

POLICY ON GENDER SENSITIZATION AGAINST SEXUAL HARASSMENT

1. Introduction

Sexual harassment has come to be widely condemned as a form of human rights violation, and as an infringement on life and liberty as defined by the Constitution of India. Such behavior is seen to transgress common dignity, gender equality, and fundamental rights. The Supreme Court of India, in a landmark judgment in August 1997 (*Vishaka & others vs. the State of Rajasthan & others*) stated that every instance of sexual harassment is a violation of “Fundamental Rights” under Articles 14, 15, and 21 of the Constitution of India, and amounts to a violation of the “Right to Freedom” under Article 19 (1)(g). It also issued a set of guidelines – usually referred to as the Vishaka Guidelines – to deal with the problem of sexual harassment.

In 2013, the Government of India passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [2013 Act henceforth]. The Act reiterated that sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

As an educational institution, the Centre for Studies in Social Sciences, Calcutta (Centre henceforth) is committed to uphold the Constitutional mandate ensuring the above mentioned human rights. It is with this objective that this policy has been framed.

2. Objectives and Scope of Policy

- a. This policy shall be called “Policy on Gender Sensitization against Sexual Harassment”.
- b. The policy reiterates the commitment of the Centre to creating and maintaining a campus in which students and employees can study and work together in an environment free of all forms of sexual harassment.
- c. The policy is based on the 2013 Act and rules passed under it to date. The policy deals with issues in consonance with the requirements of an academic institution. Amendments to the policy shall have effect only if they are in consonance with the Act and rules under it.
- d. The policy would apply to all students and employees of the Centre as well as to service providers and outsiders who may be within the Centre’s campus at the time of commission of the act coming under the purview of the policy. The policy would apply inside the campus but also on off-campus official duty and Centre-related academic and social events (workshops, conferences, field work, group holidays/excursions organized by the Centre or conducted on behalf of the Centre, interviews/meetings with outside people and any other activity organized by the Centre outside the campus including the period of traveling for such activity).

e. The meaning of various terms relevant to the policy are as follows:

- “Campus” includes all places of work (instruction, research and administration), as well as canteen and other public places on the Patuli campus of the Centre (excluding the premises of the Eastern Regional Centre of ICSSR) as well as Jadunath Bhavan Museum and Resource Centre at 10, Lake Terrace.
- “Centre” refers to the Centre for Studies in Social Sciences, Calcutta (CSSSC).
- “Employee” means a person employed by the Centre for any work on regular, temporary, honorary, visiting, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor; 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 express or implied; and includes a co-worker, probationer, trainee, apprentice or called by any other such name.
- “Faculty” includes any person on the staff of the Centre who is appointed on a temporary or permanent basis either as Assistant Professor, Associate Professor, Professor or Postdoctoral Fellow and includes Visiting and Honorary Faculty and any outside faculty temporarily affiliated with the “Centre”.
- “Non-teaching staff” includes any person on the staff of the Centre who is not appointed to a teaching and/or research post, whether full-time, permanent, temporary, ad-hoc, part-time, daily wage, honorary or on special duty or deputation, and shall include persons employed on a casual or project basis, as also persons employed through a contractor.
- “Outsider” includes any person who is not a student or employee of the “Centre”; these could include “service providers”, participants in a seminar, workshop or a training program, students’ relatives, alumni or students from another institution, and any other outsiders who are on the “campus” of the “Centre” to meet with any employee or student or use the library and other facilities of the “Centre”.
- “Project staff” includes any person on the staff of the “Centre” who is appointed on a temporary or permanent basis as part of a specific project.
- “Service provider” includes any person or entity who provides services to the “Centre” or its “employees” and “students”.
- “Student” means any person who is enrolled for any degree/diploma/certificate course at the “Centre” (full-time/part-time/short-term/long-term). It also includes a student of another University or college or research institution who has been placed or has opted for placement with the “Centre” or is auditing/attending courses at the “Centre” or is temporarily affiliated with the “Centre”.

3. Definition of Sexual Harassment

Sexual harassment, as defined in the 2013 Act, includes any one or more of the following unwelcome acts or behavior (whether directly or by implication):

- Physical contact and advances
- A demand or request for sexual favors
- Making sexually colored remarks

- Showing pornography
- Any other unwelcome physical verbal or non-verbal conduct of a sexual nature.

Note: The key expression in the above definition is *unwelcome* which indicates unwanted and non-consensual nature of the behavior in question.

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

- Implied or explicit promise of preferential treatment in employment
- Implied or explicit threat of detrimental treatment in employment
- Implicit or explicit threat about present or future employment status
- Interference with work or creating an intimidating or offensive or hostile work environment
- Humiliating treatment likely to affect health or safety.

Sexual harassment is an assertion of power. Though all women and some men can be the targets of sexual harassment, vulnerability can be compounded by region, caste, class, religion, sexual orientation, minority identity and by being differently abled.

4. Internal Complaints Committee

The Internal Complaints Committee (ICC henceforth) shall consist of seven members, with the composition as given below:

- A Presiding Officer who shall be a woman faculty member
 - One faculty member and two members of the non-teaching staff
 - One PhD student
 - One project staff representative
 - One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with issues relating to sexual harassment.
- At least half of the total members on the ICC shall be women.
 - All members shall hold office for a period of two years.
 - The new committee (including the outside expert) has to be fully constituted at least one month before the end of the tenure of the existing committee. In case of any delay, the previous committee will continue until the new committee is constituted.
 - In the event of the expiry of the term of the ICC during the pendency of an enquiry, then for purposes of that complaint, the previous ICC will be regarded as a valid committee, till the submission of the enquiry report to the employer.
 - Any member of ICC charged with sexual harassment in a complaint or any other interested party must step down as member during the enquiry into that complaint and another member will be appointed as replacement.

Note: The ICC is **NOT** about moral policing. The role of the committee is to create awareness about sexual harassment and to deal with and punish acts of sexual harassment, *and not to curtail sexual expression from the campus*. Members are expected to be sensitive to the issue and not let personal biases and prejudices (whether based on gender, caste, class) and stereotypes (e.g., pre-determined notions of how a “victim” or “accused” should dress or behave) to affect their functioning as members of the committee.

5. Complaints Filing Process

- a. Any person may make, in writing, a complaint of sexual harassment at the workplace to the ICC within three months of the incident and in case of a series of incidents, within a period of three months from the date of the last incident.
- b. The time limit may be extended if the committee is satisfied that there were circumstances which prevented the person from filing a complaint within the said period. But ICC shall record the reasons for the same in writing.
- c. If the person cannot make a complaint in writing, the Committee shall render all reasonable assistance to them for making the complaint in writing. All such complainants should be authenticated by the complainant with their signature or thumb impression.
- d. At the timing of filing the complaint, the complainant shall submit six copies of the complaint to the ICC along with supporting documents and the names and addresses of the witnesses.
- e. Third party complaints are not allowed except in the circumstances prescribed in the 2013 Rules (that is, when a person is unable to make a complaint on account of documented physical or mental incapacity and with the written consent of the complainant or in case of death of the person).

6. Conciliation

- a. If the complainant so requests, the ICC may, before initiating an inquiry, take steps to settle the matter between the complainant and respondent through conciliation.
- b. Any settlement that is arrived at through conciliation should be recorded in writing and forwarded to the employer to take any action that may be specified as part of the settlement. Copies of the settlement shall also be provided to the complainant and the respondent.
- c. No monetary settlement shall be made as a basis of conciliation.
- d. Where a settlement is arrived at, no further inquiry shall be conducted. However, if the complainant informs the ICC that the terms of the settlement have not been complied with by the respondent, then the ICC shall proceed to make an inquiry into the complaint.

7. Inquiry process

- a. Upon receipt of a complaint of sexual harassment, the ICC shall proceed to make an inquiry into the complaint except when the complainant requests conciliation.
- b. Any member of the ICC who receives the complaint must immediately forward the same to the Presiding Office of the ICC.

- c. The first meeting of the ICC should be called no later than two working days of the receipt of the complaint.
- d. Once the ICC decides that the complaint falls within its jurisdiction, the inquiry process will be set in motion.
- e. The inquiry shall be completed within a period of ninety days.
- f. At the start of the inquiry process, the ICC shall send one of the copies received from the complainant to the respondent within a period of seven working days.
- g. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents.
- h. The ICC shall conduct an inquiry into the complain in accordance with the principles of natural justice.
- i. In conducting the inquiry, a minimum of three members of the ICC, including the Presiding Officer, shall be present.
- j. In the course of the inquiry, the complainant, the respondent, and their witnesses will be given a chance to give an account of the instances alluded to in the complaint.
- k. The ICC shall have the power to ask questions that it deems fit to all parties.
- l. The ICC may also call upon additional witnesses and ask them any questions that it may deem fit.
- m. The ICC shall have the power to ask the relevant authorities for any official papers or documents pertaining to the complainant as well as the respondent.
- n. If the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Presiding Officer, the ICC shall have the right to terminate the inquiry proceedings or give an *ex parte* decision on the complaint, after giving a written notice, fifteen days in advance, to the party concerned.
- o. Within a period of ten days from the date of completion of the inquiry, the ICC shall provide a report of its findings to the employer. A copy of the report shall also be made available to the concerned parties.
- p. In case the ICC arrives at the conclusion that the allegation against the respondent has not been proved or that the evidence is inconclusive, it shall recommend to the employer that no action is required to be taken in the matter. In case the ICC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend suitable action.
- q. The employer shall act upon the recommendation made in the report of the ICC within sixty days of its receipt by them. Note: for the purpose of taking such action, the term 'employer' would refer to the Board of Governors in case the respondent is a faculty member or a Group 'A' staff member, and to the Director in case of all other respondents.
- r. Any person aggrieved by the recommendations made in the report of the ICC or non-implementation of such recommendations may appeal to the court or tribunal in accordance with service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed. Such an appeal shall be made within a period of ninety days of the recommendations.

General Guidelines for the Inquiry Process

- a. The ICC shall conduct the proceedings in a fair manner and shall provide reasonable opportunity to the complainant and the respondent for presenting and defending their case.
- b. At no time in the enquiry proceedings shall the respondent and the complainant be placed face to face, or put in a situation where they may be face to face (e.g., they should not be called at the same time or made to wait in the same place).
- c. The ICC may consider as relevant any earlier complaints against the respondent. However, at no time in the enquiry process shall the past sexual history of the complainant be probed into, as such information shall be deemed irrelevant to a complaint of sexual harassment.
- d. Most cases of sexual harassment occur in private, so there may not be any eye-witness. The ICC will have to come to a conclusion about the complaint without proof or evidence of this kind. It will rely on circumstantial evidence and the written submissions and oral testimonies of the complainant, the respondent, and witnesses if any as well as any documentary evidence. This enquiry is not a criminal investigation or a proceeding in a court of law – a strong probability, rather than ‘proof beyond reasonable doubt’, is enough to take a decision on the complaint.
- e. Records of all evidence gathered in the course of the enquiry shall be maintained. The name of the complainant and of all witnesses shall be coded. However, the name of the respondent shall not be coded.
- f. Enquiry proceedings shall be confidential.
- g. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint filed, the identity and addresses of the complainant, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC and action taken by the employer under the provisions of the Act shall not be published, communicated or made known to the public, press and media in any manner. However, information may be disseminated regarding the justice secured to any complainant without disclosing the name, address, identity or any other particulars which may lead to the identification of the complainant and witnesses.
- h. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of the Act contravenes the provision in 7, s/he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.
- i. The ICC should make efforts to ensure that the complainant(s), respondent(s) and the witnesses are not victimized or discriminated against at any time during or after the enquiry process as a result of their respective roles in a particular case of complaint. For instance, if the complainant is a student and the respondent is a faculty member, the respondent will not act as examiner or supervisor to this student. If the complainant and the respondent are both employees working together on one or more tasks, alternative arrangements shall be made to carry out the task such that interaction between the two are not allowed. If the respondent is an outsider, he/she shall not be allowed to enter the premises of the Centre during the period of enquiry. These changes may be continued as long as necessary.
- j. The ICC shall take action against anyone who intimidates the complainant(s), respondent(s), witnesses or members of the committee, during or after the enquiry process.

- k. The ICC shall take every effort to ensure that there is no victimization of complainant(s), respondent(s), and witnesses during or after the enquiry process.

9. Penalties

Any employee, student, service provider, or outsider, found guilty of sexual harassment shall be liable for disciplinary action. The penalties listed below are *indicative*, and shall not constrain the CSSSC authorities from considering others, in accordance with the rules governing the conduct of employees and students in practice at the time.

(i) Penalties in Case of Employees (Faculty or Non-teaching staff)

- a. Warning, reprimand, or censure
- b. Withholding of one or more increments
- c. Debarring from supervisory duties
- d. Denial of membership of statutory bodies
- e. Removal from administrative position
- f. Suspension from service for a limited period
- g. Compulsory retirement
- h. Dismissal from service
- i. Any other relevant mechanism

Further, the penalty awarded shall be recorded in his/her Confidential Record. The right to an official character certificate may also be withdrawn where applicable.

(ii) Penalties in Case of CSSSC Students

- a. Warning or reprimand
- b. Withholding results
- c. Debarring from exams
- d. Suspension for a specified period
- e. Expulsion/ Rustication
- f. Denial of admission
- g. Declaring the harasser as *persona non grata* for a stipulated period of time
- h. Any other relevant mechanism

Further, the penalty awarded shall be recorded in his/her Personal File. The right to an official character certificate may also be withdrawn where applicable.

(iii) Penalties in Case of Outsiders

- a. Warning, reprimands, or censure
- b. A letter communicating her/his misconduct to her/his place

- of education, employment or residence
- c. Declaration of the campus as out of bounds for her/him, and/or a bar on appearing for the entrance examination/interview to any program of study offered by CSSSC
- d. Any other action as may be necessary

(iv) Penalties in Case of Service Providers

- a. Warning, reprimands, or censure
- b. A letter communicating her/his misconduct to her/his place of employment
- c. Declaration of the campus as out of bounds for her/him
- d. Withdrawal of the right to run/manage/work in any commercial enterprise, or to provide services, on the campus
- e. Any other action as may be necessary

In addition to the penalties specified under (1)-(4) above, the person may be advised to undergo counseling and gender sensitization, and required to give a written and/or public apology to the complainant.

(v) Penalty in Case of a Second Offence

A second, or repeated offence, may, on the recommendation of the ICC, attract a higher penalty.

10. False or Malicious Complaints and False Evidence

- a. If the ICC arrives at a conclusion that the allegation against the respondent is malicious, or the person making the complaint has done so knowing it to be false, or the person making the complaint has produced any forged or misleading document, it may recommend to the employer that action be taken against such person in accordance with the provision of the relevant rules applicable (subject to clauses b and c below).
- b. However, a mere inability to substantiate a complaint or provide adequate proof would not attract action against the complainant under this section.
- c. Further, malicious intent on part of the complainant shall be established after an inquiry in accordance with the prescribed procedure, before any action is recommended.
- d. If the ICC arrives at a conclusion that during the inquiry, any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action in accordance with the provisions of the relevant rules applicable to the said witness.

11. Duties of Employer

Every employer shall provide a safe working environment at the workplace. To this end, the following steps shall be taken:

- a. Display at any conspicuous place in the workplace the list of members of the Internal Complaints Committee and the penal consequences of sexual harassment.
- b. Facilitate ICC in organizing awareness programmes at regular intervals for sensitizing employees and students about sexual harassment.
- c. Providing necessary facilities to the ICC for dealing with complaints and conducting enquiries
- d. Assist in securing the attendance of respondent and witnesses before the ICC
- e. Make available to the ICC such information as may be required pertaining to complaints
- f. Provide assistance to the complainant if they choose to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.
- g. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.
- h. Monitor the timely submission of reports by the ICC

12. Miscellaneous

The ICC shall prepare a report of its activities (including number of sensitization activities and complaints received and pending or disposed) during each calendar year, and submit the same to the employer and the District Officer (notified under Section 5 of the 2013 Act).