

**CDS Rules on Sexual Harassment of Women at Workplace: Prevention,
Prohibition and Redressal and Procedures of the Internal Complaints Committee
(ICC)**
(as revised in November 2016)

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 has been published in the Gazette of India on 23rd April 2013. The rules have been published on 9th December, 2013. The Act makes it mandatory for employers not only to prevent and prohibit Sexual Harassment at the workplace, but it also provides employees with an impartial grievance redressal mechanism and regulations as per the requirements of the Act. In pursuance of the above, and in compliance with the requirement of the Act, it has been decided to formulate a policy and operating procedures for dealing with such issues in the Centre for Development Studies.

A. Definition

1. Sexual Harassment includes:

Any unwelcome sexually motivated behaviour, whether directly or by implication involving physical contact or advances, demand or request for sexual favours, making sexually-tainted remarks, showing pornography and other unwelcome physical, verbal or non-verbal expression of a sexual nature.

To prevent sexual harassment at the workplace, the following circumstances, among others, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment, may amount to Sexual Harassment:

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

2. Scope:

The provision of these rules and procedures shall apply to all students and academic and non-academic staff of Centre for Development Studies (CDS); project staff on temporary basis and also service providers working on the campus. Service provider means a person employed in CDS directly (inclusive of daily wage workers, those on a consolidated salary) or through an agency to render specific services (inclusive of sweepers, security personnel and canteen workers). These guidelines reiterate the commitment of the Centre to create and maintain a community in which students, academic and non-academic staff and other service providers can work together in an environment free from all forms of sexual harassment.

These rules and regulations shall be applicable to all complaints of sexual harassment inclusive of:

- (i) a student against a member/ members of academic or non-academic staff co-students
or
a member of the academic or non-academic staff against a student/ students or another member/ members of the academic or non-academic staffs,
irrespective of where the alleged harassment is reported to have taken place;
- (ii) a service provider or an outsider against a student/ students or a member/ members of the academic or non-academic staff or another service provider
or
a student or a member of academic or non-academic staff against an outsider or service provider,
if the alleged sexual harassment is reported to have taken place within the campus;
- (iii) a temporary project staff against a student/ students or a member/ members of the academic or non-academic staff or service provider, irrespective of where the alleged harassment is reported to have taken place.

B. Composition of Internal Compliance Committee (ICC), CDS and Procedure

According to the SEXUAL HARRASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITON AND REDRESAL) ACT 2013, "Every employer of a workplace shall, by an order in writing constitute a committee to be known as "Internal Complaints Committee" (ICC).

I. Composition:

- a. The Committee shall consist of the following seven members to be nominated by the Director:
 - i. A Presiding officer (PO) who shall be a senior woman faculty member, preferably committed to the cause of women.
Provided that if a senior woman faculty member is not available, the PO shall be nominated from any other government department/ institution/ university, in accordance with the provisions of the Act and the Rules
 - ii. Three members of the CDS staff (one from amongst all faculty members, one from amongst all library staff and one from amongst all administrative staff), preferably committed to the cause of women
 - iii. Two students
 - iv. One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment

- b. The number of women members should not be less than one-half of the total number of members in the Committee.
- c. The nomination procedure shall be completed by the month of December.
- d. The panel of NGOs, from which a representative is chosen, shall be updated on a continuous basis.
- e. The tenure of members shall be generally for three calendar years. Nomination of a member for more than one term is allowed.
- f.
 - i. In the absence or inability of the PO, another woman member shall act as an acting PO and she shall have all the powers of the PO.
 - ii. A member shall be disqualified if any complaint arises against him on sexual harassment or a case of sexual harassment is pending against him or if he is found guilty of sexual misconduct.
 - iii. A member ceases to be a member if he/she absents himself/herself in three consecutive meetings.
 - iv. A member may resign office-tendering resignation to the Director and cease to be a member from the date of acceptance of resignation.
 - v. A vacancy arising out of consecutive absence/resignation shall be filled in eight weeks of the date of occurrence of the vacancy by the Director.
 - vi. If the complainant/respondent is a member of ICC, s/he shall recuse herself/himself from hearings in that particular case.
 - vii. If any member of the committee is found to be having a conflict of interest vis-a-vis the respondent/complainant, s/he should be asked by the PO to stay away from sittings till that particular case is enquired. This is respecting the principle of impartiality.
 - viii. The external member shall be paid fees or allowance and travel arrangements for holding proceedings of the ICC and it will be determined by the CDS administration.
 - ix. ICC shall meet at least once a semester, the gap between two consecutive meetings not exceeding six months.
 - x. The quorum for all meetings shall be more than half of the existing members of the committee. Motions shall be carried by a simple majority of those present and voting.
 - xi. Any member of the committee may request the PO to call an emergency meeting. A notice of two working days shall be required for such a meeting to be called.
 - xii. The CDS authorities will reconstitute the committee upon retirement, transfer, disqualification, death or prolonged illness of members.

II. Functions of ICC include:

- a. Inquire into the complaints of sexual harassment, in doing which ICC has powers of a civil court under the Code of Civil Procedure (1908) namely:
 - Summoning and enforcing the attendance of any person and examining him on oath;
 - Requiring the production of the necessary documents; and
 - Any other matter which is required for the completion of enquiry.
- b. Conciliation at the request of the aggrieved woman to settle the matter between her and the respondent.
- c. Assist the aggrieved woman to make complaints to the appropriate authority.
- d. Undertake the inquiry independently and without malice (personal or otherwise)
- e. Follow the required due process with respect to procedural matters in keeping with the principles of Natural Justice and the laws of the land.
- f. Organize workshops and awareness programmes at regular intervals for sensitising the CDS community about ICC and CDS rules on sexual harassment;
- g. Bring to the notice of the Director any matter which affects the safety/security of women on the campus like inadequate lighting etc;
- h. Submit an Annual Report to the Director.

III. Filing of complaints-Procedures and time limit

- a. Any aggrieved woman may make, in writing, a complaint of sexual harassment at the work place 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. The date of complaint can be extendable if the committee is satisfied with the special circumstances cited for the delay in complaining. The written complaint should be submitted to the PO or any of the members along with a list of witnesses and supporting documents. Additional documents and list of witnesses can be submitted to the ICC at a later stage during the proceedings.
- b. If the aggrieved woman cannot make such a complaint in writing, the Committee shall render all reasonable assistance to the aggrieved woman for making the complaint in writing. This may include drafting of the complaint, obtaining photocopies (which may be then signed or thumb impression affixed).
- c. Any complaint received by members should be immediately forwarded to the presiding officer and this must be notified to other committee members at the earliest and not later than three days and a meeting should be called for discussing the matter. Such complaints should be taken up by the committee within a week of receipt of the complaint.
- d. If an aggrieved woman cannot submit a complaint due to any reason (fear, unwell etc) another woman can make a complaint in the interest of all women in the

campus and to ensure that a safe working environment is maintained in the campus. In this case, a written and signed letter of consent from the victim herself or email should accompany the complaint.

- e. The committee will provide assistance to the aggrieved women, if she so chooses to file a complaint, in relation to an offense under the Indian Penal Code.

IV. Enquiry Process:

- a. The committee can meet and make a preliminary inquiry to see whether the complaint falls within the scope of the ICC, whether the time period was followed and if not examine the mitigating circumstances for the delay and decided as to whether or not the circumstances justify the delay. If the reason is found valid, it is to be recorded in writing.
- b. Conciliation:
 - i. The ICC may, before initiating an inquiry under section 11 of the Act and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. However, no monetary settlement shall be made as a basis of conciliation.
 - ii. Where a settlement has been arrived at, the ICC shall record the settlement so arrived and forward the same to the Director to take action as specified in the recommendation.
 - iii. The ICC shall provide copies of the settlement as recorded to the aggrieved woman and the respondent.
 - iv. Where a settlement is arrived at, no further enquiry by the ICC shall be conducted.
 - v. Where the aggrieved woman informs the ICC that any term or condition of the settlement arrived at, has not been complied with by the respondent, the ICC shall proceed to make an enquiry in to the complaint or forward the complaint to the police.
- c. During the pendency of the inquiry, on a written request made by the aggrieved woman, the ICC may recommend to the Director interim relief measures as stipulated in the law, including leave to her up to a period of three months which will be in addition to the leave she would be otherwise entitled to.
- d. The complainant is at liberty to withdraw the complaint at any stage of inquiry, provided that such withdrawal is made independently and under free will. The inquiry may be terminated on receipt of the request for such withdrawal.
- e. A restraint order may be served on the respondent at the earliest opportunity, giving him a copy of the complaint and warning him against making any attempt to exert pressure on the complainant or any other person involved in dealing with the complaint.
- f. The complainant may bring to the notice of the Committee attempts if any, made by the respondent to violate the order.
- g. If the complaint is tenable, the committee can proceed with the enquiry to verify the facts of the case by talking to the complainant. If she has any additional

statement, to be made, she can submit this in writing. The committee can also examine the witnesses of the complainant.

- h. The ICC shall enquire into the complaint, observing the principles of natural justice and maintaining the norms of gender sensitivity and arrive at a decision, taking cognizance of all aspects of the incident, the time, place and the context.
- i. A copy of the complaint shall be given to the respondent and request him to be present for the next sitting, to present oral or written submissions.
- j. Within a week, the respondent shall submit his reply to the complaint with names of witnesses if any. If both parties wish to cross examine the other, they can submit a list of questions to the ICC and the ICC reserves the right, in appropriate cases, not to allow cross examination of each other in person.
- k. The Inquiry Committee shall have the power to ask questions that it deems fit to all parties during the oral hearing.
- l. The inquiry committee shall ask questions which have been submitted by the complainant and defendant for the other parties. However, the enquiry committee has the right to disallow any questions that it has reason to believe to be irrelevant, mischievous, or gender-insensitive.
- m. The inquiry committee may also call upon additional witnesses and ask them any questions that it may deem fit.
- n. The committee has the power to ask the relevant authorities for any official papers or documentation pertaining to the complaint as well as the accused.
- o. The ICC shall complete the inquiry in the shortest possible time, not exceeding three months from the date on which the complaint is referred to it, except for special reasons.
- p. The complainant and the respondent shall be given reasonable opportunity to present and defend their case. Witnesses may be called if deemed necessary. The past sexual history of the complainant shall not be probed into and considered of any value to decide on the complaint.
- q. In case the respondent fails to attend consecutively for three hearings, the inquiry may be terminated and the decision may be taken on the complaint on *ex-parte* basis.
- r. Counselling services may be made available to the aggrieved woman on request.
- s. The complainant and the respondent cannot bring lawyers on their behalf.

V. Inquiry Report

- a. On completion of an inquiry, the ICC will submit a detailed report of its findings to the Director within 10 days of completing the inquiry. The report should include an indication of whether ICC finds the accused guilty or not guilty, along with the reasons for its decision. If the accused is found guilty, the report should indicate the gravity of the offence, whether it is major or minor, and its suggestions for punishment.
- b. Further, a copy of the report of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

- c. Where the ICC arrives at a conclusion that during the enquiry 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 service rules applicable to the said witness.
- d. Where the ICC arrives at a conclusion that the allegation against the respondent is malicious or false, action should be taken in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 dated 9th December, 2013. However mere inability to substantiate evidence cannot constitute false evidence.

Note:

Most cases of sexual harassment occur in private, so there may not be any eye witnesses. The committee 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 accused and witnesses if any, as well as documentary evidence. This enquiry is not a criminal investigation or proceeding in a court of law-a strong probability, rather than 'proof beyond reasonable doubt' is enough to take a decision on the complaint.

VI. Confidentiality

- a. The Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013, stipulates that those who violate the confidentiality related to the contents of the case and the identity of the affected parties would be penalised.
- b. All copies of the complaints received, documentation of the inquiry including names and depositions of the witnesses shall be kept confidential. The recommendations of the committee shall be submitted to the Director and all the documents regarding complaints be retained by the office of the Committee including the original signed witnessed depositions.
- c. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and address of the aggrieved women, respondent, and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the internal committee and the action taken by the employer under the provisions of this Act shall not be published, communicated, or made known to the public, press and media in any manner: Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

VII. Record keeping and duration

- a. All materials relating to a complaint of harassment including reports, correspondence, data, documents, tapes and testimony gathered during the investigation will be retained in a confidential listed file for a minimum of ten years.

- b. The PO is responsible for the safe keeping of records. In the event of reconstitution of the committee, all records relating to the complaints of harassment including reports, correspondence, data, documents, tapes, and testimony shall be handed over to the PO of the new Committee.

VIII. Redressive Action

Based on the report provided by the ICC, the Director should take appropriate redressive action within 60 days of receipt of the Report. If the Director finds that there are lacunae in the Report, he may order for a review of the Report by the ICC.

IX. Punitive Action

The ICC may recommend the following range of penalties depending on the seriousness of the incident:

- (a) For Faculty:
 - i. Warning, Reprimand or Censure
 - ii. Withholding of increment/s for a period of one year
 - iii. Entry of penalty awarded in his confidential record
 - iv. Removal from administrative responsibilities of CDS
 - v. Disbarment from administrative positions
 - vi. Suspension from service for a limited period
 - vii. Compulsory retirement
 - viii. Dismissal from service
- (b) Non-academic staff
 - i. Warning, Reprimand or Censure
 - ii. Withholding of one or more increment/s for a period of one year
 - iii. Entry of penalty awarded in his confidential record
 - iv. Suspension from service for a limited period
 - v. Compulsory retirement
 - vi. Dismissal from service
- (c) For students
 - i. Warning or Reprimand
 - ii. Withdrawal of hostel accommodation for a period up to one semester
 - iii. Withdrawal of the right to an official character certificate
 - iv. Withdrawal of hostel accommodation for the entire period of study
 - v. Rustication from Programme for a period of up to two semesters.
 - vi. Expulsion from CDS
 - vii. Withholding of degree awarded by JNU
 - viii. Entry of the penalty awarded in his personal file

(d) For project staff/Service Provider/Outsider

- i. Warning or Reprimand
- ii. Withdrawal of remuneration/ wages
- iii. Withdrawal of the right to an official character certificate
- iv. Removal from the duties

1. In complaints involving teachers and students, the teacher shall not teach or supervise the work of the student concerned during the period of inquiry and pendency of the decision on the case. Members of the academic and /or non-academic staff involved in such complaints either as the victim or the accused shall not write the confidential reports of the complainant or the respondent during the pendency of the case.
2. In case the complainant or the respondent is dissatisfied with the recommendation or non-implementation of the recommendation, she/he may prefer an appeal to the court or tribunal in accordance with the service rules applicable to the CDS. Such appeal shall be preferred within a period of 90 days of the recommendation.

C. General Rules:

- a. Service rules of CDS should incorporate acts of sexual harassment as possible ground for disciplinary action. In the case of students, the brochure/handbook provided to them at the time of admission should contain a Section giving the CDS rules against sexual harassment.
- b. The existence of the Committee, and its Rules should be well publicised with Notices to be put up on all Notice Boards regarding the constitution of the ICC and its composition.
- c. A copy of the Rules should be kept at the Library counter, in the Canteen and be available on the CDS website.
- d. The project staff and the service providers should also be informed about the CDS- ICC Rules at the time of joining work which should be accessible from the Administration. Provision should be made to translate the Handbook into Malayalam.

- e. The institution through the office of the ICC will facilitate timely training programmes to educate employees about the laws against sexual harassment.
- f. The institution shall make efforts to train supervisory staff with respect to their responsibilities for the staff under their jurisdiction.
- g. Employees are required to make themselves aware of the policies of the CDS in this regard and ignorance of the code of conduct is not a valid reason for violating the code.

D. Miscellaneous

The CDS shall allocate the necessary funds for the functioning of the ICC (honorarium for external member and their transportation) as well as for organising programmes/workshops on gender sensitisation issues/ bringing out materials (like brochures, posters, pamphlets etc).