

Internal Complaints Committee
as per the
Sexual Harassment of Women at Workplace (Prevention, Prohibition
& Redressal) Act, 2013

Sree Chitra Tirunal Institute for Medical Sciences and Technology,
Thiruvananthapuram 695011



Standard Operating Procedures

Dec 2015

Preamble

The Government of India requires that a safe working environment be assured to women to enable them to realise their right to work or follow an occupation of their choice and fulfil this role to the best of their abilities without fear of any form of harassment or abuse of a sexual nature. In keeping with this requirement, the Govt of India had followed the Vishaka Guidelines¹ set forth by the Supreme Court of India and subsequently enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013² and notified the concordant Rules³ to address the issue.

In keeping with the Vishaka Guidelines, the Sree Chitra Tirunal Institute for Medical Sciences & Technology (SCTIMST) constituted a committee to address complaints of sexual harassment by women and amended its Service and Personnel Conduct Rules (as on 31st Dec 2009).

The Govt of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on April 23, 2013. Subsequently, the Ministry of Women and Child Development notified the rules called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 on 9th December 2013. Following this notification, the SCTIMST revised its Complaints Committee in keeping with the requirements of the Act and reconstituted its Internal Complaints Committee on 20/01/2014 vide SCTIMST Office Order of Personal & Administrative Division No.Dir/Per&GI.Admn/SCTIMST/CCR/2014.⁴

The Internal Complaints Committee of SCTIMST has the mandate to prevent, prohibit and redress complaints of sexual harassment at workplace.

Goals of the Committee

To promote a safe working environment for all women employees and students to work and realise their fullest potential

¹ Vishaka and others V. State of Rajasthan and other. (AIR 1997 Supreme Court 3011)

² The Sexual Harassment of Women in Workplace (Prevention, Prohibition & Redressal) Act, 2013 No 14 of 2013 April 23, 2013 url: <http://wcd.nic.in/wcdact/womenactsex.pdf> accessed on Jan 3, 2015

³ The Sexual Harassment of Women in the Workplace (Prevention, Prohibition & Redressal) Rules, 2013 9th December 2013 url: <http://www.ucms.ac.in/sexual-harassment-28.1.14/Sexual-Harassment-at-Workplace-Rules111.pdf> accessed on Jan 3, 2015

⁴ SCTIMST, Personnel and Administrative Division Order no. No.Dir/Per&GI.Admn/SCTIMST/CCR/2014 url: http://intranet.sctimst.ac.in/custom_code/showPdf.php accessed on Jan 3, 2015

The national and international context

Redressal provided for complaints of sexual harassment are based on the fundamental rights that address equality before the law, right to practice any profession or carry out any occupation and protection of life and liberty. The right to life here is interpreted as the right to life with dignity and the ability to carry out a profession is contingent upon having a working environment that is safe.

The Government of India ratified the Convention on Elimination of all forms of Discrimination against Women (CEDAW)⁵ on 9 July, 1993 and this requires that it act to eliminate discriminatory practices that come in the way of women's right to work.

The legal rationale

The need for redressal of complaints on sexual harassment of working women is realised in the context of the fundamental rights of working woman under articles 14, 19 and 21 of the Constitution of India, where, in article 14: *Equality before law*, – The state shall not deny to any person equality before law or equal protection of laws within the territory of India, article 19(1)(g): *to practice any profession or to carry out any occupation, trade or business*, – and article 21: *Protection of life and personal liberty* – No person shall be deprived of his life or personal liberty except according to procedure established by law. Here the fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working environment. Right to life means life with dignity.

The international covenants that are relevant in this context, namely, the Universal Declaration of Human Rights⁶ of which India is a signatory and the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) which was ratified by the government on July 9, 1993,⁷ both require that discriminatory practices that affect women in their enjoyment of their right to work be eliminated.

Scope

This policy covers all staff and students – including permanent, temporary and contract staff and visiting students, in the premises of the Sree Chitra Tirunal Institute for Medical Sciences and Technology (SCTIMST).

By premises is meant the working sites of the BMT and hospital wings including Labs, OT, OP, Canteens, Hostels, Quarters, and all other sites within the administrative jurisdictional authority of the Director, SCTIMST. This also includes the places to which the aforementioned persons are sent in the performance of their duties.

Purpose of policy

⁵ Convention on Elimination of All Forms of Discrimination Against Women, Url: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en accessed on May 27, 2015

⁶ Universal Declaration of Human Rights, 1948 url: <http://www.un.org/en/documents/udhr/index.shtml> accessed on Jan 3, 2015

⁷ Convention on Elimination of All Forms of Discrimination against Women, url: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> accessed on May 27, 2015

The purpose of this policy is to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.

Mandates for maintaining a safe working environment

Responsibilities of the Institution

Provide a safe workplace for women: The Institute shall strive to provide a workplace that is free from sexual harassment for women. It shall support and sustain a Committee to inquire into the grievances due to 'sexual harassment' of women staff and students (both temporary and permanent) and others confined to their care within the statutory limits of the Director, SCTIMST's jurisdictional authority.

Dissemination of sexual harassment policy: The employer, namely SCTIMST shall make all efforts to display and disseminate the policy against sexual harassment to all its employees.

Responsibilities of Internal Complaints Committee Members

1. Create awareness amongst the staff and students of the SCTIMST as to the existing laws regarding sexual harassment and the ways of prevention
2. Undertake an inquiry in to complaints by women in keeping with the requirements of the Standard Operating Procedures(SOPs) for the Committee
3. Undertake the inquiry independently and without malice (personal or otherwise)
4. Follow the required due process with respect to procedural matters in keeping with the Principles of Natural Justice and the laws of the land

Responsibilities of Employees

The responsibilities of the employees including those at supervisory levels are stated in Chapter VII. Misconduct, Penalties and Disciplinary Procedures, section 6B.Prohibition of Sexual Harassment of Working Women, pages 113-114, of the Service and Personnel Conduct Rules (as on 31st Dec 2009). The appropriate clauses are given below.

- 1) Indulging in any act of sexual harassment of any woman at her work place by any employee shall be taken note of seriously and shall be liable for strict disciplinary action.
- 2) Every employee who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.
- 3) A Complaints Committee constituted by the Director of the Institute will be deemed to be an Inquiry Authority for the purposes of the Conduct Rules and the report of the Complaints Committee shall be deemed to be an inquiry report under those rules.

Definition of Sexual Harassment: For the purposes of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as-

- a. physical contact and advances;
- b. demand or request of sexual favours;

- c. making sexually coloured remarks;
- d. showing any pornography; or
- e. any other unwelcome physical or verbal conduct of sexual nature.

Explanation for sexual harassment as per Sexual Harassment of Woman (Prevention, Prohibition and Redressal) Act 2013

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

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status, or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety

Explanation for terms used

Physical contact and advances or demand or request for sexual favours:

When submission to unwelcome sexually determined behaviour such as sexual advances, requests for sexual favours, and verbal or physical conduct of a sexual nature, are explicitly or implicitly made a term or condition of teaching/guidance, education, employment, participation or evaluation of a woman's engagement in any activity as part of the education or employment, it shall also be deemed to be sexual harassment.

Any other unwelcome physical, verbal conduct of a sexual nature:

When unwelcome sexually determined behaviour, including but not limited to, sexual advances, physical and /or verbal or non-verbal or conduct, such as loaded comments, remarks or jokes, letters, phone calls, SMS or emails, postings in social networking sites, gestures, exhibition of pornography, lurid stares, physical contact, stalking, sounds or display of a derogatory nature have the purpose and /or effect of interfering with a woman's work or academic performance or of creating an intimidating, hostile or offensive employment, educational or living environment, it shall be deemed to constitute sexual harassment.

Unwelcome physical conduct of a sexual nature:

When a man uses with a sexual purpose, the body or any part of it or any object as an extension of the body in relation to a woman without her consent or against her will, such conduct will amount to sexual assault.

Unwelcome physical, verbal conduct of a sexual nature:

It is clarified that it is the **reasonable perception of the woman that would be relevant** in determining whether any conduct was sexually determined and, if so, whether such conduct was unwelcome or not and that her objection would disadvantage her in connection with her education or employment, including evaluation, grading, recruitment or promotion, or when it creates a hostile working, educational or living environment.

“Hostile Work Environment”:

A hostile work environment is said to be created when any act of Sexual Harassment has the purpose or effect of interfering with an individuals’ work performance or creating an intimidating, hostile or offensive employment, educational or living environment.

Responsibility of Supervisors

The supervisors are required to take cognisance of complaints by women both formal and informal and take necessary steps to prohibit and prevent acts of sexual harassment within their jurisdiction. The supervisors are the first line of informal redressal mechanism that is available to women employees subject to such abuse. Therefore the role of the supervisor is very important in the prevention of sexual harassment in the work place. The Committee shall take strict view regarding any acts of omission by supervisors in this context and such acts shall be treated as abetting the act of sexual harassment.

Reporting sexual harassment

1. The employee/student/ women who are included within the scope of this policy should submit a written complaint to any member of the Complaints Committee. This complaint should be made within a period of three months from the date of the incident or in case the complaint includes a series of incidents, within three months of the date of the last incident.
2. In case the woman is unable to make a written complaint, the members of the Committee shall render reasonable assistance to the woman to make her complaint in writing. This may include drafting of the complaint, and obtaining photocopies (which may be then signed or thumb impression affixed).
3. The complainant should submit the complaint, including the names and addresses of witnesses to the incident(s) and other supporting documents, if any.

If a complaint is referred to the ICC by any of the authorities of SCTIMST, the ICC shall make an effort to obtain a written complaint from the complainant in keeping with the requirements of the Sexual Harassment in the Workplace Act, 2013.

Written complaints should include details of the following:

- a. Name and designation of the complainant
- b. The nature of the complaint including
 - i. The names and designation of the person(s) against whom the complaint is being made
 - ii. The description of the event along with specifics of the alleged perpetrator and actions and timing in chronological order

- iii. The consequence of the action/event on their functioning
- iv. The names and designation(s) of witnesses (if any) describing what aspect of the event was witnessed.
- v. The steps (if any) taken by the Complainant to bring the unsavoury action to the attention of the authorities /perpetrator
- vi. The responses of the supervisory authority/perpetrator
- vii. A request to inquire into the case and provide relief

Procedure for inquiring into the complaint

The member who receives the written complaint should inform the Chairperson immediately. The Chairperson will constitute the Sub-Committee including a member from the specific wing to which the complainant is attached to undertake a preliminary inquiry into the events described and evaluate whether or not the complaint is tenable.

In case of referred complaints, the ICC may review the documentation accompanying the referral to make a determination as to whether or not it falls within the scope of the ICC. If a report is part of the documentation, the ICC may treat the same as a preliminary inquiry report.

If the complaint falls within the scope of the ICC, then the sub-committee would have to examine the date of the said complaint to verify whether it fulfils the criteria of the 90 day cut off for filing a complaint before the ICC.

If it does not fulfil the criteria of the 90 day limit for filing of such complaints, the sub-committee should examine the mitigating circumstances for the delay and decide as to whether or not the circumstances justify the delay. If the reason is found valid, the reason is to be recorded in writing and an extension - limited to 3 months may be granted.

If the complaint is tenable, the Sub-Committee will undertake a preliminary inquiry to verify the facts of the case by talking to the complainant, person(s) against whom complaint is made, witnesses (if any) and supervisory staff.

Following this preliminary inquiry, if the complaint is found tenable, the sub- committee can then make a determination as to whether any specific steps taken by the person against whom complaints are made would serve by way of redressal. This effort should be made by taking into confidence the Supervisory staff of both the Complainant and the person against whom the complaint is made.

Each case will have to be decided on its own merits. Perceptions of individuals vary. What may be acceptable to one may not be to another. Therefore, the Complainant may be encouraged to convey to the person against whom the complaint is made, either in writing or orally, preferably in the presence of witnesses/Committee members; her perceptions of the action. Following this, a defence of not knowing that the aforementioned act was sexual harassment is not tenable.

The Sub-Committee will then prepare a draft report on the verified facts of the case and the recommendations for redress. This report will be circulated among the members of the

committee for their inputs and then finalised. This preliminary report will be filed within 7 working days of receiving the complaint.

If the act/event does not fall within the scope of the ICC or if the complainant is not found eligible to be granted an extension for the time limit of 90 days, the decision of the ICC shall be made known to the complainant within a period of 7 working days of receiving the complaint by way of a written communication. In such a case one copy of the complaint received, the decision of the ICC and the communication from the ICC to the complainant shall be forwarded to the Director, under a seal of confidentiality.

In case the sub-committee finds the complaint tenable, before initiating action for the conduct of the inquiry, the sub-committee at the behest of the complainant, shall make attempts towards conciliation. The efforts at conciliation should be made without coercion or undue influence and cannot include any monetary settlement.

If such a settlement of the case is arrived at, the Committee shall record the settlement arrived at and forward the same to the Director, SCTIMST along with a copy of the complaint for taking action on the recommendations made as a part of the conciliation.

A copy of such a settlement as recorded shall be provided to the aggrieved woman and the respondent.

If such a settlement is arrived at, no further inquiry needs to be conducted on the compliant.

If the complaint is found to be tenable and no reconciliation is possible or called for, then, the complainant will be asked to file a formal complaint with a date, providing 6 signed copies of the complaint, with supporting documents and the names and addresses of witnesses (if any). The ICC will proceed with the inquiry under such circumstances.

All decisions of the sub-committee should be ratified by a quorum of 4 members, including sub-committee members and the external member, either by circulation or by direct meetings.

The sub-Committee is used to undertake the preliminary inquiry for the following reasons:

1. to ascertain the genuineness of the complaint,
2. to expedite the process of inquiry without violating the requirements of due process entitlements and
3. to maintain the confidentiality of the complainant

Relief to complainant, during the pendency of inquiry

The ICC, at the written request of the aggrieved woman may recommend to the employer to:

- a. Transfer the aggrieved woman or the alleged perpetrator to avoid interaction,
- b. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report till the inquiry report is submitted.
- c. If necessary assign the same to another officer,

- d. Restrain the respondent, in case of student, from supervising any academic activity of the aggrieved woman. In such a case the HOD or a senior faculty member from the Department nominated by the Director may carry out the academic supervisory functions.

Manner of inquiry into the Complaint

If the efforts at conciliation fail or the complainant is not willing for conciliation, the Committee shall proceed to undertake the inquiry into the matter.

On receipt of the formal complaint, the ICC will send one copy of it to the respondent within 7 working days, seeking an explanation.

The respondent is required to file his response along with a list of documents and names and addresses of witnesses, within a period not exceeding 10 working days from the date of receipt of the copy of the complaint from the ICC Chairperson.

The ICC shall make **inquiry** into the complaint, in accordance with the principles of natural justice.

The ICC can terminate the inquiry proceedings or give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself/himself for 3 consecutive hearings convened by the ICC:

Provided such termination or ex-parte order may not be passed without giving a notice in writing, 15 days in advance, to the party concerned.

The parties shall not be allowed to bring any legal practitioner to represent them in their case at any stage of the proceedings before the ICC.

In conducting the inquiry, a minimum of 3 members of the ICC including the Chairperson shall be present. If the Chairperson is unable to attend, he/she may nominate another member to act as Chairperson after providing notice to the other members. This shall be in effect during the pendency of an inquiry.

In case the Chairperson is unable to perform the duties for more than three months, the Director, SCTIMST will require to nominate another Chairperson to the ICC.

Care should be taken to ensure that the complainant is heard in an environment that is non-threatening and efforts should be made to conduct the inquiry in as confidential a manner as possible.

All concerned parties, including the complainant, the person against whom complaint is made, the witnesses and supervisory staff shall be called to be present for the inquiry. These persons shall be given a minimum of 24 hours' notice to present themselves before the committee/subcommittee.

Their statements before the committee shall be documented.

The inquiry shall be completed within 90 days of receipt of the formal complaint.

A written report including the recommendations in keeping with the Service and Conduct Rules, SCTIMST wherever applicable, or the laws framed by the Govt of India from time to time, shall be submitted within 15 days of the completion of the inquiry, if the ICC arrives at the conclusion that the allegation against the respondent has been proved.

Where the ICC arrives at the conclusion that the allegation against the respondent has been proved it shall recommend to the Director, SCTIMST

- (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules of SCTIMST or where no such service rules have been made, in such manner as may be prescribed
- (ii) To deduct, notwithstanding anything in the service rules applicable to the respondent from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine in accordance with the provisions of section 15 of the Sexual Harassment of Women at Work Place (Prevention Prohibition and Redressal) Act, 2013. Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct to the respondent to pay such sum to the aggrieved woman. Provided further that in case the respondent fails to pay the sum, refer to clause (ii) the ICC may forward the order for recovery of the sum as an arrear of land/revenue to the concerned district officer.

Powers of the ICC

The ICC has the same powers as that of a civil court under the Code of Civil Procedure, 1908, with respect to:

- (a) summoning or enforcing the attendance of any person and examining him on oath
- (b) requiring the discovery and production of documents, and
- (c) any other matter prescribed (for the conduct of the inquiry into the complaint)

All employees who receive a letter requiring their presence in the matter of an inquiry before the ICC are required to respond to the letter as a summons before a district Magistrate.

Punishment for False and/or Malicious Complaints or Evidence

In case the ICC finds that the complaint has been filed falsely or with malicious intention, except where service rules exist, action should be taken in accordance with the Sexual Harassment of Women at the Workplace (prevention, prohibition and redressal) Rules, 2013 dated 9th December, 2013.

The ICC may recommend action in keeping with the Employee Code of Conduct, or in case where no such regulations exist, in keeping with the laws of the land, for providing of false evidence. This needs, however to be proved directly. Mere inability to substantiate cannot constitute false evidence.

Confidentiality

All 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, SCTIMST and all the documentation regarding complaints be retained by the Office of the Committee including the original signed witnessed depositions.

Record keeping and duration

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

The Chairperson 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 Chairperson of the New Committee.

Training

The Institution through the offices of the ICC will facilitate timely training programmes to educate employees about the laws against sexual harassment.

The Institution shall make efforts to train supervisory staff with respect to their responsibilities for the staff under their jurisdiction.

Employees are required to make themselves aware of the policies of the SCTIMST in this regard and ignorance of the code of conduct is not a valid reason for violating the code.