

(PSEA) Policy of SIGMA Foundation

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Prevention of Sexual Exploitation and Abuse (PSEA) Policy of SIGMA Foundation¹

INTRODUCTION

Articles 14,15 and 21 of Constitution of India ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to the protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. A safe workplace is therefore a woman's legal right. In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act hereinafter). Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above three elements – Prohibition, Prevention and Redress.

To ensure a safe workplace for the women SIGMA Foundation, Kolkata abides by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. To comply with its responsibility SIGMA Foundation has effectively communicated a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prohibition, prevention, and redress processes. Also, it shall (i) carry out awareness and orientation for all employees for the policy (ii) ensure formation and capacity and skill-building of Complaints Committee members.

WHO IS AN AGGRIEVED WOMAN?

Hence, the right of all women working at SIGMA Foundation whether in the capacity of regular, temporary, ad-hoc or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, voluntarily or otherwise. Their terms of employment can be expressed or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name.

WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

"Sexual Harassment" following the Act includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

¹ Compiled by following "HANDBOOK on Sexual Harassment of Women at Workplace for Employers / Institutions / Organisations/ Internal Complaints Committee / Local Complaints Committee", Government of India Ministry of Women and Child Development November 2015

- 1. Physical contact or advances;
- 2. A demand or request for sexual favours;
- 3. Making sexually coloured remarks;
- 4. Showing pornography;
- 5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

WORKPLACE BEHAVIOURS THAT MAY NOT CONSTITUTE SEXUAL HARASSMENT:

- Following-up on work absences.
- Requiring performance to job standards.
- The normal exercise of management rights.
- Work-related stress e.g. meeting deadlines or quality standards.
- Conditions of works.
- Constructive feedback about the work mistake and not the person.

INTERNAL COMPLAINTS COMMITTEE (ICC)

SIGMA Foundation has already constituted an ICC through a written order. ICC comprises of 50 per cent representation of women and will hold their position not exceeding three years from the date of their nomination or appointment. There will be a 4 to 5-member Committee-Chairperson, Member Secretary, two general members and one Psychologist. The Chairperson must be a woman. She may be from Governing body/from the employees of SIGMA Foundation. Member Secretary must be a woman. She must be from the employees. Out of the two general members at least one member must be from the employees and the another member may be from the employees/governing body. The psychologist should not be related to SIGMA Foundation. She will be inducted in the committee when it is needed. All the members of ICC must be committed to the cause of women/ having legal knowledge/experience in social work.

HOW TO COMPLAIN

The victim/in case of victim's death/physical and mental inability any co-worker with the written permission of the victim's legal heir may complain to the Member Secretary or any member of the committee in writing electronically or in the paper.

WHAT SHOULD THE COMPLAINT CONTAIN?

The written complaint should contain a description of each incident(s).

It should include relevant dates, timings and locations; the name of the respondent(s); and the working relationship between the parties.

A person designated to manage the workplace sexual harassment complaint is required to assist in the writing of the complaint if the complainant seeks it for any reason.

WHAT CAN AN EMPLOYEE/WORKER EXPECT?

When it comes to redressing for workplace sexual harassment, employee/worker has a right to expect -a trained, skilled and competent ICC, a time-bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

RIGHTS OF THE COMPLAINANT

An empathetic attitude from the ICC so that she can state her grievance in a fearless environment

A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent

Keeping her identity confidential throughout the process

Support, in lodging FIR in case she chooses to lodge criminal proceedings

In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent

Right to appeal, in case, not satisfied with the recommendations/findings of the ICC

RIGHTS OF THE RESPONDENT

A patient hearing to present her case in a non-biased manner

A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant

Keeping her identity confidential throughout the process

Right to appeal in case not satisfied with the recommendations/findings of the ICC

KEY RESPONSIBILITIES of ICC

- 1. Be thoroughly prepared.
- 2. Know the Act, Policy and/or relevant Service Rules.
- 3. Gather and record all relevant information.
- 4. Determine the main issues in the complaint.
- 5. Prepare relevant interview questions.
- 6. Conduct necessary interviews.
- 7. Ensure parties are made aware of the process and their rights/responsibilities within it.
- 8. Analyse information gathered.
- 9. Prepare the report with findings/recommendations.

KNOWLEDGE and SKILLS of the members of ICC

1. They must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues.

- 2. The skills of members must include an ability to synthesise information i.e. relevant documents, the law and interviews.
- 3. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews.
- 4. They should be competent at showing empathy, being impartial and being thorough.
- 5. They should be able to identify sexual harassment and its impact.
- 6. They required to be trained/have experience in both skill and capacity to carry out a fair and informed inquiry into a complaint of workplace sexual harassment.

DO'S AND DON'TS FOR COMPLAINTS COMMITTEE **DO'S**

- 1. Create an enabling meeting environment.
- 2. Use body language that communicates complete attention to the parties.
- 3. Treat the complainant with respect.
- 4. Discard pre-determined ideas.
- 5. Determine the harm.

DON'TS

- 1. Get aggressive.
- 2. Insist on a graphic description of the sexual harassment.
- 3. Interrupt.
- 4. Discuss the complaint in the presence of the complainant or the respondent.

TIMELINES AS PER THE ACT

Submission of complaint within 3 months of the last incident.

Notice to the Respondent within 7 days of receiving a copy of the complaint.

Completion of inquiry within 90 days.

Submission of report by ICC to President and Secretary of SIGMA Foundation within 10 days of completion of the inquiry.

Implementation of Recommendations within 60 days.

Appeal within 90 days of the recommendations.

THE SEXUAL HARASSMENT COMPLAINT PROCESS

The ICC needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.

STAGE ONE: RECEIPT OF THE COMPLAINT

A fair, prompt, and impartial inquiry process starts with the ICC capable of creating an environment of trust and confidence throughout the inquiry.

Step 1: Receive and Acknowledge Receipt of the Complaint

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the ICC. Upon receipt, the complaint should be reviewed for 1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, Workplace Policy, Vishaka Guidelines and related laws.2. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Step 2: Meet and Talk to the Complainant to explore options for Formal and Informal Resolution.

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the ICC to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation. However, before recommending conciliation, the ICC must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the ICC will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC who in turn will forward the same to the President/Secretary, SIGMA Foundation for further action based on the resolution. President / Secretary is responsible for taking steps to ensure that the complainant is not subject to any backlash. The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

Step 4: Formal Mechanism

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the responds to the complaint.

2. Members of ICC must be free of any conflict of interest with either the concerned parties or with the outcome.

Step 5: Respondent and Response

1. Within seven days of receiving a complaint, the ICC will inform the respondent in writing that a complaint has been received.

2. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

STAGE TWO: PLANNING CAREFULLY

Step 6: Prepare the File

This includes taking into account the following steps:

1. Documentation: Create an independent confidential file of the complaint and all subsequent related documentation.

2. Review Law & Policy: Have a clear knowledge and understanding of the Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.

3. Make a List: Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable. The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. Also, the ICC has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

4. Supporting Documents: Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.

5. Act Quickly: Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes a. The names of the parties and witnesses to be interviewed b. Any documentary support that needs to be examined c. Timeline Preparing the Plan - Key Elements to consider 1. Defining the Issues: What is the complaint, questions or points that require clarification 2. Determining a violation of the Policy/Act: What information is needed to determine that there has been a violation 3. Logistics: Venue for conducting the interviews, special logistics required, creating timelines for each 4. Critical Information: What documents need to be looked at,witnesses to be questioned and in what order 5. Areas of Questioning: questions for each specific incident and party/witness, questions for each particular issue, issues likely to require follow-up.

Step 7: Consideration

1.Interim Measures: While a complaint is pending inquiry, a complainant can make a written request for her for leave (upto 3 months). She can also request the ICC to restrain the respondent from reporting on her work performance. Even in the absence of such a request, the ICC must take corrective action. It is essential to take these actions to prevent potential ongoing sexual harassment

2. Support: Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

STAGE THREE: INTERVIEWS

Step 8: Prepare an Interview Plan for the Hearing Complainant, Witnesses, Respondent

1. Based on the results of the previous steps and before conducting interviews, the ICC should decide which issues need to be pursued for questioning. 2. Interviews are meant to obtain information that is relevant to the complaint from individuals. 3. Interviews should be conducted with each person separately and in confidence. The complainant and the respondent should not be brought face to face with each other.

Step 9: Assess the Completeness of the Information Collected

At this stage, the ICC should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

STAGE FOUR: REASONING

Step 10: Once the information and review are complete, the ICC will make its reasoned finding(s), which involves having to

- 1. Identify the substance of each aspect of the complaint.
- 2. Determine, whether or not, on a balance of probability, the unwelcome sexual harassment took place.
- 3. Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules and Policy
- 4. Comment on any underlying factor(s) that may have contributed to the incident.

Step 11: Create a timeline to help establish the sequence of events related to the complaint.

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDING AND RECOMMENDATION

Step 13: Finding

Based on the above, the ICC must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive. Provided, where both the parties are employees, before finalising the findings, the ICC shall share its finding with both the parties and provide them with an opportunity to make representation against it before the ICC.

Step 14: Recommendations

Based on its findings, the ICC shall then make appropriate recommendations which may include:

1. Where the ICC is unable to uphold the complaint, it shall recommend no action.

2. Where the ICC upholds the complaint, it may recommend disciplinary action, including a written apology, reprimand, warning, censure; withholding promotion/ pay raise/ increment; termination; counselling; community service.

3. The ICC may also recommend financial damages to the complainant while deciding the amount they shall take into consideration: mental trauma, pain, suffering and emotional distress

caused; medical expenses incurred; loss of career opportunity; income and financial status of the respondent.

4. The ICC can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

STAGE SIX: REPORT

Step 15: Writing the Report

The ICC will prepare a final report that contains the following elements:

- a. A description of the different aspects of the complaint
- b. A description of the process followed
- c. A description of the background information and documents that support or refute each aspect of the complaint
- d. An analysis of the information obtained
- e. Findings
- f. Recommendations

An inquiry must be completed within 90 days and a final report submitted to the President and Secretary within ten days thereafter. Such a report will also be made available to the concerned parties.

The President and the Secretary are obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations of the ICC or nonimplementation of the recommendations may appeal in an appropriate court or tribunal. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

CONFIDENTIALITY

The publication or making known the contents of a complaint and the inquiry proceedings by ICC is prohibited. Any breach of confidentiality will result in specific consequences.