

# **POLICY ADOPTED BY THE INSTITUTE OF COST ACCOUNTANTS OF INDIA (ICAI) PERTAINING TO THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.**

Sexual Harassment results in violation of the Fundamental rights of a woman to equality (article 14 & 15 of constitution) and her right to life and to live with dignity (article 21 of constitution).

Whereas the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25<sup>th</sup> June, 1993 by the Government of India.

The ICAI is determined to strictly follow its duties as “Employer” as envisaged under Section 19 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

## **PHILOSOPHY**

The Institute of Cost Accountants of India [ICAI] functions as a centre for academic excellence for the development of the Cost and Management Accountancy profession. There exists a cohesive atmosphere of mutual respect amongst its employees, members and students irrespective of their gender. Zero Tolerance to Sexual Harassment is the motto of the Institute.

## **SCOPE**

This policy shall be applicable to all employees, members, Council Members, Regional Council Members, Managing Committee Members of Chapters, associates, clients, contractors, vendors/supplier/service providers including their agents, supervisors, managers and their employees, visitors associated with ICAI offices at Delhi, Kolkata, Hyderabad, Mumbai, four Regional Councils at Western India Regional Council, Mumbai; Southern India Regional Council, Chennai; Eastern India Regional Council, Kolkata and Northern India Regional Council, Delhi and Chapter offices. It also includes the places/offices where the employees, trainees, representatives, etc. of the Institute are visiting for official assignment, including the use of transport facility provided to them.

## **EFFECT OF THE ACT**

With the advent of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, efforts have been made for educating all and sundry, directly or indirectly associated with the functioning of the Institute about the provisions of the Act including the complaint procedure and the adjudication & appeal mechanism available to the victims.

As enumerated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 hereinafter called "Act", the Institute has to include the appropriate provisions as part of the Service Rules. These provisions are also extended to the third party and visitors, etc.

### **Definition - AGGRIEVED WOMEN** *[section 2(a) of the Act]*

*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.*

### **Definition - EMPLOYEE** *[section 2(f) of the Act]*

*A person employed at a workplace for any work on regular, temporary, 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 voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.*

### **Definition -EMPLOYER** *[section 2(g)(i) (ii)&(iii) of the Act]*

- (i) In relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate government or the local authority, as the case may be, may by an order specify in this behalf.*
- (ii) any person responsible for the management, supervision and control of the workplace. (explanation "Management" includes the person or board or committee responsible for formulation and administration of policies for such organization.*
- (iii) In relation to workplace covered under sub-clause (i) and (ii), the person discharging contractual obligations with respect to his or her employees.*

**Definition – RESPONDENT** [section 2 (m) of the Act].

A person against whom the aggrieved woman has made a complaint under section 9.

**Definition - WORKPLACE** [section 2 (o)(ii) and (v) of the act]

The definition is widened. "Workplace" includes -

- (i) Any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
  - (ii) Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
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**Definition - "SEXUAL HARASSMENT"** includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely :-  
[(Sec. 2 (n))]

- i. physical contact and advances; or
- ii. A demand or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing pornography; or
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

**Prevention of Sexual Harassment** [(sec.3) of the Act]

- (1) No woman shall be subjected to sexual harassment at workplace.
  - (2) 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 :-
    - i. Implied or overt 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.
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## **WHAT IS SEXUAL HARASSMENT**

Any unwelcome behavior i.e. act against the will of the female, makes her feel offended, humiliated or intimidated is under the purview of sexual harassment.

**Unwelcome Behavior** is a critical word. It does not mean "involuntary". An individual may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. The sexual conduct is unwelcome, whenever the person subjected to it considers it as 'unwelcome'.

Sexual harassment manifests itself in different forms - verbal, physical, visual and psychological harassment and can be caused by superiors, co-workers, customers, clients, etc.

### **VERBAL**

Use of unparliamentary, abusive, threatening or insulting language; unwelcome comments, speculation or gossips about a person's private life, body parts or appearance; sharing indecent, demeaning, sexual suggestive jokes/story/pranks/comments, even when female (about whom the comment is made or a third party female/s) is/are within hearing distance; making indecent sounds like whistling; cat calls; etc.

Turning work discussions to sexual topics; asking personal questions about social or sexual life, etc.; Repeatedly asking out a person who is not interested; etc. also amounts to verbal sexual harassment.

### **PHYSICAL**

Any unwelcome touching or assault in a sexual manner such as actual or attempted rape or sexual assault; Unnecessary and unwelcome body contact like leaning over, cornering, patting or pinching; resting his hand on hers; etc.

### **VISUAL**

This includes sexually suggestive body language and/or gestures; blocking a person's path; following the person; displaying sexually suggestive visuals in the form of pictures, screen savers, posters, etc.; making objectionable facial expressions; harassment through emails, sms or other modes of electronic communication, print, social media;

## **PSYCHOLOGICAL**

Psychological harassment includes any indecent proposals and unwelcome requests for sexual favours, unwanted invitation to go out on dates, unwanted sexual teasing, insults, taunts, remarks or questions; dropping hints and finding ways to be alone with her, making hidden threats, physical confinement against one's will ; likely to intrude upon one's privacy; pranks played on women particularly where women are in minority in workplace; etc.

## **QUID PRO QUO HARASSMENT**

Quid Pro Quo harassment associates when employment and/or employment decisions for an employee are based on that employees' acceptance or rejection of unwelcome sexual behavior. There exists implied or explicit promise of preferential treatment in her employment.

e.g. One party forces the other party for sexual favour in return for recruitment, promotion or salary raise within the first party's powers, and threatens to demote, cut the salary or even fire the second party if the offer of sexual favour is rejected.

## **HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

Hostile environment consist of implied or explicit threat or detrimental treatment in employment or Implied or explicit threat about present or future employment status. When one party interferes with the work performance of the victim in an unreasonable manner, intentionally leaves the victim in an intimidated or hostile work environment, exposes the victim to a rude, lewd and uncomfortable work environment, it constitutes a hostile environment sexual harassment.

## **ANY ACT OR CONDUCT CONSTITUTING HEALTH AND SAFETY PROBLEM FOR FEMALES**

Removing the hazards including health hazards from the workplace, providing clean environment, washrooms for female employees etc. is related to health and safety related harassment.

## **PREVENTIVE MEASURES**

ICAI believes that the key element in the successful prevention of harassment is a strong commitment from all levels. It is the duty of every person in the organisation to report questionable sexual conduct promptly, not to engage in sexual harassment and has an obligation to ensure that others do not engage in such conduct. Ensure protection against retaliations to complainants, witnesses, committee members and other employees involved in prevention and complaint resolution.

### **The Prevention measures :**

1. Training of employees
2. Monitoring of Workplace

### **TRAINING & AWARENESS OF EMPLOYEES & OTHERS**

- Educating all employees on sexual harassment through gender sensitization programmes, posters and through the website of the Institute.
- Organise Promotional and educational programmes to explain the company policy of Sexual harassment, to raise awareness of harassment and adverse consequences for breach of the policy.
- The Sexual Harassment policy is disseminated to all employees (as defined in the Act) during recruitment/hiring and induction.
- The Sexual Harassment policy to be informed to the third party, visitors etc.

### **MONITORING THE WORKPLACE**

The HR Department/HODs/ICC members should interact with employees periodically and discuss about the work environment. Based on the input received, an appropriate action to be initiated. Any offensive posters, notes, gesture, place, behavior etc. should be questioned & addressed appropriately. The lines of communication should be kept open with employees, clients, third party etc.

### **COMPLAINTS RESOLUTION**

ICAI would take all Sexual harassment Complaints seriously and is committed to address the same within a stipulated time frame. Resolution mechanism comprise of following:

1. Formation of Internal Complaints Committee
2. Filing and redressal of complaints.

### **ABOUT THE INTERNAL COMPLAINTS COMMITTEE (ICC) [section 4 (1) of the Act]**

- Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the 'Internal Complaints Committee'.

Provided that where the offices or administrative units of the workplace are located at different place or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

- The ICC should be headed by Presiding Officer who shall be a woman employee at senior level and minimum two members from amongst employees and one member from amongst non-governmental organisations or associations committed to the cause of women.
- The ICC should have at least 50% women members.
- For the purpose of making an inquiry, the ICC shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit like summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of documents and any other matter which may be prescribed. [refer section 11(3) of the Act]
- ICC must complete the enquiry within ninety days of filing the complaint.[section 11(4) of the Act]
- The ICC shall make inquiry into the complaint in accordance with the principles of natural justice. [Rule 7 (4) ]

## **FORMATION OF INTERNAL COMPLAINTS COMMITTEE, ICAI**

The Council of the Institute has constituted the Internal Complaints Committee in line with the proviso of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 to deal with the complaints of Sexual Harassment at the Work Place. The Internal Complaints Committee consists a Presiding Officer and three Members including a member from an NGO. Any aggrieved women can address her complaint to the Presiding Officer or Member of the Committee at Kolkata and New Delhi offices.

## **FILING COMPLAINTS BY THE COMPLAINANT**

- I. Any aggrieved woman may make in writing, a complaint of sexual harassment at workplace to the Internal Committee within a period of three months from the date of incident and in case of series of incident, within a period of three months from the date of last incident
  - a. Where such complaint cannot be made in writing, the Presiding officer or any member of the ICC shall provide all reasonable assistance to the women for making the complaint in writing.

- b. The ICC for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. ; [\[section 9\(1\) of the Act\]](#)
- II. The aggrieved women shall submit to the ICC, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.[\[Rule 7 \(1\) of the Act\]](#)
- III. The ICC shall send one of the copies received from the aggrieved women to the respondent within a period of seven working days. [\(Rule 7 \(2\) of the Act\)](#)
- IV. The respondent shall file his reply to the complaints along with his list of documents, names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified.[\(Rule 7\(3\) of the Act\)](#)
- V. Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by her relative or friend; her co-worker; an officer of National Commission for Woman or State Women's Commission; or any person who has knowledge of the incident, with the written consent of the aggrieved woman. [\(refer rule 6\(i\)\)](#)
- VI. Where the aggrieved woman is unable to make a complain on account of her mental incapacity, a complaint may be filed by her relative or friend; a special educator; a qualify psychiatrist or psychologist or the guardian or authority under whose care she is receiving treatment or care; any person who has knowledge of the incident jointly with her relative or friend; special educator; a qualify psychiatrist or psychologist or the guardian or authority under whose care she receiving treatment or care. [\[refer rule 6\(ii\)\]](#)
- VII. Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent. [\[refer rule 6\(iii\)\]](#)
- VIII. Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir. [\[refer rule 6\(iv\)\]](#)



## **CONCILIATION** [ refer section 10(1)]

The ICC before initiating inquiry into the complaint may on request of aggrieved woman take steps to settle the matter between her and the respondent through conciliation. However, monetary settlement can not be the basis for conciliation proceedings.

Settlement arrived through conciliation should be recorded and the same may be forwarded to ICAI, the aggrieved woman and the respondent.

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

Where the aggrieved woman informs the Internal Committee that any term or condition of the settlement arrived at under conciliation, has not been complied with by the respondent, the Internal Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

## **INQUIRY INTO THE COMPLAINT BY ICC** [refer section 11]

- Where the respondent is an employee, the ICC shall proceed with inquiry into the complaint according to the provisions of the Service Rules. However, where no such service rules exist the inquiry to be initiated on the basis of natural justice (rule 7 (4)).
- Where aggrieved woman informs the Internal Committee that any term or condition of the settlement arrived has not been complied with by the respondent, the Internal Committee shall proceed to make an inquiry into the complaint.
- Both parties will have the opportunity to be heard. The statements of both parties will be recorded by oath.
- Both parties can submit evidences, supporting documents and bring witnesses.
- Questions can be put to witnesses by both the parties, as well as, ICC members.
- ICC can also summon witness or ask for required documents.
- Ex parte decision on the complaint can be taken if the complainant or respondent fails to present herself or himself for three consecutive hearing convened by the ICC.
- Both parties can not bring any legal practitioner to represent them before the ICC. [rule 7 ( 6)]

- In conducting the inquiry, a minimum of three members of the complaints committee including the Presiding Officer or the Chairperson shall be present. [Rule 7(7)]

## **INQUIRY REPORT**

- On the completion of an inquiry under this Act, the Internal Committee shall provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. [section 13(1) of the Act]
- Where the Internal Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the ICAI that no action is required to be taken in the matter. [section 13(2) of the Act]
- In case any party is not satisfied with the finding of the ICC they may appeal to the court or tribunal within 90 days of the recommendations of ICC.

## **PENALTY AND/OR RECOMMENDATIONS**

### **ICAI Service Rules are applicable to respondent**

1. Where ICC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer : [sec. 13(3) of the Act]
  - (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the Service Rules applicable to the respondent 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;

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 referred to in clause (ii), the ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

2. During the pendency of an inquiry, on a written request made by the aggrieved woman, the ICC should recommend to the employer to – [\[sec. 12 \(1\) of the Act\]](#)
  - (a) *transfer the aggrieved woman or the respondent to any other workplace ;  
or*
  - (b) *grant leave to the aggrieved woman up to a period of three months. The leave granted to the aggrieved woman shall be in addition to the leave she would be otherwise entitled. or*
  - (c) *grant such other relief to the aggrieved woman as may be prescribed.*
3. *The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled. [\[section 12\(2\) of the Act\]](#)*
4. On the recommendation of the Internal Committee under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be. [\[section 12\(3\) of the Act\]](#)
5. *The complaints committee at the written request of the aggrieved woman may recommend to the employer to – [\[Rule \(8\) of the Act\]](#)*
  - (a) *Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;*
  - (b) *Restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.*
6. issuing a written warning and reprimand to the respondent. Asking for written apology by the respondent. [\[refer rule 9\]](#)
7. Withholding of promotion, pay rise or increment and payment of dues etc. [\[refer rule 9\]](#)
8. issuing a transfer/re-location/replacement; reassignment of duties; removal of management authority or duties of the respondent.
9. In order to ensure that the harasser understands why his conduct violated the policy of the organization training, counseling or community service of the respondent may be recommended. [\[refer rule 9\]](#)

10. In serious cases termination of the respondent. [refer rule 9]
11. No one should disclose the identity and addresses of the aggrieved woman, respondent and witnesses; any information relating to conciliation and inquiry proceedings, recommendations of the ICC and action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner. [section 16]

Even the 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 leading to the identification of the aggrieved woman and witnesses.

12. Where any person entrusted with the duty to handle or deal with the complaint, inquiry etc., contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to such person or as may be prescribed. [refer section 17]
13. Punishment for false or malicious complaint and false evidence – after an inquiry if Internal Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved or other person has made the complaint knowing to be false or the aggrieved woman or other person has produced any forged or misleading documents, it may recommend to the employer to take action against the woman or other person as per service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed. [refer section 14(1)]
14. Where the Internal Committee arrives at the 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 service rule or where no such service rules exist, in such manner as may be prescribed. [refer section 14(2)]

**WHERE THE ICAI Service Rules are not applicable to the respondent being a third party, visitor etc.**

1. Discontinuation of contract with immediate effect.
2. Imposing penalty to be paid to the aggrieved.
3. Stopping the payment and dues of the defaulter to be paid to the aggrieved.
4. Blacklisting of party.
5. Advertisement in the Newspaper about the misbehavior of the contractor/agency.
6. Referring the matter to the Disciplinary Committee of the Institute.
7. Referring the matter to the organization of the defaulter.
8. Compensation for losses such as medical expenses, etc.
9. Recovery through revenue authorities.
10. Penal actions to be recommended.
11. Public apology/written apology may be demanded.
12. Protective and remedial measures to be initiated for the complainant as deem fit by the ICC.
13. Any other punitive actions may be recommended.

**DUTIES OF THE EMPLOYER (section 19)**

- a) Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- b) Display at any conspicuous place in the workplace, the penal consequences of sexual harassment; and order constituting the ICC.
- c) Organise workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed.

- d) Provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry;
- e) Assist in securing the attendance of respondent and witnesses before the Internal Committee.
- f) Make available such information to the Internal Committee as it may require having regard to the complaint made under section 9 (1).
- g) 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;
- h) To initiate action, under the Indian Penal Code (45 of 1960) 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 any employee, in the workplace at which the incident of sexual harassment took place;
- i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j) Monitor timely submission of reports by the Internal Committee.

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