



Telemedicine Society of India Policy on Sexual Harassment at Workplace

Version Control

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Policy on Sexual Harassment at Workplace

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 25 June 1993 by the Government of India.

Sexual harassment at the workplace results in violation of the fundamental right of an individual (woman or man)

- to equality under Articles 14 and 15 of the Constitution of India
- to life and to live with dignity under article 21 of the Constitution
- to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

This policy and procedure is prepared based on the

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹

HANDBOOK on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, issued by Ministry of Women and Child Development, November 2015. ²

Introduction

TSI believes in equality and provides equal opportunity to all its members and employees. TSI is committed to creating a healthy working environment that enables members and employees to work without fear of prejudice, gender bias and in a harassment free workplace to all without regard to race, caste, religion, colour, ancestry, marital status, gender, age, nationality, ethnic origin or disability. TSI also commits to create a work environment where safety and dignity of all employees is ensured and they are protected from sexual harassment (especially women) as envisaged by Supreme Court of India Guidelines on Sexual Harassment, August 1997, “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” and

¹ https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362

² HANDBOOK on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, issued by Ministry of Women and Child Development, November 2015 accessed from <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013”. Sexual harassment at TSI work place or other than work place if involving an employee or employees or TSI members is a grave offence and is therefore, punishable.

At TSI all members and employees are expected to uphold the highest standards of ethical conduct at the workplace and other place where ever while representing TSI in all their interactions with stakeholders. All stakeholders involved with TSI should

- Treat each other with dignity and respect
- Follow the letter and spirit of law
- Refrain from any unwelcome behaviour that has sexual connotation (of sexual nature)
- Refrain from creating hostile atmosphere at workplace via sexual harassment
- Report sexual harassment experienced and/or witnessed to appropriate authorities and abide by the complaint handling procedure of the Society

Scope:

The Policy intends to ensure that no individual (male/female) is subjected to sexual harassment and it is applicable to all members of TSI, employees (temporary or permanent) , stake holders, consultants, volunteers, interns and participants of any TSI events.

Where Sexual Harassment occurs against any individual (especially female) members/employers/stakeholders/consultants/volunteers/interns/trainee /domestic helper and participants of any TSI event as a result of an act by a third party or outsider while on official duty, TSI shall take all necessary and reasonable steps as per the applicable laws, rules and regulations, to initiate action at the workplace of the third party or outsider. This Policy shall be applicable to any allegation of Sexual Harassment at any of the TSI office premises (national head quarter/state chapters/ TSI event venue) including any place visited by members/employees/stakeholders/consultants/volunteers / interns/ arising out of or during the course of employment and/or transportation provided by TSI. Local country laws will take precedence over this policy, in other geographies, if applicable.

Definitions

Sexual harassment may occur not only where a person uses sexual behavior to control, influence or affect the career, salary or job of another person, but also between co-workers. It may also occur between an employee and someone that employee deals with in the course of his/her work who is not employed TSI.

“Sexual Harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication), but not limited to:

1. Any unwelcome sexually determined behavior, or pattern of conduct, that would cause discomfort and/or humiliate a person at whom the behavior or conduct was directed namely:
 - a. Unwelcome sexual advances involving verbal, non-verbal, or physical conduct, implicit or explicit
 - b. Physical contact and advances including (but not limited to) touching, stalking, sounds which have explicit and /or implicit sexual connotation/overtones, molestation
 - c. Teasing, Voyeurism, innuendos and taunts with implicit sexual connotation, physical confinement and /or touching against one’s will
 - d. Demand or request for sexual favors
 - e. Sexually colored remarks or remarks of a sexual nature about a person's clothing or body
 - f. Display of pictures, signs etc. with sexual nature/ connotation/ overtones in the work area and work-related areas.
 - g. Showing pornography, making or posting vulgar / indecent / sexual pranks, teasing, jokes, demeaning or offensive pictures, cartoons or other materials through email, SMS, MMS, gestures etc.
 - h. Repeatedly asking to socialize during off-duty hours or continued expressions of sexual interest against a person’s wishes
 - i. Giving gifts or leaving objects that are sexually suggestive
 - j. Eve teasing, innuendos and taunts, physical confinement against one’s will or any such act likely to intrude upon one’s privacy; Persistent watching, following, contacting of a person; and

- k. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
2. The following circumstances if it occurs or is present in relation to any sexually determined act or behavior amount to sexual harassment:
- a. Implied or explicit promise of preferential treatment in employment/any position at TSI;
 - b. Implied or explicit threat of detrimental treatment in employment/any position at TSI;
 - c. Implied or explicit threat about the present or future employment status/any position at TSI;
 - d. Interference with the person's work or creating an intimidating or offensive or hostile work environment; or
 - e. Humiliating treatment likely to affect health or safety.

An alleged act of sexual harassment committed during or outside of office hours falls under the purview of this policy. Further, it is important to note that whether harassment has occurred or not does not depend on the intention of the people but on the experience of the aggrieved woman (even man).

3. Some examples of behaviour that constitute sexual harassment at the workplace:

- a. Making sexually suggestive remarks or innuendos.
- b. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
- c. Offensive comments or jokes.
- d. Inappropriate questions, suggestions or remarks about a person's sex life.
- e. Displaying sexist or other offensive pictures, posters, MMS, SMS, WhatsApp, or e-mails.
- f. Intimidation, threats, blackmail around sexual favours.
- g. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
- h. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
- i. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
- j. Physical contact such as touching or pinching.

- k. Caressing, kissing or fondling someone against her will (could be considered assault).
- l. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
- m. Persistently asking someone out, despite being turned down.
- n. Stalking an individual.
- o. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
- p. Falsely accusing and undermining a person behind closed doors for sexual favours.
- q. Controlling a person's reputation by rumour-mongering about her private life.

Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:

- a. Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
- b. Exclusion from group activities or assignments without a valid reason.
- c. Statements damaging a person's reputation or career.
- d. Removing areas of responsibility, unjustifiably.
- e. Inappropriately giving too little or too much work.
- f. Constantly overruling authority without just cause.
- g. Unjustifiably monitoring everything that is done.
- h. Blaming an individual constantly for errors without just cause.
- i. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.
- j. Insults or humiliations, repeated attempts to exclude or isolate a person.
- k. Systematically interfering with normal work conditions, sabotaging places or instruments of work.
- l. Humiliating a person in front of colleagues, engaging in smear campaigns.
- m. Arbitrarily taking disciplinary action against an employee.
- n. Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed.

Some examples of workplace behaviours that may not constitute sexual harassment:

- a. Following-up on work absences.
 - b. Requiring performance to job standards.
 - c. The normal exercise of management rights.
 - d. Work-related stress e.g. meeting deadlines or quality standards.
 - e. Conditions of works.
 - f. Constructive feedback about the work mistake and not the person.
4. **Aggrieved individual (woman / man):** In relation to a workplace, a woman/man, of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.

Complainant: Any aggrieved individual (woman / man) who makes a complaint alleging sexual harassment under this policy

Respondent: A person against whom a complaint of sexual harassment has been made by the aggrieved individual under this policy

Employee: A person employed at the 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 a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a coworker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Special Educator: A Special Educator means a person trained in communication with people with special needs in a way that addresses their individual differences and needs.

Workplace: means a premise, locations, establishments, enterprises, institutions, offices, branches or units established subsidiaries which are controlled by the TSI. Places visited by the members/employees/stakeholders/consultants/volunteers / interns/trainee/domestic helper arising out of or during the course of employment/work including official events, accommodation and transportation provided by TSI for undertaking a journey.

Employer: A person responsible for management, supervision and control of the workplace

Redressal Mechanism – Formal Intervention -In compliance with the Act, any complaint under this policy shall be followed by a formal redressal mechanism as described in this Policy and Procedures.

Internal Complaints Committee (ICC)

To prevent instances of sexual harassment and to receive and effectively deal with complaints pertaining to the same, Internal Complaints Committees (ICC) shall be constituted at TSI.

Composition tenure and other terms and conditions of ICC

TSI President or anyone nominated by EC shall appoint a minimum of 5 member committee on the advice and suggestion of EC. The same committee shall look into all matters related to sexual harassment related to all TSI members/employees/stakeholders/consultants/volunteers/interns/trainee/domestic helper etc. all over India.

ICC shall have following members

1. Presiding Officer: A senior woman member from the TSI or Outside of TSI (Provided that in case a senior level woman TSI member is not available)
2. At least 1 member from the TSI EC (Current/Previous)
3. Two (2) women members (preferably life members from TSI) who are committed to the cause of the women or who have had experience of social work /health or have a legal knowledge.
4. At least one external member from amongst the non-government organization or association committed to the cause of women or a person familiar with the issues relating to sexual harassment.
5. The ICC shall consist of minimum of 5 members and in odd numbers. One half of the total members nominated shall be women.
6. Where the Presiding Officer or any Member of the Internal Committee,—
 - (a) contravenes the provisions of section 16; or
 - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - (c) s/he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - (d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as

the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

Tenure of the ICC

The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by President of TSI or anyone nominated by EC.

Meeting Mode:

TSI ICC meetings shall be conducted online preferably. In the event the meeting has to be done at the site of incident inevitable, then it shall be done at the site with the approval of the TSI EC.

Fees or allowances for Member of Internal Committee.- The Member appointed shall be entitled to an allowance for holding the proceedings of the Internal Committee onsite and also the reimbursement of travel cost incurred in travelling by economy air fare or train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less. Though facilities are being provided, TSI prefers the meetings to be conducted online, where ever possible.

Accommodation shall be arranged by TSI.

The committee will be responsible for:

- a. Receiving complaints of sexual harassment at the workplace
- b. Committee should be thoroughly prepared.
- c. Know the Act, Policy and /or relevant service rules
- d. Initiating and conducting inquiry as per the established procedure
- e. Gather and record all relevant information
- f. Determine the main issues in the complaint
- g. Prepare relevant interview question
- h. Conduct necessary interviews
- i. Ensure parties are made aware of the process and their rights/responsibilities within it
- j. Analyse information gathered
- k. Prepare the report with the findings/recommendation
- l. Submitting findings and recommendations of inquiries

- m. Coordinating with the employer in implementing appropriate action
- n. Maintaining strict confidentiality throughout the process as per established guidelines
- o. Submitting annual reports in the prescribed format

Lodging a Complaint of sexual harassment

- Any aggrieved individual may make, in writing, a complaint of sexual harassment at workplace to the Internal Complaints Committee as early as possible or within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.
- The Internal Complaints Committee can extend the timeline by another 3 months for reasons recorded in writing, if satisfied that these reasons prevented the lodging of the complaint within the period
- Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Complaints Committee or any Member, as the case may be, shall render all reasonable assistance to the aggrieved individual for making the complaint in writing.
- Where the aggrieved individual is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, a complaint may be filed by:
 - a. legal heir or such other person as may be prescribed
 - b. relative or friend; or
 - c. co-worker; or
 - d. a special educator; or
 - e. the guardian or authority under whose care she is receiving treatment or care
 - f. any person who has knowledge of the incident, with the written consent of the Aggrieved Woman.
- The complaint shall be submitted by the complainant to the ICC in writing or shall be submitted to the ICC electronically at tsicomplaint@gmail.com. The complaint can also be physically submitted to any ICC member or through registered post to TSI HQ addressed to ICC.

Contents of the complaint

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; 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 provide assistance in writing of the complaint if the complainant seeks it for any reason.

Rights of the complainant

- An empathetic attitude from the Internal Complaints Committee so that s/he can state her/his 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 complainant's 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/his statement can be recorded in absence of the respondent.
- Right to appeal, in case, not satisfied with the recommendations/findings of the Internal Complaints Committee

Rights of the respondent

- A patient hearing to present his/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 his identity confidential throughout the process.
- Right to appeal in case not satisfied with the recommendations/findings of the Internal Complaints Committee

Receiving a Complaint (guidelines)

Complaints shall be accepted by TSI in which ever mode it is presented. Each complaint shall be listened to and the complainant shall be informed that the TSI takes the concerns seriously. Complainant is informed that these concerns will be reported to the appropriate committee and follow up will be done speedily.

The Internal Complaints Committee/s shall follow the following procedure detailed below, for addressing a complaint of workplace sexual harassment.

- Receive and Acknowledge Receipt of the Complaint
- Upon receipt, the complaint should be reviewed for:
 - In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
 - Clarity in the complaint.
 - Additional information needed from the complainant.
 - The complainant will be notified in writing to acknowledge receipt
- Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution
- Informal Mechanism (Conciliation)
- Formal Mechanism
 - If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Internal Complaints Committee responds to the complaint.
- Respondent and Response
 - Within seven days of receiving a complaint, the Internal Complaints Committee will inform the respondent in writing that a complaint has been received.
 - The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.
- Prepare the File
 - Create an independent confidential file of the complaint and all subsequent related documentation
- Review Law & Policy
- Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent
 - 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.
- Once the information and review is complete, the Internal Complaints Committee will make its reasoned finding(s).
- Finding and Recommendation: Based on the above, the Internal Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.
 - Where the Internal Complaints Committee is unable to uphold the complaint, it shall recommend no action.
 - Where the Internal Complaints Committee upholds the Complaint, it may recommend such action as stated below:
 - Disciplinary action, including a written apology, reprimand, warning, censure.
 - Withholding promotion/ pay raise/ increment

- Termination;
 - Counselling;
 - further escalate to District committee
- The Internal Complaints Committee will prepare a final report that contains the following elements:
 - A description of the different aspects of the complaint;
 - A description of the process followed;
 - A description of the background information and documents that support or refute each aspect of the complaint;
 - An analysis of the information obtained;
 - Findings as stated above;
 - Recommendations.
- An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties.

Conciliation

- a. The Internal Complaints Committee before initiating an inquiry may at the request of the aggrieved individual take steps to settle the matter between complainant and the respondent through conciliation.
- b. Provided that no monetary settlement shall be made as a basis of conciliation
- c. Where settlement has been arrived at under sub-section (a), the Internal Complaints Committee, shall record the settlement so arrived and forward the same to the TSI President or anyone appointed by TSI EC or the District Officer to take action as specified in the recommendation.
- d. The Internal Complaints Committee shall provide the copies of the settlement as recorded under sub-section (c) to the complainant and the respondent.
- e. Where a settlement is arrived at under sub-section (a), no further inquiry shall be conducted by the Internal Complaints Committee.

Inquiry into complaint

- The Internal Complaints Committee shall make inquiry into the complaint, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable.
- Provided that where the aggrieved individual informs the Internal Complaints Committee that any term or condition of the settlement has not been arrived.
- Provided further that where the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being

heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

Action during pendency of inquiry

- During the pendency of an inquiry on a written request made by the aggrieved individual, the Internal may recommend to the employer to—
 - transfer the aggrieved woman or the respondent to any other workplace; or
 - leave to the aggrieved woman/individual up to a period of three months; or
 - grant such other relief to the aggrieved woman/individual as may be prescribed
 - The leave granted to the aggrieved woman /individual under this section shall be in addition to the leave she would be otherwise entitled

Inquiry report

- On the completion of an inquiry, the Internal Complaints Committee shall provide a report of its findings to the TSI President or anyone appointed by the TSI EC, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
- Where the Internal Complaints Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend that no action is required to be taken in the matter.
- Where the Internal Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to
 - 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
 - Disciplinary action, including a written apology, reprimand, warning, censure.
 - Withholding promotion/ pay raise/ increment
 - Termination;
 - Counselling;
 - further escalate to District committee

Punishment for false or malicious complaint and false evidence

- Where the Internal Complaints Committee arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to take action against the woman or the person who has made the complaint

Confidentiality

Notwithstanding anything contained in the Right to Information Act, 2005, contents of the complaint, the identity and addresses of the Aggrieved Woman, Respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Complaints Committee and the action taken by TSI shall not be published, communicated or made known to the public, press and proceedings media in any manner.

Awareness session and Dissemination of information

TSI shall organize awareness session to

- Formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women.
- Carry out orientation programs and seminars for the Members of the ICC.
- Conduct capacity building and skill building programs for the Members of the ICC.
- Declare the names and contact details of all the Members of the ICC.
- Use modules developed by the State Governments to conduct workshops and awareness programs for sensitizing the employees with the provisions of the Act

For more details, please refer to the Act and the Rules issued thereunder.