



# POLICY AGAINST SEXUAL HARASSMENT AT THE WORKPLACE

GUIDELINES FOR  
NATIONAL INSTITUTE OF ADVANCED STUDIES (NIAS)  
BANGALORE, INDIA



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**NATIONAL INSTITUTE OF ADVANCED STUDIES**  
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## I. INTRODUCTION

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s. Before 1997, women experiencing SHW had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer/s. In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT was passed in April 2013.

Harassment of sexual nature is an infringement on life and liberty and is also condemned as a form of violation of the fundamental rights to equality under articles 14 and 15 of the Constitution of India and her/his right to life and to live with dignity under article 21 of the Constitution and the right to practice any profession or to carry on any occupation, which includes a right to a safe environment free from sexual harassment;

The protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as the convention on the elimination of all forms of Discrimination against Women (CEDAW), which has been ratified on the 25 June 1993 by the Government of India.

The Constitution of India and the international convention, CEDAW to which India is a signatory decrees this so and therefore, it is a prerogative of employers/administration of workplaces/Institutions to cater to and mete justice to those victims of harassment. A set of guidelines have been set by the Supreme Court, commonly known as the Vishakha Guidelines. According to this, every employer and other responsible people is obliged to do the following:

- Follow the judgment laid down by the Court.
- Evolve a specific policy to combat sexual harassment in the workplace.

The guidelines explicitly state the following:

*“It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required”.*

Following this, the National Institute of Advanced Studies (NIAS), Bangalore is committed to provide facilities/mechanisms by which issues of harassment can be dealt with and the Institution become a safe environment free from sexual harassment and a more gender inclusive space. The Policy for NIAS is gender neutral and includes men and individuals with different sexual orientation. It draws from the sexual harassment of women at the workplace( Prevention, prohibition and redressal) Act, 2013. The following policy has been made keeping in mind the above facts.



## II. DEFINITION OF SEXUAL HARASSMENT

According to THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013, sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- Physical contact and advances; or
- A demand or request for sexual favors; or
- Making sexually colored remarks; or
- Showing pornography; or
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

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

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

### III. SCOPE OF THE POLICY

This policy shall be called “Policy against sexual harassment at the workplace, NIAS”. The policy reiterates the commitment of the institute to create and maintain a community in which students, teachers and non-teaching staff can work together in an environment free of all forms of sexual harassment<sup>1</sup>.

In framing the rules and procedures laid down in this policy, the spirit of the Supreme Court judgments mentioned in the Background section have been followed; however, the rules and procedures cover a wider spectrum of sexual harassment and deal with issues in consonance with the requirements of an academic institution.

The policy and rules and procedures would apply to all students, academic staff, adjunct faculty and non-teaching staff on the active rolls of the NIAS as well as to service providers and outsiders who may be within the territory of the NIAS at the time of commission of the act coming under the purview of the policy.

1. The policy would apply inside the campus but also on off-campus official duty (workshops, field work, group holidays/excursions organized by NIAS, interviews/meetings with outside people and any other activity organized by NIAS outside the campus including the period of traveling for such activity).
2. In particular, the rules and procedures laid down in this policy shall be applicable to all complaints of sexual harassment made:
  - a. By a student against a member of the academic or non-

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<sup>1</sup> Through several rounds of discussions and dialogues among the NIAS members, there was a realization that gender as a category extends much beyond the binary as normally understood. Thus, NIAS took the decision of extending the policy against sexual harassment to include men and other categories.

teaching staff or a co student; or by a member of the academic or non-teaching staff against a student or another member of the academic or non-teaching staff; in either case, irrespective of whether sexual harassment is alleged to have taken place within or outside the campus.

- b. By a service provider or an outsider against a student or a member of the academic or non-teaching staff or by a student or a member of the academic or non-teaching staff against an outsider or a service provider, if the sexual harassment is alleged to have taken place within the campus.
3. In order to implement the policy, a Committee shall be appointed whose composition and mandate would be as described below.

#### **A. CONSTITUTION OF THE INTERNAL COMPLAINTS COMMITTEE, NIAS.**

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

The administration of NIAS, therefore, by an order in writing constitutes a committee to be known as the "Internal Complaints Committee". This policy will be called "Policy against Sexual Harassment at the Workplace, NIAS" and the committee will be called Internal Complaints Committee, NIAS (ICC, NIAS). The following will make up the constitution of the committee:

1. The committee will consist of seven members, one external and six internal members.

2. The six internal members will be elected<sup>2</sup> and will include two from faculty/post- doctoral/Adjunct faculty/ project staff, one each from administration and support staff and two students.
3. A sub-committee of three members will constitute the Enquiry sub-committee in case of complaints to maintain confidentiality.
4. The chair or Presiding Officer of the committee will be elected by voting and will be a woman.
5. More than 50% of the committee will be women.
6. Once all internal members of the new committee have been elected, they will choose a woman faculty member from amongst them as the chairperson.
7. The committee will on consensus basis decide on external members of committee and this will be recommended to the Director.
8. The new committee shall have its first meeting no later than two weeks after it comes into force.
9. The committee will function for a period of three years. The members of the new committee will be elected according to the procedures outlined above at least two months before the end of the tenure of the existing committee. The new committee (including the outside expert) has to be fully constituted at least one month before the end of the tenure of the existing committee.
10. Once the formal committee has been constituted they will add to the draft policy the procedures for filing a complaint, reprisal of complaint and other process.

## **B. ROLE AND MANDATE OF ICC**

The committee is NOT to act as a moral police; neither will it

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<sup>2</sup> The election process will have all NIAS faculty, staff and students across levels voting for representatives for each category.

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intrude on anyone's privacy. The role of the Committee is to create awareness about sexual harassment and to deal with and recommend punishment for non-consensual acts of sexual harassment, and not to curtail sexual expression within the campus. Members are expected to be sensitive to the issue and not let personal biases and prejudices (whether based on gender, caste, class) and stereotypes (e.g., pre-determined notions of how a "victim" or "accused" should dress or behave) affect their functioning as members of the committee.

1. Any case arising on issues of sexual harassment should be brought to the committee
2. Since issues connected to gender are sensitive the committee will be approachable and not violate the confidentiality of the persons involved.
3. After the committee has been constituted the committee members will constitute the procedure to be adopted in terms of resolution of complaints.
4. The Committee should meet twice a year, additional meetings could be held as necessary to deal with issues or complaints that may arise.
5. If and when complaints arise the committee should deliberate and seek resolution within a week and submit the recommendation to the director
6. The committee is also responsible for arranging gender awareness programs such as workshops, panel discussions, lectures, interactive sessions, poster presentations etc. that will help create a sexual harassment free environment.
7. Any member of the Committee may request the Chairperson to call an Emergency Meeting. A notice of two working days shall be required for such a meeting to be called.
8. The quorum for all meetings shall be more than half of the

existing members of the Committee. Motions shall be carried by a simple majority of those present and voting.

9. Minutes of all meetings shall be recorded, confirmed and adopted.

### **C. GENDER SENSITIZATION**

Gender Sensitization involves creating awareness about issues of gender and sexuality and working towards and creating an enabling environment of gender justice where all can work together with a sense of personal security and dignity. Sensitization and Awareness will be a basic function of the Committee formed. The following is a list of methods in which awareness and sensitization of Students, staff and faculty will be conducted:

- An orientation seminar will be organized to discuss the nature and scope of the sexual harassment of women at the workplace (Prevention, Prohibition and Redressal) Act 2013, at the beginning of the academic year.
- One or more workshops/seminars annually where external experts on the subject will interact with all employees
- Seminars, performances and discussion forums where gender sensitization and gender awareness will be the focus – These will happen during the academic year.
- Spreading awareness of the policy and implementation of the same through informal sessions, performances, cultural events, etc., about the policy being implemented by NIAS

## IV. INQUIRY PROCESS

1. Within two days of the start of the enquiry process (i.e., the date of the emergency meeting discussed above), the Inquiry Subcommittee shall furnish a copy of the complaint to the accused and the complainant along with a written notice requiring both parties to furnish a written submission. The Inquiry Committee shall also provide the accused and the complainant with a copy of the Policy on Gender Sensitization against Sexual Harassment. In case the complainant does not have any additions to make to the complaint filed earlier, she/he can just submit a statement to that effect.
2. Within a week, both parties shall submit to the Inquiry Committee their replies to the documents that have been served on them. The replies may also include a list of questions that the party wishes the Inquiry Committee to ask the other party or its witnesses.
3. Within three days of the receipt of the replies and list of questions in (3) above, the Inquiry Committee shall start the process of an oral hearing.
4. In the course of the oral hearing, the complainant, the accused, and their witnesses will separately be given a chance to give an account of the instances alluded to in the complaint.
5. All parties can also submit any documentary evidence at the time of the oral hearing.
6. The Inquiry Committee shall have the power to ask questions that it deems fit to all parties during the oral hearing.
7. The Inquiry Committee would also ask questions which have been submitted by the complainant and defendant for the other parties. However, the Enquiry Committee has the right to disallow any questions that it has reason to believe to be irrelevant, mischievous, or gender-insensitive.

8. The Inquiry Committee may also call upon additional witnesses and ask them any questions that it may deem fit.
9. The Inquiry committee shall have the power to ask the relevant authorities for any official papers or documents pertaining to the complainant as well as the accused.
10. After completing the investigation, the Enquiry Committee shall submit a detailed report of its findings to the chairperson of ICC, NIAS, including an indication of whether it finds the accused guilty or not guilty along with reasons for its decision.
11. The Inquiry committee shall have to complete the enquiry within a reasonable time ordinarily not exceeding two months from the date the complaint is referred to it.
12. Any extension of the Inquiry process beyond this period would have to be notified to ICC, NIAS and approved by it.

**NOTE:**

*Most cases of sexual harassment occur in private, so there may not be any eye-witness. The Enquiry Committee will have to come to a conclusion about the complaint without proof or evidence of this kind. It will rely on circumstantial evidence and the written submissions and oral testimonies of the complainant, the accused, and witnesses if any as well as any documentary evidence. This enquiry is not a criminal investigation or a proceeding in a court of law – a strong probability, rather than ‘proof beyond reasonable doubt’, is enough to take a decision on the complaint.*

**A. GENERAL GUIDELINES FOR THE ENQUIRY PROCESS**

1. The Enquiry Sub-committee shall conduct the proceedings in a fair manner and shall provide reasonable opportunity to the



complainant and the accused for presenting and defending his/her case.

2. At no time in the enquiry proceedings shall the accused and the complainant be placed face to face, or put in a situation where they may be face to face.
3. The Enquiry Sub-committee may consider as relevant any earlier complaints against the accused. However, at no time in the enquiry process shall the past sexual history of the complainant be probed into, as such information shall be deemed irrelevant to a complaint of sexual harassment.
4. If the accused fails, without valid ground, to present her/him for three hearings convened by the chief enquiry officer, the Enquiry Sub- Committee shall have the right to take a decision on the complaint based upon available evidence.
5. Records of all evidence gathered in the course of the enquiry shall be maintained.
6. Enquiry proceedings shall be confidential.
7. All persons heard by the Enquiry Sub- Committee shall take and observe an oath of secrecy about the proceedings. Any violations of the oath of secrecy would invite action by the appropriate Institute authority as per the recommendation of ICC, NIAS. IIC,NIAS may issue an order of restraint to the accused in accordance with the procedure outlined below:
  - i. A restraint order shall provide a summary of the complaint, the date(s), time(s), and location(s), of the alleged incident(s). It shall warn the accused(s) that any attempt on her /his part or by person(s) acting on her /his behalf, to contact, or influence, or intimidate, or exert pressure on the complainant or any person in the complainant's confidence may prove prejudicial to her/his case.

- ii. The complainant or any other person should intimate in writing the Chairperson of ICC, NIAS and/or the Enquiry Sub-Committee (discussed in the subsequent section) of any violation of the order of restraint by the accused, or any persons acting on her /his behalf.
  - iii. Should the Chairperson of ICC, NIAS be convinced of the truth of such allegations, the Chairperson of ICC, NIAS and/or the chief enquiry officer may summon the accused in person and issue a verbal and written warning that such behavior may lead to an adverse inference being drawn against her/him. The Enquiry Sub-Committee or ICC, NIAS shall retain the right to close the enquiry proceedings, and to give an *ex parte* decision on the complaint.
  - iv. The Enquiry Sub-Committee and ICC, NIAS shall consider all violations of the restraint order when determining the nature of offence of a accused.
8. ICC, NIAS should make efforts to ensure that the complainant(s), accused(s) and the witnesses are not victimized or discriminated against at any time during or after the enquiry process as a result of their respective roles in a particular case of complaint. For instance, if the complainant is a student and the accused is a faculty member, the accused will not act as examiner or supervisor to this student. If the complainant and the accused are both employees working together on one or more tasks, alternative arrangements shall be made to carry out the task such that interaction between the two are not allowed. If the accused is an outsider, she/he shall not be allowed to enter the premises of the Institute during the period of enquiry. These changes may be continued as long as necessary.

9. ICC, NIAS shall recommend action against anyone who intimidates the complainant(s), accused(s), witnesses or members of the committee, during or after the enquiry process.

**B. COMPLAINTS MECHANISM**

1. Any student, service provider or a member of the academic or non-teaching staff may make, in writing , a complaint of sexual harassment at the workplace to any member of the Internal Complaints Committee, within a period of three months from the date of the last incident:
  - a. Provided that where such complaint cannot be made in writing, the presiding officer or any member of the ICC as the case may be shall render all reasonable assistance to the complainant for making the complaint in writing;
  - b. Provided further that 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 complainant from filing a complaint within the given period.
2. Where the complainant is unable to make a complaint on account of her/his physical or mental incapacity or death or otherwise, her/his legal heir or such other person as prescribed make a complaint under this section.
3. Upon receipt of the complaint, ICC member to whom the complaint is made shall forward the same to the Chairperson of ICC, NIAS.
4. The Chairperson of ICC, NIAS shall call an emergency meeting within two working days of the receipt of the complaint.
5. The purpose of the meeting will be to constitute an Enquiry Sub- Committee of three members and submit the complaint to

this Sub-Committee and formally initiate the enquiry process.

6. The complainant can request the replacement of a member of the Enquiry Sub- Committee providing a valid reason.

**C. CONCILIATION:**

- The Enquiry Sub- Committee may before initiating the inquiry and at the request of the complainant take steps to settle the matter between her/him and the accused through conciliation;
- Grant such other relief to the complainant as may be prescribed.
- Based on the recommendation of the ICC, the employer shall implement the recommendation and send the report of such implementation to the ICC.

**D. FORMAT AND PROCEDURES FOR THE INQUIRY REPORT:**

- On the completion of the inquiry under this Act, the ICC will provide a report of its findings to the employer within a period of 15 days from the date of completion of the inquiry and a copy of the report made available to the concerned parties.
- Where the ICC arrives at the conclusion that the allegation against the accused has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.
- Where the ICC arrives at the conclusion that the allegation against the accused has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules;
- To deduct from the salary or wages of the accused/ or pay some sum as it may consider appropriate to be paid to the complainant.
- The employer shall act on the recommendation within 60 days of its receipt by her/him.

- Where the ICC arrives at the conclusion that the allegation against the respondent is malicious or the complainant has made the complaint knowing it is false/ used forged or misleading documents, ICC shall recommend to the employer penalties against the person who has made the complaint.
- Notwithstanding the Right to Information Act, 2005, the contents of the complaint, the identity and address of the aggrieved woman, respondent and witnesses, any information relating to the conciliation, inquiry proceedings and recommendation of the ICC and the action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner.
- Any person entrusted to deal with the complaint reveals the details shall be liable for penalty in accordance to the service rules.

#### **E. COMPLAINTS WITHDRAWAL**

1. The complainant may withdraw her/his complaint in writing at any time during the enquiry procedure. However, ICC, NIAS must ascertain the reasons for withdrawal of the complaint, record the same in writing and get it counter-signed by the complainant.
2. The complaints enquiry procedure shall, on such withdrawal, be terminated, save in instances in which the Enquiry Committee is informed, knows, or has reason to believe, that the reasons for such withdrawal are the consequences or effect of coercion and intimidation exerted by the accused(s), or any person on her/his behalf on the complainant. In such an instance, the complaints enquiry proceedings shall continue in accordance with the procedure outlined in the policy.

#### **F. COMMUNICATION OF FINDINGS OF THE ENQUIRY SUB- COMMITTEE AND FOLLOW-UP PROCEDURES**

1. Within five working days of the receipt of the report of the enquiry committee, copies of the report shall be made available to all members of ICC, NIAS.
2. Anonymity shall be maintained by the Enquiry committee in the interest of complainant or witnesses.
3. Within ten working days of the receipt of the report of the enquiry committee, the Chairperson of ICC, NIAS shall convene a meeting to deliberate upon the findings of the enquiry committee.
4. The Enquiry Sub-Committee shall have to resubmit its findings within fifteen working days from the date the case is referred back to it along with responses to the specific concerns raised by ICC, NIAS. In order to deal with the concerns of ICC, NIAS, it may review the already collected evidence or it may collect new evidence/s.
5. Within five working days of the resubmitted findings, a meeting of ICC, NIAS shall be convened. The resubmitted findings of the Enquiry Committee (whether it upholds the earlier findings or revises them) shall be binding on ICC, NIAS; any dissenting opinions shall, however, be recorded.
6. Within two working days of the decision of ICC, NIAS, the chairperson of ICC, NIAS shall communicate the decision of the ICC, NIAS to the Director, NIAS.
7. The appropriate follow-up action and the report of the Enquiry Sub-Committee shall be communicated to the complainant and the defendant. Copies of depositions of witnesses shall be made available for perusal to the complainant or accused on request.

## **V. REDRESSAL**

### **A. GUIDING PRINCIPLES**

There will be provisions for punishment for the accused once there is a strong probability of the offence. There will also be attempts at every step of the enquiry and the punishment to treat the alleged accused as a human being susceptible to changing one's behavior on positive suggestions and social pressures. Redressal shall involve supportive measures for the complainant and protection against victimization. Filing of a grievance or complaint will not reflect upon/adversely affect the complainant's or accused or witnesses' status, future evaluation of grades, assignments, employment, promotion etc. As a general principle, everyone who is associated with redressal of sexual harassment needs to be sensitive towards both the accused and the complainant. To this end, it is advisable that they undergo periodic orientation and training.

### **B. PUNISHMENTS AND PENALTIES**

Any student, service provider, resident, outsider, or a member of the academic or non-teaching staff found guilty of sexual harassment shall be liable for disciplinary action. The penalties listed below (in ascending order) are indicative, and shall not constrain the Director from considering others, in accordance with the rules governing the conduct of employees and students in practice at the time.

- Warning, reprimand, or censure.
- Withholding of one or more increments for a period not exceeding one year.
- Removal from an administrative position at the ICC, NIAS.

- Disbarment from holding an administrative position at the ICC, NIAS.
- Suspension from service for a limited period.
- Compulsory retirement.
- Dismissal from service.

*Further, the penalty awarded shall be recorded in his/her Confidential Record. The right to an official character certificate may also be withdrawn where applicable.*

*In addition to the penalties specified, the person may be advised to undergo counseling and gender sensitization, and to give a written apology to the complainant.*

#### **PENALTY IN CASE OF A SECOND OFFENCE**

A second, or repeated offence, may, on the recommendation of ICC, NIAS, attract a higher penalty.

*Amendment to the Policy and Rules and Procedures of ICC, NIAS Amendments to the policy and rules and procedures of ICC, NIAS shall have effect only if these are compatible with the letter and spirit of the Supreme Court judgment. Amendments shall be effected by decision taken in a special meeting of ICC, NIAS called for this purpose.*

*Proposed amendments shall be circulated at least 15 working days prior to the special meeting called for this purpose. An amendment shall be passed by two-thirds of the total members of ICC, NIAS.*



## VI. OBLIGATIONS OF NIAS AUTHORITIES

### NIAS ADMINISTRATION SHALL

- Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- Display at any conspicuous place at the workplace, the penal consequences of sexual harassment and the order constituting the ICC.
- Assist the ICC,NIAS to organise one or more workshop/s annually to sensitise the employees with the provisions of the Act and orientation programmes for members of the ICC.
- Provide necessary facilities to the ICC to organise meetings, deal with the complaint and conduct the inquiry.
- Provide assistance to the individual to file a complaint under IPC.
- Treat sexual harassment as misconduct under the service rules and initiate action against misconduct.
- Monitor the timely submission of the reports by the ICC.

