

POLICY FOR COMBATING SEXUAL HARASSMENT AT WORK

INTRODUCTION

The main object of this Policy is to give practical guidance to all employees on the protection of the dignity of women and men at work.

POLICY-STATEMENT

All employees have a right to be treated with dignity and to work in an environment free of Sexual harassment. The Management will not permit or condone sexual harassment at work. The Management will make every reasonable effort to ensure that no employee or other person is subjected to sexual harassment at the any of the Foundation's workplaces. The Management assures that allegations of sexual harassment will be dealt with seriously, expeditiously and confidentially, and employees will be protected against victimization or retaliation for making or supporting a complaint of sexual harassment.

DEFINITION OF SEXUAL HARASSMENT,

Sexual harassment at workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victim.¹

In assessing the severity of the conduct in question or determining whether it was unwelcome or offensive to the recipient, the subjective perception of the recipient would also be given due weightage.

¹The Sexual Harassment of women at workplace (Prevention, prohibition and Redressal) Act, 2013 defines "sexual harassment" as including any one or more of these unwelcome acts or behaviour(whether directly or by implication): (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". Further, the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment of a woman:

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

SOME COMMON FORMS

Some common forms of sexual harassment would include, inter alia:

- *Physical harassment* (for example, leering, sexual groping, kissing, patting, pinching or touching in a sexual manner, affectionate gestures that are inappropriate in the circumstances, unwelcome staring, sexually-offensive physical conduct, sexual violence, etc.);
- *Verbal Harassment* (for example, propositions or inappropriate comments, unwelcome comments about a person's sex or private life, jokes and insinuations, sexually explicit conversation, suggestive comments about a person's appearance or body, verbal innuendoes, repeated social invitations for dinner or drinks or dates or the like, unwelcome flirting, sexual taunts, lewd or provocative comments and gestures, sexually abusive jokes or other language, etc.);
- *Gestural harassment* (for example, sexually suggestive gestures, such as nods, winks, gestures with the hands, fingers, legs or arms, lascivious looks or other gestures associated with sexuality, etc.);
- *Written or graphic harassment* (for example, sending pornographic pictures through email, putting up pin-ups or addressing unwanted love letters to an employee, displaying of pornography and the writing of graffiti which singles out or demeans individual employees, derogatory posters, cartoons or drawings, etc.);
- *Emotional harassment* (for example, behaviour which isolates, is discriminatory towards, or excludes a person on the grounds of his or her sex. Other sex-based conduct may in the circumstances also constitute sexual harassment, such as making disparaging comments on the role of women, their place in the labour market, or their skills and capabilities, inaccurate criticisms of job performance, a condescending or paternalistic attitude undermining dignity, etc.).

'WORKPLACE'

'Workplace' includes any place visited by the employee arising out of or during the course of employment including transportation if provided by the Management for undertaking such journey 'Workplace' or 'at work' would also include, inter alia, office parties, work-related social functions, phone calls, sending messages through cellular phones or email from home even on an off day, or other contacts outside office hours and work-related interactions. Thus, it is not the physical workplace that would govern, but the "access" that a perpetrator has to the recipient of sexually harassing behaviour by virtue of a job situation or relation that is relevant.

RESPONSIBILITIES

All employees have a responsibility to help create a working environment free from sexual harassment. Employees should ensure that their conduct does not offend anyone at the workplace. Employees who are victims of sexual harassment should tell the harasser that such behaviour is unwanted and unacceptable and, as such, should be stopped immediately. Victims of sexual harassment should immediately notify the Human Resources Department and/or invoke the complaints procedure provided in this policy.

COMPLAINTS PROCEDURES FOR 'AGGRIEVED WOMEN,

Definitions:

'Aggrieved woman'

'Aggrieved woman' means a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.

'Respondent'

'Respondent' means a person against whom the aggrieved woman has made a complaint of sexual harassment to the 'Internal Committee' in accordance with this policy.

'Employee'

'Employee' means 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 a 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.

Constitution of 'Internal Complaints Committee'

The Management has constituted a committee (**'the Internal Complaints Committee, or the ICC'**) in accordance with the provisions of the Sexual Harassment of women at workplace (*Prevention, Prohibition and Redressal*) Act, 2013. The names of the members of the ICC are displayed at the conspicuous places in every workplace and are also available with the Human Resources Department.

Written complaint to the 'Internal committee a.k.a Internal Complaints Committee,

Any aggrieved woman may make a written complaint against the respondent to the ICC. Such complaint shall be made within a period of three months from the date of incident and in case of series of incidents, within a period of three months from the date of the last incident. Where such complaint cannot be made in writing, the Presiding officer or any member of the ICC shall render all reasonable assistance to the woman for making the complaint in writing. The ICC may however, for reasons to be recorded in writing, extend the aforesaid time limit of three months by period not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the initial period of three months. The complainant shall submit to the ICC, six copies of the complaint along with supporting documents and the names and addresses of her witnesses. On receipt of the complaint, the ICC shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days' The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents provided by the Complainant.

Conciliation

The ICC may, before initiating a formal inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation. However, no monetary settlement can be made a basis of conciliation. If such conciliation fructifies into a settlement' the ICC shall record the settlement so arrived at and forward the same to the Management to take action as specified in the recommendation. The ICC shall provide copies of the settlement to the aggrieved woman and the respondent. Where such settlement is arrived at, no further inquiry shall be conducted by the ICC.

Inquiry

Except where conciliation fructifies into a settlement, in all cases where the respondent is an employee the ICC shall make inquiry into the complaint in accordance with the provisions of the service rules/ standing orders applicable to the respondent.² The ICC shall also conduct the inquiry, if the respondent fails to comply with any term or condition of the settlement. Where both the parties are employees, they 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 ICC.

The ICC shall make inquiry into the complaint in accordance with the principles of natural justice. The ICC shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself in the inquiry. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the ICC. In conducting the inquiry, a minimum of three Members of the ICC including the presiding officer shall be present. The inquiry would be completed within a period of ninety days.

Action during pendency of inquiry

During the pendency of an inquiry, on a written request made by the aggrieved woman, the ICC may recommend to the Management to (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; or (c) 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; or (d) grant such other

²The respondent may also be suspended pending or in contemplation of such inquiry. During the suspension period, the suspended employee shall be entitled to receive only a subsistence allowance as provided under the standing orders .If Standing orders are not applicable, subsistence allowance shall be paid to the respondent at the rate of 50% of his/her salary to which he/she was entitled immediately preceding the suspension, for the first ninety days of suspension. If the suspension is delayed beyond 90 days for reasons not directly attributable to the respondent, the subsistence allowance shall be increased to 75% of the salary to which he/she was entitled immediately preceding to his/her suspension.

relief to the aggrieved woman as may be prescribed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. The Management would implement such recommendations and send the report of implementation to the ICC³

Restraint Order

Apart from the above, on receipt of a complaint of sexual harassment from an aggrieved woman and during the pendency of inquiry, the ICC, on a written request made by the aggrieved woman may, if it thinks fit and proper, pass a Restraint order directing the respondent not to contact or influence or intimidate or exert pressure on the aggrieved woman or any person in the aggrieved woman's confidence. Such restraint order shall warn the respondent that any violation of the terms thereof by him would be liable to prove prejudicial to his case.

The aggrieved woman or any other person should intimate, in writing, the ICC of any violation of the Restraint order by the respondent or any person(s) acting on his behalf. If the ICC is convinced of the truth of such allegations, it may summon the respondent in person and issue a warning that such behaviour may lead to an adverse inference being drawn against him. In any case' the ICC shall consider all violations of the restraint order while arriving at its findings.

Inquiry report

On completing the inquiry the ICC will provide a report of its findings to the Management within ten days from the date of completion of the inquiry. Copies of the report would also be supplied to the concerned parties. If the ICC concludes that the allegation against the respondent is not proved' it shall recommend to the Management that no action is required to be taken in the matter.

However, if the ICC concludes that the allegation against the respondent has been proved, it shall recommend to the Management:

(i) to take action for sexual harassment as a misconduct in accordance with this policy and the provisions of the Service conditions or the Certified Standing orders, as the case may be, as applicable to the respondent;

(ii) to deduct, notwithstanding anything in the service rules/standing orders 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, after having regard to (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses

Incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; and (e) feasibility of such payment in lump sum or in instalments. However, if the Management is unable to make such deduction from the salary of the respondent due his being absent from duty or cessation of employment, the ICC may direct the respondent to pay such sum to the aggrieved woman.

³ The Management may allow the aggrieved woman to work from home during the inquiry, if so found by it. It is clearly understood that the aggrieved woman shall not abuse or misuse the provision of leave during the inquiry.

In case, however, the respondent fails to pay such sum, the ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer notified by the appropriate Government for the district under the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

(iii) The Management shall act upon the recommendation of the ICC within sixty days of the receipt thereof.

MISCONDUCT

The Management shall treat commission of an act constituting sexual harassment by an employee as a disciplinary offence. Victimising or retaliating against a complainant for making a complaint of sexual harassment in good faith shall also be treated as a disciplinary offence. However, a proven malicious complaint of sexual harassment or one made by the complainant. Despite knowing it to be false would also be treated as a disciplinary offence. Similarly, if the complainant produces any forged or misleading document or if a witness during the inquiry gives false evidence or produces any forged or misleading document, such act would also be treated as a disciplinary offence.

DISCIPLINARY ACTION

If the result of the investigation/ inquiry holds the alleged harasser guilty of sexual harassment, the Management shall take appropriate disciplinary action against the harasser. Subject to the provisions of this Policy, the Management may inflict any of the following punishments on the perpetrator of sexual harassment, or an aggrieved woman/other employee found guilty of making a malicious complaint against the respondent or making a false complaint against the respondent knowing it to be false or producing forged or misleading document:

- Written warning;
- Written apology;
- Reprimand or Censure;
- Withholding of promotion;
- Withholding of pay raise or increments;
- Termination or dismissal from service;
- Undergoing a counselling session;
- Carrying out community service;
- Any other punishment provided in the Service Conditions/Standing deemed fit and proper by the Management.

The above punishments may also be imposed on a delinquent employee victimizing or retaliating against a complainant for making a complaint of sexual harassment in good faith or for victimizing or retaliating against any person for supporting the complainant or for violating the Restraint Order issued by the Internal Committee in terms of this policy or for breaching the condition of confidentiality in terms of this policy or for violating any other norm or condition laid down or prescribed by this policy.

The inquiry for the purposes of determining the truth or otherwise of allegations of sexual harassment made against the alleged harasser would be held in accordance with the principles of natural justice' In this connection, reference may also be made to the relevant provisions of the service conditions or certified standing orders, as the case may be, applicable to the employees' However, for redressing/ resolving complaints made by women, the Management has provided for a specific complaints mechanism - See below: *Complaints Procedures for 'Aggrieved Women'*.

Punishment for false or malicious complaint and false evidence

(i) If the ICC concludes 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 produced any forged or misleading document, it may recommend to the Management to take action against the woman or the person who has made the complaint in accordance with this policy and the provisions of the service conditions or the certified standing orders, as the case may be.

(ii) Similarly, if the ICC concludes that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the Management or the employer of the witness, as the case may be, to take action in accordance with the provisions of the service rules/standing orders applicable to the said witness or where no such service rules/standing orders exist, in such manner as may be prescribed by *Sexual Harassment of Women at Workplace*

(Prevention, Prohibition and Redressal) Rules, 2013.

Prohibition of, and penalty for, publication or making known contents of complaint or inquiry proceedings

All employees should note that the *Sexual Harassment of Women at Workplace prevention, Prohibition and Redressal) Act,2013* prohibits the publication, communication, or making known to the public, press and media in any manner, the contents of the complaint made by the 'aggrieved woman' or the identity and addresses of the 'aggrieved woman,, respondent and witnesses' as also any information relating to conciliation and inquiry proceedings ,recommendations of the ICC, and the action taken by the Management.

Criminal Proceedings

The Management would provide assistance to the aggrieved 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' The Management would also cause to initiate action, under the Indian penal code or any other law for the time being in force, against the perpetrator.

'Third Party Harassment'

The Management also stands committed to take appropriate preventive and remedial action to prevent sexual harassment of its employees by non-employees at its workplace. Where sexual harassment occurs as a result of an act by any third party or outsider, the Management would take all steps necessary and reasonable to assist the victim in terms of support and preventive action.

The Management would cause to initiate action under the Indian Penal Code or any other law for the time being in force against such perpetrators. Further, in such cases, if the aggrieved woman so desires, the Management would cause to initiate action in the workplace at which the incident of sexual harassment took place. In such cases the aggrieved woman should promptly report the sexual harassment to the Management so as to enable the Management to take appropriate action. Unless the aggrieved woman reports the harassment to the Management, the latter in no case shall be responsible or liable in this regard.

REVIEW

The Management would periodically monitor, review and evaluate the working and efficacy of this policy.



Pearl Tiwari

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