

POLICY ON PREVENTION OF SEXUAL HARASSMENT (POSH) OF WOMEN AT WORKPLACE

INTRODUCTION:

This policy has been framed in accordance with the provisions of “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” and rules framed thereunder (hereinafter referred to as “**the Act**”). Accordingly, while the policy covers all the key aspects of the Act, for any further clarification reference shall always be made to the Act and the provisions of the Act shall prevail.

Project Mumbai is an equal opportunity NGO and we are committed to creating a healthy environment that enables employees to treat each other with respect and dignity and to work without fear of prejudice, gender bias and expect everyone to promote a sense of personal responsibility. We recruit competent and motivated people who respect our values, provide equal opportunities for their development and advancement; protect their privacy and do not tolerate any form of harassment or discrimination. This policy intends to provide protection against sexual harassment of women at workplace and the prevention and redressal of complaints of sexual harassment and matters related to it. This policy extends to all employees of the organisation

DEFINITIONS:

1. Sexual harassment may occur not only where a person uses sexual behaviour 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 of Project Mumbai and someone that the employee deals with in the course of his/her work who is not employed by Project Mumbai.
2. The term sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) but not limited to:
 - a) Any unwelcome sexually determined behaviour, or pattern of conduct, that would cause discomfort and/or humiliate a person at whom the behaviour or conduct was directed namely:
 - i. Physical contact and advances including but not limited to touching, stalking, sounds which have explicit and/or implicit sexual connotations/overtones, molestation;
 - ii. Demand or request for sexual favours;
 - iii. Sexually coloured remarks or remarks of a sexual nature about a person's clothing or body;

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- iv. teasing, voyeurism, innuendos and taunts with implicit sexual connotation, physical confinement and/or touching against one's will;
- v. Showing pornography, making or posting sexual pranks, sexual teasing, sexual jokes, sexually demeaning or offensive pictures, cartoons or other materials through email, SMS, MMS etc.;
- vi. Repeatedly asking to socialize during off-duty hours or continued expressions of sexual interest against a person's wishes;
- vii. Giving gifts or leaving objects that are sexually suggestive;
- viii. Eve teasing, innuendos and taunts, physical confinement against one's will or any such act likely to intrude upon one's privacy;
- ix. Persistent watching, following, contacting of a person; and
- x. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

The policy shall also apply mutatis mutandis when such acts take place while the employees are working virtually from their homes.

- b) The following circumstances if it occurs or is present in relation to any sexually determined act or behaviour amount to sexual harassment:

- i. Implied or explicit promise of preferential treatment in employment;
- ii. Implied or explicit threat of detrimental treatment in employment;
- iii. Implied or explicit threat about the present or future employment status;
- iv. Interference with the person's work or creating an intimidating or offensive or hostile work environment; or
- v. Humiliating treatment likely to affect her health or safety.

The reasonable person standard is used to determine whether or not the conduct was offensive and what a reasonable person would have done. 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.

- 3. Aggrieved woman:** 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 and includes contractual, temporary, visitors.
- 4. Complainant:** Any aggrieved woman who makes a complaint alleging sexual harassment under this policy.
- 5. Respondent:** A person against whom a complaint of sexual harassment has been made by the aggrieved woman under this policy.

6. **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 co-worker, a contract worker, probationer, trainee, apprentice or by any other such name.
7. **Workplace:** In addition to the place of work, it shall also include any place where the aggrieved woman or the respondent visits in connection with his/her work, during the course of and/or arising out of employment/ contract/ engagement with Project Mumbai, including transportation provided for undertaking such a journey.
8. **Employer:** A person responsible for management, supervision and control of the workplace.

ROLES & RESPONSIBILITIES

1. **Responsibilities of Individual:** It is the responsibility of all to respect the rights of others and to never encourage harassment. It can be done by:
 - a. Refusing to participate in any activity which constitutes harassment
 - b. Supporting the person to reject unwelcome behaviour
 - c. Acting as a witness if the person being harassed decides to lodge a complaint

All are encouraged to advise others of behaviour that is unwelcome.

2. **Responsibilities of Managers:** The managers at Project Mumbai must ensure that nobody is subject to harassment and there is equal treatment. They must also ensure that all employees understand that harassment will not be tolerated; that complaints will be taken seriously; and that the complainant, respondent/s, or witnesses are not victimized in any way.

REDRESSAL MECHANISM – FORMAL INTERVENTION

In compliance with the Act, if the complainant's warrants formal intervention, the complainant has to lodge a written complaint, which shall be followed by a formal redressal mechanism as described in this Policy. In case of a verbal complaint, the complaint will be reduced in writing by the receiver of the complaint and signatures of the complainant will be obtained.

INTERNAL COMPLAINTS COMMITTEE

To prevent instances of sexual harassment and to receive and effectively deal with complaints pertaining to the same, an Internal Complaints Committee is constituted. The details of the committee are notified to all covered persons at the workplace.

The committee comprises of the following personnel:

- i. Presiding Officer: A woman employed at a senior level in the organization or workplace.
- ii. At least 2 members from amongst employees, committed to the cause of women and or having legal knowledge.
- iii. One external member, familiar with the issues relating to sexual harassment
- iv. At least one half of the total members nominated are women.

The committee shall be responsible for the following:

- i. Receiving complaints of sexual harassment at the workplace
- ii. Initiating and conducting inquiry as per the established procedure
- iii. Submitting findings and recommendations of inquiries
- iv. Coordinating with the employer in implementing appropriate action
- v. Maintaining strict confidentiality throughout the process as per established guidelines
- vi. Submitting annual reports in the prescribed format.

The current members of the committees are as mentioned in Annexure A hereinbelow.

LODGING A COMPLAINT

The complainant may make a detailed complaint, along with any documentary evidence available or names of witnesses, to any of the committee members at the workplace.

The complaint must be lodged within 3 months from the date of incident/ last incident. The 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.

Provided that where such a complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Complaint Committee shall render all reasonable assistance to the aggrieved woman for making the complaint in writing.

If the aggrieved woman is unable to lodge the complaint on account of her physical incapacity, the following persons may do so on her behalf, with her written consent.

- i. Legal heir, relative or friend;
- ii. Co-worker;
- iii. Any person having the knowledge of the incident or
- iv. An officer of the National Commission for Women or State Women's Commission.

If the aggrieved woman is unable to lodge the complaint on account of her mental incapacity, the following persons may do so on her behalf:

- i. Legal heir, relative or friend;
- ii. Special educator;
- iii. A qualified psychiatrist or psychologist;
- iv. The guardian or authority under whose care she is receiving treatment or care;
- v. Any person having the knowledge of the incident jointly with the aggrieved women's relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care.

If the initial complaint is made to a person other than a committee member, upon receiving such a complaint, it will be the responsibility of such person receiving the complaint to report the same to the committee immediately. Wherever possible Project Mumbai ensures that all the complaints of harassment are dealt with speedily, discreetly and as close as possible to the point of origin.

RECEIVING A COMPLAINT (GUIDELINES)

Dealing with incidents of harassment is not like any other type of dispute. Complainants may be embarrassed and distressed and it requires tact and discretion while receiving the complaint.

The following points are kept in mind by the receiver of the complaint:

- i. The Complaint are listened to and the complainant informed that the organisation takes the concerns seriously. The Complainant is informed that these concerns will be reported to the appropriate committee and follow up will be done speedily
- ii. Situation are not be pre-judged. Written notes are taken while listening to the person. The Complainant is allowed to bring another person to the meeting if they wish. When taking accurate notes, complainant's own words, where possible, is used accurately. Clear description of the incident in simple and direct terms is prepared and details are confirmed with the complainant.
- iii. All notes are kept strictly confidential. The Complainant's agreement is taken to allow proceeding with the matter, which involves a formal investigation.
- iv. The Complainant is advised that although the process is confidential, the Respondent needs to be informed and any witnesses and persons directly involved in the complaint process will also learn of the complainant's identity.

Care must be taken to prevent any disadvantage to or victimization of either the complainant or the respondent.

RESOLUTION PROCEDURE THROUGH CONCILIATION

On receiving the complaint and before initiating the inquiry, the committee may take steps to conciliate the complaint between the Complainant and the Respondent in the event the aggrieved woman requests for the same. For the sake of clarity, it is hereby stated that conciliation will not be deemed to be acceptance of the contents of the complaint by the respondent. It is a practical mechanism through which issues are resolved or misunderstandings cleared. No monetary settlement can be made as a basis of conciliation. In case a settlement is arrived at, the committee records & reports the same to the employer for taking appropriate action. Resolution through conciliation shall take place within 2 weeks of the receipt of the complaint. The committee shall provide copies of the settlement to the Complainant and the Respondent. Once the settlement is implemented, no further inquiry shall be conducted by the Committee with regard to the Complaint.

RESOLUTION PROCEDURE THROUGH FORMAL INQUIRY

1. Inquiry

The committee shall initiate inquiry in the following cases:

- i. No conciliation is requested by the aggrieved woman
- ii. Conciliation proceedings has not resulted in any settlement
- iii. The Complainant informs the committee that any terms or conditions of the settlement arrived through conciliation has not been complied with by the Respondent

The Committee shall proceed to initiate an inquiry into the complaint within a period of 1 week of its receipt of the original complaint/closure of conciliation/repeat complaint.

2. Manner of inquiry into complaint:

- i. Complainant should submit the complaint along with supporting documents and the names of the witnesses.
- ii. Upon receipt of the complaint, the committee shall send a copy of the complaint to Respondent within 7 working days.
- iii. Respondent shall reply with all supporting documents within 10 working days of receiving the copy of the complaint and a copy of the same shall be provided to the Complainant.
- iv. No legal practitioner can represent any party at any stage of the inquiry procedure
- v. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
- vi. In conducting the inquiry, a minimum of three committee members including the Presiding Officer shall remain present.
- vii. The employer shall provide all necessary assistance for the purpose of ensuring full, effective and speedy implementation of this policy.

3. Interim relief

During pendency of the inquiry, on a written request made by the complainant, the committee may recommend to the employer to

- i. Transfer the complainant or the respondent to any other workplace
- ii. Grant leave to the aggrieved woman of maximum 3 months, in addition to the leave she would be otherwise entitled
- iii. Prevent the respondent from assessing complainant's work performance
- iv. Grant such other relief as may be appropriate.

Once the recommendations of interim relief are implemented, the employer will inform the committee regarding the same.

4. Termination of Inquiry

Committee at Project Mumbai may terminate the inquiry or give ex-parte decision, if the complainant or the respondent remains absent for three consecutive hearings without sufficient reason. The Committee shall give 15 days written notice to the party before termination of inquiry or ex-parte order.

5. Inquiry procedure

All proceedings of the inquiry shall be documented. The Committee shall interview the Respondent separately and impartially. The Committee shall state the allegation and the details of the Complainant to the Respondent. The respondent shall be given full opportunity to respond and provide any evidence if required. Detailed notes of the meetings shall be prepared which may be shared with the respondent and complainant upon request. In the event the witnesses produced by the Respondent are interviewed, their statements shall be taken. If the Complainant or the Respondent desires to cross examine any witnesses, the Committee shall facilitate the same and record the statements. In the event the Complainant or the Respondent seeks to question the other party, the questions shall be provided to the Committee and the Committee shall provide the same to the other party and record the response to such questions. Such inquiry shall be completed, including the submission of the Inquiry Report, within 90 days from the date on which the inquiry is commenced. The inquiry procedure ensures absolute fairness to all parties.

6. Considerations while preparing inquiry report

While preparing the findings/recommendations, following are considered:

- i. Whether the language used (written or spoken), visual material or physical behaviour was of sexual or derogatory nature.
- ii. Whether the allegations or events follow logically and reasonably from the evidence
- iii. Credibility of complainant, Respondent, witnesses and evidence.
- iv. Other similar facts, evidence, for e.g. if there have been any previous accounts of harassment pertaining to the Respondent.

- v. Both parties have been given an opportunity of being heard.
- vi. A copy of the proceedings was made available to both parties enabling them to make representation against the findings.

A copy of the final findings shall be shared with the complainant and the respondent to give them an opportunity to make a representation on the findings to the committee.

7. Action to be taken after inquiry

Post the inquiry the committee submits its report containing the findings and recommendations to the employer, within 10 days of completion of the inquiry.

The findings and recommendations are reached from the facts established and is recorded accurately.

If the situation so requires, or upon request of the complainant, respondent or witness, Management at Project Mumbai may decide to take interim measures such as transfer, changing of shift, grant of leave etc. to protect against victimization or distress during or subsequent to the course of inquiry, pending the final outcome.

8. Unsubstantiated Complaint

Where the committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.

Further, the committee shall ensure that both parties understand that the matter has been fully investigated and concluded and neither party will be disadvantaged within the organisation.

9. Substantiated Complaint

Where the committee arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend to the employer to take necessary actions for sexual harassment as misconduct, in accordance with the applicable service rules and policies, and this may include:

- i. Counselling;
- ii. Censure or reprimand;
- iii. Apology to be tendered by the Respondent;
- iv. Written warning;
- v. Withholding promotion and/or increments;
- vi. Suspension;
- vii. Termination or
- viii. Or any other action that the Management may deem fit.

The employer at Project Mumbai shall act upon the recommendations within 60 days and shall confirm the same to the committee. After implementation of the actions, the organisation should follow up with the Complainant to ascertain whether the behaviour has in fact ceased, the solution is working satisfactorily and if any party has been victimized.

10. Malicious Allegations

Where the committee arrives at the 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 the employer to take action against the woman or the person making the complaint. The action recommended should be similar to the ones proposed for the respondent in case of substantiated complaints. While deciding malicious intent, the committee should consider that mere inability to substantiate a complaint need not mean malicious intent. Malicious intent must be clearly established through a separate inquiry.

CONFIDENTIALITY

The identity of the complainant, respondent, witnesses, statements and other evidence obtained in the course of inquiry process, recommendations of the committees, action taken by the employer is considered as confidential materials, and not to be published or made known to public or media.

Any person contravening the confidentiality clauses is subject to disciplinary action as prescribed in the act.

APPEAL

Any party not satisfied or further aggrieved by the implementation or non-implementation of recommendations made, may appeal to the appellate authority in accordance with the Act and rules, within 90 days of the recommendations being communicated.

Annexure A

Internal Complaints Committee at Project Mumbai

Presiding Officer – Mrs Rupali Vaidya

Member – Mr Sanjal Panvalkar

Member – Ms Malvika Fernandes

Member - TBD

External Member – TBD

Employer - Mr Shishir Joshi