

GUIDELINES FOR

Preventing
**SEXUAL
HARASSMENT**
at the Workplace

EETPCINDIA

ENGINEERING THE FUTURE

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Message

We are glad that EEPC India is coming up with a detailed guideline on Sexual Harassment at Workplace. A better understanding of the issue through this publication will help us in creating a very conducive environment in EEPC India to utilise the full intellectual potential of its highly talented women employees.

As part of the legal responsibility to deal with sexual harassment, all employers must implement effective and accessible complaint procedures for employees and other workplace participants.

Prevention and control of sexual harassment in the workplace is the statutory obligation of enterprises. It constitutes an important part of corporate culture while aligning with international best practices and improving management processes.

As an employer, EEPC India has the responsibility to maintain a workplace that is free of any gender based harassment. This also makes good business sense because it allows high employee morale and high productivity.

We are sure this document will prove to be immensely useful to enterprises in strengthening its existing systems to check the problem of sexual harassment at workplace. It will also be a value added service to the members of EEPC India.

A handwritten signature in black ink that reads "Anupam Shah".

Anupam Shah
Chairman, EEPC India



Foreword

Sexual harassment at the workplace is a prevalent practice that jeopardizes the well being of employees, reduced the quality of work life and undermines gender equality in organisations. It breaches national legislations and international conventions and destroys the sanctity and safety of a conducive work environment for men and women and in turn becomes detrimental for the growth of any organisation.

This guide for employers on “Guidelines for Preventing Sexual Harassment” is an effort of EEPC India to provide employers with a practical tool towards creating a sexual harassment free workplace. This is also in line with the legislative act – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act 2013) which seeks to provide women from sexual harassment at their place of work.

This is a guide intended for employers of any company with more than 10 women workers and informing them of how to prevent sexual harassment in the workplace. It answers a series of questions, including what it is sexual harassment in the workplace, how enterprises put in place a prevention mechanism, what roles employers play and how the victims can deal with it.

A handwritten signature in black ink, appearing to read 'Bhaskar Sarkar'. The signature is fluid and cursive, with a horizontal line underneath it.

Bhaskar Sarkar
Executive Director & Secretary, EEPC India

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PREVENTING SEXUAL HARASSMENT AT WORKPLACE

Purpose

- Generating awareness on the concept of sexual harassment at workplace.
- Providing practical guidance to employers on how to create a sexual harassment free work environment.
- Evolving a permanent mechanism for prevention, prohibition and redressal of sexual harassment at the workplace.

How to use this Guide

This guide aims to serve as a reference tool for employers, providing them with a step-by-step guidance on creating a sexual harassment free workplace environment.

The guide contains the following sections:

- **Section 1: Overview of sexual harassment** - Touches upon the contribution of women to national growth; recognition of the issue as a problem; and its impact on 3 key stakeholders-victims, the employer and the country.
- **Section 2: Defining sexual harassment** - Provides valuable insight into the concept of sexual harassment.
- **Section 3: Response to the problem** - Discuss various international instruments such as United Nations' Discrimination (Employment and Occupation) Convention (No.111), Domestic Workers' Convention (No.189) and Declaration on the Elimination of Violence against Women, developed to discourage sex based discrimination between women and men, and stop sexual harassment at workplace.

This section also touches upon the Indian responses to the problem. It looks into constitutional provisions, guaranteeing women's right to

equity and dignified life, sections of IPC dealing with issues of sexual harassment, landmark court judgments and the newly enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

- **Section 4: Preventing sexual harassment at workplace**- Guidelines or employer's suggestions, practical measures to check problems at workplace.

SECTION - 1

Overview

The issues of sexual harassment at the workplace received public attention mainly after the Supreme Court's landmark judgement in Vishakha v/s State Government case in 1997. The apex court, in its verdict, held the employers responsible for protection of women employees from sexual harassment at the workplace, and issued comprehensive guidelines (widely known as Vishakha guidelines) enjoining them to take appropriate measures to curb this pernicious practice.

Costs of Sexual Harassment at Workplace

Sexual harassment at the workplace does not only cause disastrous psychosocial and physical hardships to the victim, but also leads to corresponding negative impact on the performance and reputation of the organisation. At broader level, it also hampers the inclusivity of the labour market and erodes the prospects of a country's economic growth.

Cost to the Victim

- It discourages the victim from asserting themselves within the workplace.
- The victim is objectified and humiliated by scrutiny and gossip.
- It may also bring disgrace to the family of the victim.
- It risks the victim losing their job or chance of promotion.
- It causes a range of psychological and physical sufferings to the victim.
- It causes a dip in the performance of the victim.
- Absenteeism from the workplace increases to avoid humiliation.

Cost to the Employer

Sexual harassment has been linked to decrease job satisfaction, de-motivation, and resultant poor performance, leading to loss of staff and expertise.

It can tarnish the company's image among clients, employees, potential customers, and the general public.

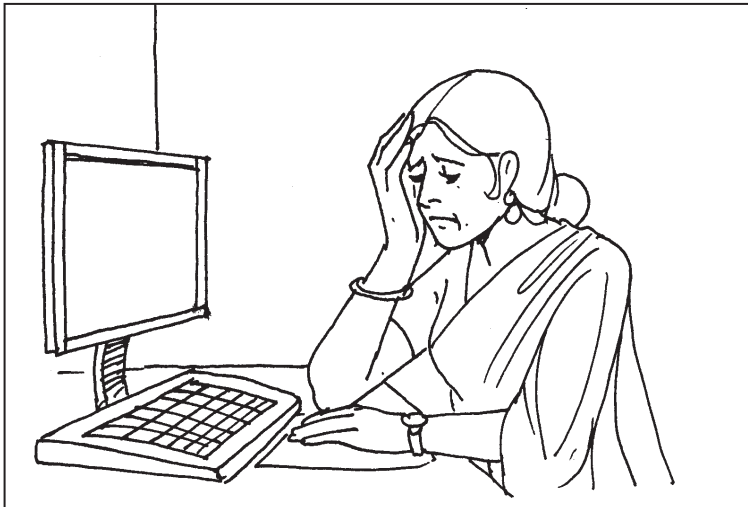
It makes the working conditions hostile and unpleasant, impacting productivity level of the victim and profit margins of the company.

It undermines ethical standards and discipline in the organisation and impacts the recruitment of "best talent".

Cost to the Country

Sexual harassment at the workplace contributes to decreasing labour force participation rate of women, jeopardizing inclusivity of the labour force.

As an overall social and economic effect, every year sexual harassment deprives its victims (mainly women) from active social and economic participation, and costs hundreds of millions of dollars in lost educational and professional opportunities for mostly girls and women.



SECTION - 2

Defining Sexual Harassment

According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, “sexual harassment includes one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- Physical contact or advances, or
- A demand or request for sexual favours, or
- Making sexually coloured remarks, or
- Showing pornography, or
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.”

Types of Sexual Harassment at the Workplace

Sexual harassment manifests itself in different forms – verbal, non-verbal and physical. The fourth category is called “Quid pro quo”. Some examples are:

a. Physical conduct

- Physical violence
- Rape or attempted rape
- Physical contact, e.g. unwelcome touching, patting, stroking, grabbing pinching, hugging
- Blocking someone’s path with the purpose of making a sexual advance.

b. Verbal conduct

- Comments on a worker’s appearance, age, private life, etc.
- Sexual comments, stories and jokes
- Sexual advances (explicit or implicit)

- Repeated unwelcome social invitations
- Insults based on the sex of the worker
- Condescending or paternalistic remarks
- Telling lies or spreading rumors about a person's personal or sex life.

c. Non-verbal conduct

- Display of sexually explicit or suggestive material
- Sexually suggestive gestures
- Starting, stalking, whistling, etc.
- Unwanted SMS/e-mail containing sexual comments.

d. Quid pro quo

It occurs when (1) job benefit, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment are associated with the provision of sexual favours, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment issues; or (2) the rejection of a sexual favour or request for sexual favour results in a tangible employment detriment, a loss of a job benefit of the kind described above.

e. Hostile work environment

Hostile working environment involves uninvited and unwelcome conducts or behaviour, whether physical, verbal or non-verbal, leading to a work environment that is uncomfortable to an employee.



SECTION - 3

Instruments to Check Sexual Harassment

A range of measures to combat the workplace sexual harassment have been developed at regional and international levels. All of them tend to conceptualize sexual harassment as a form of sex discrimination and a manifestation of violence against women. Some of these instruments are :

1. Universal Declaration of Human Rights, 1948

Articles 1, 2 and 7 speak about equality in dignity, rights and freedoms, and equal protection of men and women against any discrimination.

2. International Covenant on Economic, Social and Cultural Rights, 1966

The covenant enjoins all states to guarantee the rights enunciated in it without discrimination of any kind. States must ensure equality between women and men for the enjoyment of all economic, social and cultural rights established in the Covenant. The right to fair conditions of work is enshrined in Article 7.

3. United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Adopted in 1979 by the UN Assembly and ratified in 1993 by India, CEDAW identifies discrimination on the ground of sex as a clear violation of Human Rights. By ratifying the Convention, States commit themselves to (1) incorporate the equality of men and women in their legal system and abolishing all discriminatory laws; (2) establishing tribunals and other public institutions to ensure effective protection of women against discrimination; and (3) ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises.

4. The UN World Conference on Human Rights, 1993

Held in Vienna in 1993, the UN World Conference on Human Rights identifies sexual harassment as a case of Human Rights violation and treats it primarily as a form of violence against women.

5. Declaration on the Elimination of Violence Against Women, 1993

Adopted in 1993, the declaration outlines the steps which states and the United Nations should take to address gender-based violence against women. It defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It makes clear that states should take steps to eliminate any custom, tradition or religious consideration to prevent, investigate and, in accordance with national legislation, punish acts of violence against women.

Indian Response

Though a number of legal and constitutional provisions were already there in place to deal with cases of sexual harassment, the “Vishakha Guidelines”, laid down by the Supreme Court, provided broad framework for the prevention and redressal of such cases.

1. Constitutional Provisions

- Article 14 of the constitution identifies sexual harassment as a violation of a woman’s fundamental right to gender.
- Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 21 treats sexual harassment as a violation of the right to life and live with dignity.

2. Indian Penal Code (IPC)

- Section 292, 293 and 294 deal with Obscenity
- Section 354 deals with assault or criminal force to a woman with the intent to outrage her modesty
- Section 509 deals words, gestures or acts intended to insult the modesty of a woman

- Criminal Law (Amendment) Act, 2013, makes stalking, sexual harassment, and other sexual offences a crime under Indian Penal Code.

3. Vishaka Guidelines

The Supreme Court of India vide its judgement in 1997 (known as the Vishaka Guidelines), which was in response to a writ petition. “Vishaka and others vs. The State of Rajasthan”, brought the first ever comprehensive judgement to address sexual harassment at workplace. It was decreed that these Supreme Court directives would have the effect of law, till a specific legislation is enacted.

4. Relevant Legislations

- Indecent Representation of Women (Prohibition) Act, 1986, makes indecent representation of women through books, photographs, paintings, films, pamphlets, packages, etc. a punishable offence. Section 7 of the Act holds the companies/organizations guilty if there has been any case of indecent representation of women (such as the display of pornography) on the premises.
- Protection of Children from Sexual Offences Act, 2012, gives protection to all children (defined as a person under the age of 18 years) from the offences of sexual assault, sexual harassment and pornography. Section 11 of the Act deals with sexual harassment.

5. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to enforce legal measure to combat sexual harassment.

The Act recognizes that sexual harassment results in the violation of a woman’s fundamental right to equality under Articles 14, 15 and 21 of the Constitution. It hold employer responsible to provide protection against sexual harassment of women at workplace. It also requires them to provide employees with procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all required steps. Key provision of the Act are as under:

Coverage and Applicability

Act covers whole of India and applicable to public and private, organized and unorganized sectors, where domestic workers, clients, customers,

apprentice and daily workers are engaged.

Key Definitions

Aggrieved woman [Section 2(a)]

- A woman of any age irrespective of her employment status who alleges to have been subjected to any act of sexual harassment by respondent in relation to a workplace
- A woman of any age employed in such a dwelling place or house.

Employee [Section 2(f)]

Employee is a “person employed at a workplace for any work on regular, temporary, ad hoc, daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on voluntary basis or otherwise, whether term of employment are expressed or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or others who may be called by any other such name”.

Employer [Section 2(g)]

- i) In relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government, or a local authority, the head of the department, organisation undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or local authority, as the case may be, may by an order or specify in this behalf.
- ii) In any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of workplace.
- iii) In relation to workplace covered under sub-clause (i) and (ii), the person discharging contractual obligations with respect to his or her employees.

Respondent [Section 2(m)]

Respondent means a person against whom the aggrieved woman has made a complaint to the internal committee or the local committee.

Workplace [Section 2(o)]

- i) Any department, organisation, undertaking, establishment, enterprise,

- institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the Government or local authority or a Government company or Corporation or a co-operative society.
- ii) Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider, carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or services.
 - iii) Hospitals or nursing homes.
 - iv) Any sports institutes, stadium, sports complex or compensation or games venue, even the residence if used for training, sports or other related activities.
 - v) Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
 - vi) A dwelling place or house.

Unorganised sector [Section2(p)]

Unorganised sector is an enterprise owned by individuals or self-employed workers, engaged in the production or sale of goods or providing services of any kind whatsoever.

Employer's Obligations

Section 4(1) of the Act makes it mandatory for every employer employing 10 or more workers, to constitute an “Internal Committee” to provide employees with procedures for the resolution, settlement or prosecution of acts of sexual harassment.

Section 19(a) of the Act holds the employer responsible to provide a safe working environment at workplace which shall include safety from persons coming into contact at the workplace.

Section 19(b) requires the employer to display the penal consequences of sexual harassment and order constituting the internal committee [Section 4(1)], at any conspicuous place in the workplace.

Section 19(c) requires the employer to organize workshops and awareness

programmes at regular intervals for sensitizing employees on the provisions of the Act; and organizing orientation programmes for the members of internal committee.

Section 19(d) requires the employer to provide necessary facilities to the internal committee for dealing with the complaint and conduct enquiry.

Section 19(e) requires the employer to assist in securing the attendance of the respondent and witness before the internal committee or the local committee, as the case may be.

Section 19(f) requires the employer to make available all the information to the internal committee, which may be required in connection with the complaint made.

Section 19(h) requires the employer to initiate action against the perpetrator under the IPC or any other law, or if the aggrieved woman so desires, where the perpetrator is not an employee, in workplace at which the incident of sexual harassment took place.

Section 19(i) requires the employer to treat the sexual harassment as misconduct under the service rules and initiate action for such misconduct.

Section 19(j) requires the employer to monitor the timely submission of the reports by the internal committee.

Section 21(a) requires the employer to ensure that the internal complaint committee prepares and submits an annual report.

Section 22 requires the employer to incorporate the report of the number of cases, if any, and their disposal under the Act, in the annual report of the organisation.

Section 4 : Constitution of the Internal Compliant Committee-

Section 4 (1) - Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”.

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

Section 9 (2) - Internal Committee shall consist of the following Members to be nominated by the employer, namely-

- a) A **Presiding Officer** who shall be a woman employed at a senior level at workplace from amongst the employees. Provided that in case a senior

level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1). Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation.

- b) **Not less than two Members from amongst employees** preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- c) **One Member from amongst non-governmental organisations** or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

Provided that at least one-half of the total Members so nominated shall be women.

- d) Section (3) - the Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of nomination as may be specified by the employer.
- e) Section 4(4) - the Member appointed from amongst non-governmental organisations or associations shall be paid fees or allowances for holding the proceedings of the Internal Committee by the employer, as may be prescribed.
- f) Section 4(5) - where the Presiding Officer or any Member of the Internal Committee-
 - i) Contravenes the provision of section 16 of the Act; or
 - ii) 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
 - iii) He has been found guilty in any disciplinary proceedings is pending against him; or
 - iv) 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 provision of this section.

Filing the complaint: Section 9 of the Act outlines the procedure of filing the complaint of sexual harassment.

Section 9(1) says that any aggrieved woman can make a complaint of sexual harassment at the workplace to the internal committee, in written form, within a period of 90 days from the date of incident, and in case of a series of incidents, within 3 months from the date of the last incident. However, the time limit for filling up of complaint can be extended for another 3 months if the committee finds that the circumstances prevented the woman from filing the complaint within the same period.

Section 9(2) makes the provision of filing a complaint by the victim's legal heir or such other person as may be prescribed, in case of her inability to make a complaint due to physical or mental incapacity or death.

Conciliation: Section 10 of the Act provides the procedure for conciliation.

Section 10(1) outlines that the internal complaint committee, before initiating any inquiry, at the request of the aggrieved woman, can take steps to settle the matter between her and the respondent through conciliation. However, no monetary settlement can be made as a basis for conciliation.

Section 10(2), (3) and (4) outlines that after arriving at a settlement, the internal complaint committee will record it and provide a copy of the same to the employer and both the parties, and stop investigation into the case.

Inquiry into the complaint: Section 11 and 12 of the Act outline the procedure of conducting enquiries into a complaint, and suggest actions to be taken during pendency of inquiry.

- **Section 11(1)** directs that if the respondent is an employee, the internal complaint committee shall commence the enquiry into the complaint in accordance with the provisions of the service rules applicable to her/him. In cases where no service rules exist, the local complaint committee shall, if a prima facie case exists, forward the complaint to police, within a period of seven days, for registering a case under Section 509 of the Indian Penal Code.
- If the aggrieved woman informs the internal complaint committee that any term or condition of the settlement arrived (through conciliation) has not been complied by the respondent, the committee shall proceed to make an enquiry into the complaint or, as the case may be, forward the complaint to the police.
- **Section 12(1)** outline that during pendency of an enquiry, on a written request made by the aggrieved woman, the internal complaint committee may recommend the employer 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) grant such other relief to the aggrieved woman as may be prescribed.

- **Sub-section (2)** The leave granted to the aggrieved woman under the section shall be in addition to the leave she would be otherwise entitled.
- **Sub-section (3)** On the recommendation of the internal complaint committee, the employer shall implement the recommendations and send the report of such implementation to the committee.

Inquiry report and making final recommendations: Section 13 and 14 of the Act outlines the procedure of submitting the enquiry report and making final recommendations.

1) Section 13(2) outlines the internal complaint committee, upon completion of enquiry under the Act, shall provide a report within 10 days, to the employer. This report will also be made available to the parties.

2) Section 13(1) describes that where the internal 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. However, where the internal complaint committee arrives at a conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to (1) take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent; or (2) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to their legal heirs [Section 13(3)].

Punishment

Punishment for false or malicious complaint and false evidence: Section 14 (1) describes the actions to be taken if the complaint is found false/malicious. It says, where the internal complaint 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 has produced any forged or misleading document, it may be recommended to the employer to take action against the woman or the person who has made the complaint, in accordance to the service rules applicable. Similarly, if the internal complaint committee arrives at a conclusion that during the enquiry any witness has given false evidence or produced any forged or misleading document, it may be recommended to the employer

of the witness to take action in accordance with the provisions of the service rules applicable, or where no such service rules exist, then in such manner as may be prescribed.

Determination

Determination of compensation: Section 15 of the Act describes the process of determining the compensation to be paid to an aggrieved woman. It says that for the purpose of determining of sums to be paid to the aggrieved woman, the internal complaint committee shall have 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 final status of the respondent, and (e) feasibility of such treatment in lumpsum or in installments.

Duties of Employer

Section 19 (duties of employer) – Every employer shall-

- a) Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- b) Display at any conspicuous place in the workplace, penal consequences of sexual harassment; and the order constituting the internal Committee under sub-section (1) of section 4;
- c) Organize workshop and awareness programmes at regular intervals for sensitizing the employees with the provision of the Act and orientation program programmes for the members of the Internal Committee in the manner as prescribed;
- d) Provide necessary facilities to the Internal Committee for dealing with the complaint and conducting the inquiry;
- e) Assist in securing the attendance of respondent and witnesses before the Internal Committee;
- f) Make available such information to the Internal Committee as it may require having regard to the complaint made under sub-section (1) of section 9;
- g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Penal Code or any other law for the time being in force;
- h) Cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which

the incident of sexual harassment took place;

i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

j) Monitor the timely submission of reports by Internal Committee.

Sub-section (1) of Section 21 (Committee to submit annual report) – The Internal Committee shall in each calendar year prepares, in such form and at such time , an annual report and submit the same to the employer

Section 22 (employer to include information in annual report) – The employer shall include in its report the number of cases filed, if any, and their disposal under this Act, in the annual report of his organisation.

Penalties

Penalty for publication or making known contents of complaint and enquiry process: The law, under Section 16, prohibits the employee from publishing, communicating or making known to the public, press, media, any information relating to the complaint, details of the aggrieved woman, respondent and the witness. If it is found that a person entrusted with the duty to deal with the complaint, enquiry or any recommendations or action to be taken under the provisions of the Act, contravenes the provisions of Section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person, or where no such service rules exist, in such manner as may be prescribed (Section 17).

Penalty for non-compliance with provision of the Act: Section 26 of the Act describes penalties for non-compliance with provisions of the Act and repetition of the non-compliance.

Section 26(1) clearly states that if the employer fails to – (a) constitute internal compliant committee under sub-Section (1) of Section 4; or (b) take action as required under section 13, 14 and 22; and (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, she/he shall be punishable with fine which may extend to fifty thousand rupees (INR 50,000).

Section 26(2) states that if any employer, after having been previously convicted of an offence punishable under this Act, subsequently commits and is convicted of the same offence, she/he shall be liable to - (a) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence; or (b) cancellation of her/his license, or withdrawal, or non-renewal, or approval, or cancellation of registration, as the case may be, by the Governments or

local authority required for carrying on this business activity.

Department of Social Justice and Empowerment, issued following recommendations, in order to address discrimination and violence against transgender community, in work places:

- a) The private sector needs to sensitize employers and employees on issues of transgender persons.
- b) Anti-discrimination policies must be instituted and meaningfully applied to the processes of hiring, retention, promotion, and employee benefits.
- c) Workplace sexual harassment policies should be made transgender inclusive.



SECTION - 4

How To Stop Sexual Harassment At The Workplace: Guide For Employers

Sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters but most importantly from the senior management. A strong will at the top and a series of well thought out preventive and curative measures, can together ensure sexual harassment free workplace environment. Given below a list of recommended measures for employers to express their commitment to end workplace sexual harassment and create a conducive work environment for employees:

1. Employers should recognize the following

- First and foremost, acknowledge that it is our legal as well as moral responsibility to provide a sexual harassment free workplace environment for employees
- Understand that sexual harassment can devastate health, confidence morale and performance of victim. Impact of sexual harassment can also hit organization's performance as the anxiety and stress produce by it leads the victim to take time off work due to sickness, reduces efficiency, or forces the victim to leave job
- Understand the reasons why the victim remain silent about sexual harassment. An absence of complaints does not necessarily mean an absence of sexual harassment. It may mean that the victims of sexual harassment believe that there is no point in complaining because:
 - Nothing will be done about it
 - It will be trivialized
 - The complainant will be subject to ridicule

- The fear reprisals.

2. Adopt a sexual harassment policy

An effective measure to prevent sexual harassment at the workplace is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur; and if it occurs, adequate procedure are readily available to deal with problem and prevent its occurrence.

The policy should include –

- i) An express commitment to eradicate and prevent sexual harassment
- ii) A detailed definition of sexual harassment at the workplace.

Scope of the policy

- i) An explanation of penalties
- ii) A detailed outline of the procedure employees should use in the case of sexual harassment complaint
- iii) A clear statement that anyone found guilty of harassment after investigation, will be subject to immediate and appropriate disciplinary action
- iv) A clear statement and strict rules regarding harassment of or by third parties like clients, customers etc.
- v) Additional resource or contact persons available for support or consultation
- vi) An anti-retaliation policy providing protection against retaliation to complaints, witnesses, complaint committee members and other employees involved in prevention and complaints resolution.

3. Communicate the policy and other relevant information

Section 19(b) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, requires the employer to display the penal consequences of sexual harassment at a conspicuous place in workplace. Therefore display the Sexual Harassment Policy at the Bulletin Board.

4. Constitute the internal complaint committee

Section 4(b) of the Sexual Harassment of Women at Workplace (Prevention,

Prohibition and Redressal) Act, 2013, makes it mandatory for every employer having 10 and more employees to constitute an internal complaint committee to deal with cases of sexual harassment.

The employer needs to put down clearly, certain “non-negotiable” for the complaint committee for effective resolution of complaints. Given below are do’s and don’ts:

Do’s

- i) Formulize and publicist complaint procedures that are easy and non-threatening.
- ii) Treat the complaint with respect.
- iii) Appoint complaints officer – one man and one women- to serve as the first point of contact.
- iv) Most sexual crimes are committed in private, therefore, there may not be any eyewitnesses.
- v) Help the complainant to regain her/his self respect.
- vi) Always document the results of any sexual harassment complaint or investigation.

Don’ts

- i) Do not insists on detailed description of harassment.
- ii) Do not allow for interruptions when talking to complainant and/or accused.
- iii) Do not try and determine the impact of the harassment on the complainant.
- iv) Do not discuss the complaint among the presence of the complainant or the accused.

5. Establish complaints channels

Employees need to be provided different routes to approach the internal complaint committee and file complaints.

Informal methods of resolving complaints must be part of the complaints mechanism as many complaints can be resolved effectively and positively through informal methods.

6. Workshop/Awareness programme/Training

Section 19(c) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, require the employer to organize workshops and awareness generation programmes at regular intervals for sanitizing the employees with the provisions of the Act.

7. Establish sensing mechanism

Setting up a mechanism does not mean that there is sexual harassment in your workplace. Prevention is always better than cure, and being pro-active always helps. Alongwith performance, change in employees' behaviour patterns also deserves employer's close scrutiny.

8. Support internal complaint committee (ICC) in enquiry process

The most comprehensive sexual policies and procedures are bound to fail if a company does not enforce them quickly, consistently, and aggressively. Therefore section 19(d), (e) and (g) require the employer to provide all necessary support to the ICC for dealing with the complaint and conducting an unbiased enquiry.

9. Encourage employees and trade unions

Speak out : Speaking out about sexual harassment is an effective tool to combat it. While speaking about it, the problem becomes visible, is acknowledged, and pushes the management to take effective measures against it. Speaking about sexual harassment also helps in changing the attitudes of people towards the issue.

Keep records: Keep track of what happens in a diary and keep any letters or notes or other documents you receive. Write down the dates, times, places, and an accounts of what happened. Write down the names of the witnesses.

Be aware of situations and people who may harm you: Don't ignore other's warnings about particular employee or social settings. Acknowledge their concern for you and for themselves.

The employer should also encourage the trade union to –

- Help employees to realize that sexual harassment is a major problem which cannot be simply ignored.
- Try to informally resolve the complaint first by talking to the harasser.

If that is ineffective, help the victim to file a complaint with the appropriate authority

- Educate the members about the issue
- Determine the extent of the problem in the workplace. A survey of the members may be useful
- Work with employers to jointly conduct training programme
- Try to stop any harassment they observe, whether or not the victim has complained
- Disclose information only to the extent necessary to protect the confidentiality of all who are involved.



Annexure – 1

Model Policy on Preventing Sexual Harassment at the Workplace

Preamble

M/s EEPC INDIA is committed to create a workplace environment for its employees which is free from any form of sexual harassment.

The organisation believes that sexual harassment does not only infringes the victim's fundamental right to gender equality (Article 14) and the right to life and live with dignity (Article 21), but also transgresses their right to practice any profession, or to carry any occupation/trade/business [Article 19(1)(g)].

The Supreme Court of India also identifies sexual harassment as a violation of fundamental rights of the victim (*Vishaka & others vs. the State of Rajasthan & others case*). It is also condemned as a form of Human Rights violation.

It is therefore, expected that all employees (including vendors and clients) are aware that M/s EEPC INDIA will not tolerate any such behaviour/action that promotes, directly or by implication, sexual harassment at workplace. Such behaviour/act will be deemed to be a breach of terms of employment, and a criminal offence.

In order to reiterate its commitment towards creating a sexual harassment free workplace environment, and following the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, M/s EEPC INDIA is going to adopt this policy which seeks to encourage all employees to express freely, responsibly and in any other orderly way, their opinions and feelings about any problem or complaint of sexual harassment. It prohibits retaliation against persons who file a complaint or provide information about sexual harassment. Any act of reprisal, including internal interference, coercion, and restraint, by an employee, violates this policy and will result in appropriate disciplinary actions.

Objectives

The policy is directed to ensure zero tolerance towards any behaviour/conduct of a sexual nature by an employee or stakeholder that directly or indirectly harass, disrupts or interfere with another's work performance, or that creates an intimidating, offensive, or hostile environment. Key objective of the policy include:

- To raise awareness about sexual harassment in various forms
- To evolve a well defined mechanism for prohibition, prevention and redressal of sexual harassment cases.

Scope and Commencement

The rules and regulations outlined in this policy shall be applicable to all complaints of sexual harassment made:

- By an employee of EEPC INDIA against any other employee or client/vendor etc. of the organisation
- By an outsider against an employee of EEPC INDIA.

The policy will come into effect immediately.

Complaint Committee

In order to provide employees with a mechanism to report cases of sexual harassment, the organisation has constituted an internal complaint committee (ICC) with at least half of the members being Female members. It has taken the process of nomination and obtaining consent in appointment of committee members to ensure transparency and fairness in constitution of the committee.

The internal complaint committee may be subject to change in membership, depending on situation, from time to time. The existing committee is headed by a Chairperson who is independent and an outsider. The committee is displayed in the notice board of all offices of the Council.

Members are drawn from different locations of the Council. Further, as also required by law, in order to prevent the possibility of any undue pressure or influence, such Panel/complaints committee also involves a third party who is familiar with the issue of sexual harassment.

Grievance Procedure

- a) Any employee (complainant) may lodge a complaint of sexual harassment (complaint) against an employee / third party (“Accused”) or vice versa, with any of the members of the Panel at the earliest point of time and in any case preferably within 15 days from the date of occurrence of the alleged incident. If the complainant feels that she/he can not disclose her/his identity for any particular reasons with the Panel members, she/he addresses the complaint to the Chairperson.
- b) Such a complaint may be written or oral.
- c) If the complaint is oral, the same shall be put in writing by the complainant and shall be signed on every page, at the foot of the page, by the complainant.
- d) The complaint committee shall hold a meeting with the complainant latest within a period of 7 (seven) days within the receipt of the complaint and advance intimation will be given to the complainant of the same.
- e) At the first meeting of the complaint committee, the complainant shall

be heard and her/his statement is recorded (statement of allegation). The complainant can produce collaborative material with a documentary oral material, etc., to substantiate her/his complaint.

- f) Thereafter, the accused will be called to a meeting by the complaint committee and will be informed of the complaint and an opportunity will be given to the accused to give an explanation. Thereafter, an “Enquiry” shall be conducted.
- g) In the event the complaint does not fall under the purview of sexual harassment/the complaint on the face of it does not disclose an offence of sexual harassment, the complaint committee may drop the complaint after recording the reason(s) thereof.
- h) In case the complaint registered by the complainant is found to be false at any stage, the complainant shall be liable for appropriate action as per the service rules of the Council.
- i) In case the complaint is against any member of the Panel, such member shall not be allowed to be part of the enquiry committee.

Procedure for Enquiry

- a) The complaint committee shall immediately proceed with the enquiry and communicate the same to the complainant and the accused. The complaint committee shall record all the proceedings of the enquiry and all parties present at any of the communication meetings, shall endorse the same in token of authenticity thereof.
- b) The complaint committee shall hand over the statement of allegation to the accused and give an opportunity to the accused to submit a written explanation if she/he so desires within 15 days of receipt of the same.
- c) The complainant shall be provided with a copy of the written explanation submitted by the accused.
- d) If the complainant or the accused desires any witness(es) to be called, they shall communicate in writing to the complaint committee the names of the witness(es) whom they suppose to call.
- e) If the complainant desires to tender any document by way of evidence before the complaint committee, she/he shall supply true copies of such documents to the complaint committee. Similarly, if the accused desires to tender any documents in evidence before the complaint committee she/he shall produce true copies of such documents to the complaint committee and will affix her/his signature on the same to certify it as true copy.
- f) The committee will call upon all witnesses mentioned by both the parties.

- g) The complaint committee will provide every reasonable opportunity to the complainant and the accused, for putting forward and defending their respective case.
- h) The complaint committee shall complete the “Enquiry” as soon as possible and communicate its findings and recommendations for disciplinary action to the appointing authority.
- i) The Chairperson will direct the Personnel & Administration Department to take action in accordance to the recommendations proposed by the complaint committee.
- j) The complaint committee shall be governed by such rules as may be framed by the Council from time to time, taking into account the best practice from India and abroad.

Protection Against Victimization

The victim of sexual harassment has the option to seek transfer of the perpetrator OR her/his own transfer.

Obligation of the Management

The Management of the Council shall provide all necessary assistance for the purpose of ensuring full, effective and speedy implementation of this policy.

Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the Council shall take all steps necessary and reasonable to assist affected person in terms of support and preventive action.

Annual Report

The complaint committee shall prepare an Annual Report at the end of the financial year of the Council, giving a full account of the activities during the previous year and forward a copy thereof, to the Chairperson who shall direct its Personnel & Administration Department to forward the same to the Ministry of HRD.

