

DRAFT

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE POLICY 2013

DETAILED POLICY



HARYANA STATE COMMISSION FOR WOMEN PANCHKULA

BAYS 39-40, CADA BHAWAN, SECTOR 4 PANCHKULA

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1. Background

Name of the Company/Institute/Department (hereinafter referred to as the “**Company**”) is committed to provide equal opportunity and a harassment free workplace notwithstanding race, caste, religion, colour, ancestry, marital status, gender, sexual orientation, age, nationality, ethnic origin or disability, as the case may be. Thus in order to create such a safe and conducive work environment, this Policy has been framed, in line with the provisions of the “**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**” of India (hereinafter referred to as the “**Act**”¹) and existing rules framed there under namely the “**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013** (hereinafter referred to as the “**Rules**”²).

2. Purpose & Scope

Purpose of this policy is 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 including individuals coming to the workplace for employment or for any other purpose whatsoever including but not limited to visitors, vendors, contractual resources, secondees and applies to any alleged act of sexual harassment against persons at workplace, whether the incident has occurred during or beyond office hours.

This policy does not prevent any aggrieved person from taking recourse to the law of the land.

3. Important definitions

(a) “Aggrieved Individual” means in relation to a workplace, a person, of any age, whether employed or not, who alleges to have been subject to any act of sexual harassment by the respondent and includes contractual, temporary employees and visitors.

(b) “Complainant” is any aggrieved individual (including a representative as more fully described under Rule 6 of the said Rules, if the aggrieved individual is unable to make a complaint on account of his/her physical or mental incapacity or death or otherwise) who makes a complaint alleging Sexual Harassment under this Policy.

(c) “Employee” as defined under the Act and means a person employed with the Company for any work on permanent, temporary, part-time, ad-hoc or daily wage basis, either directly or through an agent, including a contractor, who 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 expressed or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

(d) “Employer” means person who are responsible for management, supervision and control of the workplace including appointment/removal/termination of employees and will include ‘Director and General Manager’, ‘Chief People Officer (CPO)’ and ‘Chief Operating Officer (COO)’.

1. <http://wcd.nic.in/sites/default/files/Sexual-Harassment-at-Workplace-Act.pdf>
2. <http://wcd.nic.in/sites/default/files/Sexual-Harassment-at-Workplace-Rules.pdf>

(e) “Internal Committee” means and include an Internal Complaints Committee (hereinafter referred to as the “IC”).

(f) “Member” means a member of the IC.

(g) “Presiding officer” means the presiding officer of the IC and shall be a woman employed at a senior level at the workplace amongst the employees.

(h) “Respondent” means a person against whom a complaint of alleging sexual harassment has been made under this policy.

(i) “Parties” means collectively the complainant and the respondent.

(j) “Sexual Harassment” includes any one or more of the following unwelcome acts of behavior (whether directly or by implication):

A. Any unwelcome sexually determined behavior or pattern of conduct that would cause discomfort and/or humiliate a person at whom the behavior or conduct was directed namely -

- (i) Physical contact and advances;
- (ii) Demand or request for sexual favours;

- iii) making sexually coloured remarks or remarks of sexual nature about a person's clothing or body;
- (iv) showing pornography;
- (v) Any other unwelcome physical, visual, verbal or non-verbal conduct of sexual nature including but not limited to cat-call, wolf/finger whistle, vulgar/indecent jokes, letters, phone calls, text messages, e-mails, gestures etc.

Sexual harassment can involve a series of incidents or it can be a one-off occurrence.

- B. The following circumstances, among other circumstances, if it occurs or is present in relation to connected with any act or behavior of sexual harassment may amount to sexual harassment:-
- Implied or explicit promise of preferential treatment in employment; or
 - Implied or explicit threat of detrimental treatment in employment; or
 - Implied or explicit threat about the present or future employment status; or
 - Interference with work or creating an intimidating or offensive or hostile work environment for the person; or
 - Humiliating treatment affecting any person's health or safety.

(k) "Workplace" means establishments, enterprises, institutions, offices, branches, premises, locations or units established, owned, controlled by the Company or places visited by the employees out of or during the course of employment including accommodation, transportation provided by the employer for undertaking such journey.

4. Procedures & Guidelines

Composition of Internal Committee

- Pursuant to the relevant provisions of the Act, an Internal Committee (IC) has been constituted to prevent sexual harassment and to receive and effectively deal with complaints pertaining to the same. Details of the members, including their names and contact information, of the IC constituted by the Company for its offices are displayed at office notice board and have also been published on the website and will be updated on a periodic basis, as and when applicable. Employer will not form a part of the IC.

- A quorum of 4 members is required to be present for the proceedings to take place. The quorum must include the Presiding Officer, at least two members (one of whom must be female) and the external member.

Complaint of Sexual Harassment³

Raising of complaint

1. Any aggrieved individual may make in writing, a complaint of sexual harassment to the Human Resource Department or through create a special email id of this or Help Line No within a period of three (3) months from the date of incident and in case of more than one incident, within a period of three (3) months from the date of last incident. Complaints arising of incidents more than three (3) months old shall not be accepted.
2. However, the IC may, for reasons to be recorded in writing, extend such time limit of filing complaint up to further 3 months, if it is satisfied that bonafide circumstances prevented the aggrieved individual from filing complaint within the time limit mentioned in point (1) hereinabove. The complaint should clearly mention name and available details of both the aggrieved person and the respondent. Anonymous or pseudonymous complaints will not be investigated.
3. Where the aggrieved individual is unable to make the complaint on account of her/his physical or mental incapacity or death or otherwise, his/her representative, as more fully described under Rule 6 of the said Rules, may make a complaint.
4. The HR Department or Ethics Office will officially forward the complaint to the Presiding Officer of IC within seven (7) days from the date of making of the complaint.
5. The complainant shall submit six copies of the complaint accompanied by available supporting documents and relevant details concerning the alleged act of sexual harassment(s) including names and address of witnesses, if any which the complainant believes to be true and accurate.

3. Please refer Annexure-1 for the Grievance Redressal Procedure.

Redressal Process

- **Conciliation**

Before the IC initiates an inquiry, the complainant may request the IC to take steps to resolve the matter through conciliation provided no monetary settlement shall be made as basis of conciliation. If a settlement has been so arrived, the IC shall record the same and forward the same to the Employer and provide copies of the settlement to the aggrieved individual and the respondent. In such cases, no further inquiry shall be conducted by the IC.

- **Inquiry**

(1) In case where a settlement is not feasible or could not be arrived at through conciliation (as above), the IC will conduct an inquiry into the complaint. Additionally an inquiry may also be initiated if the aggrieved person informs the IC that any terms of settlement (as above) has not been complied with by the respondent.

(2) The IC within 7 (seven) working days of receiving the complaint shall forward one copy thereof to the respondent for obtaining a response.

(3) The respondent within 10 (ten) working days of receiving the complaint shall file his/her reply to the complaint along with list of supporting documents, names and addresses of witnesses.

(4) The IC shall consider the reply from the respondent and initiate an inquiry. The complainant or the respondent to the complaint shall not be allowed to bring any legal practitioner to represent them at any stage of the proceedings before the IC. IC shall hear both the complainant and the respondent on date(s) intimated to them in advance and the principles of natural justice will be followed accordingly.

(5) In the event of failure to attend personal hearing before IC by the complainant or the respondent on three consecutive dates (intimated in advance) without sufficient cause, the IC shall have the right to terminate the inquiry proceedings or give an ex-parte decision. However, the IC shall serve a notice in writing to the party (ies), 15 (fifteen) days in advance, before such termination or the ex-parte order.

(6) The inquiry process shall be completed maximum within the period of 90 (ninety) days from the date of receipt of the complaint.

(7) The IC within 10 (ten) days from the date of completion of inquiry shall provide a report of its findings and recommendation(s) to CPO and Director & General Manager and such report and recommendation(s) shall also be forthwith made available to the complainant(s) and respondent(s).

(8) Where the conduct of Sexual Harassment amounts to a specific offence under the Indian Penal Code⁴ (45 of 1860) or under any other law; it shall be the duty of IC to immediately inform the complainant of his/her right to initiate action in accordance with law with the appropriate authority, and to give advice and guidance regarding the same. Any such action or proceedings initiated shall be in addition to proceedings initiated and /or any action taken under this Policy.

4. Please refer Annexure-2 for sections dealing with sexual harassment under the Indian Penal Code.

- **Interim relief**

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

- Transfer the aggrieved individual or the respondent to any other workplace; or
- Grant leave to the aggrieved individual of maximum 3 months, in addition to the leave he/she would be otherwise entitled; or
- Grant such other relief to the aggrieved individual as may found to be appropriate; or
- Restraint the respondent from reporting on the work performance of the complainant.

Once the recommendation of interim relief are implemented, CPO shall inform the committee regarding the same.

- **Prohibition on disclosure of information**

This policy and the law prohibits any person including IC Members from publishing, communicating or making known to the public, press and media in any manner, contents of the complaint, the identity and addresses of the aggrieved person, respondent and witnesses, any information relating to conciliation and inquiry proceedings, or recommendations of the IC during the proceedings under the provisions of the Act. Any violation thereto shall also be subject to applicable disciplinary action as outlined in Employee Handbook. Further CPO shall impose monetary sanctions as per provisions of the Act and Rules.

- **Harassment by individuals outside this policy**

If an aggrieved individual brings to the notice of the IC any instances of sexual harassment where the respondent is not an employee or other individuals covered under this policy, the Management or any person delegated by the Management shall provide assistance to the aggrieved individual, if such aggrieved individual so chooses, to file a complaint with the IC of the respondent's employer or under the IPC or any other law for the time being in force, as may be appropriate.

- **Protection to Complainant**

The Company is committed to ensuring that no employee who brings forward a harassment concern is subject to any form of reprisal. Any reprisal will be subject to disciplinary action. The Company will ensure that the victim or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.

However, anyone who abuses the procedure (for example, by maliciously putting an allegation knowing it to be untrue and/or produces any forged or misleading document) will be subject to applicable disciplinary action.

- **Appeal**

Any person aggrieved by the recommendation of IC may prefer an appeal under the relevant provisions of the Act and Rules.

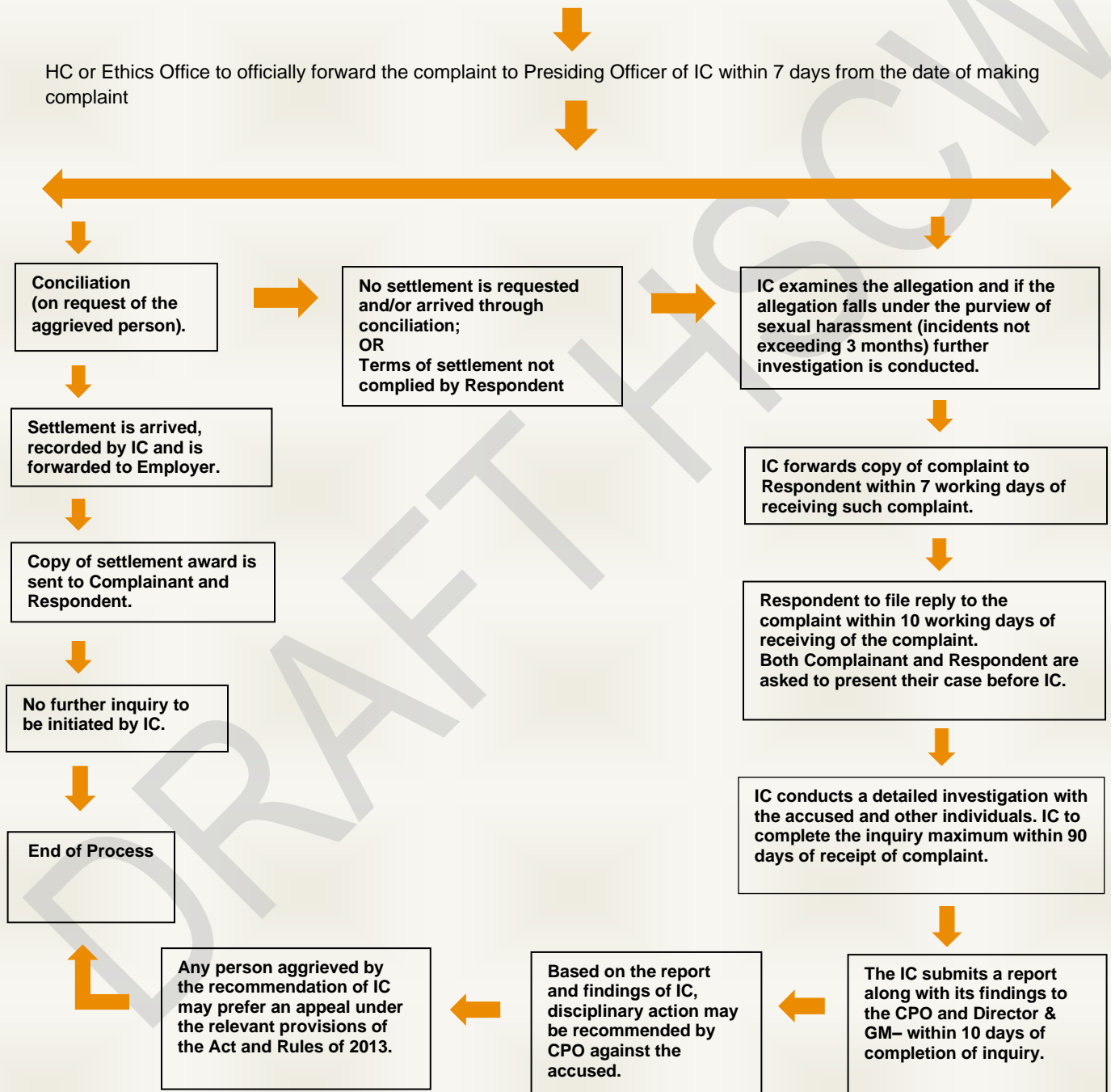
- **Disciplinary Proceedings**

Pursuant to written recommendation of CPO on the basis of report and findings of IC and subject to the final outcome of the appeal proceedings, if any, (as above) necessary disciplinary proceedings may be initiated against the respondent in terms of the applicable provisions of Employee Handbook of the Company.

Annexure-1

GRIEVANCE REDRESSAL PROCEDURE

Reporting of Complaint through HC or Ethics Office



Annexure-2

Sections of the Indian Penal Code (IPC) – Sexual Harassment and Punishment for Sexual Harassment

Under the Indian Penal Code, the newly introduced Section (Section 354A) which deals with Sexual Harassment has made this a 'cognizable offense' i.e. a person charged with Sexual Harassment may be arrested **without a warrant**.

(1) A man committing any of the following acts:

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) above, shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) above shall be punished with imprisonment of either description (i.e. either simple or rigorous) for a term which may extend to one year, or with fine, or with both.

In addition to Section 354A set out above, acts of Sexual Harassment may also constitute other offenses under IPC including Section 354 (assault or criminal force to woman with intent to outrage her modesty), Section 354C (Voyeurism), Section 354D (Stalking), Section 375 and 376 (Rape) and Section 509 (word, gesture or act intended to insult the modesty of a woman) of the IPC.
