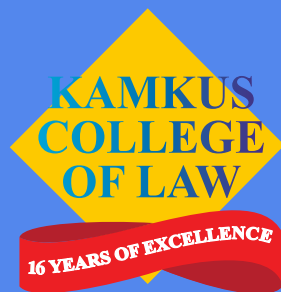


Prevention and Redressal of the Sexual Harassment of Women at the Workplace



KAMKUS COLLEGE OF LAW

Prevention and Redressal of the Sexual Harassment of Women at the Workplace

OVERVIEW

Sexual harassment of women at the workplace is prohibited by law in India.

Bhagirath Sewa Sansthan (hereinafter referred to as 'BSS', which term shall include the institutions under the BSS umbrella) is committed to discouraging and taking corrective actions against any form of harassment at the workplace. The BSS Statement on Conduct and Ethics ensures that the organization will act to prevent inappropriate behavior, including sexual, racial, religious or any other form of harassment, bullying or intimidation. Abiding by the requirements of the law in India to protect women employees/staff against sexual harassment BSS is also committed to:

- Providing a safe workplace environment;
- Publishing in the workplace the potential penal consequences of sexual harassment; and information about the Internal Committee ("Committee") established further to the law;
- Providing necessary facilities for dealing with complaints and conducting inquiries; assisting in securing to the best of its ability, the attendance of the respondent and witnesses in Committee proceedings; and providing information as available with the organization to the Committee as it may require with regard to complaints;
- Providing assistance to the aggrieved woman as required under the law in India;
- Initiating action as required under the law
- Treating sexual harassment as misconduct under internal disciplinary rules;
- Monitoring timely submission of reports by the Committee.

OBJECTIVE

2. OBJECTIVE

This policy prohibits sexual harassment and describes the requirements of the law including the provisions and process for enquiries and redressal of complaints and related actions. The disciplinary procedure of BSS will be applied in addition to the process adopted by the Committee and the principles of natural justice will be followed. To the extent the law specifically requires steps and processes to be followed in an alleged case of sexual harassment that are different from those as set out in the disciplinary procedure of BSS, the requirements of the law will prevail, and all references in this document to the disciplinary procedure of BSS shall be read accordingly.

SCOPE

3. Scope

This policy applies to all the employees / staff of BSS institutions.

What is Sexual Harassment?

The law defines “sexual harassment” to include any one or more of the following unwelcome acts or behavior, whether direct or implied:

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

Some examples of circumstances described in the law that are associated with such acts or behaviors, would also be considered sexual harassment:

- An implied or explicit promise of preferential treatment in employment; or
- An implied or explicit threat of detrimental treatment in employment; or
- An implied or explicit threat with regard to present or future employment status; or
- Interference with work or creating an intimidating, offensive or hostile work environment; or
- Humiliating treatment likely to affect health or safety.

NOTE:

The above is only illustrative and not exhaustive and sexual harassment includes such and similar behaviour even if committed off workplace premises. Harassment can be based on the perception of a purported victim, regardless of whether there is any intent on the alleged perpetrator's part. Please refer to Annexure A for some examples of Sexual harassment.

What is the workplace?

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The law defines “workplace” to include:

- Any place visited by the employee / staff arising out of or during the course of employment, and
- Transportation provided by the employer / staff for undertaking such journey;

A. Complaint of sexual harassment at the workplace

- An aggrieved woman may make a written complaint to the Committee or can send written complaint to email address:
- The complaint can be made:
 - Within a period of three months from the date of the incident, or
 - If there are a series of incidents, within a period of three months from the date of the last incident.
- If the aggrieved woman is unable to make a complaint because of
 - Physical
 - Mental
 - Incapacity
 - Death,her legal heir or such other person as is permitted by the law, may make the complaint.
- If the complaint cannot be made in writing, the Presiding Officer or any Member of the Committee will provide all reasonable assistance so that the written complaint can be made.
- The Committee may, for reasons recorded in writing, extend the time limit by a further period not exceeding three months, if it is satisfied that circumstances prevented the filing of a complaint within the first three months.

B. Conciliation

- The Committee may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.
- No monetary settlement shall be made the basis of conciliation.
- If a settlement is arrived at, the Committee shall record the settlement and send it to management for action to be taken as recommended, and no further inquiry shall be conducted by the Committee.
- The Committee shall provide copies of the recorded settlement to the aggrieved woman and to the respondent.

C. Inquiry into Complaint:

- The Committee shall, if the respondent is an employee / staff, make inquiry into the complaint in accordance with the disciplinary procedure of BSS.
- If the aggrieved woman informs the Committee that any term or condition of the settlement arrived at in Conciliation has not been complied with by the respondent, the Committee shall make an inquiry into that complaint.
- If the aggrieved woman and the respondent are both 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 so that they may make representation against the findings before the Committee.

The Committee has the power to:

- I. summon and enforce the attendance of any person for examination;
- II. require discovery and production of documents; and
- III. deal with any other matter as may be prescribed by the law.

The Committee will complete an inquiry within a period of 90 (ninety) days.

Manner of inquiry into a complaint:

- When filing a complaint, the complainant shall submit six copies of the complaint together with supporting documents, and names and addresses of witnesses;
- The Committee will send one copy of the complaint to the respondent within a period of seven working days.
- The respondent will file a reply to the complaint along with a list of documents and names and addresses of witnesses within ten working days from the date the respondent receives the copy of the complaint.
- The Committee's inquiry will be made in accordance with the principles of natural justice.
- The Committee after giving written notice of fifteen days to the party concerned, can terminate an inquiry or give an ex parte decision if either the complainant or the respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Presiding Officer.
- No legal practitioner may represent a party before a Committee proceeding.
- In conducting an enquiry, a minimum of three Members of the Committee including the Presiding Officer shall be present.

D. Action when inquiry is pending:

On written request by the aggrieved woman, the Committee may recommend, where feasible that BSS -

- Transfer the aggrieved woman or the respondent to another department;
or
- Grant leave to the aggrieved woman up to a period of three months (in addition to the leave she would be otherwise entitled to); or
- BSS shall implement the recommendations made and send the report of such implementation to the Committee.

E. Inquiry report:

- (i) The Committee shall provide a report of its findings to BSS within a period of 10 days from the date of completion of the inquiry.
- (ii) The report will be made available to the concerned parties.
- (iii) If the conclusion is that:
 - the allegations have not been proved, the Committee shall recommend to BSS that no action is required to be taken in the matter.
 - the allegations have been proved, the Committee shall recommend to BSS that-
 - action be taken for sexual harassment as a misconduct or gross misconduct in accordance with the disciplinary procedure;
 - such sum be deducted from the salary or compensation of the respondent as it may consider appropriate, and paid to the aggrieved woman or to her legal heirs, as it may determine;
 - if BSS is unable to make such deduction, it may direct the respondent to pay such sum to the aggrieved woman.
 - in case the respondent fails to pay the sum, the Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned government District Officer.
- (iv) The recommendation must be acted upon, within 60 (sixty) days of its receipt.

F. Punishment for false or malicious complaint and false evidence:

If the Committee concludes that the allegations are malicious or false to the knowledge of the complainant or that the complainant or any other person has produced forged or misleading documents, it may recommend to BSS that suitable action be taken against the woman or the person who has made the complaint.

Except if service rules apply, where the Committee concludes that the allegation is malicious or the aggrieved woman or any other person making the complaint made it knowing it to be false, or forged or misleading documents have been produced in support of the complaint, it may recommend to BSS any action, such as a written apology, warning, reprimand, censure, withholding of promotion or pay rise or increment, termination of service, counseling or community service.

NOTE:

Mere inability to substantiate a complaint or provide adequate proof is excluded from the above.

Malicious intent on part of the complainant shall be established after an inquiry, before any action is recommended.

If the Committee concludes that during the inquiry a witness has offered false evidence or produced a forged or misleading document, it may recommend that appropriate action be taken as provided for by the laws of India.

G.Prohibition of publication or making known contents of complaints and inquiry proceedings:

A complaint; the identity and addresses of the aggrieved woman; respondent; witnesses; any information relating to conciliation and inquiry proceedings; recommendations of the Committee; action taken by BSS or by the District Officer shall not be published, communicated or made known to the public, press and media in any manner.

Information regarding justice provided to a victim of sexual harassment may be disseminated without disclosing the name, address, identity or any other particulars that would allow the identification of the aggrieved woman and witnesses.

The law provides for penalty for publication or making known contents of complaint and inquiry proceedings.

BSS may recover a sum of Rs. 5,000/- as penalty from the person in breach.

H. Appeal:

Any person aggrieved with:

- recommendations of the Committee on the basis that allegations of sexual harassment have either been proved or not;
- recommendations for punishment for false or malicious complaints or false evidence;
- penalty levied for publication or making known contents of complaint and inquiry proceedings;
- non-implementation of Committee recommendations,
- may prefer an appeal as provided for in the law, within a period of 90 (ninety) days of the recommendations, inter alia, without prejudice to provisions contained in any other law for the time being in force, to the appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946.

Constitution of Complaints Committee

BSS has constituted the Committee as the "Internal Complaints Committee", comprising the following members, on the basis of the following parameters:

(a)	Woman employed at a senior level at workplace from amongst the employees.
(b)	From amongst employees preferably committed to the cause of woman or who have had experience in social work or have legal knowledge.
(c)	From amongst employees preferably committed to the cause of woman or who have had experience in social work or have legal knowledge.
(d)	From amongst non-governmental organizations or associations committed to the cause of woman or a person familiar with the issues relating to sexual harassment.

The ICC at BSS is constituted of the following members:

NAME	DESIGNATION	PRESIDING OFFICER / MEMBER / NGO REPRESENTATIVE
Dr. Sanjeev Kumar Tyagi	Principal	Presiding Officer
Dr. Seema Singh	Dean	Member
Dr. Jaya Sukul	Clinical Psychologist	Member
Neha Shukla	Advocate	Member

NOTE:

- At least half the members of the Committee (including the Presiding Officer) shall be women.
- Subject to the provisions of the law and earlier separation (including transfer), the Presiding Officer and every Member of the Committee shall hold office for three years, from the date of their nomination.
- In the event the Presiding Officer or any Member is not available or is himself/herself the complainant, the respondent or a witness in a particular inquiry, the Head- Human Resources shall appoint a substitute for such inquiry.
- The Committee will submit an annual report in each calendar year to BSS and the District Officer in the manner required by law.
- BSS will include in its annual report the number of cases filed, if any and their disposal under the law.

The point of reference for the Committee within BSS will ordinarily be the Chairman of the BSS.

If a complaint alleging sexual harassment is made against a person in BSS who is vested with the delegated responsibility for management and supervision of the workplace, the society of BSS will be the representative reference point as the same has the over-arching and ultimate responsibility for the management and supervision of BSS.

REFERENCE

The footnotes in this policy document are references to the provisions of law.

1. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013
2. In the law, “respondent” means a person against whom the aggrieved woman has made a complaint of sexual harassment.
3. In the law, an “aggrieved woman” in relation to a workplace, 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.
4. The complaint can be filed by (i) her relative, or friend; (ii) her co-worker; (iii) an officer of the National Commission for Women or a State Women's Commission; (iv) any person with knowledge of the incident, with the written consent of the aggrieved woman.
5. The complaint can be filed by (i) her relative, or friend; (ii) a special educator (a person trained in communication with people with special needs in a way that addresses their individual differences and needs); (iii) a qualified psychiatrist or psychologist; (iv) the guardian or authority under whose care she is receiving treatment or care; (v) any person with knowledge of the incident, jointly with her relative, friend, special educator, qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care.
6. Where the aggrieved woman is unable to make a complaint for any other reason, a complaint may be filed by any person who has knowledge of the incident, with her written consent.
7. Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

8. In the law, for the purpose of determining the sums to be paid to the aggrieved woman, the Internal 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 financial status of the respondent;
 - (e) feasibility of such payment in lump sum or in instalments.
9. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.
10. "appellate authority" means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under the Act.
11. A person familiar with issues relating to sexual harassment shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:
 - (a) a social worker with at least five years' experience in a field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular, in addressing workplace sexual harassment;
 - (b) a person who is familiar with labour, service, civil, or criminal law.

ANNEXURE- A

Sexual Harassment – illustrative Modes / Behavior patterns

Sexual Harassment – illustrative Modes / Behavior patterns					
VISUAL	VERBAL	WRITTEN	TOUCHING	POWER	FORCE
Ogling	Requests for dates, sexual demands/ favours or unwanted sexual advances		Violating Space	Using Position to request dates, sex etc	Criminal offences
Staring	Questions about personal life	Love letters sent at complainant's home/ messages via phone or mobile/ email	Patting/ trying to tap	Promising	
Posters	Lewd / Lustful comments	Obscene Poems/ Jokes/ Stories	Grabbing	Threatening Loss of Job	
Magazines	sexually explicit jokes or remarks or demeaning terms or sexually	Obscene Letters, messages via phone or mobile/ Email etc.	Pinching		
Flyers	Whistling	Cards	Caressing	Force to shake hand with no specific reason	
Calendars		Objectionable E-mail/ Communication	Kissing/ attempt to kiss		
Stalking		Love poems			

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