



# Policy Against Sexual Harassment at the Workplace

## 1. Background

National Foundation of India (NFI) works towards creating a peaceful, just and equitable society of which equality and non-discrimination are the key elements. Sexual Harassment at the workplace is a violation of women's human rights as it denies gender equality and the right to life and liberty. Women's safety at the workplace is paramount and the responsibility of all employers. NFI is committed to creating a safe and secure work environment for women free from sexual harassment.

NFI's Policy Against Sexual Harassment (PASH) aims to prohibit, prevent, protect and redress sexual harassment at the workplace of NFI and is based on the Sexual Harassment Of Women (Prevention, Prohibition and Redressal), Act, 2013.

NFI's PASH lays down the mechanism for dealing with complaints of sexual harassment at workplace of.

## 2. Applicability

- a. NFI's Policy Against Sexual Harassment at the workplace is binding on all the employees of NFI; vendors and partners, grantees and others associated with the organization who are present at the workplace.
- b. This policy is applicable to all the offices of NFI in India, that is, the office premises and spaces contiguous to the same or any place visited by the employee arising out of or during the course of employment including transportation provided by the employer.

## 3. Responsibility of NFI

- a. The Employer for the purpose of this policy is Executive Director.
- b. NFI shall not tolerate or condone any act of sexual harassment at the workplace. NFI will immediately initiate appropriate proceedings when a complaint prima facie alleging sexual harassment at the workplace is received against an employee or vendor or third party.
- c. All offices/workplaces of NFI shall prominently display notices stating that sexual harassment at the workplace is prohibited.
- d. All offices/workplaces shall prominently display the name and contact details of the Presiding Officer and other members of the Internal Complaints Committee (ICC) and inform the manner in which complaint has to be sent to the ICC.
- e. A soft copy of the NFI PASH shall be given to all the employees and grantees of NFI.

f. The contract of each employee shall include an undertaking that the employee will abide by the NFI PASH .

g. All persons connected with or enquiring into a case of sexual harassment at the workplace , including members of the ICC, the aggrieved woman, the respondent, witnesses and the Employer must at all times maintain confidentiality while dealing with a case of sexual harassment at the workplace. Breach of confidentiality leading to revealing the names of the aggrieved woman, respondent or witnesses is a punishable offence.

h. NFI shall ensure that no adverse or retaliatory action, such as transfer, loss of seniority or suspension, change in employment status, intimidation, etc is taken against a woman for filing a complaint of sexual harassment or against any person for cooperating in an inquiry of sexual harassment.

i. NFI shall provide the necessary infrastructure for the functioning of the Internal Complaints Committee and the Inquiry Committees (IC) set up under NFI's PASH.

j. NFI shall bear the travel expenses of the Internal Complaints Committee (ICC), the Inquiry Committee(IC), the aggrieved woman, the respondents and the witnesses required to appear before the Internal Complaints Committee (ICC), the Inquiry Committee(IC),

h. NFI shall create awareness and orientation on the issue of Sexual Harassment at the Workplace amongst its employees by conducting workshops with the employees.

i. NFI recommends that grantees of NFI formulate a policy against sexual harassment at the workplace and set up an ICC for their organization at the earliest.

#### **4. Who can make a complaint of sexual harassment at the workplace.**

Any woman who alleges to have been subjected to the any act of sexual harassment at the workplace can make a complaint. The woman will be referred to as an “aggrieved woman”,

An aggrieved woman includes a woman who :

a. works with NFI as a regular full-time employee or regular part time employee or project based employee or consultant or fellow or intern or an ad hoc employee who employed directly or through a contractor, or an “outsider”.

b. An outsider includes a woman who is associated with NFI's workplace as a vendor, client, grantee, etc

*Illustration : A woman employee or intern of a grantee organization who alleges sexual harassment by an employee or consultant of NFI either in the NFI office or in the field area is an outsider.*

#### **5. Against whom can a complaint of sexual harassment at the workplace be made?**

An aggrieved woman can make a complaint against any person, man or woman, who is alleged to have committed sexual harassment at the workplace and such a person will be referred to as the Respondent.

The Respondent may be an employee or a “Third Party”.

Third party includes person who is associated with NFI such as a vendor providing transport, catering, conference and other facilities or any person related to the work of NFI, or an employee or any other person associated with a grantee, etc.

*Illustration:*

- a. A NFI employee on work to a grantee's office alleges sexual harassment by an employee of the grantee. In this case the employee of the grantee is a Third Party.
- b. A NFI employee attending meeting of a donor or the government alleges sexual harassment by an employee of the donor or a government official. In this case the employee of the donor or the government official is a Third Party.

## **6. NFI's workplace consists of :**

The office premises of NFI and any other place visited by the aggrieved woman during her course of work or arising out of her work.

This includes

- a. Offices of any grantees/ partners or other stake holders
- b. field areas;
- c. Meetings/ conferences/ seminars etc attended by aggrieved person on behalf of or organized by NFI ;
- d. Transport used for purposes of work; such as trains, buses or flights taken on field trips;
- e. Hotels/hostels wherein an aggrieved woman stays in the course of work.

## **7. What constitutes Sexual Harassment at the workplace**

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

- a. physical contact and advances;
- b. a demand or request for sexual favours; or
- c. making sexually coloured remarks; or
- d. showing pornography; or
- e. any other unwelcome physical, verbal or non-verbal conduct of sexual nature,

Further, the following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- a. implied or explicit promise of preferential treatment in her/ his employment; or
- b. implied or explicit threat of detrimental treatment in her/ his employment; or
- c. implied or explicit threat about her/ his present or future employment status; or
- d. interference with her/ his work or creating an intimidating or offensive or hostile work environment for her/ his; or
- e. humiliating treatment likely to affect her/ his health or safety.

The definition of sexual harassment at the workplace is as per S. 2(n) and S. 3 of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013.

**Appendix A** details out the behavior which is considered sexual harassment at the workplace and is prohibited and deemed actionable.

## **8. Internal Complaints Committee of NFI( ICC)**

- a. The Internal Complaints Committee (ICC) of NFI will be constituted by the Executive Director of NFI for redressal of complaints of sexual harassment at the workplace.
- b. The ICC will consist of four members who will hold office for a term of three years.
- c. Half the members of the ICC will be women and the Presiding Officer will be a woman who is one of the senior most positions in NFI.
- d. There will be one external member in the ICC, who is an expert on gender issues and may belong to a NGO or be a lawyer, with at least 5 years of experience.
- e. If ICC receives a complaint of sexual harassment at the workplace against a member of the ICC, the member shall step down from the ICC.
- f. The names and contact details of the ICC members is given **Appendix B**.

## **9. Principles to be followed by the ICC while of dealing with a complaint of sexual harassment at the workplace.**

- a. The ICC will follow principles of natural justice while dealing with a complaint of sexual harassment at the workplace.
- b. The ICC will maintain confidentiality at all times and will direct the parties to do the same.
- c. The ICC while dealing with complaints of sexual harassment at the workplace shall be sensitive to the covert, private and insidious nature of Sexual Harassment and shall take into account that often the aggrieved woman may not be able to present direct or corroborative evidence.
- d. The past sexual history of the complainant shall not be probed into, as such information shall be deemed irrelevant to a complaint of sexual harassment.

## **10. Making a complaint of sexual harassment at the workplace**

- a. An aggrieved woman may make a complaint of sexual harassment in writing to any member of the ICC within 3 months from the date of incident and in case of a series of incidents, within a period of three months from the date of the last incident.
- b. The ICC may accept a complaint after a period of three months if it is satisfied that the aggrieved woman was prevented from making the complaint due to certain circumstances. The ICC will record its reasons in writing.
- c. In case an aggrieved woman makes a complaint of sexual harassment at the workplace to any other person at the workplace, the complaint will be forwarded to the Presiding Officer of the ICC immediately.
- d. In case an aggrieved woman makes the complaint verbally to an employee of NFI or any member of the ICC, that person must send a notice in writing/ by email to the aggrieved woman informing her that she should make a complaint in writing to the Presiding Officer of the ICC.
- e. In case the Human Resource department of NFI receives a complaint about sexual harassment at the workplace in writing or orally, the department must forward the complaint to the Presiding Officer of the ICC.
- f. Where an aggrieved woman is unable to make a complaint in writing the Presiding Officer will provide all reasonable assistance to the woman for making the complaint in writing.

g. Where the aggrieved woman is unable to make a complaint, the complaint may be filed by a relation or a friend or a co-worker or any person having knowledge of the incident, with the written consent of the victim.

h. Where the aggrieved woman is unable to make a complaint on account of her/mental incapacity, the complaint may be filed by a relative or friend or a guardian, a special educator, a qualified psychiatrist or psychologist, or a person having knowledge of the incident jointly with any of these other persons just mentioned.

i. Anonymous complaints will not be acted upon.

### **11. Procedure to be followed by the ICC on receiving a complaint.**

On receiving a complaint of sexual harassment at the workplace against an employee, the Presiding Officer of the ICC shall take the following steps.

1. If the Presiding Officer is of the opinion that prima facie no case of sexual harassment is made out in the complaint, the Presiding Officer after consulting with the other ICC members inform the complainant in writing of the decision within 7 days of receiving the complaint. The Presiding Officer will state the reasons for reaching the decision that prima facie no case is made out.

2. If the Presiding Officer is of the opinion that prima facie a case of sexual harassment at the workplace is made out then a copy of the complaint must be sent to all the members of the ICC . The Presiding Officer will inform the aggrieved woman in writing of the options available and at her request :

a. Initiate conciliation proceedings to settle the matter between the parties, or

b. Conduct an inquiry by the ICC, and /or

c. File a complaint about the incident(s) to the police. and/or

#### **A. Conciliation**

a. If the aggrieved woman opts for conciliation proceedings, the Presiding Officer will send a notice along with a copy of the complaint to the Respondent directing him to appear before the ICC.

b. The ICC will conduct conciliation proceedings and the settlement arrived at will be recorded in writing and signed by both the parties and the members of the ICC. A copy of the settlement will be given to the Executive Director NFI , the aggrieved woman and the respondent.

c. At the conciliation proceedings both the parties will be given a fair chance to put their point of view.

d. The settlement may include and apology, written undertaking not to commit act of sexual harassment, transfer of either party, etc

e. No monetary settlement shall be the basis of conciliation.

f. On the failure of conciliation proceedings to reach a settlement and at the request of the aggrieved woman the Presiding Officer will initiate an inquiry into the complaint.

g. When the Respondent breaches any terms of the settlement of the conciliation proceedings the aggrieved woman can ask the Presiding Officer to initiate an inquiry.

## **B. Relief available to the aggrieved woman during the pendency of the inquiry.**

On a written request made by the aggrieved woman or the ICC suo moto may recommend to the employer to:

- a. Transfer the aggrieved woman or the respondent to any other workplace, or
- b. Allow the aggrieved woman to work from an alternate location up to a period of three months.
- c. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another person. While taking any of the above actions the ICC will ensure that the aggrieved woman is not disadvantaged or penalized for filing a complaint.

## **C. Conducting an inquiry into the complaint.**

- a. When the aggrieved woman opts for an inquiry, at least three members of the ICC will be present at each hearing.
- b. The Presiding Officer shall request the aggrieved woman to submit supporting documents and list of witnesses along with the complaint if she so wants.
- c. The ICC shall send a copy of the complaint to the Respondent within seven working days of receiving the complaint.
- d. The Respondent shall send a written reply within ten working days of receiving the complaint along with supporting documents and the list of witnesses.
- e. A copy of the Respondent's reply shall be given to the complainant.
- f. The ICC shall examine the aggrieved woman and the respondent and their witnesses after giving them a notice of at least forty eight hours.
- g. The ICC may examine any other witnesses that it thinks necessary for a just decision of the case after giving them a notice of at least forty eight hours.
- h. At no stage during the inquiry shall the aggrieved woman or the respondent and/or their witness be caused to be placed face to face or put in a situation where they may be face to face (e.g. they shall not be called at the same time and be made to wait in the same place).
- i. The ICC shall have the right to terminate the inquiry or give an ex-parte decision on the complaint if the either the aggrieved woman or the respondent fail without sufficient cause, to present themselves before the ICC for three consecutive hearings. The inquiry termination or ex-parte order shall only be passed after giving a notice of 15 days in writing in advance to the party.
- j. The ICC will record proceedings of each day in brief which will be signed by all the members of the ICC present at the proceedings
- k. The ICC shall conclude the inquiry within a period of ninety days of receiving the complaint from the aggrieved woman.
- l. The ICC shall send the inquiry report within ten days of completion of the inquiry to the Employer.
- m. A copy of the report including the findings shall be sent to both the aggrieved woman and the respondent.

## **D. Informing the police**

- a. When the aggrieved woman wishes to register a case with the police, the ICC shall record this in writing and forward the complaint to the local police station and provide full support to the police during investigation.
- b. When the aggrieved woman does not wish to make a police complaint, the ICC will record this in writing and inform the aggrieved woman that whenever she desired to do so the ICC will facilitate the same.
- c. In cases of rape or grievous injury or the ICC shall forward the information/ complaint to the police unless the aggrieved woman specifically prohibits the ICC to do so in writing.

## **12. Outsider / Third Party complaints**

- a. When the Presiding Officer of the ICC receives a complaint of sexual harassment at the workplace of NFI from an aggrieved woman who is not an employee of NFI, but is an “outsider“ against an employee of NFI, the ICC will deal with the complaint as per the provisions laid down in paragraph 11. The ICC will call upon the aggrieved woman through a notice to participate in the inquiry.
- b. When the Presiding Officer of the ICC receives a complaint from an aggrieved woman who is an employee of NFI of sexual harassment at the workplace against the respondent who is a “third party”, that is not an employee, the Presiding ICC will call for a meeting and examine the aggrieved woman. If the ICC concludes that there exists a prima facie case of sexual harassment at the workplace the ICC shall after taking the consent of the aggrieved woman in writing :
  1. inform the police, and/or
  2. inform the employer of the third party respondent to take appropriate action , and/or
  3. Prohibit the third party respondent to enter the NFI workplace , and /or
  4. Ensure that the aggrieved woman does not have to interact with the Third Party Respondent and /or
  5. Reprimand/Warn the third party respondent, and/or
  6. Take any other appropriate action

## **13. Punishment for making a false or malicious complaint or giving false evidence.**

Where the ICC comes to a conclusion that the aggrieved woman or any witness knowingly made a false complaint against the respondent or has knowingly given false evidence or has produced forged documents before the ICC, the ICC may recommend to the Executive Director that action be taken against the aggrieved woman or any witness. The ICC shall record its reasons in writing for reaching such a conclusion.

Mere inability to substantiate a complaint or provide adequate proof shall not attract action against the aggrieved woman.

## 14. Penalty

When the ICC concludes that the allegation of sexual harassment at the workplace against the Respondent has been proved, the ICC shall taking into consideration the gravity of the charges proved recommend to the Executive Director the following action :

- a. Written Reprimand/Warning, or
- b. Adverse comments on personal file , or
- c. Denial of promotion, or
- d. Suspension for a fixed period, or
- e. Dismissal, and /or
- f. Deduction from salary or wages of the respondent a sum to be paid to the aggrieved woman as compensation.

The compensation should be calculated keeping in mind the mental trauma, pain and suffering caused to the aggrieved woman, loss of career opportunity and medical expenses incurred and income and financial status of the respondent.

## 15. Appeal

An appeal shall be filed within 90 days of recommendations of the ICC to the District Labour Courts in Delhi.

## 16. Miscellaneous

1. The ICC shall review the situation of sexual harassment in NFI and prepare an annual report each calendar year and submit it to the Executive Director and the District Officer nominated as per Sexual Harassment Of Women (Prevention, Prohibition and Redressal), Act , 2013
2. The annual report will contain information about
  - a. The number of complaints of sexual harassment at the workplace received in the year,
  - b. The number of complaints disposed of during the year;
  - c. The number of cases pending for more than 90 days ;
  - d. The number of workshops or awareness programs against sexual harassment at the workplace conducted.
  - e. Make suggestions to further improve the situation vis a vis sexual harassment in the organization.
3. The ICC shall at regular intervals reiterate with the NFI staff, interns, consultants, etc behaviour which is not permissible as it amounts to sexual harassment at the workplace and against which severe action may be taken .