

SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE

IMI BHUBANESWAR

A. Policy

1. POSH Policy

(a) IMI is committed to promoting a workplace, free from all forms of sexual harassment and creating a gender-sensitive working environment.

(b) In accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (hereinafter referred to as the 'POSH' Act), it is mandatory that organisations with 10 or more employees, formulate and implement Sexual Harassment Policy to ensure compliance with the aforesaid Act.

(c) IMI stands committed to full compliance with POSH, endeavouring to achieve improvements in its implementation, in excess of the provisions of the law, with a view to providing maximum protection to women staff and students.

(d) Any sexual harassment faced by women staff and students is to be resolutely and expeditiously addressed to ensure that women are secure at work and provided equal opportunities and unfettered access to resources, enabling them to contribute to their full capacity, to the organisation's vision and goals.

(e) Provisions shall be made for giving proper effect to the POSH Act, for protection against sexual harassment at all workplaces of the IMI.

2. Applicability

(a) The policy covers everybody working with IMI to deliver on its mission, including employees, volunteers, consultants, suppliers, partners, interns and students.

(b) The policy additionally recognizes that the POSH Act needs to be extended to girls/women students enrolled with IMI, comprising recipients of educational and training inputs and services from the institution at its workplaces, ensuring their security and protection from sexual harassment, and enabling a conducive and positive learning environment.

3. Basic Definitions

- (a) “Aggrieved person,” means any woman employee, volunteer, consultant, intern and student, employed, working or studying at IMI, who alleges that she has been subjected to sexual harassment in the organisation.
- (b) “Internal Complaint Committee” means complaint committee constituted to deal/dispose of matters relating to sexual harassment.
- (c) “Complainant” means any aggrieved person for herself and the person(s) authorised to file a complaint on behalf of an aggrieved person, in accordance with the POSH Act.
- (d) “Defendant” means a person against whom an allegation of sexual harassment is made. “Associate” means and includes any person employed or engaged by the organisation.
- (e) “Organisation” means IMI.
- (f) “Workplace” means any department, organisation, undertaking, establishment, enterprise, institution, office, laboratory, classroom, school, branch or unit, which is established, owned, controlled, or wholly or substantially financed by funds provided directly or indirectly, by the organisation.
- (g) Any place visited during the course of employment/ study, including transportation provided by the employer for undertaking such visits.
- (h) “ Employer” means Board of Governors, Director and/or Senior Management Team of IMI.

4. Definition of Sexual Harassment

- (a) Sexual harassment is defined as any one or more of the following unwelcome acts, gestures or behaviour (whether directly or by implication), namely:
- (i) Physical contact and advances
 - (ii) Demand or request for sexual favours
 - (iii) Making sexually coloured remarks
 - (iv) Showing pornography or materials that denotes to pornography
 - (v) Humiliating treatment likely to affect her health or safety
 - (vi) Any other unwelcome physical, verbal or non-verbal conduct or gestures of sexual nature.

(2) The following circumstances, including above, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- (i) Informal punitive behaviour of a male member towards a female member on a continuous basis
- (ii) Implied or explicit promise of preferential treatment in her employment/ engagement; or
- (iii) Implied or explicit threat of detrimental treatment in her employment/ engagement; or
- (iv) Implied or explicit threat about her present or future employment/ engagement status; or
- (v) Interference with her work or creating an intimidating or offensive or hostile work/study environment for her.

5. Constitution of Internal Complaint Committee (“ICC”)

- (a) The ICC shall be constituted with not less than four members to deal with complaints of sexual harassment at the workplace. Out of these, one female member will be appointed as Chairperson of the ICC. At least fifty percent of the ICC shall always be women associates.
- (b) The employer will include an outside woman legal expert, or member of any NGO, to form a part of the aforesaid ICC.
- (c) Cessation of membership: If the member of NGO or any member not engaged with the employer resigns from the post of ICC, then the IMI Board of Governors and Director will appoint a new person in her/his place.
- (d) Chairperson or members of the ICC shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the management.
- (e) If any member of the ICC, who is engaged with the employer, leaves the employment, or whose services are discharged, or who is dismissed or terminated (or any such termination is in dispute), or who is put under suspension, then automatically s/he will cease to be a member of the ICC. The IMI Board of Governors and Director will nominate another person as member, in place of such a member.

B. Process

6. Procedure to Conduct Enquiry

- (a) The inquiry of sexual harassment complaints shall be considered and conducted in a confidential manner by all parties involved.

(b) The ICC shall inquire into the allegations in a fair and expeditious manner. A two-pronged approach will be undertaken to address the sexual harassment at IMI, which would be:

(i) If the complaint is of the nature that violates the law of the land, the matter will be reported to the competent authority and subsequent inquiry will be undertaken to determine the institutional stance.

(ii) If the complaint is of a nature that does not violate the law of the land but violates the sanctity of IMI's Sexual Harassment Policy, ICC will conduct inquiry, as per prescribed procedure.

(iii) Inquiry into sexual harassment complaints shall be fast-tracked and completed within four weeks of receipt of the complaint.

(iv) In addition, immediate steps may be taken, at the discretion of the ICC, to protect the complainant or aggrieved person and respondents, pending completion of inquiry into the alleged sexual harassment.

(v) When the inquiry is completed, the person filing the complaint and the respondent will be informed, as appropriate, of the results of the inquiry. ICC shall also send a report of the incident to the Director with its recommendations for action.

7. Response to the Complaint/ Disciplinary Action

(a) IMI has "zero tolerance" to incidences of sexual harassment. Under the circumstances, the respondent found guilty of sexual harassment shall be liable for disciplinary action, as laid down in the policy.

(b) If it is determined that the defendant has engaged in inappropriate conduct, necessary action will be taken immediately, which may range from counselling to termination of employment/ enrolment and may include such other forms of disciplinary action, as found to be appropriate:

(i) Warning, reprimand, or censure

(ii) Adverse remarks in the Personal file

(iii) Withholding of one or more increments for a period not exceeding one year

(iv) Downgrading of annual performance ratings

(v) Suspension from service or studies

(v) Dismissal from service or studies.

(c) If the allegation is not found to be credible, the complainant and the defendant shall be so informed, with appropriate instruction provided to each, including the right of the complainant to contact any of the state/enforcement agencies.

8. Non-retaliation

(a) Retaliation against a staff member, or student, filing a sexual harassment complaint or participating in an inquiry of such a complaint is prohibited. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

(b) Retaliation is a violation of this policy and may result in discipline, up to and including suspension and termination.

(c) It shall be a violation of this policy for any staff member or student who learns of the inquiry or complaint, to take any retaliatory action, which affects the working environment of any person involved in this inquiry.

9. Functions of the ICC

(a) **General and Emergency Meetings:** The ICC shall hold generally one meeting in three months. However, in case any complaint is made to the ICC, pertaining to matters of sexual harassment, it will hold emergency in-person or video-conference meetings, immediately, as per its discretion and proceed further, as per the requirements of the case. (Note: ICC Members shall be given training on the provisions of the POSH Act and in the conduct of ICC Meetings including inquiries, by specialist POSH Trainers)

(b) Quorum of Members for Holding Meetings:

(i) The minimum number constituting quorum for holding any meeting of the ICC, shall not be less than three members, provided that every meeting has the presence of the outside member belonging to an NGO, or anybody/person, who has legal expertise on the issue of sexual harassment.

(ii) A majority of the quorum shall comprise female members.

10. Procedure for Dealing with Complaints

(a) A written complaint, preferably in a sealed envelope or confidential mail, may be sent to any member of the ICC, within three months of the incident complained against and if the complaint pertains to a series of incidents, the complaint may be made within three months of the date of the last incident.

- (b) The ICC may extend the aforementioned period of three months by a further period of three months if the ICC is satisfied that there were circumstances, which prevented the woman associate from filing a complaint within the first period of three months.
- (c) The complainant shall submit complaint along with supportive documents and names and addresses of the witnesses. Preferably, six copies of entire set shall be submitted (one for Director's office and remaining for ICC) If, however, the complainant is not in a position to provide more than one copy of the complaint and supporting documents, the ICC shall prepare the additional copies required.
- (d) A complaint can also be sent by mail or by hand.
- (e) If any aggrieved woman associate is unable to make a written complaint, the aggrieved woman associate may contact the Chairperson/ Presiding Officer or any member of the ICC, who shall then assist the aggrieved woman associate in making a written complaint.
- (f) The ICC may also convene an emergency meeting of the ICC, wherein the statement of the aggrieved woman associate shall be recorded in the first instance.
- (g) Where the aggrieved woman associate is unable to make a complaint on account of the woman associate's physical, or mental incapacity, or death, or otherwise, the woman associate's legal heir or any other person authorised under law to do so, may make a complaint.
- (h) Any complaint of sexual harassment against the "employer" may be made in accordance with the Sexual Harassment Act.
- (j) The ICC shall send a copy of complaint to the defendant against within a maximum of three days of the receipt of the complaint.
- (k) The ICC shall have the power to sanitize the complaint and supporting documents etc., in order to protect the identity of the complainant and/or witnesses.
- (l) The defendant shall, within a maximum of three days of receipt of the complaint, file his reply to the same, along with his list of documents and names and addresses of the witnesses. If the complainant so demands, the ICC shall attempt to reach an amicable settlement, not being a monetary settlement, between the complainant and the defendant. If no settlement is either requested or reached, the ICC shall proceed to make an inquiry into the complaint.

- (m) The ICC may terminate the inquiry proceedings or may give an ex parte decision on the complaint, if the complainant or the defendant fails, without sufficient cause, to present herself or himself for two consecutive hearings.
- (n) The ICC shall, however, before passing such an order give three days advance written notice to the party concerned.
- (p) The ICC shall also recommend to the organisation, if any interim remedial measures need to be taken to distance the complainant from the defendant, to prevent further harassment at the workplace. These measures may include:
- (i) Re-allocation of duties/transfer of the complainant or the defendant
 - (ii) Granting of leave to the complainant
 - (iii) Restraining the defendant from reporting on the work performance of the complainant, or writing the confidential report of the complainant, and assigning the same to another officer
 - (iv) Any other action it deems fit.
- (q) The ICC shall not entertain any anonymous complaint.
- (r) The ICC shall hear any complaint from an aggrieved person before it, at the earliest point of time and generally within three days of receipt of such complaint. In case of an emergency, it can call the meeting as early as possible on receipt of the complaint. Strict confidentiality of the complaint, complainant and the defendant, shall be maintained within the organisation, during the enquiry.
- (s) The ICC shall have the same powers as a civil court regarding:
- (i) Summoning and enforcing the attendance of any person and examining him/her on oath
 - (ii) Requiring the discovery and production of documents
 - (iii) Any other matter authorised by law.
- (t) Where the act of sexual harassment amounts to an offence, the complainant will have her right to initiate action under criminal law, if the complainant so desires.
- (u) Before the commencement of enquiry into the complaint, the ICC will try to resolve the matter by conciliation, if both parties agree for the same. The settlement brought about by such conciliation must be acceptable to the complainant and defendant. Thereafter, the copy of settlement will be sent to the management for implementation. Copies of the settlement will also be provided to the complainant, as well as the defendant.

(v) The ICC shall be free to adopt its own procedure for carrying out the enquiry having regard to the sensitive nature of the complaint and the respective positions of the parties.

(w) The enquiry shall be conducted in Hindi or English, whichever is appropriate for the parties involved. In case, complainant, defendant or any witness is not convergent with the languages, a qualified interpreter will be provided to him/her.

(x) If at any stage, after the filing of a complaint and during any proceedings, the complainant wishes to withdraw the complaint, then she shall have the right to withdraw the complaint, and if an enquiry has commenced, then the ICC shall discontinue the enquiry without giving any findings, or conclusions, on merit.

(y) The ICC will generally complete its enquiry within 15 days from the date of receipt of the complaint.

(z) If it is brought to the notice of the ICC, or the ICC is of the opinion that pressure is being brought on the complainant, or the witnesses to withdraw their statements, or not go through with the complaint, then the ICC will record the same and offer remedial recommendations to the management.

(aa) The ICC will reduce the proceedings in writing. It shall pass its order within a period of three days from the date of completion of the inquiry. It will provide the copy of final order passed by it, in its findings of matter of sexual harassment, to the complainant, defendant, and the management.

(ab) Where the ICC finds the allegation to be proved, it shall recommend the punishment for the misconduct of sexual harassment, which may include one or more of the following:

- (i) Defendant be reprimanded or censured
- (ii) Promotion of the defendant be withheld
- (iii) Pay rise or increment of the defendant may be stopped
- (iv) Defendant be reduced to a lower grade or post
- (v) Defendant be dismissed from service or studies
- (vi) That from the salary or wages of the defendant, such sum be deducted and paid to the complainant, or complainant's legal heir, as the ICC determines
- (vii) Defendant undergoes a counselling session, or carries out community services
- (viii) Defendant shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant

(ix) Defendant shall give a written apology to the complainant, clearly undertaking that such behaviour will not be repeated and that no retaliatory steps will be taken by him, or on his behalf

(x) In addition to the above, punishment may be imposed upon the defendant by the management, according to the gravity of the act of which has been committed and found proved in the enquiry by the ICC.

(ac) While determining the sum to be paid to the complainant or complainant's legal heir as above, the ICC shall have regard to:

(i) Mental trauma, pain, suffering and emotional distress caused to the complainant

(ii) Loss in career opportunity to the complainant due to the incident of sexual harassment

(iii) Medical expenses incurred by the complainant for physical or psychiatric treatment

(iv) Income and financial status of the defendant and found guilty

(v) Feasibility of such payment in lump sum or in instalments.

(ad) In case, if in the opinion of the ICC, it is necessary that the aggrieved employee needs special counselling or any other support, it will inform the management about the steps to be taken in that matter.

(ae) IMI shall act upon recommendations of the ICC within 15 days of their receipt.

6. Appeal

(a) The parties shall have the right to appeal against the decision of the ICC to the employer, who shall decide the appeal upon examining the report of the ICC. Such appeal shall be filed within 90 days of receipt of the recommendations of the ICC.

(b) The employer shall dispose of the appeal within 30 days of receipt of the appeal.

(c) The appeal is not equivalent with the right to reopen the investigations or to reappraise the evidence. The finding of the appellate authority shall be final and binding.

7. Interpretation

The above set of rules and regulations addresses various steps to be initiated for protection against sexual harassment at all workplaces of the IMI. However, in case of ambiguity in interpretation of the same, decision of the Director shall be final binding.