



## **CHARKHA - THE DEVELOPMENT COMMUNICATION NETWORK**

# **POLICY ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN (POSH)**

*“No woman shall be subjected to sexual harassment at any workplace.”*

[Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act), 2013]

# INTRODUCTION

**Charkha - The Development Communication Network** (hereinafter referred to as 'Charkha') is an innovative non-profit organization registered under the Societies Registration Act of 1860 that works towards the social and economic inclusion of rural marginalized communities through the creative use of media.

The Charkha is an equal employment opportunity organization and is committed to creating a healthy working environment that enables employees to work without fear of prejudice, gender bias and in a harassment free workplace to all employees without regard to race, caste, religion, colour, ancestry, marital status, gender, age, nationality, ethnic origin or disability. The organization also believes that all employees of the organization have the right to be treated with dignity. Sexual harassment at the work place or other than work place if involving an employee or employees is a grave offence and is therefore, punishable.

This version of the policy is effective from 1st April 2020 and supersedes all prior policies and communication on this matter.

## The Mandate

Today, all workplaces in India are mandated by law to provide a safe and secure working environment free from sexual harassment for all women.

## The Genesis

In India, before 1997, there were no formal guidelines for how an incident involving sexual harassment at workplace should be dealt by an employer. Women experiencing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the '*criminal assault of women to outrage women's modesty*' and Section 509 that punishes an individual or individuals for using a '*word, gesture or act intended to insult the modesty of a woman*'. These sections left the interpretation of '*outraging women's modesty*' to the discretion of the police officer.

In 1992 Bhanwari Devi, a social worker engaged by the State of Rajasthan as a *Sathin* (means a friend) to work towards the prevention of the practice of child marriages was brutally gang raped by a number of men, because she had tried to stop a child marriage. Bhanwari Devi was determined to get justice and lodged a case against the offenders. However, the accused was acquitted by a trial court. This appalling injustice, together with the fighting spirit of Bhanwari Devi, inspired several women's groups and NGOs to file a Public Interest Litigation (PIL) in the Supreme Court of India under the collective platform of Vishaka, an NGO.

The Supreme Court decided that the consideration of "*International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein*". The Supreme Court defined sexual harassment and set guidelines for employers.

## Sexual harassment

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implementation) as:

- a) Physical contact and advances;
- b) A demand or request for sexual favours;
- c) Sexually coloured remarks;
- d) Showing pornography; and
- e) Any other unwelcome physical, verbal or non-verbal conduct or sexual nature.

Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

- a) Prohibition
- b) Prevention
- c) Redress

## **The Act**

Consistent with the Vishaka judgment, the Government of India enacted the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** (hereinafter referred to as the **Act**). The Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements.

A safe workplace is a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the **UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)**, which was adopted by the UN General Assembly in 1979 and it has been ratified by India on 25th June, 1993.

# POLICY ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN (POSH) IN CHARKHA

## I. The Policy

1. At Charkha, all employees are expected to uphold the highest standards of ethical conduct at the workplace and in all their interactions with business stakeholders. This means that employees have a responsibility to:

- a) Treat each other with dignity and respect;
- b) Follow the letter and spirit of law;
- c) Refrain from any unwelcome behaviour that has sexual connotation (of sexual nature);
- d) Refrain from creating hostile atmosphere at workplace via sexual harassment; and
- e) Report sexual harassment experienced and/or witnessed to appropriate authorities and abide by the complaint handling procedure of the organization.

2. This policy has been framed in accordance with the provisions of “**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**” and rules framed there under (hereinafter “**the Act**”). Accordingly, while the policy covers all the key aspects of the Act, for any further clarification reference shall always be made to the Act and the provisions of the Act shall prevail. If any aspect relating to sexual harassment not explicitly covered in this policy is provided for by the law, then the law will be applicable. In case of any conflict between the policy and the law, the law will prevail.

3. This policy provides protection against sexual harassment of women at workplace and the prevention and redressal of complaints of sexual harassment and matters related to it.

## II. Scope

This Policy extends to all employees of the Charkha with applicability of HR Policies of Charkha, hereinafter referred to as '**Organization**' in this policy. It is deemed to be incorporated in the service conditions of all employees of the Organization in India.

## III. Definitions

(i) “**Sexual Harassment**” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication), but not limited to:

- a) Physical contact and advances including (but not limited to) touching, stalking, sounds which have explicit and /or implicit sexual connotation/overtones, molestation); or
- b) A demand or request for sexual favors; or
- c) Making sexually colored remarks or remarks of a sexual nature about a person's clothing or body; or
- d) Showing pornography, making or posting vulgar / indecent / sexual pranks, teasing, jokes, demeaning or offensive pictures, cartoons or other materials through email, SMS, MMS, gestures, etc.; or
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature; or

(ii) “**Aggrieved woman**”: In relation to a workplace, a woman, of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.

(iii) “**Complainant**”: Any aggrieved woman who makes a complaint alleging sexual harassment under this policy.

(iv) **“Respondent”**: A person against whom a complaint of sexual harassment has been made by the aggrieved woman under this policy.

(v) **“Domestic Worker”** means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer.

(vi) **“Employee”**: A person employed at the workplace, for any work on regular, temporary, ad-hoc or 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 a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a coworker, a contract worker, probationer, trainee, apprentice or called by any other such name.

(vii) **“Employer”**:

- a) in relation to the organization, the Management or such other officer, as the case may be, may by an order of the Management specified in this behalf;
- b) in any workplace not covered under sub-clause (a) above, any person responsible for the management, supervision and control of the workplace.

**Explanation:**

(i) The *“management”* includes the person or the Governing Board responsible for formulation and administration of policies for the organization;

(iii) The *“person”* means the official, by appointment, discharging official obligations with respect to the employees of the organization.

(viii) **“Workplace”**:

- a) Premises, locations, establishments, enterprises, institutions, offices, branches or units established or subsidiaries which are controlled by the Organization.
- b) Places visited by the Employee arising out of or during the course of employment including official events, accommodation and transportation provided by the employer for undertaking a journey.

(ix) **“Internal Committee”**: The Internal Complaints Committee constituted under provisions of this Policy.

(x) **“Local Committee”**: The Local Complaints Committee constituted, if any, under provisions of this Policy.

(xi) **“Member”**: A Member of the Internal Committee or the Local Committee, as the case may be.

(xii) **“Prescribed”**: Prescribed by rules made under this Policy.

(xiii) **“Presiding Officer”**: The Presiding Officer of the Internal Complaints Committee nominated under provisions of this Policy.

#### **IV. Prevention of sexual harassment:**

(a) No woman shall be subjected to sexual harassment at any workplace.

(b) The following circumstances if it occurs or is present in relation to any sexually determined act or behavior amount to sexual harassment:

- i. Implied or explicit promise of preferential treatment in employment;
- ii. Implied or explicit threat of detrimental treatment in employment;
- iii. Implied or explicit threat about the present or future employment status;

- iv. Interference with the person's work or creating an intimidating or offensive or hostile work environment; or
- v. Humiliating treatment likely to affect health or safety.

## **V. Redressal Mechanism – Formal Intervention**

In compliance with the Act, any complaint under this policy shall be followed by a formal redressal mechanism as described in this Policy.

## **VI. Constitution of Internal Complaints Committee.**

1. The Organization shall, by a resolution passed by the Governing Board in writing, constitute a Committee to be known as the "Internal Complaints Committee" (Henceforth known as the "**Committee**") provided that where the project offices or the workplace are located at different places, the Internal Committee shall be constituted at all offices.

2. The Internal Complaints Committees shall consist of the following members to be nominated by the Organization, 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 workplaces;
- (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 organizations 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.

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 their nomination as may be specified by the Management.

4. The Members appointed from amongst the employees of the organization shall be paid such own pocket expenses exclusively incurred for attending proceedings of the Committee, by the organization, as may be prescribed.

5. Presiding Officer or Member, as the case may be, shall be removed from the Internal Committee where:-

- (a) contravenes the provisions of this Policy; or
- (b) 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/her; or
- (c) he/she has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him/her; or
- (d) has so abused his/her position as to render his continuance in office prejudicial to the public interest.

6. The vacancy so created by removal of Presiding Officer or any Member or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this Policy.

## **VII. Constitution of Local Complaints Committee**

As and when and where necessary, Local Complaints Committees (hereinafter the “**Local Committee**” shall be constituted as in the same provision and style as at section VI above.

## **VIII. Complaint of sexual harassment**

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Complaint Committee or Local Complaint Committee, as the case may be, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.
2. Where such complaint cannot be made in writing by the aggrieved woman, the Presiding Officer or any Member of the Committee or of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.
3. The Committee or the Local Committee, as the case may be, may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.
4. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section of the Policy.

## **IX. Conciliation.**

1. The Internal Committee or the Local Committee, as the case may be, 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, provided:
  - (a) That no monetary settlement shall be made as a basis of conciliation.
  - (b) Where settlement has been arrived at under sub-section (a) above, the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the Management.
  - (c) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (b) above to the aggrieved woman and the respondent.
  - (d) Where a settlement is arrived at under sub-section (a) above, no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

## **X. Inquiry into complaint**

1. Subject to the provisions of section IX, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable.
2. Where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (b) of section IX has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

3. Where both the parties are employees, the parties 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 the parties enabling them to make representation against the findings before the Committee.

4. Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the Committee or Local Committee, as the case may be, may, when the respondent is proved guilty, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of **section XIV** below.

5. For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

6. The inquiry under sub-section (1) shall be completed within a period of ninety days.

#### **XI. Action during pendency of inquiry**

1. During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the Management 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.

2. The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

3. On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1) above, the Management shall implement the recommendations made under sub-section (1) above and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

#### **XII. Inquiry report**

1. On the completion of an inquiry under this Policy, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the Management, within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

2. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the Management that no action is required to be taken in the matter.

3. Where the Internal Committee or the Local Committee, as the case may be, arrives at conclusion that the allegation against the respondent has been proved, it shall recommend to the Management:

- a) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

b) 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 her legal heirs, as it may determine, in accordance with the provisions of section XIV below;

c) in case the Management is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman;

d) further that in case the respondent fails to or refuse to pay the sum referred to in clause (b) above, as Ordered, the Management may issue a warning notice to the respondent that in case he fails to pay the amount within 7 (seven) days of receipt of such notice and also warn him that if he fails to comply with the orders, the case shall be referred to the Police for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code, where applicable, for inquiry and if convicted the respondent *shall be punished with imprisonment for a term which may be decided by the court, and also with fine.*

4. The Management shall act upon the recommendation within sixty days of its receipt.

### **XIII. Punishment for false or malicious complaint and false evidence**

1. Where the Internal Committee or the Local Committee, as the case may be, 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 the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the Management to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section XI, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

2. A mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.

3. The malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

4. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the Management to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

### **XIV. Determination of compensation**

For the purpose of determining the sums to be paid to the aggrieved woman under clause (b) of sub-section (3) of section XII, the Internal Committee or the Local Committee, as the case may be, 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 installments.

## **XV. Prohibition of publication or making known contents of complaint and inquiry proceeding**

Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section VIII, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the Management under the provisions of this Policy shall not be published, communicated or made known to the public, press and media in any manner, provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Policy without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

## **XVI. Penalty for publication or making known contents of complaint and inquiry proceedings**

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Policy, contravenes the provisions of section XV, he/she 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.

## **XVII. Appeal**

1. Any person aggrieved from the recommendations made under clauses of section XII or section XIII or section XIV or non-implementation of such recommendations may prefer an appeal to the court in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.
2. The appeal under sub-section (1) above shall be preferred within a period of ninety days of the recommendations.

## **XVIII. Duties of the Organization**

The Organization shall:

- (a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under section VII or section VII, as the case may be;
- (c) organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Policy and orientation programs for the members of the Internal Committee and Local Committee, if any, in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case be, 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 Indian Penal Code (45 of 1860) or any other law for the time being in force;

- (h) cause to initiate action, under the Indian Penal Code (45 of 1860) 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 the Internal Committee.

#### **XIX. Committee to submit annual report**

The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the Management.

#### **XX. To include information in Annual Report**

The Management shall include in its report the number of cases filed, if any, and their disposal under this Policy or NIL report, as the case may be, in the annual report of the organization.