

HR POLICY NO. 5

POLICY AGAINST SEXUAL HARASSMENT AT WORKPLACE

1. Background

- a) Oxfam India is committed to creating and ensuring an enabling, dignified and equitable work environment for every employee. All Oxfam India employees should be able to work together in an environment free of exploitation, harassment and violence. We believe that sexual harassment is not only a criminal offence but is a violation of human rights. According to the Protection of Human Right Act, 1993 "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women so as to live with dignity which is a fundamental right guaranteed by our constitution. Sexual harassment is contrary to anti discrimination law (Article 15: "prohibition of discrimination on grounds of religion, race, caste, sex or place of birth" and Article 19(1) (g) Right to freedom) which upholds a woman's right "to practice any profession, or to carry on any occupation, trade or business."

- b) Sexual harassment is an act of power, and a public violation of a woman's dignity that is often trivialized by labeling it an interpersonal transgression. The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (hereinafter referred to as The Act) in lines with the Vishakha Judgement by the Hon'ble Supreme Court of India has laid out that it is the duty of the employer or other responsible persons at work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. Oxfam India endeavours to put in place adequate measures to ensure safety, security, dignity, rights and equality of women.

2. Sexual Harassment: The Law

- a) The Act has laid down process and procedures for resolution and prevention of sexual harassment enjoining employers by holding them responsible for providing a safe work environment for women. The application of the Act is to both organized and unorganized work sectors and to all women whether working part time, on contract or in voluntary/honorary capacity. This policy is in sync with the guidelines and procedures laid down by the Act and is majorly with the purpose of expressly prohibiting sexual harassment at Oxfam India.

3. Purpose

- a) Pursuant to The Act, Oxfam India has promulgated this Policy Against Sexual Harassment which will be strictly implemented across all offices of Oxfam India, and other places where employees find themselves in connection with work.
- b) Pursuant to the Act, an Internal Complaints Committee shall be formed at each Administrative Unit of Oxfam India which is the body responsible to uphold the principles of this policy and also ensure the implementation of the Act in Oxfam India.

- c) It is important to provide an organisation climate free from discrimination and harassment with a particular focus on sexual harassment and ensure this through all of Oxfam India's interventions and practices.
- d) The purpose of the policy is to promote a work place free from sexual harassment, prevent and minimize harassment of sexual nature, and provide an appropriate complaint mechanism to redress the complaints and ensure time bound redressal.
- e) Specifically this policy aims:
 - a) To put in place a mechanism for prevention and redressal of sexual harassment cases at work place.
 - b) To create a secure and stress free environment for women workers/ employees
 - c) To ensure that no gender based discrimination takes places which hinders women's progress and equal opportunities for them
 - d) To promote a healthy work environment in which men and women can work as a colleagues and develop their fuller potential

4. Principles

- a) Sexual Harassment is unlawful and will not be tolerated and is a disciplinary issue other than it being a criminal offence. The principles governing it are:
 - a) Speedy (early) resolution to problems
 - b) Confidentiality
- b) It is the duty of all staff, part time or casual employees, volunteers and consultants to comply with this policy.
- c) Any retaliation against an individual who has complained about sexual harassment (complainant) or retaliation against individuals for cooperating with an investigation of a harassment complaint is similarly unlawful and will not be tolerated.
- d) Misuse of policy or Malicious complaints will be dealt with as a disciplinary matter

5. Internal Complaints Committee (ICC) for Head Office

- a) Constitution of the Committee- The Committee shall consist of 5 members in total, which is explained as below:
 - a) Presiding Officer- Shall be a women employed at a senior level at the Head Office.
 - b) Internal Members- 3 Internal members out of whom at least one would be a male member.
 - c) External Member- 1 external member who is a person committed to the cause of women.
 No meeting of the ICC can be held without at least 3/5 members present including the external member.
 No member shall be part of ICC for more than a period of 3 years. The only exception of extension in any member's tenure would be in case of an ongoing investigation.
- b) Management- For the implementation of this policy, the ICC would report all matters to the CEO and the CEO shall act as Management for the purpose of this policy and the Act. In case of an allegation against CEO is being investigated by the ICC, the Management would mean the Board Chair of Oxfam India.

6. Internal Complaints Committee (ICC) for Regional Offices/ Other Administrative Units

- a) Constitution of the Committee- The Committee shall consist of 4 members in total, which is explained as below:

- a) Presiding Officer- Shall be a women employed at a senior level at such Regional Office. In case of such women not being there, one senior level women employed at some other Administrative Unit.
- b) Internal Members- 2 Internal members out of whom at least one would be a male member.
- c) External Member- 1 external member who is a person committed to the cause of women.

No meeting of the ICC can be held without at least 3/5 members present including the external member.
No member shall be part of ICC for more than a period of 3 years. The only exception of extension in any member's tenure would be in case of an ongoing investigation.

7. Complaint

- a) **Time Limitation-** The aggrieved party must complaint to the Committee in writing within 3 months of the incident or 3 months from the last incident in case of series of incidents. This can be further extended to another 3 months in case of exceptional circumstances by the ICC but in no case more than 6 months.
- b) The complaint can also be made by the legal heir in case the aggrieved party is not in physical or mental condition to do so.

8. Procedure for ICC

- a) **Complaint-** ICC cannot function suo-motto but will have to wait for the complaint to happen.
- b) **Conciliation-** ICC at the request of the aggrieved party may take steps to settle the matter between her and the respondent through conciliation. Such conciliation can't result in monetary settlement.
- c) **Settlement-** The ICC shall record the settlement and submit the same to the Management and also a copy each to aggrieved party and the respondent. If settlement is submitted once, no further investigation to be made by the ICC.
- d) **Police Complaint-** During the course of investigation, if the ICC deems to believe that a prima facie case exist, shall forward the complaint to the police within 7 days for registering the case under Sec 509 of IPC.
- e) **Both parties heard-** The ICC is responsible to give the opportunity of representation to both parties during the course of inquiry before reaching any conclusion.
- f) **Powers of ICC-** The ICC has the powers under law as equivalent to that of a Civil Court in the following matters:
 - a) Summoning and enforcing the attendance of any person and examining him/ her on oath.
 - b) Requiring the discovery and production of documents
- g) The inquiry must finish within a period of 90 days.
- h) **Recommendations-** At the end of such inquiry, the ICC needs to submit a recommendation to the Management and the Management is bound to implement such recommendations. The Management is also required to submit a report of such implementation to the ICC.
Copy of such recommendations shall be submitted within 10 days of finishing the inquiry.
A copy of the same shall also be submitted to the two parties involved.
- i) **Punishment-** Since the sexual harassment is considered a misconduct so punishment for misconduct may apply.

- 9. **Malicious Complaint-** If the ICC comes to a conclusion that the allegation made against the respondent are malicious or have been made even after the knowledge of it being false or has produced forged or misleading documents, it shall report the same to the Management and the Management is bound to take action against the person involved in such malice.
Every complaint that is not successful is not malicious.

10. Determination of Compensation- The determination of compensation shall be made on following grounds:

- a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman.
- b) The loss in career opportunity.
- c) Medical expenses incurred due to physical or psychiatric treatment.
- d) Income and financial status of the respondent.
- e) Feasibility of such payment in lump sum or instalments.

11. Non Disclosure or Publication

Any complaint, the identity of the aggrieved woman, respondents and witnesses, any information relating to conciliation, compensation, settlement, inquiry proceedings, recommendations and actions taken shall not be disclosed or published to public, press and media in any manner.

12. Provision of appeal- In case any party is not satisfied with the recommendations, has the freedom to appeal in the court of law within 90 days of such recommendations.

13. Scope of the Policy

- a) This policy shall extend to all Staff of Oxfam India and to third party harassment of Oxfam India women employees. Specifically, the provisions of this policy are applicable to
- b) All women employees of Oxfam India, regardless of the nature of their contract, duration of employment or position in the organisation.
- c) Women volunteers, consultants and interns, regardless of the duration of their association with the organisation.
- d) Women employees of partner organisations who come in contact with Oxfam India staff as a result of the role of Oxfam India as a grant maker.
- e) Action under this policy will be initiated in cases where any of the above are subjected to sexual harassment by an Oxfam India employee, inside or outside the office.
- f) The policy is not designed or intended to limit Oxfam India's authority to discipline or take remedial action for workplace misconduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment. Oxfam India will actively assist and do all that is necessary to ensure the safety of female staff in the office premises or otherwise in respect to any duties/activities that they perform in connection with work which take place outside office premises and involves third party contacts
- g) In cases where an Oxfam India employee is subjected to sexual harassment by a third party who is not an Oxfam India employee, this policy mandates immediate action to protect the complainant and to initiate action against the harasser, either through the appropriate policy of the concerned employer or, in cases where this is not possible, through the criminal justice system.

14. Definitions

- a) "Staff or employee" shall mean any woman employed by Oxfam India in all offices including full-time, part-time, temporary, voluntary, seconded, contracted or casual staff, researchers, trainees and consultants.
- b) "Partners" for the purposes of this policy means any NGOs, non-governmental organization, institutions or organisations of any other nature who have working relationship with Oxfam India

either through contracts, or agreements or MoU for implementing project or undertaking any specific assignment.

15. "workplace", in relation to an employee, means any place where an aggrieved woman or defendant is employed or works, or visits in connection with work during the course of or arising out of employment
- a) "complainant" means,- (i) an aggrieved person; (ii) an aggrieved person or self and on behalf of others, in the case of more than one aggrieved person;
 - b) "defendant" means a person against whom a complaint is filed by a complainant
 - c) "Sexual Harassment" in the Act is defined as any unwelcome act or behaviour (whether directly or by implication) namely:
 - a) Physical contacts and advances
 - b) demand or request for sexual favours;
 - c) sexually coloured remarks
 - d) showing pornography
 - e) or any other unwelcome sexually determined physical, verbal or non-verbal conduct of a sexual nature

Explanation: "Unwelcome sexually determined behaviour" shall include but not be limited to the following instances:

- f) where submission to or rejection of sexual advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
- g) such advances, requests or conduct (whether direct or implied) have the purpose or effect of interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.
- h) Under these definitions, direct or implied requests by any staff for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.
- i) The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, when that is unwelcome and where any staff has a reasonable apprehension that the conduct has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to staff may also constitute sexual harassment.
- j) While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness.

16. Examples of behaviour include:

- a) Unwelcome sexual advances - whether they involve physical touching or not;
- b) Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess; banter, insults, taunts or gibes which are disparaging about a particular gender or make reference to sexuality or intimate parts of the body
- c) Displaying pornographic or sexually suggestive objects, pictures, cartoons;
- d) Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- e) Inquiries into one's sexual experiences; and,

- f) Sexually oriented comments and use of abusive language in the presence of women or any other foul language which shows disrespect towards women;
- g) Discussion of one's sexual activities.
- h) Persistent or unwanted attention or physical contact or similar;
- i) The exercise of undue influence to obtain consent to a sexual relationship;
- j) The general use of sexually explicit or provocative language;
- k) Obscene behaviour in front of women colleagues; seeing or compelling them to see photographs which make them feel harassed;
- l) Any behaviour that creates an environment that is intimidating, hostile, or offensive for members of one sex, and thus interferes with a person's ability to work;
- m) The above is not exhaustive and can only be used as a guide for examples of sexual harassment.

All staff should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will be treated as gross indiscipline.

17. Minor Penalties:

- a) Being put on Probation for 6 months irrespective of length of service
- b) Censure/Reprimand in writing to be placed on record in the Personal File

18. Major Penalties:

- a) Reduction in salary not exceeding 1/3 of the gross pay
- b) Forfeiture of Annual Increment
- c) Suspension from work for a period not exceeding 3 months on half pay
- d) Transfer
- e) Dismissal

Provided further that before any action is taken under this clause, the defendant shall be given an opportunity to show cause as to why the proposed action should not be taken against him.

Explanation.- For the purpose of this sub-section, "damage" shall include the injury to the feelings of the aggrieved woman or the humiliation suffered by her.

19. Others

- a) Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the Committee and Oxfam India management will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
- b) Partners will be advised and requested to consider adopting suitable measures to ensure that the guidelines laid down by this order are also observed by their organisations.

20. Criminal Proceedings

- a) In the event the conduct complained of amounts to a specific offence under the Indian Penal Code or under any other law in existence, the ICC, shall recommend to management to take appropriate action in making a complaint with the appropriate authority.

21. Conclusion

- a) The proceedings under this policy shall not be stalled or postponed merely because the complainant is proceeding against the accused under any other provision of law.
- b) The provisions of this policy shall not restrict the powers of the Management or the complainant to proceed against the alleged offender for any other misconduct or other legal remedies.
- c) The policy will be reviewed from time to time and revised to keep it up to date with changes in state acts, employments policies or lessons learnt. The process for review will also consult all staff and seek advice externally
- d) The Committee will minute all its meetings and proceedings and submit quarterly reports to the Senior Management Team.
- e) These Reports will be placed before the Board for information at the Board Meeting every quarter.