

## **TERUMO PENPOL PRIVATE LIMITED SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) POLICY**

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1. Terumo Penpol is dedicated to a strong policy against sexual harassment in the workplace, as required in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. Together the law and rules protect the Constitutional doctrine of equality and personal liberty enshrined in Articles 14, 15 and 21 of the Indian Constitution, for women.
2. Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India “to practice any profession or to carry out any occupation, trade or business”; it erodes equality and puts the dignity and the physical and psychological well-being of women workers at risk. This leads to low productivity and adversely affects lives and livelihoods. To exacerbate matters, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society, at large.
3. Terumo Penpol acknowledges the requirement under the *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules* to formulate and widely disseminate an internal policy for prohibition, prevention and redressal of sexual harassment at workplace intended to promote gender sensitive and safe spaces and remove underlying factors that contribute towards a hostile working environment against women, hence the policy. This will help ensure consistency and clarity in the implementation of the law and support better enforcement of the 2013 Act to prevent sexual harassment in the workplace; ensure that reports of sexual harassment are treated in a confidential and sensitive manner; encourage women employees to bring forward instances of sexual harassment and other inappropriate workplace behaviour of a sexual nature; and ensure just and fair actions to be taken.
4. The Legal/Regulatory authority for the policy includes:
  - a. The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (“the 2013 Act”).

- b. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules<sup>1</sup>, 2013 (the 2013 Rules).
  - c. Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India. Ministry of Women and Child Development November 2015
  - d. The Repealing and Amendment Act, 2016, No. 23 of 2016.
5. **Section 3(2) read with Section 2(n) defines SEXUAL HARASSMENT.** The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any unwelcome act or behaviour of sexual harassment may amount to sexual harassment: -
- a. implied or explicit promise of preferential treatment in her employment; or
  - b. implied or explicit threat of detrimental treatment in her employment; or
  - c. implied or explicit threat about her present or future employment status; or
  - d. interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - e. humiliating treatment likely to affect her health or safety.
6. Sexual Harassment” is defined in section 2(n) and includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication) (Box 1), namely:
- a. Physical contact or advances;
  - b. A demand or request for sexual favours;
  - c. Making sexually coloured remarks;
  - d. Showing pornography;
  - e. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

**Box 1: Sexual Harassment** (Source: Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Government of India. Ministry of Women and Child Development November 20) Pgs. 10-11

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<sup>1</sup> vide GSR 769 (E), dated 9<sup>th</sup> December, 2013 published in the Gazette of India Extra., Pt. II, Sec. 30), No. 593, dated December 9, 2013

**THE FIRST STEP TO PREVENTION IS RECOGNITION**

Workplace Sexual Harassment is behaviour that is

- **UNWELCOME**
- **SEXUAL** in nature
- A **SUBJECTIVE** experience
- **IMPACT** not intent is what matters
- Often occurs in a matrix of **POWER**

**SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE**

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held “We therefore prefer to analyse harassment from the [complainant’s] perspective. A complete understanding of the [complainant’s] view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. ... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009 On 9 September, 2010, in the High Court of Delhi

UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control
Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

Listed are some examples of how “unwelcome” and “welcome” behaviour is experienced.

7. Section 2(a) defines an "**AGGRIEVED WOMAN**", means – (i) 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.
  - a. **Note from the Handbook:** The rights of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name.
8. **The WORKPLACE is defined in** (Section 2(O)). A workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India.
9. The Act provides for complaints mechanism: **INTERNAL COMMITTEE (IC)**
  - a. **INTERNAL COMMITTEES:** Section 4(1) of the Act requires every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Committee"
    - i. The proviso to the section states that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

## IC IS MANDATORY

*In Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (Crl.R.C.No.370 of 2014 order dated 02.09. 2014. Original Petition No.463 of 2012 the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the non- constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).*

10. Section (1) states the manner of **FILING A COMPLAINT to the IC** .
  - a. Section 9(1) states that the aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the IC if so constituted.

- b. Section 9(1) Proviso 1 states that where such complaint cannot be made in writing, the Presiding Officer or any Member of the IC or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.
- c. Section 9(3) further states that 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.

**11. TIME LIMITATION for making the Complaint.** Section 9(1) states the complaint shall be made 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. Section 9 (1), Proviso 2 states that the IC as the case may be, 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.

**12. CONCILIATION (Section 10):** At the request of the aggrieved woman, the Internal Committee may, before initiating an inquiry under section 11 take steps to settle the matter between her and the respondent through conciliation. Where a settlement has been arrived at under sub-section (1), the IC shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation. The aggrieved woman and the respondent shall be given a copy of the settlement as recorded, and no further inquiry will be conducted by the IC.

- a. **No compensation under Conciliation:** Section 10 (4) states the Act does not permit a monetary settlement in case of conciliation.

**13. Conducting the INQUIRY:** Sections 11 of the Act and Section 7 of the Rules state how the inquiry should be conducted: Key provisions are mentioned below:<sup>2</sup>

- a. **Powers of the IC:** Section 11 (4) of the Act states that for the purpose of making an inquiry under sub-section (1), the IC, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908) when trying a suit in respect of the following matters, namely: -
  - i. summoning and enforcing the attendance of any person and examining him on oath;
  - ii. requiring the discovery and production of documents: and
  - iii. any other matter which may be prescribed.

- b. IC must abide by the **rules of natural justice** in conducting the inquiry Rule 7(4).
14. **SPECIAL LEAVE:** Section 12 of the Act states that during the pendency of an inquiry, on a written request made by the aggrieved woman, the IC, may recommend to the **employer** 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 (The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled. (Notification 4f);
  - c. grant such other relief to the aggrieved woman as may be prescribed.
15. Section 12(3) states that on the recommendation of the IC, leave granted under section 12(1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee.
16. In addition to the above, Rule 8 provides that during the pendency of inquiry, the IC at the request of the aggrieved woman, may recommend to the employer to restrain the Respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another officer; as well as retrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.
17. **PROCESS FOR CONDUCTING INQUIRY:** The process for conducting an inquiry as stipulated in the Act and rules are stated herein:
- a. **IC must Inform Respondent:** The IC must send a copy of the complaint to the respondent within 7 working days of receipt of the complaint from the aggrieved woman. (Rule 7(1))
  - b. **IC must provide time for Respondent to Respond:** The respondent shall file his reply along with list of documents and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the complaint. (Rule 7(3))
  - c. **Time Period for Inquiry (Section 11(4)):** IC must conclude the inquiry within 90 days and shall provide a report of its findings to the employer within 10 days from the date of completion of the inquiry.
  - d. **Disclosure of Draft Inquiry Report** (section 11, Proviso 2): 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.

18. **PROHIBITION OF PUBLICATION** or making known contents of complaint and inquiry proceedings. Section 16 states that:

- a. Notwithstanding anything contained in the Right to Information Act, 2005(22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:
  - i. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

19. **TYPES OF RECOMMENDATIONS IC can make:** Section 13(3) states the type of recommendation:

- a. Where committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter (Section 13(2)).
- b. Where committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend the employer, as the case may be (Section 13 (3) (i) and (ii)):
  - i. To take action for sexual harassment as misconduct in accordance with the provisions of the service rules applicable to the respondent (Section 13(3)(i)).
  - ii. To deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman.  
(Section 13(3)(ii)).
    1. **Determining the sums to be paid to the aggrieved woman** under clause (ii) of sub-section (3) of section 13, the IC: 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.
  - iii. In addition, Rule 9 prescribes, that where there are no appropriate service rules, it may take any action including written apology, warning, reprimand or censure,

withholding of promotion, pay rise or increments, terminating the respondent or undergoing counselling.

**20. Obligation of Employer to Act on IC Recommendations:** Section 13(4) states that the employer “shall” act upon the recommendations of the IC within 60 days of receipt of recommendations.

**21. Appeal:** Any person aggrieved from the recommendations made under sub- section.

i. (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person.

1. Where there 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.

**22. Time Limitation for Section 18(2):** The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

**23. Failure of Complainant to Follow IC Recommendations:** Proviso 1 of Section 11 states that where the aggrieved woman informs the Internal Committee, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.

**24. DUTIES OF THE EMPLOYER:** Section 19 places several responsibilities on the Employer. These include:

- a. provide a safe working environment at the workplace which 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 subsection (1) of section 4;
- c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d. provide necessary facilities to the Internal Committee, for dealing with the complaint and conducting an inquiry;

- e. assist in securing the attendance of respondent and witnesses before the Internal Committee;
- f. make available such information to the Internal Committee, 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.

**25. Employer Must Include Information in Employer's Annual Report:** Section 22 requires the employer shall include in its report the number of cases filed, if any and their disposal under this Act in the annual report of his organisation or where no such annual report is required to be prepared, intimate such number of cases, if any, to the District Officer.

**26. Penalty for a malicious complaint against the respondent:** Section 14 states that where the IC, 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 employer, to take action against the woman or the person who has made the complaint under sub- section (1) or sub-section (2) of section 9, 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.

- a. **Proviso 1 of Section 14 also clarifies that** a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.
- b. Proviso 2 of section 14 states that 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.

27. **False evidence by Witness:** Section 14 (2) states that where the IC, 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 employer of the witness, 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.

28. **Section 17 - 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 Act, contravenes the provisions of section 16, he 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.

## AT A GLANCE

### 1) Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
- Meet with the complainant
- Meet with the respondent
- Meet with the witnesses
- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyse all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
  
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.

\* Source: MCWD Handbook, pg.34

The Internal Committee shall follow the Act and Rules in conducting the inquiry of complaints received and submit its report.

- i. The proceedings under this Policy shall be conducted analogously and shall be independent of any other proceedings in law, if such a case arises.

- ii. The provisions of this Policy shall not restrict the power of Employer or aggrieved woman or complainant to proceed against the Respondent for any other misconduct or to pursue other criminal or civil remedies.