

## **POLICY ON PREVENTION OF SEXUAL HARASSMENT**

**Objective:**The Government of India, Ministry of Law and Justice has constituted the “**The Sexual Harassment of Women in Workplace (Prevention, Prohibition and Redressal) Act, 2013**” (hereinafter the **Act**) and “**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**” (hereinafter the **Rules**) based on the observations made by the Honorable Supreme Court of India in Vishaka vs. State of Rajasthan. The Act and the Rules framed thereunder aims to prevent sexual harassment against women in order to promote safe and healthy working conditions for them.

In the background of the above judgment and the Act enacted by the Government of India ' Martin Burn Ltd, has developed a Policy on **Prevention of Sexual Harassment (hereinafter 'the policy')** to sensitize the female employees about their fundamental right to have safe and healthy work conditions and to codify the conducts which tantamount to sexual harassment and the ways and means to prevent such occurrences and in the event of such occurrence to enable a fair mechanism to deal with such situation.

The Company will ensure no discrimination of gender and will ensure its commitment to fulfill the objective and purpose of the Act, the management of the Company to pledge to zero tolerance towards any kind of sexual harassment of anybody, directly or indirectly or in any manner.

### **I. Definitions**

- a) **'Employee'** shall mean all persons directly or indirectly employed by the Company or otherwise fall under the category of 'employee' within the meaning of section 2(f) of the Act.
- b) **'Connected Person'** shall include any consultant or an office bearer of any Auditor, Contractor, Consultant, Agent, Supplier, Purchaser, Banker of the Company who is directly or indirectly connected with the business of the company.

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- c) **'Employer'** shall have the same meaning as defined in section 2(f) of the Act, which will include the Board of Directors.
- d) **'Internal Complaints Committee'** or ICC shall mean a four member committee Constituted by the employer to prevent and address the incidence of sexual harassment in the company.
- e) **'Sexual Harassment'** shall include any form of verbal or physical behavior which is unsolicited and unwelcome and interferes with an individual female worker or employee's work performance by creating an intimidating/insecure working environment or any unwelcome sexually determined behavior (whether directly or by implication) in any form, such as:
- f) Physical contacts and advances
- i. A demand or request for sexual favors
  - ii. Sexually colored remarks
  - iii. Showing pornography
  - iv. Any other unwelcome physical, verbal or other conduct of sexual nature against any female employee, worker or connected person in the workplace during or after office hours.
- g) **'Complainant'** shall mean a female employee or connected person who has been subject to sexual harassment or any employee or connected person reporting an incident of sexual harassment.
- h) **'Complaint'** will mean a written, factual and non-speculative communication made by a complainant in the format contained in the Schedule I of this policy, on alleged sexual harassment falling within the scope of this policy.
- i) **'Respondent'** shall mean any employee who is alleged or reported to have committed any act of sexual harassment.
- j) **'Workplace'** shall mean all office premises, factory premises, gardens and all other areas where the operation of the Company extends and are within the control of the Company and will also include notional extension of operations such as place visited by the employees arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
- k) **'Service Rules'** shall mean the manual adopted by the respective

Company depicting the terms of service of all level of employees employed in the Company.

## II. Scope of the Policy

The employer has constituted an Internal Complaint Committee as per guidelines of the Act to make aware of the employees to have safe and healthy environment at their workplace, to take preventive measures to the occurrence of any sexual harassment and in the event of such occurrence to facilitate a speedy redressal to the complainant.

The respective ICC is required to enquire all complaint made under the provisions of the Act and as per policy in a fair and transparent manner and submit its report to the respective employer.

**The Employer only has the right to punish any accused hereunder and ICC is an advisory body to meet the ends of justice.**

Any act of sexual behavior is included if such an act is perceived to be detrimental to healthy and congenial work environment. **The procedure and remedies which are made available under this policy are applicable only when the alleged harasser, i.e. the respondent is an employee of the company and the woman who has been subject to sexual harassment is an employee or a connected person.**

However, in the event any employee experiences any act of sexual harassment at any place other than its workplace and/or extended workplace or by any person who is a connected person and the employee who is subject to such harassment is in contact with him due to reason of her employment, the employer is obligated to provide all assistance, support and help to the said employee for redressal of her complaint.

It is mandatory on all employees and recommendatory on all connected persons to follow this policy and the guidelines framed herein. Sexual Harassment at the work place will be deemed to be a violation/breach of terms of employment and a criminal offence in addition to violation of gender equality guaranteed under the constitution.

## III. Constitution of Committees

ICC and RCC shall consist of 4 members at all times. Both the committees shall consist of a member Presiding Officer who shall be a woman employed in the Company at a senior level. The other three members should be from amongst employees preferably committed to the cause of women or who have experience in social work or have legal knowledge. The fourth member of both the committees should be

nominated from amongst non-governmental organizations or association committed to the cause of the women or personal familiar with issues relating to sexual harassment. One half of the total members of both the committees should be women.

The Presiding Officer or other members of the ICC shall hold office not exceeding three years at a time, from the date of their nomination as may be specified by the employer. In the event of resignation, removal or death of any member from the committees, the employer shall fill such vacancy forthwith but not exceeding a period of 6 months from the date of such vacancy. Where any member of the ICC contravenes any provision of the Act' or rules framed thereunder or of this policy, the employer shall remove such member from the committee and make fresh nomination to fill the casual vacancy.

The office of Presiding Officer or other employee members will be honorary but the member appointed from amongst the non-governmental organizations or associations shall be paid such fees or allowances or reimbursement of travel cost for attending the proceedings of the ICC by the employer as may be prescribed.

Each of the committee shall meet regularly, however one meeting should be held in each quarter. The quorum for any meeting of ICC shall be two members. However for the purpose of making an enquiry to any complaint relating to sexual harassment the quorum of the ICC should be minimum three members including the Presiding Officer. The Presiding officer shall give written notice of any meeting of the ICC by post, hand, fax or email to other members at least 7 days in advance. All meetings of the ICC will be held at Registered Office at Kolkata.

List of members of ICC is given in **Schedule II** of the policy.

### **Preventive Measure**

ICC shall organize sensitization programmes, workshops for all as well as special meetings to be conducted with only the women employees on a regular basis in order to do the following:

- i) To sensitize employees about their right to have safe and healthy work environment.
- ii) To spread awareness on sexual harassment by way of publication, advertisement or by convening meeting.
- iii) To discuss with women employees on general issues involving challenges faced by them at workplace.
- iv) Increase awareness amongst employees and overcome hesitation and discomfort in discussing issues involving sexual harassment at work place by convening open house session so that employees can come up and share their views

- and ideas.
- v) To assist any complainant to make a complaint.

ICC should introduce a system to record names of the female employees who have to stay late (beyond 7.30 pm) in office and should instruct security on duty to visit the work places every half an hour post 7.30 pm.

**ICC should cause displaying penal provisions of sexual harassment in each workplace.**

#### **IV. Sexual Harassment Complaints and Reporting**

Any aggrieved person who feels/presumes that she has been subject to sexual harassment in the workplace should immediately report or complain the incidence before the ICC as the case may be addressing the Presiding Officer of the ICC within three months from the date of the occurrence of the said incident and in the case of series of incidents within three months from the date of last occurrence. The complaint should be made by the aggrieved person or where she is incapable, by her relative, friend, co-worker or any person having knowledge of the incidence with the written consent of the aggrieved person.

The complaint should be made in the format prescribed in the **Schedule II** in six copies along with supporting documents and the names and addresses of witnesses. If the complaint cannot be made in writing, any member of the respective ICC as the case may be shall render all reasonable assistance to the aggrieved person for making the complaint in writing.

**It is pertinent to mention that written complaint is required to be filed mandatorily with full names and details for seeking any action under the Policy. Any anonymous complaint shall not be entertained.**

#### **V. Enquiry Procedure**

On receipt of a complaint, the Presiding Officer, should check the complaint and supporting documents and if found in order, proceed to call a meeting of the ICC. A copy of the complaint without annexing supporting documents should be forwarded to the respondent at his/her workplace or residence within 7 working days from receipt alongwith a notice to file his reply to the complaint alongwith list of documents and names and addresses of witnesses within a period 10 working days from the date of receipt of the notice. The Presiding Officer shall arrange to place before the meeting, the complaint and reply of the respondent with supporting documents. The Presiding Officer shall call upon the complainant and the respondent separately

before the committee and shall inform the complainant that the issue could be resolved by way of conciliation and may at the request of the aggrieved person take steps to settle the matter between her and the respondent through conciliation. However, no monetary settlement could be made as a basis of conciliation. Where a settlement is arrived at, the ICC as the case may be shall record the settlement so arrived and forward the same to the Employer to take such action as it has been arrived out of conciliation. A copy of the settlement should also be forwarded to the aggrieved and the respondent. Where a settlement is arrived at, no further enquiry shall be conducted by the ICC.

Where no conciliation could be arrived at, the Presiding Officer shall call meeting(s) of the committee for conducting the enquiry proceeding and call upon the aggrieved party, and the respondent to appear before the ICC and also call the witnesses from both the parties. **The parties will not be allowed to present their case by legal practitioner in the enquiry proceeding.** ICC shall conduct the enquiry in accordance with the principle of natural justice. The enquiry proceedings should always be minuted and/or video recorded and the same be preserved and maintained by the committee. Any submission made by any witness should be recorded in a camera. It is being specifically mentioned that once the enquiry proceeding is initiated the option of conciliation ceases to exist.

The ICC members should be prepared to deal patiently with the aggrieved woman's embarrassment, pain and anger but they should be firm on explaining the detail and the documentation required for an accurate enquiry. The aggrieved person should be interviewed first to ensure that all important details and witnesses are identified promptly and material object if submitted or referred to in the complaint is received, numbered and preserved. It is important that the members of ICC should be objective and non- judgmental and allow the respondent to respond to each allegation. The members should also explain the nature of disciplinary action that could be brought against him if the complaints are found to be true. The Committee should advise both the parties to avoid contact during the pendency of the enquiry proceeding and it may recommend the ways to minimize contact. In the event there are no eyewitnesses, the Committee may have to resolve harassment claim based on the credibility of parties. Circumstantial evidence would play important role during the decision making process by the Committee. During the pendency of the proceeding one member should maintain contact with the aggrieved and should report to the Committee further incidents of harassment or retaliation.

The ICC may terminate the enquiry proceedings or give ex-parte decision on the complaint, if the complainant or the respondent fails

without sufficient cause to present her- self or him-self for three consecutive hearings convened by the respective committee.

During the pendency of the enquiry when the complaint has been filed against her reporting manager or any person placed high on hierarchy then on written request made by the aggrieved woman, the ICC may recommend to the employer to transfer her to any other workplace or grant leave to the aggrieved up-to a period of three months or such other interim relief as the Committee will deem fit. Provided the leave granted as above should be in addition to the leave she would otherwise be entitled as per service rules of the Company. On recommendation made by the ICC or RCC, the employer shall implement such interim reliefs and inform the ICC as the case may be.

The respective ICC will study the findings and shall then proceed to deal with the complaint so as to arrive at a conclusion within 90 days of the date receipt of the complaint.

## **VI. Reporting and Penalty**

On completion of the enquiry under this policy the ICC shall provide a report of its findings to the employer within a period of 10 days of the date of completion of the enquiry. A copy of the report should be served both to the complainant and the respondent.

Where the ICC arrives at a conclusion the allegations against the respondent has not been proved it shall recommend the employer that no action is required to be taken in this matter.

Where the ICC arrives at a conclusion that the allegations against the respondent have been proved it shall recommend the employer all or any of the followings:

- a. To take action for sexual harassment as misconduct in accordance with the provisions of the service rules applicable to the respondent.
- b. To deduct notwithstanding anything contained in the service rules from salary, wages of the respondent such sum it may consider appropriate to be paid to the aggrieved woman.
- c. To take any action including a written apology, warning, reprimand or censure, undergoing counseling sessions, withholding of promotion, withholding of pay rise or increments or carrying out community services.

The employer shall act on the recommendation made by the ICC and implement the penalties within such period as may be prescribed by the Act or the Rules framed thereunder.

## **VII. Mala fide Complaint or False Evidence**

In the event the enquiry reveals that the complaint is unjustified then the ICC will recommend the employer to counsel the complainant and take suitable action to prevent recurrence. Where it is proved in the enquiry that the aggrieved woman or the complainant had raised the concern with ulterior motive or the aggrieved woman or any person making the complaint has produced any forged or misleading document then ICC may recommend the employer to take suitable action as stated in paragraph VIII above against the complainant or such other person.

## **VIII. Appeal**

The complainant or the respondent being aggrieved from the recommendations made by the ICC as the case may be, may prefer an appeal to the appellate authority notified under Industrial (Standing Orders) Act' 1946 within 90 days of communication of the report on recommendation to the concerned party.

## **IX. Maintenance of Record and Register**

The Presiding Officer of ICC shall maintain such records and registers either in physical form or in electronic mode as the ICC may deem fit for the purpose of registering complaints and conducting enquiry. However, on completion of any conciliation or enquiry and recommendation thereat by the Committee, the Presiding Officer shall hand over all collected material i.e. duly signed statement of the complainant, respondent, witnesses, involved parties, video or audio recording of the proceeding and material objects if any along with the settlement or recommendation made by ICC to the Head of Human Resources of the respective organization which will be deemed as service of the reconciliation or recommendation to any enquiry to the respective employer.

The Presiding Officer shall cause proceedings of each meeting to be prepared and kept in minuted form within 30 days of conclusion of the meeting. The Presiding Officer can take such in-house clerical, secretarial assistance or legal advice with consent of the employer as she thinks fit for the purpose of functioning of the Committees.

In every financial year, Presiding Officer of the ICC shall cause an annual report containing all the details like number of complaints filed, before ICC, the stage of conciliation or redressal of each complaint, to be

furnished to the employer who shall cause such report to be included in the Annual Report of the Company.

#### X. Non-Disclosure

ICC and respective employer shall maintain absolute non-disclosure of the identity of the aggrieved person, respondent and witnesses unless ordered by any competent Court.

#### XI. Criminal Proceeding

An enquiry in connection with any complaint made under this policy be initiated or continued notwithstanding of the fact that such incidence has been complained and reported under Indian Penal Code' 1860 (IPC) or that police proceedings has been initiated in connection with the said complaint. Where such conduct tantamount to a specific offence under the IPC or under any other law, the respective employer based on the findings and advise of the respective ICC may initiate appropriate action in accordance with the law by making a complaint with the appropriate authorities. Detailed list of penal action involving sexual harassment is provided in **Schedule III** of the policy. In the event any criminal proceeding is initiated the matter should be referred to Group Head- Legal or such other person as may be authorized by the employer.

#### XII. Amendments

The Board of Directors of the respective companies shall have the full authority to amend or modify this Policy or waive any procedural requirements of this Policy subject to the guidelines issued by Government of India in this regard from time to time.

#### SCHEDULE I - Format of complaint

Name of the Complaint	
Designation	
Organization & Department	
Location	

Complaint in Detail	Date:Signature

Enclosures-

- 1. List of witnesses with addresses
- 2. Material objects (Specify)

## SCHEDULE II- List of Members Internal Complaints Committee

Name	Position	Location	Phone Number	Email Id
	Non - Governmental Organization  Member			
	Employee Member (Presiding Officer)			
	Employee Member			
	Employee Member			

## SCHEDULE III - Applicable Penal Provisions under Indian Penal Code

1.	IPC Section 292: Obscenity	Penalty of imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees.
2.	IPC Section 292A: Indecent Circulation	Penalty of imprisonment of either for a term which may extend to two years or with a fine or both.
3.	IPC Section 294: Obscenity	Punishment of imprisonment of either description for a term which may extend to three months or with fine or with both.
4.	IPC Section 354A: Sexual Harassment	Punishment of rigorous imprisonment up to five years, or with fine, or with both.

5.	IPC Section 354 B: Sexual Harassment (Assault)	Punishment of imprisonment not less than three years but which may extend to seven years and with fine.
6.	IPC Section 354 C: Sexual Harassment (Voyeurism)	Punishment of imprisonment not less than one year, but which may extend to three years, and shall also be liable to fine.
7.	IPC Section 354 D: Sexual Harassment (Stalking)	Punishment of imprisonment not less than one year which may extend to three years and shall also be liable to fine.
8.	IPC Section 506: Criminal Intimidation	Punishment of imprisonment of for a term which may extend to two years or with fine, or with both.
9.	IPC Section 341: Wrongful restraint	Punishment with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.
10.	IPC Section 342: Wrongful confinement	Punishment with simple imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.