



NATIONAL CENTRE FOR ADVOCACY STUDIES

CODE AGAINST SEXUAL HARASSMENT AT WORK PLACE

BACKGROUND

The National Centre For Advocacy Studies (NCAS) is a membership based social change resource centre that aims at strengthening rights based and people centred advocacy, so as to empower people who are struggling for the creation of a just and humane society. NCAS works with social action groups and professionals, as well as public-spirited citizens.

Sexual harassment in a work environment violates not only the human rights of the victim but also the fundamental values of the organization including the value it places on high standards of personal and professional integrity and responsibility. It is the legal responsibility of NCAS to take all reasonable and necessary steps to ensure that its employees do not face any kind of sexual harassment, that a gender friendly environment is nurtured, and that a redressal mechanism is in place in case sexual harassment takes place.

In keeping with the Supreme Court judgment, dated August 13 1997, that endorses guidelines, also referred to as Vishakha Guidelines against Sexual Harassment at the Workplace; NCAS proposes to establish

- A. 'Complaints Committee Against Sexual Harassment' to address and resolve any cases of sexual harassment in the organization
- B. 'Gender Cell' to pro-actively work for creating a gender sensitive environment and preventing sexual harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is any unwelcome behavior of sexual nature in the working or learning environment. It does not refer to mutually accepted behavior, and is not confined to a particular gender or sexuality. Sexual attention becomes harassment when it is "unwelcome". Whether the perpetrator sexually harasses another person intentionally or otherwise is not the issue. How the person, to whom it is directed, receives that behavior is crucial because of the subjective nature of sexual harassment. It is crucial to understand the difference between sexual harassment and 'friendly' behavior. Friendly behavior is welcome and mutual while sexual harassment is not.

Sexual Harassment as defined by the Supreme Court is open to varied interpretations; and one has to specify behavior that could constitute sexual harassment. It may include but is not limited to the following behaviours¹:

1. Physical contact and advances
2. Demanding or asking for sexual favors
3. Sexually coloured remarks, jokes or comments shared in the office that make others uncomfortable
4. Display of pornographic pictures/messages
5. Any unwelcome and avoidable physical, verbal or non-verbal conduct of sexual nature²
6. And any other act or gesture, perceived by the victim as sexual harassment.

¹ The first five points are as defined by the SC judgement of 1997.

² Women's groups feel that 'AVOIDABLE PHYSICAL CONTACT' as opposed to the original term (UNWANTED) should be used.

A. THE COMPLAINTS COMMITTEE AGAINST SEXUAL HARASSMENT

1. THE COMPOSITION:

The Complaints Committee would be composed of the following 5 members:

- The Convener would be a woman staff member
- One woman staff member, other than the convener
- One male staff member
- One member will be invited from another organization to bring an element of objectivity and ensure justice
- The Executive Director would be the ex-officio member of this Committee whose status would be the same as that of other members of the Committee.

2. ELIGIBILITY CRITERIA:

- Completion of at least one year of service in NCAS.
- No previous record of allegations of sexual harassment
- Should be gender sensitive and knowledgeable about women's issues
- Preference will be given to a person having experience of dealing with cases of Violence Against Women.

3. **CONSTITUTION OF THE COMPLAINTS COMMITTEE:** For the first complaints committee staff members would propose names of possible members with their prior consent. A nomination committee approved by the staff and constituted solely for this purpose will finalize the names, in accordance with eligibility criteria. For the constitution of subsequent committees, the members of complaint's committee would propose names of new members and finalize their names with the approval of the staff.

4. **TENURE:** Every three years the Complaints Committee will be reconstituted. The previous members can continue to be on the complaints committee with the approval of the staff.

5. THE SCOPE:

- The Complaints Committee will examine cases of sexual harassment reported by any employee of NCAS made against another employee during office hours, travel, field visit or outside office.
- In case the alleged harasser is not an employee of NCAS, the Complaints Committee may approach police, women's organizations etc. as required.
- In case of disagreement between the complaints committee and the management regarding the action to be taken, the committee's recommendations would be binding unless the management gives a written explanation to the contrary.

6. PROCEDURE FOR ADDRESSING CASES OF SEXUAL HARASSMENT:

- a. An aggrieved person can approach any member of the staff or the Committee directly or through e-mail or phone. The person who receives the complaint should ask the complainant to lodge a formal written complaint of sexual harassment with the Committee.
- b. The written complaint should bear the signature of the complainant and include the details of the incidence in terms of what, when, where, who and how it occurred.
- c. In exceptional cases the committee may take immediate measures to provide support and safety, without waiting for the receipt of the formal complaint.

- d. After the receipt of the written complaint, the Complaints Committee will constitute a Working Committee of 2/3 members, at the earliest.
- e. The Working Committee will acknowledge in writing, the written complaint and inform the names of the members on this Committee to the complainant within the next 5 working days, assuring absolute confidentiality.
- f. The Committee would call for a meeting with the complainant and decide the next course of action.
- g. The working committee would inform the alleged harasser/s, in writing, that a complaint of sexual harassment has been received against him/ them and the procedure that would be followed.
- h. The Committee will call for a meeting with the alleged harasser/s for a hearing.
- i. The Committee will hold individual and joint meetings with the complainant and the alleged harasser/s and witnesses, if any, for further investigations.
- j. In the context of the culture of denial that shrouds the issue of sexual harassment, complainants or witnesses will not be victimized or discriminated. Absence of eyewitnesses or delay in filing the complaint will not be the ground for disbelieving a complaint.
- k. The committee may undertake home/ field visits if necessary.
- l. The committee will maintain a confidential record of the case – which would include the complaint, minutes of the various meetings, witness statements, resolution process, recommendations to the Executive Director etc.
- m. The Working Committee will notify the Complaints Committee and the Executive Director about the findings and the decision taken, and about the administrative/ management follow-up that needs to be undertaken.

7. ACTION TO BE TAKEN BY MANAGEMENT :

The following steps may be taken by the employers/ management so that the affected person gets justice:

Penalties:

- The harasser can be asked to give an apology either written or verbal, in public or private.
- Where sexual harassment amounts to a specific offence under Indian Penal code (IPC) or any other law, the management shall initiate appropriate action in accordance with the law.
- Additional penalties may include
 - Warning and counseling on misconduct
 - Closer supervision of conduct
 - Downgrading of job status or responsibilities
 - Suspension
 - Dismissal

Remedial measures:

- The affected person/s can be given adequate compensation for any wages or salary lost as a result of harassment and/or failure on part of the organization to take necessary action for redressal.
- Leave with pay to the affected person/s during the period of investigation.
- Removal of any detrimental comments/ notings on work performance of the affected person/s during the period of harassment and investigation.
- The affected can be given an opportunity, to the extent possible, to choose to either remain in the same job or opt for transfer, without any kind of disadvantages with respect to the job profile.

B. THE GENDER CELL

NCAS committed to the values of Human Rights and Social Justice is working for the creation of a just and humane society. Gender Justice is an integral component of Human Rights and Social Justice framework hence creation of a gender-just work environment becomes a prerequisite for of an organization like NCAS. It tries to do so through ensuring healthy work culture where every employee is treated with dignity and respect.

The Vishakha guidelines that mandate the formation of “Committee against Sexual Harassment at Workplace” also talks of measures for prevention of Sexual Harassment. NCAS in consonance with its values and respecting SC guidelines proposes to constitute a Gender Cell that would nurture a gender sensitive environment. Its endeavour would be to develop an understanding on gender and gender issues amongst its employees and to see that the dehumanizing and detestable acts of sexual harassment do not occur.

For promoting an understanding of gender and related issues, the Gender Cell would undertake various activities such as conducting interactive sessions, discussions, seminars, workshops, symposiums etc, putting up posters and screening films followed by discussions on topics related to gender roles, sexuality, violence and patriarchy etc. The Gender Cell would make efforts to see that the understanding and sensitivity towards gender issues developed through various activities does not get limited to mere discussions but is reflected in day-to-day conduct of NCAS staff. Gender Cell would also play an important role in providing a confidential and supportive environment for employees of NCAS who may have faced sexual harassment

COMPOSITION OF THE GENDER CELL:

The Gender Cell would be composed of 5 members - 3 women and 2 men representing different levels of NCAS staff. One member of the Complaints Committee will also be the member of the Gender Cell to ensure coordination between the committee and the cell. The procedure for constitution and tenure of the gender cell will be the same as that of the complaints committee.

ELIGIBILITY CRITERIA:

- Completion of (at least) one year of service in NCAS.
- Good track record with no previous “allegations” of sexual harassment

OTHER MEASURES THAT MAY BE TAKEN BY NCAS FOR PREVENTING SEXUAL HARASSMENT

1. An expressed prohibition of sexual harassment as defined above should be notified, published and circulated in appropriate ways.
2. Service rules should include sexual harassment as an offence.
3. *‘Hostile working environment’* is a more pervasive form of sexual harassment involving working conditions or behaviour that make the work environment ‘hostile’ for the woman to be in. Hence, appropriate conditions should be provided - such as separate toilets, rest room for child care etc., so that the employee does not feel disadvantaged because of gender.
4. Escort/ accompaniment and office vehicle should be provided whenever necessary.
5. Gender issues should be affirmatively discussed in various forums such as employer-employee meetings, board meetings etc.