

B.9. PREVENTION OF SEXUAL HARASSMENT AT THE WORKPLACE

Background Statement:

The Policy for the prevention of sexual harassment at the workplace at Dakshin Organisation was first implemented in the year 2016. The Policy aimed to give effect to the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013. Whereas, the Policy was in need of periodic revision and review, and the same was undertaken in 2023. The present Policy for the Prevention of Sexual Harassment, 2024 will replace the existent policy to implement the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013. The present policy has been reviewed and approved by the Board of Trustees, Dakshin Foundation and it shall come into force on April 2024.

Core Values:

- Dakshin is an equal opportunity organisation which is committed to creating and maintaining a safe, dignified, and trustworthy workplace for all its employees.
- Dakshin strives to create a workplace free from harassment, bullying, intimidation, prejudice, discrimination, and bias for all irrespective of class, caste, gender, religion, sex, sexual orientation, race, ethnicity, disability, or nationality.
- Sexual harassment is specifically recognised as an issue of discrimination and the organisation has zero tolerance for instances of sexual harassment, bullying, intimidation, and discrimination.

Objectives:

- The present policy aims to first and foremost, prevent the occurrence of sexual harassment at the workplace.
- Prevention of sexual harassment at the workplace has to be achieved by creating awareness around sexual harassment at the workplace, sensitisations, and ensuring that employees understand consent and professional boundaries.

- The policy shall also ensure that where sexual harassment may have occurred at the workplace, it shall be resolved in a manner which is compliant with law, and for this purpose, a mechanism of an independent Internal Committee (“IC”), and Appellate Committee (“AC”), and all other necessary mechanisms shall be created.
- All allegations of sexual harassment at the workplace shall be resolved through the processes contained in the present policy, in compliance with law, and with procedural and substantive fairness.

PROVISIONS

1. The Policy for the Prevention of Sexual Harassment at the Workplace at Dakshin Foundation, 2024 shall be applicable from the date that it is notified by a Board of Trustees Resolution for the said purpose. (Hereinafter, **“the Policy”**).
2. Under the Policy, the following words will be defined as provided below, unless the context in which the words are used necessarily implies a different meaning:
 - a. “Complainant” means a person who has filed a complaint under the present Policy. The Complainant may be of any gender.
 - b. “Respondent” means a person against whom a complaint has been filed under the present Policy. The Respondent may be of any gender.
 - c. “Employee” shall mean all persons employed by Dakshin Foundation, and includes third party contracted employees working at/for Dakshin Foundation, interns, volunteers, official visitors, trainees, apprentices, probationers or similar class of persons. Any person employed through an agency shall also be considered an employee. Knowledge of the principal employer of the status of employment, as well as remuneration, shall be irrelevant.
 - d. “Employer” refers to the members of the Board of Trustees of Dakshin Foundation collectively.
 - e. “Workplace” shall mean all offices, premises, guest houses, field stations, official transport, and any physical premises where employees of Dakshin are required to be present in connection with official work for the

organisation. Transportation required for undertaking official journeys shall also be construed as workplace. Provided that jurisdiction of the present Policy shall ordinarily extend to situations where the Respondent is an employee of Dakshin Foundation, or where the incident of sexual harassment has occurred at the workplace as defined herein.

3. Sexual harassment in all forms and of all kinds is strictly prohibited under the Policy. Sexual harassment may be, but is not limited to, unwelcome behaviour of the following kind:

- a. Unwanted physical contact or advances of an explicit or implied sexual nature.
- b. Making of verbal comments, gestures, signs, or other non-verbal conduct of an explicit or implied sexual nature.
- c. Showing, sharing, exhibiting, or circulating material of an obscene or explicit or implied sexual nature.
- d. Requesting or demanding sexual favours, as a quid pro quo arrangement, or without any such arrangement.
- e. Stalking an individual either physically, or online, or in a combined manner.
- f. Any attempt or expressed desire to commit sexual harassment shall also be construed as sexual harassment.
- g. Any other conduct or speech or action that, in the opinion of the Internal Committee, amounts to sexual harassment.

Explanation: The term “unwelcome” shall be construed to mean conduct as defined herein which is perceived to be unwelcome by the Complainant. The intent of the Respondent shall be deemed irrelevant for the same. Provided that consensual relations between the parties shall not be considered unwelcome for the purposes of this Policy. Whether conduct is unwelcome shall be a question of fact to be decided in each complaint.

4. Internal Committee: An Internal Committee (“IC”) shall be constituted by the Employer with the following responsibilities, composition, and powers:

- a. The IC shall exercise all powers conferred on it under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 to secure the presence of witnesses, summoning documents and records, and examining witnesses on oath.
- b. The Chairperson of the IC shall be a woman employee of Dakshin Foundation, who is at a mid-senior level of employment, as far as possible, at the organisation. The Chairperson of the IC shall be responsible for convening the meetings of the IC, maintaining proper documentation of its functioning, and ensuring compliance with the present Policy in all respects. All members shall be equal participants in the processes of the IC and shall carry equal vote in all decisions.
- c. There shall be one external member on the IC, who shall be an expert in the subject of sexual harassment prevention and in conducting proceedings under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013.
- d. At least 50 percent of the members of the IC shall be women.
- e. The IC shall report any potential conflict of interest on a case by case basis and any member of the IC who may have a conflict of interest in any proceeding shall forthwith report the same to the Chairperson and recuse themselves from the proceedings. Where the Chairperson has a conflict of interest in a given proceeding, she will inform the Employer forthwith and shall recuse herself from the proceedings. In such a case, another member of the IC shall be designated Chairperson for the said proceedings.
- f. The Employer shall attempt to reconstitute the IC at least once every three years, and may reconstitute the IC at any time due to the existence of any valid and justifiable reason.
- g. All provisions in the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 and Rules framed thereunder as applicable to the composition of the IC shall be applicable to the IC.

5. Making of Complaints:

- a. Any complaint alleging sexual harassment at the workplace under the Policy shall be made to the IC collectively at iccposh@dakshin.org or by personally meeting any of the IC members and handing over a complaint. Provided that where the Complainant is unable to submit a complaint herself, it shall be the duty of the IC to assist the Complainant in the drafting of such complaint.
- b. Any complaint alleging sexual harassment shall be made within a period of three months from the date of the alleged incident, or where the allegations relate to multiple incidents, three months from the date of the last alleged incident. Provided that a complaint may be made within a period of six months from the date of the incident in cases where the Complainant was unable to make a complaint earlier due to any sufficient reason. Such reasons will be stated in the complaint and the IC may choose to examine the complaint where it is satisfied that the Complainant was, in fact, unable to make a complaint within three months of the date of the alleged incident.

6. Procedure upon Receipt of Complaint:

- a. Upon receiving a complaint as stated above, the IC shall hold a confidential meeting with the Complainant, where the IC shall explain the procedure and rights of the Complainant under the present Policy for both inquiry as well as mediation/conciliation to the Complainant as provided under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 and Rules framed thereunder.
- b. The IC shall allow the Complainant full and informed choice in the matter of choosing the appropriate procedure under the Policy, and shall respect the said choice. At this stage, the IC may allow the Complainant the choice to withdraw the complaint. However, this may only be allowed if, after discussion with the IC, the Complaint does not make out any allegation of sexual harassment.
- c. Where the Complainant so requests, or if the IC is of the opinion that any interim measures are required in a given case, such as where the harassment

may be continuing, or where the Complainant apprehends a safety, or well-being concern, or where the Complainant and Respondent would have to professionally interact in an unequal power relation, the IC shall be empowered to pass interim orders to ensure that full protection of the Complainant and her interests. Such interim measures may be granted without a hearing being held for the said purpose, and may be modified, rescinded, or revoked at any time. Any interim order shall cease to have effect with the formal conclusion of proceedings. Any interim order passed shall be communicated to the Employer while maintaining confidentiality about the complaint and ongoing proceedings.

7. Procedure for Conduct of Inquiry:

- a. In case of any circumstance arising during the proceedings, which has not been expressly provided for in the present Policy or under the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 and any Rules framed thereunder, the IC shall adopt a procedure which will be reasonable in that circumstance, at all times, complying with the Principles of Natural Justice.
- b. Upon the receipt of a complaint, and if the Complainant requests for the conduct of an inquiry, the IC shall examine the complaint and hold a personal meeting with the Complainant to understand the contents of the complaint better. The IC shall also ask the Complainant to submit a list of witnesses, and/or any documentary evidence in the complaint. After having received the same, the IC shall forward the complaint and materials to the Respondent and shall provide the Respondent a period of ten working days to submit their written response, along with any documentary evidence, list of witnesses etc. Further, the IC shall personally meet with the Respondent prior to the expiry of the period of ten working days and shall fully explain the rights, procedure, and process of inquiry to the Respondent.
- c. Prior to initiating notice to the Respondent, the IC shall be empowered to hold a preliminary inquiry into the complaint. Such a preliminary inquiry shall not be a detailed evaluation of the complaint but only to determine preliminary issues, such as those of jurisdiction of the IC to inquire into the

complaint, and whether if the allegations are found to be correct, sexual harassment may be made out. Where the IC is of the considered opinion that it does not have jurisdiction to inquire into a complaint, or where the allegations do not disclose any incident of sexual harassment, it may dismiss the complaint at that stage with a full report of its findings which shall be submitted to the employer and provided to the Complainant.

- d. All evidence submitted during an inquiry shall be recorded in writing by the IC, and witness testimonies shall be recorded in writing as well. Any evidence recorded shall be shared with both parties during the proceedings. The IC will also maintain a duly dated Order-Sheet of its proceedings during an inquiry. Parties shall be allowed an opportunity to cross examine witnesses vide the Internal Committee.
- e. Where witnesses are examined during the course of the inquiry, the IC shall provide written copies of the witness testimonies to both parties as well as to the witness, cross examination, if any, shall be conducted vide the IC, after providing both parties equal rights to conduct the same. Witnesses shall be examined on oath, and their rights shall be explained to them by the IC.
- f. Parties to an inquiry shall be entitled to file a final written argument in the inquiry proceeding after all evidence has been recorded.
- g. As far as possible, the following sequence of evidential proceedings should be followed once an inquiry has been initiated. However, the same is not mandatory, and the IC may alter this sequence in cases where the same may be required:
 - i. Examination in chief of the Complainant followed by cross examination.
 - ii. Examination in chief of the Complainant's witnesses followed by cross examination.
 - iii. Examination in chief of the Respondent followed by cross examination.

iv. Examination in chief of the Respondent's witnesses followed by cross examination.

v. Submission of Final Arguments by both parties.

8. Procedure for Conduct of Mediation/Conciliation:

- a. Where the IC is conducting a conciliation/mediation under the present Policy per the request of the Complainant, it shall not conduct any scrutiny of the evidence in a given case and will proceed on the assumption that the complaint is true. The IC's responsibility in such a case would be to facilitate a settlement in the complaint, if possible.
- b. The IC shall be mindful that the mediation/conciliation process shall be duly supervised by it and shall not become unfair or cumbersome on either party. In particular, the mediation/conciliation process shall not be conducted under any duress to either party, and will only be conducted when the said is voluntary, and both parties participate in the same of their own free will.
- c. No monetary settlement or payment shall be a valid condition in any mediation/conciliation under this Policy.
- d. Where a conciliation/mediation is not successful for any reason, or where either party withdraws from the conciliation/mediation process prior to any agreement being reached, the complaint shall be transferred for the conduct of an inquiry into the allegations by the IC.

9. Conclusion of Inquiry and/or Mediation/Conciliation Proceedings:

- a. Upon completion of the inquiry or the conciliation/mediation as the case may be, the IC shall submit its report to the Employer with a detailed record of the evidence recorded, the sequence of proceedings, the framing of issues for determination, and the findings on each issue with reasoning. Such a report will also make recommendations as appropriate. Where the report is of a concluded mediation/conciliation, the original conciliation agreement entered into by the parties shall also be submitted to the Employer along with the report of the IC.

- b. All parties, including the IC shall treat all evidence and records in an inquiry as confidential and shall not share the same with any third person. All parties will be advised on confidentiality by the IC throughout the proceedings.
- c. The inquiry report submitted by the IC to the Employer may contain recommendations for implementation by the Employer, which shall be adhered to by the Employer.
- d. Any inquiry or conciliation/mediation shall be concluded and the report submitted within a period of ninety days from the date the complaint is received. Provided that delay, if any, shall be explained in the report and shall not be a ground to vitiate any proceedings.
- e. The IC shall conduct any proceeding under this Policy with full fairness, impartiality, and in compliance with the Principles of Natural Justice. It shall further abide by the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 and any Rules framed thereunder for the time being in force as regards the procedure to be adopted.

10. Malicious Complaints:

- a. A complaint submitted to the IC may be considered malicious in the following circumstances:
 - i. Where the complaint alleges facts which are untrue/false and it is proved that the complainant knew that the allegations were untrue/false at the time of making them.
 - ii. Where the complainant knowingly or intentionally submits false/doctored evidence, or knowingly conceals evidence or the identity of witnesses, or suborns witnesses to provide knowingly false/untrue evidence.
- b. Provided that mere inability to prove allegations made in a complaint shall not deem the complaint malicious.
- c. Provided further that no finding of maliciousness of a complaint shall be made by the IC without conducting an inquiry into the same, and after

having provided the complainant an opportunity to be heard and to give evidence on the matter.

- d. All other provisions of the submission of the report to the Employer as in other cases shall apply to the finding of a malicious complaint as well.

11. Appeals:

- a. Any party aggrieved with the inquiry report and findings of the IC may make an appeal to the Appellate Committee of Dakshin Foundation within a period of ninety days of the submission of an inquiry report to them. Such an appeal will be made in writing stating the grounds/reasons of the appeal.
- b. The Employer shall constitute an Appellate Committee comprising of two members of the Board of Trustees, Dakshin Foundation, and one external member to be appointed for the said purpose.
- c. The Appellate Committee shall exercise all powers provided to the IC in the hearing of the appeal, and shall have the power to summon and examine witnesses on oath, order the production of documents, and examine records of the Employer.
- d. The Appellate Committee shall adhere to the Principles of Natural Justice in the determination of any appeal, and shall provide a fully reasoned report on its findings and recommendations to the Employer at the conclusion of an appeal.
- e. Any appeal shall be concluded and the report submitted within a period of ninety days from the date the appeal is received. Provided that any delay shall be explained in the report and shall not be a ground to vitiate any proceedings.

12. Duties of the Employer:

- a. It shall be the duty of the Employer to ensure that the present Policy is circulated amongst its staff and displayed at its workplace, and to conduct periodic sensitisations and trainings for its employees and staff on the prevention of workplace sexual harassment.

- b. The Employer shall constitute an IC and an Appellate Committee and shall adequately disseminate contact information of both committees.
- c. Periodic trainings of the IC members shall be conducted by the Employer.
- d. The Employer will ensure that no employee suffers from workplace victimisation or is subjected to adverse treatment merely for making a complaint alleging sexual harassment.
- e. The Employer shall implement the recommendations of the IC and/or the Appellate Committee once the same have been submitted to them with the report within a period of three months from the date of their submission.
- f. The Employer shall ensure the continued confidentiality of records, evidence, and documents of proceedings under this Policy, as well as the identity of the parties in compliance with the applicable laws and regulations of India.
- g. Where any inquiry report discloses the commission of offences punishable under the criminal laws of India, the employer shall render assistance to the victim/Complainant to approach the jurisdictional law enforcement agencies to proceed under law. The option to initiate criminal proceedings will be exercised at the will of the victim/Complainant only.
- h. The Employer shall periodically review the working of the IC and the Appellate Committee and shall reconstitute the same as the need may arise and under the provisions of this Policy.
- i. The Employer shall periodically review the working and implementation of the present Policy and shall make amendments or replace the Policy as required to be in compliance with the laws of India.
- j. The Employer shall adhere to and comply with all applicable laws and regulations relating to sexual harassment prevention at the workplace which are in force in India and the local jurisdictions within India which are applicable to it.