

Policy for Prohibition, Prevention and Redressal of Sexual Harassment of Employees in Jammu & Kashmir State Power Development Corporation Limited.

Policy:

The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 is an act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints to sexual harassment and for matters connected therewith or incidental thereto. Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Rules, 2013 states that every employer shall formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women.

1. Definitions:

A. Sexual Harassment:

“Sexual harassment” includes any one or more of the following acts or behavior, (whether directly or by implication), namely:-

- (i) physical contact and advances; or
- (ii) demand or request for sexual favours; or
- (iii) sexually coloured remarks; or
- (iv) showing any pornography; or
- (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

The following circumstances, among other circumstance, in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-

- (i) implied or explicit promise of preferential treatment; or
- (ii) implied or explicit threat of detrimental treatment in employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

B. Workplace:

The following places are included within the ambit of the expression “workplace”.

- (i) any department, organization, undertaking, establishment, enterprise, institution, office, etc. established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
- (ii) hospitals or nursing homes;
- (iii) any sports institute, stadium, etc. used for training, sports or other activities relating thereto;
- (iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

C. Employee:

“Employee” means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

D. Aggrieved Woman:

- (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.
- (ii) In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

2. Constitution of Committee:

JKSPDC has constituted a Committee to provide Protection against Sexual Harassment of Women at workplace and for the prevention and Redressal of complaints of Sexual Harassment.

3. Complaint:

(a) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee, 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:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee, 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.

(b) 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 provided below may make a complaint under this section.

- (i) Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by-
 - (a) Her relative or friend; or
 - (b) Her co-worker; or
 - (c) Any officer of the National Commission for Women or State Women's Commission; or
 - (d) Any person who has knowledge of the accident, with the written consent of the aggrieved woman;
- (ii) Where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-
 - (a) Her relative or friend; or
 - (b) A special educator; or
 - (c) A qualified psychiatrist or psychologist or
 - (d) The guardian or authority under whose care she is receiving treatment or care; or
 - (e) Any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is received treatment or care;
- (iii) Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;
- (iv) Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

4. Conciliation:

(i) The Internal Committee, may, before initiating an inquiry at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

Provided that no monetary settlement shall be made as a basis of conciliation.

(ii) Where a settlement has been arrived at the internal complaints Committee, shall record the settlement so arrived and forward the same to the employer to take action as specified in the recommendation.

(iii) The Internal Committee, shall provide the copies of the settlement as recorded to the aggrieved woman and the respondent.

(iv) Where a settlement is arrived at, no further inquiry shall be conducted by the Internal Committee.

5. Enquiry:

A. Manner of inquiry into complaint: -

(i) At the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(ii) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days.

(iii) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents.

(iv) The Complaints Committee shall make inquiry into the complaint in accordance with principles of natural justice.

(v) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision of the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(vi) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(vii) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Chairperson, as the case may be, shall be present.

Provided that where the aggrieved woman informs the Internal Committee, that any term or condition of the settlement arrived has not been complied with by

the respondent, the Internal Committee shall proceed to make an inquiry into the complaint.

Provided further that where 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.

(B) For the purpose of making an inquiry, the Internal Committee, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 190 & 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.

(D) The inquiry under sub-section (I) shall be completed within a period of ninety days.

6. Action During Pendency of Inquiry:

(i) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee may recommend to the employer to: -

(a) transfer the aggrieved woman or the respondent to any other workplace;
or Action during pendency

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(ii) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(iii) On the recommendation of the Internal Committee, the employer shall implement the recommendations made and send the report of such implementation to the Internal Committee.

7. Other relief to complaint during pendency of inquiry: -

The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to-

(i) 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.

(ii) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

8. Inquiry Report:

(a) On the completion of an inquiry, the Internal Committee shall provide a report of its findings to the employer, within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(b) Where the Internal 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.

(c) Where the Internal Committee, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer: -

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, it shall recommend to the employer, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counseling session or carrying out community service;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, as per para 10.

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred, the Internal Committee, may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(d) The employer shall act upon the recommendation within sixty days of its receipt by him.

9. Punishment for false or malicious complaint and false evidence:

- (1) Where the Internal Committee, 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, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, it shall recommend to the employer, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counseling session or carrying out community service.

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further 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.

- (2) Where the Internal Committee, arrives at a conclusion that during the inquiry any witness has given false evidence or produced an 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. It shall recommend to the employer to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counseling session or carrying out community service.

10. Determination of Compensation:

For the purpose of determining the sums to be paid to the aggrieved woman, the Internal Committee, 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;

(e) the income and financial status of the respondent;

(e) feasibility of such payment in lump sum or in installments.

11. Prohibition of Publication or making known contents of complaint:

Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint, 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 shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

12. Duties of Employer:

Every employer shall—

- (a) provide a safe working environment at the workplace which shall include safety from the person 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.
- (c) organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee;
- (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.
- (g) provide assistance to the woman if she so choose to file a complaint in relation to the offence under the Indian Penal Code or and other law for the time being in force;

- (h) cause to initiate action, under the Indian Penal Code 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.