



**MOHAN Foundation**

**Policy for Prevention of Sexual Harassment at the Workplace (POSH)**

**1 Ver 3.0 dated 12 Nov 2018**

## **1. Executive Summary:**

1.1 MOHAN Foundation is a not-for-profit, non-governmental organization started to promote organ donation in 1997 in Chennai by philanthropists and medical professionals led by Dr. Sunil Shroff. It started advocating this very difficult cause at a time when no one in the country was talking about it and the environment was fairly hostile towards this taboo topic. With a 360 degree approach, it has innovatively responded to this complex issue and showed the way forward to the government, hospitals and policy makers. Even currently there are very few NGO's that work with this very challenging and yet life giving cause.

The NGO's unique mission is to ensure that every Indian suffering due to an end stage organ failure, be provided with the gift of life through a lifesaving organ transplantation. To this end, the Foundation has worked out a strategy over the years to bridge the gaps in the program. Besides public awareness, the Foundation has been building capacities of the medical professionals. It has been the foremost training body helping create a cadre of professionals called the Transplant Coordinators who do the unenviable task of counselling bereaved families to encourage them to donate the organs of their deceased loved one and save other lives. The Foundation works closely with hospitals to help them lay down Standard Operating Procedures for successfully carrying out a Deceased Organ Donation and Transplantation Programme. The Foundation has been liaising with Government bodies to pass favourable legislations that augment donation and has been a catalyst in making amendments to the existing Transplantation of Human Organs Act.

Over the years it has expanded its outreach and presence moving to newer states (health being a state subject) and has worked closely with state governments, private sector and other stakeholders to improve the organ donation rate in the country.

1.2 MOHAN Foundation is committed to ensure a safe, secure and congenial work environment for all employees, which will enable employees to render their services without fear of any prejudice, bias and sexual harassment. This policy aims at (i) ensuring the protection of all employees from sexual harassment at the workplace, (ii) creating awareness of the Indian law in force and the NGO's internal policies amongst employees to prevent sexual harassment at the workplace, and (iii) putting in place the recourse mechanism available to employees for redressal of complaints relating to sexual harassment at the workplace.

## **2. Objective:**

2.1 MOHAN Foundation believes that all employees have the right to be treated with utmost respect and dignity and should have the opportunity to work in an environment free from sexual harassment. The Foundation will not tolerate sexual harassment in the workplace in any form or manner.

2.2. The purpose of this policy is to (i) ensure a safe working environment free from sexual harassment, in which persons of all genders and complement each other as equals, (ii) prevent sexual harassment of employees at the workplace, (iii) to give employees a mechanism to raise concerns or issues with respect to sexual harassment at the workplace; and (iv) to provide them with an appropriate redressal mechanism.

2.3. Sexual harassment of employees at workplace is a grave offence which would be treated as 'Misconduct' under MOHAN Foundation's Code of Conduct. Any conduct or behavior that amounts to sexual harassment shall result in disciplinary action as mandated by relevant Company policies and applicable laws.

2.4. This Policy is framed bearing in mind the provisions and applicability of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as "the Act") and the Rules framed thereunder as well as MOHAN Foundation's Code of Conduct and other policies respecting diversity and equality.

### **3. Applicability & Scope:**

3.1. This Policy shall be applicable to all "Employees" of the Foundation irrespective of their Gender and to any Aggrieved Person as defined hereinafter.

3.2. This policy shall come to effect in instances where the respondent is an employee of MOHAN Foundation and the incident occurs at MOHAN Foundation or its work/implementation sites.

3.3. The respective Employees of MOHAN Foundation is appointed as the person(s) responsible for the overall administration and implementation of this Policy.

3.4. The establishment where the incident occurs and/or where Respondent is posted shall primarily have the jurisdiction to address and facilitate redressal of any complaint under this Policy.

3.5. This Policy should be read together with the rules framed under this Policy.

### **4. Definitions**

4.1. "Sexual harassment" includes any one or more of the following unwelcome acts or behavior whether directly or by implication, namely: -

- i) Physical contact and advances; or
- ii) Demand or request for sexual favors; or
- iii) Making sexually coloured remarks; or
- iv) Showing pornography; or

v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

If any of the following circumstances occur or are present in relation to or connected with any act or behaviour of sexual harassment, the same may amount to sexual harassment:

i) Implied or explicit promise of preferential treatment in employment of employee; or

ii) Implied or explicit threat of detrimental treatment in his/her employment; or

iii) Implied or explicit threat about his/her present or future employment status; or

iv) Interferes with his/her work or creating an intimidating or offensive or hostile work environment for him/her; or

v) Humiliating treatment likely to affect his/her health or safety.

4.2. **“Aggrieved person”** means any employee, of any age, whether employed with the Foundation or not, who alleges to have been subjected to any act of sexual harassment by the Respondent.

4.3. **“Complainant”** means any Employee of MOHAN Foundation or an aggrieved person who alleges to have been subjected to any act of sexual harassment by the Respondent;

4.4. **“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 MOHAN Foundation, 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 (including Community Sports Coach), Volunteer or called by any other such name.

4.5. **“Employer”**

(i) In relation to Organizational Establishment shall mean Head of MOHAN Foundation.

4.6. **“Workplace”**: Each of the following shall individually be the “workplace” for the purpose of this Policy: -

(a) City office at Chennai, Hyderabad, Delhi (NCR), Trivandrum, Nagpur, Chandigarh, Jaipur, Pondicherry, Mumbai and Bengaluru – which are offices setup by MOHAN Foundation for the purposes of running the activities of the organization

“Workplace” shall also include any place visited by the employee arising out of or during the course of employment, including transportation provided by MOHAN Foundation for undertaking such journey, or on offsite or during business functions, events, activities of MOHAN Foundation or accommodation and shall also include any hotel or restaurant if used for any purpose connected with or relating to activities of MOHAN Foundation.

MOHAN Foundation may, at its discretion, and if the facts and circumstances so warrant, also take cognizance of incidents occurring at places other than workplace as defined above, e.g. functions and events of personal nature organized by one employee and attended by other or jointly organized by them, etc.

4.7. **“employer”** shall have the same meaning as defined under the Act;

4.8. **“respondent”** means a person against whom the aggrieved Employee/ Aggrieved Person has made a complaint of sexual harassment;

4.9. **“Local complaints committee”** means the committee constituted in the district by every District Officer to receive complaints of sexual harassment under the Act;

## **5. Constituents of Sexual Harassment:**

5.1. Sexual Harassment is a serious offence that can destroy human dignity and violates the right to gender equality, the right to 'life and liberty', and the fundamental right 'to practice any profession or to carry out any occupation, trade, or business.' It is an act amounting to misconduct in employment.

## **6. Internal Complaints Committee:**

6.1. MOHAN Foundation shall constitute an Internal Complaints Committee (“ICC”).

The ICC shall at a minimum comprise of;

a. **A Presiding Officer** who shall be a woman employed at a senior level at workplace from amongst the employees or nominated from other offices/ other workplace(s) of the Company, as provided in the Act;

b. Not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge; and

c. One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. The ICC may also co-opt additional members from other offices of MOHAN Foundation. Provided that at least one half of the total members so nominated shall be women.

6.2. The order constituting ICC for MOHAN Foundation and penal consequences of sexual harassment are put up on the notice board of City Office respectively and is also easily accessible to employees along with other Policies and Guidelines.

6.3. The chairperson or any member of the ICC cannot hold office for a period exceeding 3 (three) years from the date of their nomination. Changes in the constitution of the ICC whenever necessary shall be made as expeditiously as possible.

6.4. In case a member of the ICC dies or ceases to be engaged, as the case may be, with MOHAN Foundation during the period of nomination, then the Organization will appoint an alternate member to the ICC instead.

6.5. Any member of the ICC shall be removed from the ICC if:

a) he/she makes known to the public, press or media by means of publishing, communicating or in any other manner, any information in relation to the contents of a complaint, the identity and addresses of the Complainant, Respondent and witnesses, details of the conciliation and inquiry proceedings, recommendations of the ICC, or the action taken against the Respondent. Such non-disclosure obligation shall not apply to information regarding the justice secured to any Complainant. However, care should be taken that the name, address, identity or any other particulars that could lead to the identification of the Complainant or witnesses should not be disclosed; or

b) he/she has been convicted for an offence or an inquiry into an offence under any law for the time being in force or is pending against him/her; or

c) he/she has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him/her

## **7. Registration of Complaint:**

7.1. Any Employee/ Aggrieved Person may file a written complaint of sexual harassment at the workplace to the ICC. It shall equally be responsibility of all managers to notify a member or secretary of the ICC of an incident of sexual harassment that he/she is either witness or is brought to his/her notice by the employee/aggrieved woman.

7.2. All complaints relating to sexual harassment at workplace shall be made as provided in the rules framed under this Policy, within a period of 3 (three) months from the date of incident. In case of a series of incidents, the complaint shall be made within a period of 3 (three) months from the date of last incident.

7.3. The ICC in its own discretion and for reasons to be recorded in writing, may extend the time limit not exceeding 3 (three) months, if it is satisfied that the circumstances were such which prevented the Employee/ Aggrieved Person from filing a complaint within the said period of 3 (three) months.

7.4. (i) Where the Aggrieved Person is unable to make a complaint on account of her/his physical incapacity, the complaint can be filed by –

- (a) his/her legal heir; or
- (b) his/her relative or friend; or
- (c) his/her co-worker; or
- (d) Any officer of National Commission for Women or State Women's Commission; or
- (e) Any person who has the knowledge of the incident, with written consent of the aggrieved person.

(ii) Where the Aggrieved Person is unable to make a complaint on account of his/her mental incapacity, the complaint can be filed by –

- (a) his/her legal heir; or
- (b) his/her relative or friend; or
- (c) a special educator; or
- (d) qualified psychiatrist or psychologist; or
- (e) the guardian or authority under whose care he/she is receiving treatment or care; or
- (f) any person who has the knowledge of the incident jointly with his/her relative or friend or special educator or qualified psychiatrist or psychologist; or the guardian or authority under whose care he/she is receiving treatment or care.

(iii) Where the Aggrieved Person for any other reason is unable to make a complaint, a complaint can be filed by his/her legal heir or any person who has knowledge of the incident, with her written consent.

(iv) Where the aggrieved person is dead, the complaint can be filed by his/her legal heir or any person who has knowledge of the incident, with the written consent of his/her legal heir.

## **8. Conciliation:**

8.1. The ICC may, before initiating an inquiry, at the request of the Employee/ Aggrieved Person take steps to settle the matter between him/her and the respondent through conciliation. However, no monetary settlement shall be made as a basis of conciliation.

8.2. If the parties arrive at a settlement, the ICC shall record such settlement and forward the same to employer to take actions specified in the recommendation.

8.3. The ICC shall provide copies of settlement as recorded to the Employee/ Aggrieved Person and the Respondent.

8.4. Where a settlement is arrived at, no further inquiry shall be conducted by the ICC.

8.5. If the Employee/ Aggrieved Person inform the ICC that the Respondent has not complied with any term or condition of the settlement, or if no settlement is reached at after the conciliation process, an inquiry into the complaint shall be made by the ICC.

### **9. Conducting of inquiry by the Internal Complaints Committee:**

9.1. The Complainant shall submit to the ICC the complaint along with the supporting documents and the names and addresses of the witnesses. The complaint shall contain all the relevant material and relevant details concerning the alleged sexual harassment including the name(s) of the Respondent.

9.2. Within a period of 7 (seven) working days from the receipt of the complaint, the ICC shall send one copy of the complaint to the Respondent. The Respondent shall file his/her reply to the complaint along with his/her list of documents, names and addresses of witnesses within a period of 10 (ten) working days from the date of receipt of complaint.

9.3. The ICC will take immediate necessary action to cause an inquiry to be made into the complaint in accordance with the principles of natural justice. Both the Complainant and the Respondent will be given an equal opportunity to be heard. No Advocate/ legal practitioner shall be permitted to represent complainant or the Respondent. A copy of the findings of the ICC shall be made available to both the parties enabling them to make representation against the findings before the ICC.

9.4. The ICC shall in relation to the complaints filed by an Aggrieved Person have the powers of a civil court as provided under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters:

- i) Summoning and enforcing the attendance of any person and examining him on oath.
- ii) Requiring the discovery and production of documents.
- iii) Any other matter.

9.5. The ICC shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, after giving advance notice of 15 (fifteen) days in writing, if the Complainant or Respondent fails without sufficient cause to present themselves for 3 (three) consecutive hearings convened by the Presiding Officer. The ICC will make every effort to complete the inquiry within a period of 90 (ninety) days of receipt of complaint by the ICC.

9.6. The ICC during the pendency of the inquiry, on the written request of the Complainant, recommend to the employer (i) to transfer the Complainant or the Respondent to any other workplace; or (ii) grant leave to the Complainant up to a period of 3 (three) months; or (iii) restrain the Respondent from reporting on the work performance of the Complainant or writing his/ her confidential report and assign the same to another officer.



9.7. The leave from work granted under clause 9.7 would be in addition to the leave sanctioned under the leave policy of the Organization.

9.8. The employer will implement the recommendations of the ICC received under clause 9.6 and send the report of such implementation to the ICC.

#### **10. Local Complaints Committee:**

10.1 In the event, the complaint of sexual harassment is against the employer, the Aggrieved Person should make a complaint in writing to the "Local Complaints Committee" constituted in accordance with law.

#### **11. Investigation Report:**

11.1 On the completion of an inquiry under this Policy, the ICC shall provide a report of its findings to the employer, within a period of 10 (ten) days from the date of completion of the inquiry and such report shall be made available to the Complainant and Respondent.

11.2 Where the ICC 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.

11.3 Where the ICC arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend to the employer such measures as set out in this Policy.

11.4 The employer shall implement the recommendation of the ICC within 30 (thirty) days of its receipt by him.

#### **12. Disciplinary Action:**

12.1 For the purposes of this Policy, disciplinary action for sexual harassment may result in any one or more of the following;

- i) Written apology
- ii) Warning
- iii) Reprimand or censure
- iv) Withholding of promotion
- v) Withholding of pay rise or increments
- vi) Termination from service
- vii) Undergoing counseling session
- viii) Carrying out community service

12.2 In addition to the disciplinary action taken in terms of 12.1, an appropriate amount as determined by the ICC shall be deducted from the salary or wages of the Respondent and paid to the Employee/ Aggrieved Person or to Aggrieved Person's legal heirs as compensation.

12.3 If due to absence of the Respondent from his duty or cessation of his/her employment, the employer is unable to deduct the amount referred to in clause 12.2, the employer can direct the Respondent to pay such amount to the Employee/ Aggrieved Person directly.

12.4 If the Respondent fails to pay the amount referred to in clause 12.2 to the Aggrieved Person or his/her legal heirs, the ICC may forward the order for recovery of the sum as an arrear of land revenue to the District Officer in accordance with the Act.

12.5 In determining the compensation required to be paid by the Respondent to the Employee/ Aggrieved Person as per clause 12.2, the ICC shall have regard to:

- i) The mental trauma, pain, suffering and emotional distress caused to the complainant;
- ii) The loss in the career opportunity due to the incident of sexual harassment;
- iii) Medical expenses incurred by the victim for physical or psychiatric treatment;
- iv) The income and financial status of the Respondent; and
- v) Feasibility of such payment in lump sum or in installments.

### **13. False or Malicious complaint and false evidence:**

13.1. Where the ICC or the Local Complaints Committee, as the case may be arrives at a conclusion that the allegation against the Respondent is malicious or the Complainant has made the complaint knowing it to be false or the Complainant has produced any forged or misleading document, it may recommend to the employer of the Complainant or the District Officer, as the case may be, to take action against the Complainant in accordance with the provisions of clause 12.1 or the service rules applicable to the Complainant.

13.2 A mere inability to substantiate a complaint or provide adequate proof will not attract action against the Complainant.

13.3 Before any action is recommended by the ICC, the malicious intent on part of the Complainant shall be established after an inquiry in accordance with the procedure prescribed in the rules framed by the Company under this Policy.

13.4 Where the ICC or the Local Complaints Committee, as the case may be arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading documents, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the witness.

13.5 In cases of proven false or malicious complaints, the Company shall take appropriate steps to restore the reputation of the accused person.

#### **14. Confidentiality:**

14.1 All proceedings, documents and records maintained under this Policy shall be confidential.

14.2 Special privacy safeguards will be applied to the investigation and complaints will be handled on a confidential "need to know" basis. A pseudonym may be used in place of the Complainant's name.

14.3 All persons involved in the proceeding under this Policy including the parties, witnesses, facilitators, ICC members shall be under a duty to respect and maintain confidentiality.

14.4 The contents of the complaint made, the identity and addresses of the Employee/ Aggrieved Person, Respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC or the Local Complaints Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Policy shall not be published, communicated or made known to the public, press and media in any manner.

14.5 However, information may be disseminated regarding the justice secured to any victim of sexual harassment under this Policy without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the Employee/ Aggrieved Person and witnesses.

14.6 Any person who is entrusted with the duty to handle or deal with the complaint, inquiry or recommendations or action under this Policy and contravenes the provisions of confidentiality will be liable for penalty as per the service rules of the Organizations or shall pay a fine of INR 5,000 (Rupees Five Thousand only) to the employer.

#### **15. Victimization/ Retaliation:**

15.1 The employer will ensure that any Employee subjected to sexual harassment or any Employee giving evidence in connection with an instance of sexual harassment is not victimized or discriminated against while dealing with complaints of sexual harassment and/or in his/her career in the Organization.

15.2 No Employee will be subjected to retaliatory action relating to his or her report of any alleged sexual harassment.

15.3 The employer shall forbid and take necessary steps to prevent any form of retaliation against witnesses. Even where the witness is found to be false and malicious, action shall be taken against him/her as defined in this policy.

## **16. Appeal:**

16.1 Any person, if aggrieved by the findings and recommendation of the ICC or non-implementation of ICC recommendations, may file an appeal to a court or tribunal in accordance with the Act, within a period of 90 (ninety) days of the recommendations.

## **17. Annual Report:**

17.1 ICC shall prepare an annual report at the end of the financial year and submit such report to the employer and to the District Officer as required under the Act. The annual report will contain information of complaints received from Aggrieved Person.

17.2 The annual report shall contain the following details:

- a) Number of complaints of sexual harassment received in the year;
- b) Number of complaints disposed of during the year;
- c) Number of cases pending for more than 90 (ninety) days;
- d) Number of workshops or awareness programs against sexual harassment carried out; and
- e) Nature of action taken by the employer or District Officer.

## **18. Awareness:**

18.1 MOHAN Foundation conducts training sessions, workshops, awareness programs for sensitizing the Employees with the provisions of the Act and on sexual harassment. It is mandated that Employees should attend these awareness programmes/ training sessions.

18.2 Any clarification/s or explanation in respect of this policy will be provided by the respective members of the ICC from that the City office.

18.3 MOHAN Foundation will provide necessary facilities to the ICC established by the Organization/ or Local Complaints Committee for dealing with the complaints and conducting an inquiry.

18.4 MOHAN Foundation will provide assistance in securing the attendance of Respondent and witness before the ICC of the Organization / Local Complaints Committee.

18.5 MOHAN Foundation will make available all the necessary information required by the ICC of the Organization and Local Complaints Committee, as the case may be.

18.6 MOHAN Foundation shall provide assistance to the Aggrieved Person if He/she chooses to file a complaint in relation to the offence under the Indian Penal Code, 1860, or any other law for the time being in force;

18.7 A copy of this Policy on Prevention of Sexual Harassment at the Workplace and the rules framed under this Policy will be displayed on the notice board of the City Offices. The names

contact numbers and email ids of the members of the ICC will be displayed on the notice board of each of the city offices.

For any clarification on this Policy, an Employee can approach the POC of the location