

MHI POLICY AGAINST SEXUAL HARASSMENT AT THE WORKPLACE

Introduction

The Mariwala Health Initiative (MHI) recognizes sexual harassment as an infringement on the rights and freedoms of employees at a workplace. Sexual harassment vitiates the work environment and can cause detrimental effects to the mental, physical, and social well-being of the survivor(s). It is a serious and complex concern intersecting with various axes of power. Hence, it is imperative that organizations while drafting their policies against sexual harassment, take into account, the complexities of gender identity, sexual preference, age, caste, class, etc.

An important beginning point is the various international conventions that have called for the protection and redressal of employees from sexual harassment at the workplace. In particular we have Article 11(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, that calls for guaranteeing the safety of women at the workplace. In June 2019, the International Labour Organization (ILO) adopted the ILO Convention on Violence and Harassment. The Convention draws inspiration from the ILO Declaration of Philadelphia (1944) that “affirmed that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.” Article 6 of the 2019 Convention states that “Each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.”

In the Indian context, the Vishaka guidelines, acknowledged that sexual harassment of working women amounts to violation of the rights of gender equality, violation of the right to practice any profession, occupation, and trade. The guidelines included the definition of sexual harassment, and stated that “such conduct can be humiliating and may constitute a health and safety problem”, emphasizing preventive measures for sexual harassment. In 2013, the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 was enacted to provide protection against sexual harassment of women at the workplace and for preventing and addressing complaints of sexual harassment. In consonance with the Vishaka Guidelines, the 2013 Act recognized sexual harassment at the workplace as violation of the fundamental rights to equality before law, discrimination and to life and personal liberty guaranteed by the Constitution of India.

In order to create an all-encompassing policy against sexual harassment at the workplace, the Vishaka Guidelines and the 2013 Act should be read along with another significant legislation passed in 2014. In the NALSA vs Union of India (2014) judgement, the Supreme Court recognized that the fundamental rights, including Article 14 & 15, are inclusive of all genders, and apply to trans and gender non-conforming (GNC) people as well. Trans and GNC people are entitled to



equal legal protection of the law in all spheres, including employment, health care, education and civil rights. Therefore, MHI believes that protection against sexual harassment or access to grievance and redressal mechanisms against it should be made available not just to women, but also, trans, GNC and other people with non-normative gender identities and sexual preferences.

The MHI Policy against Sexual Harassment at the Workplace follows the spirit and the legal mandate provided by the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013, and seeks to create a safe work environment. The due process provided under the Act will be followed by the Internal Complaints Committee (ICC) created by MHI, and every effort will be made to avoid any backlash or retaliatory action against the aggrieved person, witness (es), or any person supporting such complaint of sexual harassment.

Policy

1. Title and scope

The title of the Policy is the 'Mariwala Health Initiative Policy on Prevention of Sexual Harassment at the Workplace'. It will henceforth be referred to as 'the Policy' and it applies to the MHI workplace as defined below.

2. Definition

a. Aggrieved person- means in relation to the workplace of MHI

- i. An aggrieved person can be any woman, whether an employee of MHI or not.
- ii. An aggrieved person can be any man, trans person, GNC person, or any person identifying with a non-normative gender identity or sexual preference, whether an employee of MHI or not.
- iii. In case the aggrieved person is an employee; they may be employed on a regular, temporary, adhoc, or daily wages basis with MHI. They may be working for remuneration, on a voluntary basis or otherwise.

b. Respondent

Respondent is any person against whom the aggrieved person has made a complaint of sexual harassment and the respondent can be an employee or a third party.

- c. **Sexual Harassment** - For the purpose of this Policy, MHI will recognize sexual harassment as being of the following categories:

i. **Quid Pro Quo**

- Implied or explicit promise of preferential/detrimental treatment in employment
- Implied or express threat about the aggrieved person's present or future employment status

ii. **Hostile Work Environment**

- Creating a hostile, intimidating or an offensive work environment
- Humiliating treatment likely to affect the aggrieved person's mental and physical health or safety

Sexual Harassment includes any one or more of the following unwelcome acts or behaviours (whether directly or by implication) namely:

- i. physical contact or advances; or
- ii. demand or request for sexual favours; or
- iii. making sexually coloured remarks; or
- iv. showing of pornography; or
- v. any other unwelcome, physical, or verbal, or non-verbal conduct, of a sexual nature, including but not limited to sexually suggestive remarks or innuendos, jokes, made or sent in person or on social media.

d. **Workplace**

- i. Workplace includes the premises of MHI at 8th floor, Grande Palladium, 175, CST Road, Kalina, Santa Cruz (E), Mumbai, Maharashtra 400098.
- ii. Any other place, which is visited by the employee/aggrieved person for official purposes such as meetings, workshops, trainings, conferences etc. organized by MHI.
In effect, the application of the policy is not confined to the place of work, but will also apply to sexual harassment committed in connection to any place visited by the employee or consultant, arising out of or during the course of employment including transportation by the employer for undertaking such journey (the 'workplace').

3. Responsibilities of MHI - MHI is responsible towards creating a safe environment for its employees by discharging the following responsibilities:

- a. MHI will ensure that the public display of this Policy in simple, easy to understand and also available in the local language. This will also include the contact details of the members of the Internal Complaints Committee (ICC). Each existing employee and consultant will

be provided with a copy of this Policy upon the initial adoption of this Policy and thereafter new employees and consultants will be provided with a copy upon joining.

- b. MHI will display in a conspicuous place in each office, the penal consequences of sexual harassment;
- c. MHI will organise periodic trainings for sensitising employees and consultants on issues pertaining to sexual harassment.
- d. MHI shall act decisively against all forms of sexual harassment and follow the present Policy in its true letter and spirit.
- e. MHI shall also organise regular orientation or training programmes for ICC members.
- f. MHI views its employees and consultants as partners in ensuring the prevention of sexual harassment, and encourages them to speak up about sexual harassment, including of others. It will ensure that there is no retaliation, either of the victim, witnesses or of those supporting them.
- g. Provide assistance to the aggrieved person by way of providing leave from work or any other form of help/support they may require during the process.
- h. In the scenario where the Respondent is not an employee of MHI, the latter will provide assistance to the aggrieved person in seeking redressal.

4. Internal Complaints Committee

a. Constitution

The ICC will be created by MHI for the purpose of investigating complaints of sexual harassment and providing the required redressal. The ICC will have jurisdiction over the MHI workplace that has been defined above.

b. Composition

- i. The ICC will consist of a Presiding Officer, who will be a senior women member of MHI.
- ii. MHI will nominate the following members to the ICC;
 - a mental health practitioner with an established understanding of mental health as a psycho-social issue,
 - a representative from an MHI partner organization or any other external NGO, and

- a representative from an organization/collective working on issues of gender and sexuality.
- iii. One external member who will be from an NGO or will otherwise have knowledge on working on issues of gender equality, sexuality, law or any other field that will help them discharge their duties as ICC members effectively.
 - iv. In the scenario that the aggrieved person belongs to a marginalized group, MHI can decide on including an external member from a similar background to provide the necessary perspective and sensitivity to the ICC.
 - v. In the scenario that any member of the ICC is known either to the aggrieved person or the respondent; the said person shall have to excuse themselves from the ICC for that particular case in order to avoid a conflict of interest. They will also not be kept in the loop of the proceedings of the case.
 - vi. At least half of the total number of nominated members of the ICC shall be women or Non-binary, trans-masculine persons or persons assigned gender female at birth.

Current nominated members of the committees are given in Annexure A.

c. Term

ICC members will hold their position not exceeding three years from the date of their nomination or appointment.

d. Remuneration

The external member will be remunerated with a daily allowance of INR 2,000 for discharging their duties as an ICC member.

e. Complaint

- i. The aggrieved person can file a written and signed complaint or a verbal complaint through voice notes or any other auditory mechanisms with the ICC by providing a hard copy or sending it to the official ICC email address - icc@mariwalahealthinitiative.org .
- ii. If for some reason the aggrieved person is unable to write the complaint, a designated member of the ICC should assist her/them in doing so.
- iii. Where the aggrieved person is unable to make the complaint themselves, the complaint can be filed on their behalf with the ICC by any of the following persons:
 - If the aggrieved person is physically indisposed- their relative or friend, or their co-worker; or an officer of the National Commission for Women or State Women's Commission; or any person who has knowledge of the incident, with the written consent of the aggrieved person.
 - If the aggrieved person is mentally indisposed- their relative or friend, or a special educator, or a qualified psychiatrist or psychologist, or the guardian or authority

under whose care the aggrieved person is receiving treatment or care, or any person who has knowledge of the incident jointly with their relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care the aggrieved person is receiving treatment or care.

- In the event that the aggrieved person is unable to file the complaint by themselves for any other reason- any person who has knowledge of the incident, with the written consent of the aggrieved person.
- In the event of the death of the aggrieved person- any person who has knowledge of the incident, with the written consent of the aggrieved person's legal heir.

iv. **Limitation period of the complaint-** The aggrieved person should submit the complaint within three months from the incident of sexual harassment, and in case of multiple incidents, within three months from the latest incident. In case of any exigent circumstances, the ICC can relax this rule, and grant an additional time of three more months.

v. **Redressal process**

- The ICC will send a written acknowledgement of the receipt of the complaint to the aggrieved person.
- The ICC may, with the wish and consent of the aggrieved person, initiate a conciliatory process between the aggrieved person and the respondent. The ICC has to make sure that there is no coercion involved and that a fair process is followed to arrive at conciliation between the two parties. No monetary settlement shall be made as a basis of conciliation. The decision and resulting recommendations will then be communicated to the MHI Board. In case the aggrieved person is satisfied with the process followed, no further inquiry will be made by the ICC into the matter.
- In the event that the aggrieved person does not desire conciliation with the respondent, the ICC will launch its inquiry process. During the process the ICC is expected to be highly sensitive to the requirements of the aggrieved person, and follow a fair process of redressal in the matter.
- The ICC will investigate in detail the complaint and seek clarification/ documents from both the aggrieved person and respondent.
- At the time of filing the complaint with the ICC, the aggrieved person shall submit a copy of the complaint or the audio notes, along with supporting documents and names and addresses of witnesses she/he/they want to examine.
- Within seven days of receiving a complaint, the ICC will inform the respondent in writing that a complaint has been received. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter, and may include supporting documents and names and addresses of witnesses the respondent wants examined.
- No legal representative for either the aggrieved person or the respondent can be present during the proceedings of the inquiry.

- The aggrieved person and the respondent will have the opportunity to cross examine each other and other witnesses presented by each party with the consent of the aggrieved person. The ICC needs to ensure that this cross-examination happens in a respectful manner, especially for the aggrieved person and their witnesses, where they feel safe and comfortable and are not humiliated or threatened.
- In the event that either the aggrieved person or the respondent, without sufficient cause, fail to show up for three consecutive hearings convened by the Presiding officer, the ICC can terminate the inquiry proceedings or provide an ex-parte decision. However, the ICC needs to notify both the aggrieved person and the respondent 15 days prior to terminating the process or passing an ex-parte decision.
- During the pendency of the inquiry, on request by the aggrieved person, their witnesses (if employees of MHI) or the respondent (if an employee of MHI), the ICC may recommend to MHI to -
 - Grant leave of maximum 3 months, in addition to the leave she/he/they would be otherwise entitled to.
 - Transfer the Complainant/Respondent to another workplace to minimise the risks involved in contact or interaction;
 - Restrain the Respondent from reporting on or evaluating the work or performance of the aggrieved person;
 - Take strict measures to provide a conducive environment of safety and protection to the aggrieved person against retaliation and victimisation as a consequence of making a complaint.
 - Grant such other relief as may be appropriate.

vi. Decision process

- Decisions taken by the ICC will be taken through a majority vote.
- Post the inquiry the ICC shall submit its report containing the findings and recommendations to MHI CDO & the Board within 10 days of completion of the inquiry.
- Where the ICC concludes that the allegation against the respondent has not been proved, it recommends to the Management that no action is required to be taken in this matter.
- Where the ICC concludes that the allegation against the respondent has been proved, it will recommend to the Management to take necessary action, in accordance with the applicable service rules and policies, and this may include:
 - Counseling
 - Censure or reprimand
 - Apology to be tendered by respondent
 - Written warning

- o. Withholding promotion and/or increments
- o. Suspension
- o. Termination
- o. Or any other action that MHI may deem fit
- MHI Board will act upon the recommendations within 60 days and confirm to the ICC.
- MHI Board does not have to share all details of the action taken against the respondent with the aggrieved person. The quantum of information to be shared with the aggrieved person can be decided on a case-to-case basis. All information about the action taken against the respondent needs to be shared with the respondent.
- As a follow-up, the Presiding officer or any other representative from MHI can ensure from the aggrieved person, whether the behaviour on part of the respondent has in fact stopped, and whether there has been any violation post the action taken by MHI against the respondent.
- Where the ICC concludes that the aggrieved person or any other person making the complaint has made the complaint knowing it to be false or the aggrieved person or any other person making the complaint has produced any forged or misleading document, it may recommend to MHI Board to take action against the aggrieved person making the complaint.
- In case of a false complaint, the ICC should consider that mere inability to substantiate a complaint need not mean harmful intent on behalf of the aggrieved person. Any kind of harmful intent behind making a false complaint must be clearly established through a separate inquiry.
- The identity of the aggrieved person, respondent, witnesses, statements and other evidence obtained in the course of the inquiry process, recommendations of the ICC, action taken by MHI is considered as confidential materials, and not published or made known to public or media. Any person contravening the confidentiality clauses is subject to disciplinary action as prescribed in the Act.
- Any party not satisfied or further aggrieved by the implementation or non-implementation of recommendations made, may appeal to the appellate authority in accordance with the Act and rules, within 90 days of the recommendations being communicated.

5. General principles-

- a. The ICC is expected to maintain clear, timely communication with the parties throughout the process.
- b. MHI should provide aggrieved persons with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.
- c. The past sexual history or character of the aggrieved person shall be deemed irrelevant



- d. The ICC should understand and factor in the power dynamics between the aggrieved person and the respondent. This power could be because of their role, social status, caste locations, age or any other social privileges

References

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ANNEXURE A

Current nominated members of the Internal Complaints Committee of the Mariwala Health Initiative:

- Presiding Officer – Shruti Chakravarty, Chief Advisor, MHI
- Member – Anam Mitra, Manager New Initiatives, MHI
- Member – Dr. Vaishali Sonawane, Grants Manager, MHI
- Member- External – Amritananda Chakravorty