

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013

Code for Azad Foundation-2016

A Code to provide protection against sexual harassment of women employed at Azad Foundation and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

For matters of sexual harassment of Azad Foundation employees, trainees at workplaces other than Azad Foundation, please see the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act., 2013 and the Rules connected therewith.

CHAPTER I

PRELIMINARY

1. (1) This Code may be called the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Code at Azad Foundation, 2016 [hereinafter called the "Code"].
- (2) It extends to all Azad Foundation offices, branch offices, field offices and support centres/ institutions like IDTR Maruti Sansthan/Maruti Driving Schools or any other Driving Schools or while practicing in cars, Indian Red Cross, St John Ambulance or any other First Aid training school, Police premises in any city and all those spaces where institutional activities are taking place.
- (3) No woman shall be subjected to sexual harassment at the workplace.
2. In this Code, unless the context otherwise requires,—
 - (a) "aggrieved person" means in relation to Azad Foundation, a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
 - (b) "Complaint" means a complaint within the meaning of S. 5 of the Code.
 - (c) "Complainant" means any the aggrieved person or any other person, who makes a complaint within the meaning of this Code.

Provided that in cases where another person makes the complaint on behalf of the aggrieved person, the complaint must be made in accordance with S. 5(2) of the Code.

- (d) "employee" means a person employed at Azad Foundation 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, intern, apprentice called by any other such name;

(e) "employer" means Azad Foundation;

(f) "Internal Committee" means an Internal Complaints Committee constituted under section 4;

(g) "Governing Board" means the Trustees of Azad Foundation which has the authority to make decisions and ensures that the decisions are carried out;

(h) "Member" means a Member of the Internal Complaints Committee;

(i) "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(j) "respondent" means a person against whom a complaint has been made under S. 9;

(k) "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) a demand or request for sexual favors; or

(iii) making sexually colored remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(vii) implied or explicit promise of preferential treatment in employment; or implied or explicit threat of detrimental treatment in employment; or

(viii) implied or explicit threat about the present or future employment status; or

(ix) interference with his/her work or work environment creating an intimidating or offensive or hostile work environment for him or her.

(x) humiliating treatment likely to affect health or safety.

Explanation: In determining whether sexual harassment exists, the workplace may take into account, acts of discrimination based on gender, sexism,¹ sex-stereotyping or sexual orientation.

(l) "Workplace" includes all Azad Foundation offices, branch offices, field trainings, support centers/ institutions and any event or training that the Azad foundation employees/ trainees attend.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. (1) **Azad Foundation** Governing Board shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee" within one month of the notification of this code.

(2) The Internal Committee shall consist of the following members to be nominated by the Governing Board, namely:—

(a) A Presiding Officer who shall be a woman employed at a senior level at **Azad Foundation**;

Provided, that in case a senior level employee is not available, the Presiding Officer shall be nominated from any other workplace of the same employer, other department or organization

(b) Not less than two members from amongst employees who have had experience in social work or have legal knowledge;

(c) One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues of sexual harassment:

Provided that no one shall serve on the internal complaints committee if s/he has a complaint of sexual harassment lodged against them.

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The member appointed from amongst the non-governmental or associations shall be paid an appropriate amount to be fixed by the Governing Board for attendance at each day of the meeting/inquiry⁵. The member so appointed shall also be entitled to expenses actually incurred for boarding, lodging and travel.

(5) Where the Presiding Officer or any member of the Internal Committee,—

(a) Contravenes the provisions of section 12 of Sexual Harassment at workplace; or

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

(c) Has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him/her; or

(d) has so abused his/her position as to render his/her continuance in office prejudicial to Azad Foundation's interest, such Presiding Officer or Member, as the case may be, shall be removed from the Internal Committee by the Governing Board and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

A complaint of abuse of position against the members of the committee may lie with the local complaint committee in case of an internal complaints committee. The members found guilty of abuse will be removed from the committee. This is in addition to other civil and criminal proceedings that may lie against them on account of abuse.

Provided further that any vacancy so created in the Internal Complaints Committee shall be filled within a period of one month from the creation of the vacancy

CHAPTER III

COMPLAINT

5. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at Azad Foundation to the Internal Committee so constituted, within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of the 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 person for making the complaint in writing:

Provided further that the Internal Committee may, for 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.

(2) Where the aggrieved person is unable to make a complaint on account of her or his physical or mental incapacity or death or otherwise, her/his legal heir or the following may make a complaint under this section:

1. any relative of the aggrieved person; or
2. a co-worker; or
3. the National/State Women's Commission;

(3) The Internal Complaints Committee may also take cognizance of cases of sexual harassment *suo motu*

6. (1) The Internal Complaints Committee may, before initiating an inquiry under section 7 *and 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.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee shall record the settlement so arrived and forward the same to the employer to take action as specified in the recommendation.

(3) The Internal Committee shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved person and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee.

CHAPTER IV

INQUIRY PROCEEDINGS

7. (1) Subject to the provisions of S. 6, the Internal Committee, shall, *where the respondent is an employee*, proceed to make inquiry into the complaint in accordance with the following provisions:

i. Subject to S. 6, on receipt of a complaint under S. 5 by any of the members of the Internal Complaints Committee, the same shall be communicated to the Presiding Member of the committee who shall then call a meeting of the committee within 3 working days of the receipt of the complaint.⁷ If all the members of the committee cannot be at the same venue on the day so appointed for this meeting, arrangements must be made to have this meeting using video conferencing/phone conferencing technologies.

ii. The complainant shall then within a period of 10 days of the date of the meeting, be required to submit amongst others:

- A detailed narrative of the incident.
- List of documents if any by which the charges are proposed to be substantiated.
- List of witnesses, if any.
- In addition to the list of charges framed against the respondent, the committee shall send a copy of each document received from the complainant to the respondent within a period of one week who shall then be expected to reply to the charges within a period of 10 days from the receipt of the documents.

iii. The documents tendered by the complainant/respondent must be tendered to the opposite party not less than 2 days before the scheduled hearing.

iv. The first hearing shall be convened within a period of not more than 10 days from the receipt of the reply. The respondent, the complainant and witnesses shall be intimated at least 72 hours in advance in writing of the date, time and venue of the inquiry proceedings.

v. During the pendency of the enquiry proceedings, the complainant and the respondent and their witnesses shall not be brought face to face so as to ensure freedom of expression and freedom from intimidation.

vi. The committee may reject any question that it has reason to believe to be irrelevant, mischievous, gender- insensitive.

vii. If the complainant desires to tender any document by way of evidence, the inquiry committee shall supply true copies of such documents to the respondent. Similarly, if the respondent desires to tender any documents in evidence, the inquiry committee shall true copies of such documents to the complainant.

viii. All proceedings of the inquiry committee shall be recorded in writing, and the same together with the statement of witnesses shall be endorsed by both the parties

ix. The complainant and the respondent shall have the right of cross examination of all witnesses. The chairperson shall inform the respondent/complainant of the date, time and venue of such cross examination.

xi. Once an inquiry has been commenced, the complaint shall not be withdrawn except by when the committee is convinced that such withdrawal is not due to any pressure that the complainant/aggrieved person is facing.

xii. During all meetings of the committee, the quorum required shall be three fourths of the total number of members including the chairperson of the committee.

xiii. The Committee shall complete the inquiry within 90 days of the date from which the complaint is received except for the reasons that the Committee shall provide in writing.

xiv. The committee shall have the right to terminate the inquiry proceedings to give an *ex parte* decision on the complaint, should the complainant/respondent fail, without valid ground, to present herself/himself for 3 consecutive hearings convened by the chairperson.¹⁴ However, such *ex parte* order may not be passed without giving a notice in writing 15 days in advance to the person concerned.

xv. The Internal Committee shall follow the principles of natural justice:

1. No one shall be a judge in his own cause.
2. Right to be heard; and
3. A speaking order.

xvi. The Internal Complaints Committee shall be empowered to take action as per Section 7 against anyone who intimidates the complainants or the witnesses during or after the inquiry.

xvii. The complainant, respondent and witnesses may appear before the Internal Complaints Committee with a person of their choice, except a lawyer, if so desired. The name of such person shall be notified to the committee and this person shall have an observer status during the inquiry.

xviii. The proceedings of the committee shall be confidential. Violation of the confidentiality will result in removal from the committee.

xix. Nothing precludes the internal committee from taking cognizance of a new fact or evidence connected with the complaint that may arise during the pendency or after the completion of the inquiry proceedings. Such new fact/evidence may be supplied either by the complainant/respondent/witnesses/third parties or the committee may take *suo motu* cognizance of it.

xxi. Cases will be decided on the basis of balance of probabilities

Provided that where the aggrieved person informs the Internal Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both 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.

(2) For the purpose of making an inquiry under sub-section (1), the Internal Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

(a) summoning, whether in person or through video conference, and enforcing, the attendance of any person and examining him/her on oath

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

CHAPTER V

8. (1) During the pendency of an inquiry, on a written request made by the aggrieved person, the Internal Committee may recommend to the Governing Board and the employer to—

(a) transfer the aggrieved person or the respondent to any other workplace;
or

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

(c) grant any other suitable relief to the aggrieved person in accordance with the special requirements of the case ; or

Additionally, the internal committee may recommend the passing of a restraining order against the respondent. The restraint order will be sent by AF and shall contain:

1. A summary of the incident(s) complained of;

2. A warning to the respondent that any attempt by him/her or persons acting on his/her behalf, to, “contact, influence, intimate, or exert pressure on the complainant, her witnesses or any persons enjoying the complainant’s confidence may be prejudicial to his/her case.”¹⁹

Any violation of this restraint order may be notified in writing to the internal committee. If this notification is found to be true, the internal committee may draw an adverse inference against

the respondent or issue a warning to the respondent or close the inquiry and issue an *ex parte* order in the case.

3) It can include an order of suspension as per the HR policy of AF

(2) The leave granted to the aggrieved person under this section shall be in addition to the leave he/she would be otherwise entitled. This would be for a maximum period upto three months as per the Act.

(3) The Governing Board will act upon the recommendations made under sub-section (1) as it sees fit and send the report of such implementation to the Internal Committee.

CHAPTER VI

INQUIRY REPORT

9 (1). On the completion of an inquiry under this Code, 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.

(2) 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.

(3) Where the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer as the case may be, one or more of the following actions be prescribed against the respondent for sexual harassment as misconduct:

1. Written Apology (Public or private depending on the desire of the aggrieved woman).
2. Counseling and gender sensitization training.
3. Adverse remarks in appraisal/ confidential performance reports.
4. Removal from an administrative position.
5. Removal from the department of the aggrieved person. If the respondent is his/ her line manager/supervisor/superior, he/she must be transferred out of the department.
6. Denial of increment/promotion.
7. Demotion.
8. Suspension.

9. Termination of employment.

10. Any other action as the committee may find reasonable.

In determining the action, the committee will keep in mind,

(i) the prior history of the respondent under this Code, any violation of the restraint order by the respondent and the level of injury/trauma (mental, physical or financial) that the aggrieved person has faced.

(ii) To deduct, where necessary, 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 person or to his/ her legal heirs, as it may determine, in accordance with the provisions of section 11 or to organise awareness and counselling sessions etc.

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

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

The employer or the District Officer shall act upon the recommendation within 60 (sixty) days of its receipt by him.

CHAPTER VII

MALICIOUS COMPLAINTS

10. (1) Where the Internal Committee arrives at a conclusion that the allegation against the respondent is malicious or 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 the employer, to take action against the aggrieved person or the person who has made the complaint, in accordance with S.9 of this code.

Provided that a mere inability to substantiate a complaint or provide adequate proof does not amount to malicious complain

Provided that before making an assessment of false/malicious complaint, the committee must provide an opportunity to the complainant to show cause why the complaint is not malicious/false and why action should not be taken against her/him. If the complainant is able to show, on a balance of probabilities, that his/her complaint is not malicious, the committee must conclude that the complaint is not malicious. If not, the committee may conclude that the complaint is malicious provided that it records its reasons in writing for so doing.

(2) A complaint may be held to be malicious if:

(i) The complainant has either confessed before the Internal Committee or has been proved to be falsifying the incident/incidents which constitute the subject of the offence.

Provided that inaccurate information relating to facts incidental to the complaint (such as the date and time of the incident), among other things, does not amount to falsifying.

(ii) Where the Internal Committee arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action in accordance with S. 9 of the Code.

11. For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 9, the Internal Committee shall have regard to—

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved person;

(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;

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

(e) Feasibility of such payment in lump sum or in instalments.

12. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 4, the identity and addresses of the aggrieved person, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee and the action taken by the employer or the District Officer under the provisions of this Code 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 under this Code without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved person and witnesses.

14 (1) Any person aggrieved from the recommendations made under sub section 2 of section 9 or under clause (i) or (ii) of sub section (3) of section 9 or sub section 1 or sub section 2 of Section 10 or Section 13 or non implementation of such recommendations may prefer an appeal to the court or tribunal as the Sexual Harassment of Women (Prevention, Prohibition and Redressal) at Workplace Rules, 2013.

The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER

DUTIES OF EMPLOYER

15. Every employer shall—

- (a) provide a safe working environment at the workplace which shall include safety from the persons 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 under sub-section (1) of section 4;
- (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 in the manner as may be prescribed;
- (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 under sub-section (1) of section 5;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;

(h) cause to initiate action under the Indian Penal Code or any other law for the 45 of 1860, 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.

Provided also that the workplace ensures that the members of the Internal Committee undergo a mandatory training on concepts and laws related to sexual harassment and gender issues before they commence working on the internal committee.

The training shall be held annually and aim to:

(i) to impart basic counselling, mediation and negotiation skills and

(ii) to equip facilitators with a comprehensive understanding of this Code, and

(iii) to impart any other skills or knowledge which may be considered appropriate by the organizers in order to ensure efficient functioning of this Code.”