

TARSHI'S ANTI-SEXUAL HARASSMENT POLICY

2023

TARSHI has policies and provisions for mitigating risks and keeping people safe by safeguarding the organisation, our team members, associates, and the people we work with, from harm. Harm may take many forms that include exploitation, harassment, abuse and various kinds of misconduct and/or fraud.

Any issues related to safeguarding may be brought to the notice of a Safeguarding Lead, unless otherwise specified, or as per legal requirement, such as laid out in particular policies, such as in this policy. Two individuals are designated Safeguarding Leads so that in the absence of either, or in the case that either individual is the subject of, or involved in, a safeguarding issue, the other may be contacted.

A copy of this policy is to be made available to all employees, (whether part-time or full-time), volunteers, interns, and consultants of TARSHI. In the case of staff / ancillary staff members who may not be literate / comfortable with English, key points of policy may be discussed with them by a Safeguarding Lead or a senior team member of TARSHI's Programmes or Administration, Finance and Human Resources department.

As of June 2023, the Safeguarding Leads at TARSHI are:

Veronica George, Chairperson, TARSHI's Board of Directors
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Prabha Nagaraja, Executive Director, TARSHI
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We have a zero-tolerance policy on sexual harassment. This policy is in compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (also referred to as the Act, or the POSH Act ahead in this policy) and the Rules made by the Central Government in exercise of the powers conferred under the Act, (also referred to in this policy ahead as the Rules). This policy strives also, to expand the scope of understanding sexual harassment in diverse contexts, to include protection to all individuals, and therefore includes all gender and sexual identities. It outlines procedures for complaints and investigation, redressal and disciplinary action, as well as processes for implementing this policy.

It must be kept in mind that no internal policy can override the Act. If there is any contradiction between the Act and the policy, or if the provisions of this policy do not cover a specific circumstance or case, then the provisions of the Act will prevail with regard to the sexual harassment of women at the workplace.

The vision and intent behind this policy is to promote an affirmative approach and implement this policy with sensitivity to the issues that are faced by those from

marginalised communities, and with an openness to understanding the specific personal circumstances of individuals as appropriate. While this policy is specific to sexual harassment, all TARSHI policy and implementation is in compliance with the laws as applicable to the organisation and use an intersectional lens to understand the specific factors that are relevant to any given context. The experiential learning, thought and dialogue that have helped create this policy take a rights based approach, and TARSHI considers this policy a living, evolving presence, integral to the organisation.

Every manager, supervisor and staff person is collectively responsible for ensuring that no employee is subjected to conduct that constitutes workplace or sexual harassment. TARSHI is committed to ensuring an enabling, safe and equitable work environment for all individuals connected to the organisation for work including full-time and part-time staff, volunteers, interns and consultants.

1. Sexual Harassment

Sexual harassment is defined in The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013), as: any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- physical contact and advances; or
- a demand or request for sexual favours; or
- making sexually coloured remarks; or
- showing pornography; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

Section 3 (1) of the Act on the prevention of sexual harassment provides that No woman shall be subjected to sexual harassment at any workplace.

As stated at the beginning of this policy document, we reiterate, this policy aims to provide protection to all individuals and includes all gender and sexual identities. The Act specifically takes a gender binary approach and defines the term “aggrieved woman” in the context of the workplace as “a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent”. It is to be noted that this policy in its usage of gender neutral, inclusive terms such as complainant, (or person or individual, when referring to a complainant) includes the specific term ‘aggrieved woman’ as defined in the Act.

Therefore, in compliance with Section 3 of the Act, and also taking a non-binary approach to gender and sexual identities:

Any of the following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in a person’s employment;
or
- implied or explicit threat of detrimental treatment in a person’s employment; or
- implied or explicit threat about a person’s present or future employment status;
or

- interference with a person's work or creating an intimidating or offensive or hostile work environment for them; or
- humiliating treatment likely to affect a person's health or safety.

Sexual harassment may include a wide range of unwelcome/non-consensual actions and behaviours. Sexual harassment can be subtle and indirect or blatant and overt. It can occur between people of different genders or people of the same gender, between peers or between people at differing levels in the organisational hierarchy and may involve a single incident or repeated incidents over a long period.

2. This policy applies to:

All individuals as detailed below, and who may identify as any of many possible gender and sexual identities.

2.1 All team members of TARSHI, including employees, volunteers, interns and those working as consultants with TARSHI, regardless of the nature of their contract, duration of employment or position in the organisation.

2.2 Partners, stakeholders and users of services including, but not limited to, participants in training programmes and workshops and participants in campaigns and public events.

2.3 Community members that we engage with as part of our programmes and events.

2.4 This policy will be applicable if any of the above are subjected to sexual harassment by a TARSHI team member, inside or outside the office, and during or after office hours.

2.5 In cases where a TARSHI team member, is subjected to sexual harassment by a third party who is not a TARSHI team member, this policy mandates immediate action to protect the complainant and to initiate action against the person accused of such harassment, either through the appropriate policy of the employer concerned or, in cases where this is not possible, through the criminal justice system.

3. Internal Committee

In compliance with the law, complaints of sexual harassment will be received, reviewed and investigated by an Internal Committee, also referred to as IC, Complaints Committee or Committee in this policy. This Committee will comprise at least 4 members constituted as follows:

3.1 Presiding officer: Shall be a woman employed at a senior level and nominated by the Board and ED

3.2 Internal Members: Not less than two internal members, two of them women.

3.3 External Members: A person who has demonstrated expertise in handling cases of sexual harassment and violence intervention mitigation work.

The tenure of each IC member will be 3 years.

The Committee is empowered to receive complaints, attempt informal resolution through mediation, conduct formal enquiries and recommend appropriate actions for redressal and penalties. In cases where a complaint is received against a member of the Internal Committee, the concerned individual will be required to step down, and will be replaced by another person from the same category. Members of the committee can be re-nominated but with a minimum gap of one year between their renewed service term.

The only exception of extension in any member's tenure would be in case of an ongoing investigation.

Even if no complaint is filed throughout the year, the IC shall meet at least once in six months i.e. twice in a year (or at such intervals as may be necessary) to discuss the concerns, awareness related activities, refreshing the roles and responsibilities under the Law and the Policy etc. The dates for the two meetings during the year may be decided at the beginning of the year so that all IC members block such a date in advance. All members shall make themselves available for such meetings and inform the Presiding Officer immediately if they are unable to.

4. Complaint and inquiry procedures and processes

4.1 Filing of Complaints

- Any individual contracted for work with TARSHI, including volunteers and interns, can approach any member of the Internal Committee with a written complaint of sexual harassment against a staff member or a third party. If help is required for the complainant to put the complaint in writing, then the Presiding Officer or other member of the IC is to inform the complainant of their rights and help the complainant put the complaint in writing.
- The aggrieved party must complain to the Committee in writing within 3 months of the incident or 3 months from the last incident in case of a series of incidents. This can be further extended to another 3 months by the IC in case of exceptional circumstances. The complaint can also be made by the legal heir in case the aggrieved party is not in physical or mental condition to do so. The IC will be able to accept a complaint later than 6 months after the incident for a legal investigation on a case-by-case basis and may refer cases to the management to take action as the management deems fit. However, in such cases, a mediation and internal remedial procedure will be completed and documented.
- In accordance with the Rules formulated under the Act, at the time of filing the complaint, the complainant shall submit to the IC, six copies of the complaint along with supporting documents and the names and addresses of the witnesses. Further, on receipt of the complaint, the IC shall send one of the copies received from the complainant to the respondent within a period of seven working days. And further, the respondent shall file the reply to the complaint along with supporting 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.
- A meeting of the Internal Committee will be convened within three days of receipt of a complaint, to discuss the substance of the complaint and draw up a time-bound schedule for the further process.
- In the event of all the members of the Committee not being available for a meeting within the stipulated time limit, those present will be empowered to convene a meeting and take immediate decisions on the further process. In accordance with the Rules, when conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer shall be present.

4.2 Informal Process (Conciliation)

In accordance with the provisions of the ACT:

- If considered appropriate, an informal process (discussion with both parties and mediation to resolve the issue) will be attempted, as per the provisions in section 10 of the Act for this process.
- In cases where the informal process has been successful in resolving the grievance, the Committee will close the case and submit a report to the TARSHI Board members, recommending measures to prevent the recurrence of the situation that generated the complaint.
- The choice of a formal process rests with the complainant even if the person/people responsible for managing the complaint believe(s) that this can be resolved through an informal process.

4.3 Formal Process Inquiry

The provisions of the ACT and the Rules will be followed for the inquiry. The complainant and the respondent will be informed of the initiation of the formal process and asked to cooperate.

- If so appropriate, a formal process of inquiry will be followed, as per the provisions for this process laid out in Section 11 of the Act, and Rule 7 of the Rules. Therefore, subject to the provisions of section 10, the Internal Committee shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed.
- Where the complainant 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 of the Act has not been complied with by the respondent, the IC shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police.
- 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.
- The IC, as prescribed in the Act, has the same powers as are vested in a civil court:
 - summoning and enforcing the attendance of any person and examining them on oath;
 - requiring the discovery and production of documents; and
 - any other matter which may be prescribed.
- The proceedings of the investigation and the deliberations of the Committee will be documented by the committee as appropriate to support the process and the preparation of the inquiry report.
- The inquiry is to be completed within a period of ninety days.
- The inquiry report has to be submitted to the ED of TARSHI and the TARSHI Board within 10 days of completion of the inquiry, with copies to the complainant and respondent.
- If the complainant or the respondent does not turn up for 3 consecutive hearings in spite of being summoned by the IC, the IC can give an ex-parte decision and/or the IC can terminate the inquiry proceedings 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.

The IC is to strictly follow the timelines prescribed under the Act throughout the process of inquiry.

4.4 Confidentiality and Protection

Publication or making known the contents of the complaint or inquiry proceedings is prohibited under the Act. Accordingly:

- The Internal Committee will address complaints and carry out the investigation process in a manner that respects the confidentiality and privacy of complainants, respondents and others who provide information or evidence in cases of sexual harassment.
- In exceptional situations where the law requires so, the Committee may decide to set aside the commitment to confidentiality, such as in cases where legal proceedings are initiated and the organisation is required to disclose information, or in cases where disclosure is deemed necessary to protect the interests of others. In such cases, the Internal Committee must provide a written report with such rationale to the Executive Director of the organisation, before proceeding with the same.
- Under the terms of this policy, the organisation is committed to providing support and protection to complainants. Measures will also be taken to prevent further harassment or discriminatory treatment of complainants by supervisors or colleagues on account of having filed a complaint.

4.5. Interim Reliefs

The POSH Act empowers the IC to recommend interim measures to the employer at the request of the aggrieved employee/consultant, such as the following:

- Transfer of the respondent or the complainant to any other workplace, if possible and for up to 3 months, based on a written request by the aggrieved person (complainant)
- Granting leave to the aggrieved person up to a period of 3 months in addition to their statutory/ contractual leave entitlement; and
- Restrain the respondent from reporting on the work performance of the complainant or writing their confidential report. Such duties may be transferred to other employees/consultants.

4.6. Penalties

If an investigation of any allegation of sexual harassment shows that sexual harassment has taken place, the respondent will be subject to disciplinary action, up to and including dismissal. As per Section 26, as an employer, non-compliance with the provisions of the Act attracts penalties upon the employer.

Action is not taken against a complainant if they are unable to substantiate a complaint or they provide inadequate proof. Absence of adequate proof need not mean that the complaint is false or malicious.

The Committee is required to ensure that the respondent pays a compensation to the aggrieved person, if the allegation(s) is/are proved to be true. As per the Act, compensation is determined by:

- The mental trauma, pain, suffering and emotional distress caused to the aggrieved person.
- The loss of career opportunity due to the incident of sexual harassment.
- Medical expenses incurred by the victim for physical or psychiatric treatment
- The income and financial status of the respondent
- Feasibility of such payment in lumpsum or in installments

As per the Rules, the following penalties may be imposed upon a person against whom the allegation of the complainant are proved, as concluded by the IC. The degree of penalty will be decided by the IC and it shall recommend to the employer, as the case may be, 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 counselling session or carrying out community service.

5. Implementation of this policy

Each member of the TARSHI team, regardless of role or seniority, is responsible for creating and maintaining a respectful and harmonious work environment. All employees, interns, volunteers or consultants are therefore expected to react quickly and effectively to stop and to report sexual harassment, whether directed at themselves or at other colleagues.

TARSHI shall:

- provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;
- 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;
- organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner prescribed and detailed here:
 - formulate and widely disseminate this internal policy for prohibition, prevention and redressal of sexual harassment at the workplace
 - carry out orientation programmes and seminars for the Members of the Internal Committee
 - carry out employee awareness programmes and create forum for dialogues as may be considered necessary
 - conduct capacity building and skill building programmes for the Members of the Internal Committee
 - declare the names and contact details of all the Members of the Internal Committee

- use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.
- provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry
- assist in securing the attendance of respondent and witnesses before the Internal Committee
- make available such information to the Internal Committee as it may require having regard to the complaint made under sub-section (1) of section 9
- provide assistance to the complainant if the complainant so 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
- cause to initiate action, under the Indian Penal Code (1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved person so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place
- treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct
- monitor the timely submission of reports by the Internal Committee through its authorised representatives

6. Appeal procedure

The provisions of the Act and the Rules will be followed for the procedure. The complainant and the respondent will be informed of the procedure in case they prefer to appeal.

- Any person aggrieved from the recommendations made by TARSHI's Internal Complaints Committee or non-implementation of such recommendations may prefer an appeal to the court or tribunal, as per the provisions in section 18 of the Act for this process.
- The appeal shall be preferred within a period of ninety days of the recommendations

7. References

Link to the [SHW Act](#) and [Rules](#)

Link to [The Transgender Persons \(Protection of Rights\) 2019 Act](#) and [Rules](#)

Link to [The Rights of Persons with Disabilities Act](#) and [Rules](#)

Relevant IPC sections mentioned in the policy can be found [here](#)

8. List of TARSHI's IC members as of June 2023

<Details added in team's version of the policy; kept confidential for external use.>