

# Policy on prevention of sexual harassment (POSH) at workplace

## 1.1 Purpose

To establish procedural guidelines for the prevention, notification, investigation and disposing of complaints of sexual harassment.

- a. TLMTI as a Christian employer committed to the well-being of its employees will not tolerate sexual harassment. TLMTI has a legal and moral obligation to protect its employees, from sexual harassment.
- b. It is a core principle of TLM Trust India to ensure gender equality and gender justice through all of TLMTI's interventions and practices. In keeping with this principle, it is important to ensure an organizational climate, free from discrimination and harassment with a particular focus on sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which staff may find themselves in connection with their employment is unlawful and will not be tolerated by the organization\*. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unacceptable and will not be tolerated. To achieve this goal, the conduct that is described as "Sexual Harassment" in this policy will not be tolerated and provided herein under is a procedure by which inappropriate conduct will be dealt with, if encountered among staff.
- c. TLMTI will also take all the appropriate steps necessary to protect staff from retaliation. Such Steps include:
  - i. Action to stop retaliatory behaviour
  - ii. Providing required security measures.
  - iii. Counselling help to Complainant and Accused
- d. TLMTI takes allegations of sexual harassment seriously and will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, prompt and appropriate corrective action as is necessary, including disciplinary action, will be taken.
- e. While this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit the authority of TLMTI to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.
- f. The Supreme Court has also directed organizations to lay down guidelines and create a forum for redressal of grievances related to

sexual harassment and this policy is in adherence to the guidelines framed by the honourable Supreme Court of India.

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*\* The law of the land also expects us to do so. On 13.08.97, the Supreme Court of India in Vishaka vs. Sate. of Rajasthan (hereafter "Vishaka") issued guidelines pertaining to sexual harassment for strict observance at all workplaces. These directions are deemed to be "binding and enforceable in law."*

## **1.2 Scope**

This policy shall extend to all staff of TLMTI and partners and includes external incidents involving such staff.

## **1.3 Definitions**

- a. "Staff" shall mean any person employed by TLMTI including TLMTI's associates whether full-time, part-time, temporary, voluntary, seconded, contracted or casual and also researchers, students, trainees, consultants and employees of project partners.
- b. "Sexual harassment" includes any unwelcome sexually determined behaviour (whether direct or by implication) such as
  - i. physical contact and advances either physical and non-physical
  - ii. a demand or request for sexual favours
  - iii. sexually coloured remarks
  - iv. showing pornography
  - v. creating a hostile work environment
  - vi. any other unwelcome "sexually determined behaviour" be it physical, verbal or non- verbal conduct of a sexual nature
- c. Unwelcome "sexually determined behaviour" shall include but not be limited to the following instances:
  - i. where submission to or rejection of sexual advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
  - ii. such advances, requests or conduct (whether direct or implied) have the purpose or effect of interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.
- d. Creating a "hostile work environment" means
  - i. *Creating a workplace where Sexual Harassment may go unheeded, where despite complaints no action is taken, where there is nexus between accused/aggressor & higher management, and where complainant is placed under fear, disadvantage or threat of victimization.*
  - ii. It will also mean Retaliation which includes:
    - *marginalizing someone in the workplace with regard to his / her roles and responsibilities*

- *socially ostracizing*
  - *intimidating someone physically, psychologically, emotionally or someone close to or related to the victim*
  - *spreading canard*
  - iii. And any other behaviour that may commonly be construed as retaliatory
- e. “Sexual Harassment“ in TLMTI and its associates shall also mean:
- i. Direct or implied requests by any staff for sexual favours in exchange for actual or promised job benefits such as favourable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.
  - ii. Other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to staff may also constitute sexual harassment.
- f. In addition the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:
- i. Unwelcome sexual advances — whether they involve physical touching or not;
  - ii. Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one’s sex life; comment on an individual’s body, comment about an individual’s sexual activity, deficiencies, or prowess;
  - iii. Displaying sexually suggestive objects, pictures, cartoons, displaying body parts;
  - iv. Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
  - v. Inquiries into one’s sexual experiences; and,
  - vi. Discussion of one’s sexual activities.
  - vii. Abuse of authority (Quid Pro Quo) - demand by a person in authority, for sexual favours in exchange for work related benefits (e.g. a wage increase, a promotion, training opportunity, a transfer or the job itself).
  - viii. The behaviour that creates an environment that is intimidating, hostile, or offensive for members of one sex, and thus interferes with a person’s ability to work.
- g. For the purpose of this policy, the Workplace includes:
- i. All facilities of TLMTI’s Units (hospitals, VEIs, Snehalayas, CBVEIs, Community health and development projects, standalone projects, media centre, research centre and Country office).

- ii. Any place visited either by air, land, rail or sea by the employee arising out of, or during and in the course of employment.
- h. "Employee" means a person employed at a workplace for any work on regular, contract or temporary basis
- i. "Employer" means any officer who is authorized by Rule to act on behalf of TLMTI and discharge management functions for and on behalf of TLMTI or its units in India. The authorized officers include Unit Heads, Business Office Heads, Domain Heads, Deputy Directors and Director for India.
- j. Duties of TLMTI: It shall be the duty of TLMTI and other responsible persons in work place to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or persecution of acts of sexual harassment by taking all steps required.

#### **1.4 Preventive action**

Consistent with the existing law under *Vishaka*, TLMTI shall take all reasonable steps to ensure prevention of sexual harassment at work. Such steps shall include:

- a. Circulation of TLMTI's policy in English/Hindi/vernacular in all Units on sexual harassment to all persons employed by or in any way acting in connection with the work and/or functioning of TLMTI;
- b. Ensuring that sexual harassment as an issue is raised and discussed at the Open Forum meetings from time to time
- c. Conduct or cause to carry out in-house gender training on sexual harassment and addressing complaints to *staff* First Instance Persons (herein after referred as FIPs) as well as members of the Prevention of Sexual Harassment Cell (herein after referred as POSH Cell).
- d. Widely publicize that the Sexual Harassment is a crime & will not be tolerated.
- e. Provide appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplace and no women employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

#### **1.5 Prevention of sexual harassment cell (POSH cell)**

- a. There will be a Prevention of Sexual Harassment Cell (POSH Cell). The Head Human Resources shall assume primary responsibility for effective constitution and functioning of the POSH Cell at all Units. It shall be the primary responsibility of the Head Human Resources to constitute the POSH Cell in consultation with the Senior Management Team and renew its composition on the expiry of its term and to fill up vacancies as and when they may occur.

- b. **The POSH Cell shall comprise the following members** - Five persons of whom three shall be women including a Chairperson who shall also be a woman.
- i. Chairperson should be from the Pay Band 1 to 4 of TLMTI's staff, preferably
  - ii. One person selected from Pay Band 1 to 4;
  - iii. One person selected from Pay Band 5 to 7;
  - iv. One member shall be a clinical psychologist; It is advisable that the clinical psychologist is external to TLMTI.
  - v. One third party/NGO representative/lawyer familiar with the issue of sexual harassment;
  - vi. In addition to the five persons, POSH Cell may also include an advisor or invitee who should preferably be female.
- c. Membership to the POSH cell shall generally be for a period of two years. Thereafter, new appointments shall be made. At least 2 members and not more than 3 should be retained for continuity. Tenure of a particular member may exceed two years to the extent necessary in order to ensure continuity as mentioned above.
- d. POSH Cell will play a strong preventive role. In case of any complaint, the POSH Cell will appoint a Committee (henceforth referred to as Enquiry Committee) to conduct an enquiry. The Enquiry Committee (EC) shall consist of three persons which may include no more than 2 members from the POSH Cell.
- e. A member of the POSH Cell shall cease to hold membership should any one of the following conditions arise:
- i. Upon s/he ceasing to be a staff of TLMTI, in case the member is an employee of TLMTI.
  - ii. Any member of the POSH Cell remains absent without permission of the POSH Cell from three consecutive meetings.
  - iii. Any member of the POSH Cell against whom a complaint of sexual harassment, violation of TLMTI's code of conduct or criminal charges are made and prima facie established.
- f. In the event of any vacancy on the POSH Cell due to resignation, termination, death or for any other reason whatsoever the same shall (within a period of three months of such vacancy) be filled in accordance with the procedures prescribed by this policy.
- g. Each complaint will merit the formation of a new EC. In other words, ECs may be constituted on a case to case basis.
- h. The Chairperson of the POSH Cell will be required to present a quarterly report on the activities of the POSH Cell to the Head HR. Care must be taken not to breach confidentiality in these reports.
- i. All meetings of the POSH Cell shall be fixed by the chairperson through

mutual consultation among the members.

- j. The POSH Cell shall be required to present a yearly Plan & Budget for preventive activities. This will form part of the Human Resources budget.
- k. The travel expenses and boarding and lodging of external members / advisors will be borne by TLMTI. In addition such members/advisors may be paid an appropriate honorarium.

#### **1.6 The First Instance Persons (FIPs)**

- a. FIPs will be nominated by the concerned Unit Head, after an appropriate process of consultation within Units.
- b. FIPs need to have a strong commitment to women's rights and gender equality. They should also understand that complaints of Sexual Harassments are of a sensitive nature and confidentiality of all parties concerned, especially the complainant and accused has to be respected.
- c. FIPs will need to co-ordinate preventive activities within their Units to create a Sexual Harassment free atmosphere. The responsibility for ensuring that such activities take place lies with the Unit Head.
- d. FIPs will be responsible for taking steps to ensure that cases of Sexual Harassment in TLMTI are brought to the notice of POSH Cell.
- e. FIPs would be sufficiently trained and capacitated to deal with informal complaints of Sexual Harassment.
- f. The Head Human Resources will in coordination with the chairperson of the POSH Cell, ensure that at least 2 workshops are held every year to enable FIPs to upgrade their knowledge and skills.
- g. FIP will have to inform all new staff about POSH Policy.
- h. The names and contact details of all members of the POSH Cell as well as First Instance Persons (FIPs described below) shall be prominently displayed on the main notice board of all Units.
- i. First Instance Persons (FIPs) at the various levels (as it shall deem fit) shall be appointed by the Unit Head. They may provide first instance intervention in case of any complaint of sexual harassment. The POSH Cell shall undertake to impart training to such FIPs to equip them to respond effectively to first instance reports of sexual harassment. Details of the role of FIPs are given in the section below.

#### **1.7 Procedure of dealing with complaints of sexual harassment**

- a. If any staff in TLMTI believes that he or she has been subjected to sexual harassment, such person (or FIP who may have assisted the complainant or those who have otherwise observed sexual harassment in TLMTI) shall have the option to file a complaint with POSH Cell. This may be done in writing or orally. Even if it is done verbally initially, it is always preferable to have the complaint in writing.
- b. A complaint may be filed by contacting any one of the members of the

POSH Cell. The POSH Cell as well as FIPs will also be available to discuss any concerns staff may have and to provide information about TLMTI's policy on sexual harassment and the complaint process.

- c. Informal complaints of Sexual Harassment maybe made to the FIP within the Unit or directly to the POSH Cell or any of its members as stated above.
- d. Informal way of dealing with complaints of Sexual Harassment:
  - i. An informal approach to resolve a complaint of sexual harassment can be through mediation between the parties involved and by providing advice and counselling on a strictly confidential basis. The procedures though less stringent than formal procedures will be conducted in the full spirit of this policy document.
  - ii. The case will be taken up for investigation at an informal level by the FIP or a member of the Enquiry Committee in a confidential manner. The matter will be reviewed and the alleged offender will be approached with the intention of resolving the matter in a confidential manner.
  - iii. If the incident or the case reported does constitute sexual harassment of a higher degree the member will suggest taking it up for disciplinary action or with the agreement of the complainant, the case can be taken as a formal complaint.
  - iv. Once such complaints are dealt with, the FIP must inform the POSH Cell and the concerned Unit Head.
  - v. The choice whether to deal with the complaint in the informal way or through the formal mechanism (whether the case constitutes sexual harassment of a higher or lower degree) should depend entirely on the complainant.
- e. All formal complaints of Sexual Harassment have to be referred to the POSH Cell by the FIP. Unit Heads, in consultation with FIPs or any other staff, are not empowered to penalize TLMTI staff.
- f. The investigation into a complaint will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The Enquiry Committee (EC) has to be set up within 2 weeks of receiving the complaint. The POSH Cell is responsible for setting up the EC with support from the Unit Head.
- g. The EC has to investigate and submit report to POSH Cell within 6 weeks. The POSH Cell will have to decide on recommendations and forward it to the Unit Head marking a copy to the Head Human Resources within 2 weeks of receiving report from EC.
- h. In case of exceptional circumstances, the time limit for investigation may be extended by the POSH Cell. The POSH Cell has to inform the Head Human Resources, who will then inform both the complainant and accused.

## **1.8 Process of inquiry**

- a. Upon receiving a formal complaint, the Committee shall ask the complainant to prepare a detailed statement of incidents if written complaint is sketchy. A statement of allegations will be drawn up by the Committee and sent to the accused.
- b. The accused will be asked to prepare a response to the statement of allegations and submit to the Committee within the given time.
- c. The statements and other evidence obtained in the inquiry process will be considered confidential materials.
- d. An officer in the organization could be designated to provide advice and assistance to each party if requested by either of them. Similarly, the complainant and the accused, will have the right to be represented or accompanied by a member of staff of TLMTI (a friend or a colleague).
- e. The Committee will organize verbal hearings with the complainant and the accused.
- f. Statement of Complainant will be recorded first in the presence of the accused. The accused may cross question the complainant if there is a need to do so in the presence of the Enquiry Committee.
- g. The Committee will take testimonies of other relevant persons and review the evidence whenever necessary. Care should be taken to avoid any retaliation against the witnesses by giving necessary protection.
- h. The Committee will take its decision after carefully reviewing the circumstances, evidence and relevant statements in all fairness.
- i. If the accused, being provided fair opportunity to participate in the inquiry and defend him / her-self fails to participate in the inquiry, the Committee may conduct the inquiry ex-parte.
- j. The Committee will ensure confidentiality during the inquiry process.
- k. In the course of investigating any complaint of sexual harassment, the POSH Cell shall ensure that the principles of natural justice are adhered to namely:
  - i. Both parties shall be given reasonable opportunity to be heard along with witnesses and to produce any other relevant documents before the POSH Cell;
  - ii. Upon completion of the investigation, both parties, will be informed of the results of that investigation.
  - iii. Documents which form part of the official record shall also be given to the complainant if need be.
- l. The POSH Cell shall be empowered to do all things necessary to ensure a fair hearing of the complaint including all things necessary to ensure that victims or witnesses are neither victimized nor discriminated against while dealing with a complaint of sexual harassment. In this regard the POSH Cell shall also have discretion to make appropriate interim recommendations vis-à-vis an accused person pending the outcome of a complaint including suspension, transfer, leave, change of office etc. The complainants should have the option to seek transfer of the perpetrator or seek his/her own transfer.



- m. In the event, the POSH Cell determines that sexual harassment has occurred, it will make appropriate recommendations as to necessary action to be instituted to remove the offensive conduct and, where appropriate, to institute disciplinary action. The complainant's views may be taken into consideration for this purpose.
- n. Given that TLMTI views any finding of sexual harassment a serious violation of human rights, if it is determined that inappropriate conduct has been committed by a staff, appropriate action will follow under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action the POSH Cell deems appropriate under the circumstances. The POSH Cell will be guided by the Service Rules procedures for disciplinary action within TLMTI. If the aggressor is guilty of serious sexual harassment or has repeatedly (second time) committed acts of Sexual Harassment then s/he must be dismissed. In appropriate cases s/he may also be required to pay monetary compensation. If the offence is of the serious nature (Which involves challenging modesty of the complainant or any kind of molestation), then the complaint shall be lodged under Section 354 of the IPC with the consent of the complainant.
- o. Sexual harassment by line managers or by colleague senior to the victim, then such acts will be considered to be very serious and will attract higher penalties.

### **1.9 Criminal procedures**

- a. Where such conduct amounts to a specific offense under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
- b. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints or sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer

### **1.10 Relief to the complainant**

Except in cases where service rules exist, where the POSH Cell arrives at the conclusion that the allegations against the DELINQUENT has been proved, they may award

- a. To get an apology letter from the DELINQUENT employee
- b. Warning
- c. Reprimand or Censure
- d. Withholding of Promotion
- e. Withholding of pay rise or increment
- f. Order for a counselling session or carrying out community service
- g. Termination of employment

### **1.11 Sexual harassment and TLMTI's partners**

- a. TLMTI is responsible for ensuring that its partners have a commitment to a sexual harassment free working atmosphere within their organizations i.e. the partner organizations. While respecting the autonomy of the partner organization, TLMTI will have to play a facilitating role within the partner organization, by
  - i. Creating a sexual harassment free climate
  - ii. Helping in the formation of the POSH Cell
  - iii. Ensuring that complaints of sexual harassment are heard and investigated
- b. It is necessary when complainant and accused are from 2 or more different organizations there should be an EC with at-least representatives from at least one such other organization.

### **1.12 Third party harassment**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, TLMTI will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

### **1.13 TLMTI's obligations**

- a. TLMTI shall provide all necessary assistance for the purpose of ensuring full, effective and prompt implementation of this policy. It shall further be bound by the decisions of the POSH Cell and shall implement the same expeditiously.
- b. The support to be provided to POSH Cell includes:
  - i. Secretarial and administrative support for training and preventive actions.
  - ii. Helping to set up ECs
  - iii. Secretarial support during sexual harassment enquiries
  - iv. Adequate financial resources for all activities
  - v. Time planning for members of POSH Cell
- c. The responsibility for preventive activities (regarding Sexual Harassment) rests with TLMTI.
- d. The responsibility of taking prompt action on POSH Cell recommendations lies with the Senior Management Team. Recommendations of the POSH Cell shall be binding on the Senior Management Team. However, if the Senior Management Team has a difference of opinion he/she may ask the POSH Cell to review its decision. The final decision will, however, be that of the POSH Cell. Action on POSH Cell recommendations should be taken within 2 weeks of the recommendation being made.

- e. TLMTI is expected to provide adequate protection to POSH Cell and Enquiry Committee members in case of threats and any retaliation. Support and protection must also be provided by the Unit Heads if matters go to court. TLMTI should in all cases defend the POSH cell & the complainant.
- f. In the event the conduct complained of amounts to a specific offence under the Indian Penal Code or under any other law in existence, the POSH Cell, subject to the wishes of the complainant, shall take appropriate action in making a complaint with the appropriate authority. TLMTI will provide all manner of support required in such instances.
- g. TLMTI will actively assist and do all that is necessary to ensure the safety of a complainant in the office premises or otherwise in respect to any duties/activities performed in connection with work, which take place outside office premises.
- h. TLMTI has to ensure that the POSH Cell and Enquiry Committee retain their autonomy and work unhindered.
- i. The proceedings under this policy shall not be stalled or postponed merely because the complainant is proceeding against the accused under any other provision of law.
- j. The provisions of this policy shall not restrict the powers of the Management or the complainant to proceed against the alleged offender for any other misconduct or other legal remedies.

#### **1.14 Review of the Policy**

A designated committee shall review the implementation and relevance of this policy once every year. Membership of the Committee shall be mostly from within the organization but shall have experts from outside as advisors.