

**ALTERNATIVE LAW FORUM POLICY ON PREVENTION, PROHIBITION
and REDRESSAL OF SEXUAL HARASSMENT AT THE WORKPLACE,
2019**

About the Alternative Law Forum

Alternative Law Forum (hereinafter “ALF”) was started in March, 2000, by a collective of lawyers with the belief that there was a need for an alternative practice of law. We recognize that a practice of law is inherently political. We are committed to a practice of law which will respond to issues of social and economic injustice. Over the years, ALF has grown from being a legal service provider to becoming a space that integrates alternative lawyering with critical research, alternative dispute resolution, pedagogic interventions and more generally maintaining sustained legal interventions in various social issues. We are also committed to an interdisciplinary interrogation of the law using creative forms.

ALF perceives itself simultaneously as a space that provides qualitative legal services to marginalized groups, as an autonomous research institution with a strong interdisciplinary approach working with practitioners from other fields, as a public legal resource using conventional and unconventional forms of creating access to information, as a centre for generating quality resources that will make interventions in legal education and training, and as a platform to enable collaborative and creative models of knowledge production. ALF is avowedly feminist and anti-caste, and is committed to the elimination of all forms of discrimination based on caste, gender identity, sexual orientation, religion, disability and class, and other markers of marginalisation, through our advocacy, research and litigation.

About this Policy

In pursuance of our commitment to the elimination of gender-based discrimination, and in light of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter “the Act”) and our experience in handling cases of sexual harassment, ALF has formulated this policy on sexual harassment at the workplace, hereinafter referred to as “the Policy”.

The Policy covers the definition of sexual harassment at the workplace, the applicability of the Policy, jurisdiction, time limitation, constitution of the ALF Internal Complaints Committee, duties of the organisation, procedure of filing complaint, termination of committee members and all matters connected therewith and incidental thereto.

ALF will take all allegations of sexual harassment seriously and will constitute the Internal Complaints Committee which will respond with due seriousness to complaints in compliance with this policy.

I. DEFINITIONS

- a) 'Aggrieved person'- Any **individual** related to the Alternative Law Forum, of any age, whether employed or not at the Alternative Law Forum, who alleges to have been subjected to any act of sexual harassment by the Respondent.
- b) 'Employee' - An **individual** employed 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 collective member, a co-worker, a contract worker, probationer, trainee, intern, volunteer, apprentice or called by any other such name, who works with the Alternative Law forum.
- c) 'Organisation'- The 'organisation' refers to the Alternative Law Forum (ALF), which is a registered society under the Societies' Registration Act, 1860. Members who work at ALF on a full-time basis and are responsible for the management, supervision and control of the workplace, including formulation and administration of Policies.
- d) 'Employer' - The members of the organisation who are currently employed at the Alternative Law Forum on a full-time basis (collective members) and are

responsible for the management, supervision and control of the workplace, including formulation and administration of Policies.

Explanation - The Alternative Law forum is a non-hierarchical organization without any person holding the post of an employer. Decision making is based on a democratic process wherein all member of the collective vote on any work related decision.

- e) 'Sexual harassment'- Sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-
- (i) physical contact and advances; or
 - (ii) a demand or request for sexual favours; or
 - (iii) making sexually coloured remarks; or
 - (iv) showing pornography; or
 - (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature; such as (The descriptions below are illustrative and not exhaustive)
 - a) comments on an individual's body of a sexual nature or an individual's sexual activity; or
 - b) unwelcome inquiries into a individual 's sexual experiences, harassing acts or behaviour directed against a individual on the basis of their gender, sex, sexual orientation; or
 - c) unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments, touching or grabbing against any part of the body, unwelcome sexual overtone in any manner such as over telephone; or
 - d) Putting sexual favour as a term of employment (e.g. continued employment, wages, evaluation, advancement, assigned duties or shifts) or retaliation of any kind for filing the complaint such as ostracizing the aggrieved individual; or
 - e) pressuring an aggrieved person to drop or not support the complaint; or
 - f) Any retaliatory conduct against aggrieved person as per the policy; or
 - g) Off-duty conduct which falls within the above definition and affects the work environment also constitutes sexual harassment;
 - h) any other unwelcome physical, verbal or non-verbal conduct of sexual

nature;

Explanation :- The reasonable person standard is used to determine whether or not the conduct was offensive and what a reasonable individual would have done. The question of whether harassment has occurred or not, does not depend on the intention of the Respondent but on the experience of the aggrieved individual.

- f) 'Workplace' - Workplace includes office premise at No. 122/4, Infantry Road, Beside Balaji Art Gallery, Bangalore - 560001, and any place where the employee visits or stays arising out of or during the course of employment including transportation and accommodation for undertaking such a journey.
- g) "Internal Complaints Committee" - means an Internal Complaints Committee (ICC) constituted under chapter II of the policy.
- h) "Third Party" - Any individual with whom an employee interacts in the course of employment, who is not an employee as defined in this policy, but who could be a Respondent under this policy.
- i) "Respondent" - An individual against whom a complaint of sexual harassment has been filed, who is either an employee or a third party, under this policy.

II. CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

This chapter of the policy is in accordance with the Chapter II of the Act. The Internal Complaints Committee (ICC) shall comprise of the following members, to be nominated by the employer, namely:

- a) A Presiding officer, who shall be a woman employed at a senior level at the workplace from amongst the employees;
- b) Not less than two members from amongst employees preferably committed to the cause of preventing, prohibiting and redressing sexual harassment or who have had experience in social work or have legal knowledge;

- c) One member from among non-governmental organisations or associations committed to the cause of preventing, prohibiting and redressing sexual harassment or an individual familiar with issues relating to sexual harassment.

Provided that at least one-half of the members so nominated shall be women. The Presiding officer and members of the Sexual Harassment Committee shall hold office for such period, not exceeding three years, from the date of their nomination.

III. REMOVAL OF MEMBERS OF INTERNAL COMPLAINTS COMMITTEE

This chapter of the policy is in accordance to the Chapter II of the Act.

Where the Presiding officer or any member of the Internal Complaints Committee:

- i) has contravened the provisions of Section 16 of the Act
- ii) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against them; or
- iii) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against them;
- iv) or has so abused their position as to render their continuance in office prejudicial to public interest.

Such Chair individual or Member shall be removed from the Internal Complaints Committee.

IV. PROCEDURE FOR REPLACEMENT OF ICC MEMBER

This chapter of the policy is in accordance with Chapter II of the Sexual harassment act. Any vacancy created in the Internal Complaints Committee shall be filled in by a nomination by any collective Member backed by a special majority of the members of the organization (employer) in compliance with the act.

V. PROCEDURE TO FILE COMPLAINT

- a) Any aggrieved person may make, in writing, a complaint of sexual harassment to the Internal Complaints Committee, 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.

The Internal Complaints Committee may, for reasons recorded in writing extend the time limit not exceeding three months, if it is satisfied that circumstances were such which prevented the aggrieved person from complaining within the prescribed period.

Where a complaint cannot be made in writing, any member of the ICC shall render all reasonable assistance to the aggrieved person for making the complaint in writing.

- b) If the aggrieved person is unable to make the complaint on account of physical incapacity, a complaint may be made by:

- (i) Their relative or friend
- (ii) Their co-worker, or
- (iii) Any officer of the National Commission for Women or State Women's Commission, or
- (iv) Any individual who has knowledge of the incident, with written consent of the aggrieved individual.

- c) If the aggrieved person is unable to make the complaint on account of mental incapacity, it may be made by:

- (i) Their relative or friend
- (ii) Special educator

- (iii) Qualified psychiatrist or psychologist
- (iv) Guardian authority under whose care they are receiving treatment or care
- (v) Any individual who has knowledge of the incident, jointly with individuals mentioned from (i) to (iv).

d) If the aggrieved person for any other reason is unable to make a complaint, a complaint may be filed by any individual who has knowledge of the incident, **with their written consent.**

e) Where the aggrieved person is dead, a complaint may be filed by any individual who has knowledge of the incident, with the written consent of their legal heir.

VI. CONCILIATION

- a) Conciliation processes can be initiated only on the **written** request of the complainant. Under no circumstances should the committee advise the complainant towards conciliation if the complainant does not express interest in it.
- b) Conciliation may be undertaken by appointing a neutral individual (including someone from the Committee itself) as a conciliator to facilitate conversations between the two parties. Conciliation should not include any monetary transaction, including the payment of compensation.
- c) When settlement has been arrived at as part of the conciliation process, the ICC shall record the terms of the settlement and forward the same to the employer to take action as specified
- d) The ICC shall provide copies of the settlement to the aggrieved person and the respondent.
- e) When a settlement is arrived at through the conciliation, then no further inquiry shall be conducted by the ICC.
- f) If the aggrieved person informs the ICC that any term or condition in the settlement has not been complied with by the respondent, then the ICC shall, at the request of the complainant forward the complaint to the police.

VII. FORMAT OF A COMPLAINT

- a) A complaint of sexual harassment must be filed within 3 months of the incident, or if it is a series of incidents, within three months of the last incident. This time limit can be extended by a further 3 months, at the discretion of the ICC.
- b) At the time of filing, six copies of the complaint should be furnished to the ICC. Each complaint should contain the complaint, supporting documents, and names and addresses of witnesses.
- c) A complaint should ideally make out the following details:
 - (i) Details of incident, with date and time. If the complainant is unable to recollect the date and time, then at least an approximate time frame should be provided.
 - (ii) Relevant circumstances preceding and following the incident
 - (iii) Details of respondent (if known), including designation, reporting structure between complainant and respondent (if any)

VIII. REPLYING TO THE COMPLAINT

- a) The Respondent is entitled to a copy of the complaint, along with all supporting documents and list of witnesses, within a period of seven days of the ICC receiving the complaint.
- b) The Respondent must reply to the complaint within a period of ten days of receipt of the complaint.
- c) If either the complainant or the respondent fails to present themselves before the Committee, for three consecutive sittings, without providing just and sufficient reason for their absence, then the Internal Complaints Committee shall have the right to terminate the proceedings, or to give an ex-parte decision on the complaint.

Provided that no such action shall be taken without giving a notice, fifteen days in advance, to the party in question.

IX. INQUIRY INTO COMPLAINT

- a) The inquiry into a complaint shall be in accordance with section 11 of the act.

- b) During the pendency of inquiry, on a written request made by the aggrieved individual, the Internal Committee as the case may be, may recommend to the employer to-
- (i) . Grant leave to the aggrieved person of maximum 3 months, in addition to the leave he/she/they would be otherwise entitled
 - (ii) Transfer the complainant or the respondent to any other workplace
 - (iii) grant to the complainant any other relief which may be prescribed.
 - (iv) Prevent the respondent from assessing complainant's work performance

Provided that no aggrieved person shall be granted leave except on his /her own request or suspended;

- c) The complaints committee shall make the inquiry into the complaint in accordance with the principles of natural justice
- d) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the enquiry.
- e) For the purpose of conducting the inquiry, a minimum of three members of the Committee shall be present, including the Presiding officer of the Committee.
- f) A copy of the deposition of the respondent, complainant, and the witnesses have to be given to the respondent and complainant. An opportunity to rebut should be given to both the parties.
- g) The enquiry shall be completed within a period of ninety days from the filing of the complaint.

X. INQUIRY REPORT AND DISCIPLINARY ACTION

- a) The inquiry report shall be in accordance with section 13 of the act.
- b) On the completion of an inquiry, the Internal Committee shall provide a report of its findings to the employer .The report shall also be made available to all the concerned parties.
- c) Where the committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall direct the employer to not take any action in the matter.
- d) Where the Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall direct the employer to take action for misconduct.

- e) Various actions can be recommended by the Committee including a written apology, warning, reprimand or censure, withholding of allowances, withholding of pay rise, terminating respondent from service and undergoing a counseling session or carrying out community service.
- f) The determination of compensation to the aggrieved person if the committee arrives at the conclusion that the allegation against the respondent have been proved shall be in accordance with section 15 of the act.
- g) Where the committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved person or any other individual making the complaint has made the complaint knowing it to be false or have produced any forged or misleading document, it may direct to the employer to take action against the person making the complaint.

The disciplinary action recommended should be similar to the ones proposed for the respondent in case of substantiated complaints.

While deciding malicious intent, the committee should consider that mere inability to substantiate a complaint need not mean malicious intent. Malicious intent must be clearly established through a separate inquiry.

- h) The employer will act upon the recommendations of the Inquiry Report within sixty days of its receipt.

XI. CONFIDENTIALITY

- a) The identity of the complainant, respondent, witnesses, statements and other evidence obtained in the course of inquiry process, recommendations of the committees, action taken by the employer is considered as confidential materials, and not published or made known to public or media.
- b) Any individual contravening the confidentiality clauses is subject to disciplinary action as prescribed in the act.

XII. APPEAL

- a) 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

XIII. RELEVANT TIMELINES

Submission of Complaint	Within 3 months of incident, and can be extended by a further 3 months
Notice to the Respondent	Within 7 days of receiving copy of complaint
Completion of inquiry	Within 90 days of filing of complaint
Submission of Report to employer	Within 10 days of completion of inquiry
Implementation of Recommendations	Within 60 days of receipt of recommendations
Appeal	Within 90 days of receiving recommendations

XIV. DUTIES OF EMPLOYER

- a) The part shall be in accordance with section 19 of the act.
- b) Provide a safe working environment at the workplace;
- c) Display at any conspicuous place in the workplace, the penal consequences of sexual harassment; and the order constituting, the Internal Committee;
- d) Undertake workshops and training programmes at regular intervals for sensitizing the employees;
- e) Provide necessary facilities to the Internal Committee to deal with the complaint and conduct enquiry;
- f) Ensure the attendance of respondent and witnesses before the Internal

Committee as the case may be;

- g) Make available such information to the Internal Committee, as it may require with regard to the complaint;
- h) Assist the aggrieved person if they choose in the filing of a criminal complaint in relation to the offence;
- i) Assist aggrieved person to Initiate criminal action under the Indian Penal Code or any other law for the time being in force against the respondent after the conclusion of the enquiry, or without waiting for the enquiry, where the respondent is not an employee in the work place where the incident of sexual harassment has taken place;
- j) Monitor the timely submission of report by the Internal Committee
- k) It is the responsibility of all collective member to respect the rights of others and to never encourage harassment. It can be done by:
 - (i). Refusing to participate in any activity which constitutes harassment
 - (ii) Supporting the individual to reject unwelcome behavior
 - (iii) Acting as a witness if the individual being harassed decides to lodge a complaint All are encouraged to advise others of behavior that is unwelcome.

Any aggrieved person who believes that they have faced sexual harassment at the workplace is encouraged to make it clear to the offender/s that such behavior is offensive to them and unwelcome and / or, to immediately report the alleged acts to the Internal Complaints Committee.

XV. COMMITTEE TO SUBMIT ANNUAL REPORT

- a) The part will be in accordance with section 21 and 22 of the act
- b) The Internal Committee in each calendar year will prepare an annual report and submit the same to the employer and shall include in it the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation.