

Prevention of Sexual Harassment



The Banyan
I exist therefore I am

For Internal and Authorized only

Version

Revised by	Designation	Approved By	Date
Swapna Krishnakumar	Deputy Director	Executive Committee	2016
Swapna Krishnakumar	Deputy Director	Executive Committee	2019

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Sr.No	PARTICULARS
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I. OBJECTIVES :

At The Banyan is committed to creating and maintaining a secure work environment where its Employees, Agents, Vendors, and Partners can work together in an atmosphere free of harassment, exploitation, and intimidation caused by acts of Sexual Harassment within but not limited to the office premises and other locations directly related to the Organization.

The objective of this policy is to provide protection against sexual harassment of men/ women at the workplace and for the prevention and redressal of complaints of sexual harassment and for the matters connected therewith

All concerned should take cognizance of the fact that The Banyan strongly opposes sexual harassment, and that such behavior against any employee is prohibited by the law as set down in The Sexual Harassment Policy at Work Place (Prevention, Prohibition and Redressal) Act, 2013 and Rules framed thereunder being The Sexual Harassment Policy at Work Place (hereinafter referred to as Act). The terms of this Policy shall always be construed in consonance with the Act, such that in case of any doubt or conflict, the Act, including rules and amendments thereof shall apply.

At The Banyan, we aim to provide an inclusive and safe working space for our employees, irrespective of their age, gender, caste, creed or nationality. We are committed to promoting a workplace environment that safeguards the dignity and respect of every individual. Towards this effort, there is zero-tolerance for sexual harassment in any form.

We at The Banyan are committed to giving every employee a just and fair hearing on issues encountered by them at the workplace with special attention on sexual harassment. The Banyan will take very serious disciplinary action against any victimization of the employee who is complaining or the alleged harasser that may result from a complaint.

II. SCOPE:

The Banyan policy with regard to **Prevention, Prohibition, and Redressal of Sexual Harassment** covers every "employee" across the Organisation. The Banyan encourages every employee who believes they are sexually harassed to use the redressal mechanism as provided in this policy.

The Policy is with respect to Prevention, Prohibition & Redressal of Sexual Harassment which may arise in places not limited to geographical location viz. Organization's but includes all such places or locations where acts are conducted in the context of working relationships or whilst fulfilling professional duties or which may be visited by an employee during the course of employment including transportation provided by the organization for undertaking such visit. The Banyan Prevention of sexual harassment includes sexual harassment by fellow employees, supervisors, managers as well as agents, contractors, vendors, partners and, visitors including outsourced employees.

Sexual harassment is judged by the impact on the complainant and not the intent of the Respondent. Sexual harassment as addressed in this Policy need not necessarily be from a male to a female employee, it can be vice versa as well as between individuals of the same gender.

III. DEFINITION

- a. "Aggrieved Person" means a person in relation to workplace whether employed or not, who alleges to have been subject to any act of sexual harassment by the Respondent.
- b. "Organisation" means The Banyan.
- c. "Employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wages 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, apprentice or called by any other such name;.
- d. "Internal Complaints Committee" means a committee constituted by Organisation as per this Policy.
- e. "Respondent" means a person against whom the aggrieved person has made a complaint.

- f. "Sexual Harassment" includes any one or more of the following unwelcome acts or behavior.

(whether directly or by implication) such as:

- a. Physical contact and advances; or
- b. A demand or request for sexual favors; or
- c. Making Sexually colored remarks; or
- d. Showing pornography or other offensive or derogatory pictures, cartoons, representations, graphics, pamphlets or sayings; or
- e. Any other unwelcome physical, verbal or non - verbal conduct of sexual nature; or

Following circumstances amongst other circumstances mentioned above may constitute sexual harassment if it occurs or is present in relation or connected with any act or behavior of sexual harassment:

- I. implied or explicit promise of preferential treatment in their employment;
- II. implied or explicit threat of detrimental treatment in their employment;
- III. implied or explicit threat about their present or future employment status;
- IV. interfering with their work or creating an intimidating or offensive or hostile work environment; humiliation treatment likely to affect their health or safety.
- V. humiliating treatment likely to affect the health and safety of the aggrieved person.

In addition to the instances mentioned hereinabove, any other acts or behavior, which outrages the modesty of any employee, will be considered as sexual harassment.

IV. INTERNAL COMPLAINTS COMMITTEE:

Every complaint received the policy for redressal. Committee constituted for shall be forwarded to Internal Complaint Committee formed under The investigation shall be carried out by Internal Complaints this purpose.

The Internal Complaint Committee of The Banyan will be constituted every three years by the Head of Human Resources, Director and Executive Committee.

- a. The committee will consist of seven members and aim for a balance of representation from different programs and work profiles at the Organization.
- b. One female member of the Senior Management Team will be designated to the Committee as Presiding Officer.
- c. Not less than 2 members from amongst employees preferably committed to the cause of women OR who have had experience in social work OR have legal knowledge.
- d. One member shall be from amongst Non-governmental organizations OR associations committed to the cause of women OR a person familiar with the issues relating to sexual harassment.
- e. A minimum of four members are required to constitute a quorum for the committee.

The Name of the Members of the Internal Complaints Committee is as per Annexure A of this Policy and any change in such composition shall be effected in the policy

At least half the total members of the Committee have to be women. Except for the Presiding Officer, every member of zonal Internal Complaints Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

The Committee members and Zonal HR representatives will be provided with necessary training inputs to handle such issues effectively and with the required sensitivity and concern.

V. COMPLAINT REDRESSAL MECHANISM

Any aggrieved person may make, in writing, a complaint of sexual harassment at workplace to the committee giving details of the sexual harassment meted out to her/him within a period of 3 months from the date of incident and in case of a series of incidents, within a period of 3 months from the date of last incident, which may be extended for a further period of 3 months, if circumstances warrant such extension in the opinion of the Internal Complaints Committee, for reasons to be recorded in writing.

1. The Presiding Officer or any Member of the Internal Complaints Committee can render reasonable assistance to the person for making a complaint in writing, in case they are unable to do so.

2. On receipt of the complaint, the Internal Complaint Committee shall decide the place and time for hearing the complaint and shall intimate the date, time and place of hearing to the Complainant and Respondent. The Internal Complaints Committee shall follow the principles of Natural Justice while handling such complaints.

Where the aggrieved person is unable to make a complaint on account of their physical incapacity, a complaint may be filed by-

- a) a relative or friend; or
- b) a co-worker; or
- c) an officer of the National Commission for Women or State Women's Commission; or
- d) any person who has knowledge of the incident, with the written consent of the aggrieved person.

Where the aggrieved person is unable to make a complaint on account of their mental incapacity, a complaint may be filed by-

- a) a relative or friend; or
- b) a special educator' or
- c) a qualified psychiatrist or psychologist; or
- d) the guardian or authority under whose care they are receiving treatment or care; or
- e) any person who has knowledge of the incident jointly with any of the above.

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

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

Internal Complaints Committee on receipt of such written complaint, may if require ask the aggrieved person to furnish additional information about the alleged harassment.

The Complainant or person authorized on their behalf as per above provision, shall make a complaint to the Internal Complaints Committee through the following mode:

- a. Copy of complaint along with supporting documents and names and address of witness shall be sent to the Internal Complaints Committee at icc@thebanyan.org
- b. On receipt of such complaint, the Internal Complaints Committee shall provide a copy along with supporting documents of such complaints to the Respondent within 7 working days
- c. Respondent shall file the reply within 10 working days of receipt of the complaint along with the list of documents, names, and addresses of witnesses
- d. Internal Complaint Committee shall investigate in detail into the matter of the complaint. The Internal Complaint Committee shall have the right to call the person against whom the complaint is made or any other witnesses as when necessary.
- e. During the enquiry process, the Complainant and the respondent shall refrain from any form of threat, intimidation or influencing of witnesses.
- f. The Committee will conduct enquiry in accordance with the principles of natural justice and will ensure to give both parties, the aggrieved as well as the respondent, a right to be heard and present their case before the Committee.
- g. The Committee shall ensure confidentiality during the enquiry process and will ensure that sufficient care is taken to avoid any retaliation against the witnesses.
- h. Internal Complaint Committee shall have the right to terminate the enquiry or give ex-parte decision on the complaint, if the Respondent or complainant remains absent for 3 consecutive hearings, without sufficient cause, provided that such termination or ex-parte Order may not be passed

without giving a notice in writing, 15 days in advance, to the party concerned.

- i. The Internal Committee must complete its investigation within a period of 90 days.
- j. The parties shall not be allowed to bring any legal practitioner to represent them in their case at any stage of the proceedings before the Internal Complaints Committee.
- k. For conducting the enquiry the quorum of the Internal Complaints Committee shall be of 4 members including the Presiding Officer.

The Internal Committee may before initiating an inquiry, and at the aggrieved person's request, attempt to settle the matter through conciliation. However, Internal Complaints Committee shall ensure that:

- a. Monetary settlement will not be made as a basis of conciliation.
- b. Where a settlement has been arrived, the settlement terms shall be signed by both the parties and shall be provided with a copy of it.
- c. Where, a settlement is arrived as mentioned hereinabove, no further enquiry shall be conducted by the Internal Complaints Committee.

The Internal Complaints Committee may during such investigation may exercise the power of a civil court, vested in it, in respect of:

- a. summoning and enforcing the attendance of any person and examining him under oath;
- b. requiring discovery and production of documents;
- c. any other prescribed matter.

During such enquiry, upon written request by the aggrieved person, the committee may at its discretion recommend:

- a. to transfer the aggrieved person or the respondent to any other workplace;
- b. grant leave to the aggrieved person of up to three months which is in addition to leave to which she is otherwise entitled.

Provided, the aggrieved person has to tender justified reason for such transfer or leave, such as threat to work in the workplace.

VI. ACTION:

1. The Committee shall on completion of the enquiry provide a report of its findings within 10 days from the date of completion of the enquiry and such report shall be made available to the concerned parties.
2. If the allegation against the respondent has not been proved, the Committee may recommend that no action needs to be taken in the matter.
3. If the Internal Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, or if such complaint is proved to be false or malicious, it shall recommend to take action for sexual harassment as a misconduct, as per the following punishment matrix

Penalty Matrix	Disciplinary Action
Minor	Warning, Reprimand, Written apology to the Complainant
Moderate	Withholding of promotions/increments Rescinding of bonus, Carrying out of community service, Transfer from the present location Removal of Supervisory Duties
Stringent	Compensation or deduction from the salary / wages of the respondent or issue direction for payment; such sum as it may consider appropriate to be paid to the aggrieved person or to their legal heirs, as it may determine, Suspension, Termination/dismissal from employment, Legal action under the Criminal Code

4. Such action will be taken within 60 days of receipt of the report.

VII. AWARENESS:

1. All the Employees, Agents, Customers, Vendors, Partners and Visitors shall have access to this Policy at any given point of time and clarification related to this Policy shall be addressed by the HR team.
2. A brief shall be given to all existing employees regarding the features of this Policy immediately on formulation of the Policy and to new employees in The Banyan during their initial Induction.
3. The Banyan shall comply with all other details as set out under Section 19 of the Act to ensure that all employees are provided with the safe working environment at the workplace.
4. The Banyan shall display the notice showing the name of the Internal Complaints Committee members at its every establishment at a conspicuous place.

VIII. FALSE ACCUSATIONS:

1. The complaint of sexual harassment made by any employee shall be taken up with utmost seriousness by The Banyan. However, there shall be zero tolerance for any false accusation.
2. If the Internal Complaint Committee comes to a conclusion that the allegation was made with malicious intent or the aggrieved person or any other person making the complaint on behalf of the aggrieved person produced false or forged or misleading documents to prove his/her case, the Internal Complaint Committee may recommend action to be taken against the person who has made the complaint, including termination of service. In such a case, malicious intent has to be established after an inquiry, before any action is recommended. A mere inability to substantiate a complaint or provide adequate proof would not attract action as provided herein. A similar recommendation for taking action would be recommended against any witness whom the Internal Complaint Committee concludes, that he/she has given false evidence or produced forged or misleading documents.
3. It is to be noted that this statement is not intended to discourage employees from coming forward with any complaints. The Banyan recognizes and expects that some claims may be difficult to prove or support, or may not in fact be found to raise to the level of seriousness deemed necessary to

constitute Sexual Harassment. These types of complaints will not be considered to be false accusations.

IX. MISCELLANEOUS:

1. Organisation may make any alteration or amendment or rescind any of the clauses of this Policy as and when it finds it necessary to do so as long as it complies with the Act. Any such alterations or amendment or rescinding will be intimated to the employee.
2. Nothing contained in these rules shall operate in derogation of any law for the time being in force or to the prejudice of any right of any employee under any other Rules or Law.

X. CONCLUSION :

Complaints relating to Sexual Harassment shall be handled and investigations will be conducted under the principles of natural justice, basis of fundamental fairness, in an impartial and confidential manner so as to protect the identity of all viz., the person bringing the charge, potential witnesses, and the person accused of improper behavior. Also, all efforts shall be taken to ensure objectivity and thoroughness throughout the process of investigation.

The identity and address of the aggrieved person, respondent and witnesses must not be published or disclosed to the public or media.

The decision of organisation shall be final and binding on all. However, the same is without prejudice to any recourse that organisation or the individual concerned may have against the respondent and it shall not limit or restrict the rights of the Complainant and/or Organisation to pursue, nor shall they be precluded from pursuing, such further and other legal actions as may be available.

ANNEXURE - A

SI No	Name	Designation	Email ID
1	Ms. Swapna Krishnakumar	Deputy Director-HR & Admin (Presiding Officer)	swapna.k@thebanyan.org
2	Shobana J	HR Manager	shobana@thebanyan.org
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4	Ms.Kavitha Danraj	Project Coordinator	kavitha.dhanraj@thebanyan.org
5	Mrs. Madhruvi Menon	Dean-BALM	dean@balm.in
6	Ms. Parsana Moideen	Coordinator	parsana@thebanyan.orgbanyan.org
7	Ms. Prasanna (PCVC)	PCVC-Founder	pcvc2000@yahoo.com
8	Justice Prabha Sridevan	Retired Judge	prabha.sridevan@gmail.com