

Guideline on Prevention and Protection of Judicial Service Personnel from Sexual Harassment at Work Place 2022

Preamble

The Judiciary of Bhutan, recognizing the need to provide safe working environment free from sexual harassment, hereby adopt the Guideline on Prevention and Protection of Judicial Service Personnel from Sexual Harassment at Work Place 2022.

1. Title and Commencement

This Guideline shall:

- a. Be called the Guideline on Prevention and Protection of Judicial Service Personnel from Sexual Harassment at Work Place 2022.
- b. Come into force on such date as the Chief Justice of Bhutan may notify; and
- c. Apply to all judicial service personnel working in the Royal Court of Justice of the Kingdom of Bhutan.

2. Definition

- a. “Sexual Harassment” means making an unwelcome physical, verbal or non-verbal abuse of sexual nature and includes any other behavior of sexual nature that might reasonably be expected to be perceived to cause offense of humiliation to another.
- b. “Complaint” means a complaint filed by the alleged victim under this Guideline.
- c. “Victim” means and include only the employees of the Judiciary.
- d. “Council” means the Royal Judicial Service Council formed under the Judicial Service Act of Bhutan, 2007.
- e. “Internal Investigation Committee” means an ad hoc Committee constituted by the Council to investigate the sexual harassment complaint.
- f. “Work Place” means any premise or place where a person performs work in the course of his/her employment.

3. Purpose

The purpose of this Guideline are to:

- a. Eliminate all forms of sexual harassment at workplace;
- b. Enhance understanding of sexual harassment at workplace;
- c. Create safe and conducive working environment for all individuals working within the court system; and
- d. Provide guidance and mechanism to deal with the sexual harassment complaints.

4. Nature of Sexual Harassment

- a. Sexual Harassment includes unwelcome sexual behaviour such as;
 - i. Physical contact;
 - ii. Demand or request for sexual favour;
 - iii. Sending of text messages luring sexual favour from the male/female subordinates; and
 - iv. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature like showing of nude pictures and pornography.
- b. In addition to those mentioned above, sexual harassment at workplace may occur under the following circumstances:
 - i. Implied or explicit promise of preferential treatment in the employment for want of sexual favour.
 - ii. The implied or explicit threat of detrimental treatment in the employment for want of sexual favour.
 - iii. Interferes with the work or creating an intimidating or offensive or hostile work environment on refusal of sexual favour by the subordinates.

5. Procedure for Filing Complaint

- a. The victim must file a written complaint of sexual harassment to the Chairperson of the Council.
- b. The complaint must contain the clear occurrence of the commission of the harassment.

- c. If an aggrieved victim is unable to file the complaint by him/herself on account of the fear of retribution, a complaint may be filed by:
 - i. His/her family member or relative,
 - ii. His/her co-worker, or
 - iii. An officer of the National Commission for Women and Children (NCWC).
- d. A complaint may be filed within six months from the date of occurrence.
- e. A complaint once filed can be withdrawn by a victim or with the consent of victim.

6. Duties and Responsibilities of the Head of Respective Courts/Offices

- a. Under this Guideline, an employer shall have the following duties and responsibilities to:
 - i. Provide a safe environment at the workplace;
 - ii. Organize an awareness program at regular intervals for sensitizing the judicial service personnel with the provision laid down in this Guideline;
 - iii. Assist the judicial service personnel if he/she chooses to file a complaint about the offence under the Penal Code of Bhutan 2004 or any other law for the time being in force;
 - iv. Cause to initiate action, under the Penal Code of Bhutan 2004 or any other law for the time being in force, against the accused, to protect the alleged victim;
 - v. Treat sexual harassment as a misconduct under the Judicial Service Act 2007 (JSA) and Rules under it and initiate action for such misconduct without undue delay;
- b. The Chairperson of the Council in consultation with the Chief Justice of Bhutan shall take the final decision.

7. Internal Investigation Committee

- a. The Council may, by an order in writing, constitute “Internal Investigation Committee” to investigate the sexual harassment complaint within the Judiciary.
- b. Internal Investigation Committee, while carrying investigation, shall give due regard to the due process of law and relevant provisions of the Civil and Criminal Procedure Code 2001.

8. Powers and Responsibilities of the Council

- a. The Council shall be the competent authority to decide on any matter arising out of this Guideline.
- b. The Council as the Disciplinary Authority have powers under Section 133 of JSA to:

- i. Summon and enforce the attendance of the witnesses and alleged person to whom a complaint has been filed;
 - ii. Require a production of evidence; and
 - iii. Require the production of any public record or a copy thereof from any office or organization.
- c. The Council shall ensure the Committee investigating a complaint complies with the following measures while conducting the investigation:
- i. Create a conducive and enabling environment for the victim to respond without fear;
 - ii. Treat a complainant with dignity and respect; and
 - iii. Not to insist on a graphical description of the sexual harassment.
- d. The complaint filed shall be addressed expeditiously by the Council.

9. Procedure of Redressal

- a. The Presiding Officer of an Internal Investigation Committee shall submit the report of the investigation to the Chairperson of the Council. Such report shall contain the recommendation to the Council citing the admissibility and reasonableness of the investigation.
- b. Such report shall be submitted to the Council within 10 days of the completion of the investigation.
- c. Upon receipt of the investigation report from the Committee, the Chairperson of the Council shall call for the meeting of the Council and deliberate on the report.
- d. Upon admittance and satisfaction of the report by the Council, the final decision shall be submitted to the Chief Justice of Bhutan for concurrence.
- e. The decision of the Council shall encompass the following measures:
 - i. Grant appropriate relief to the victim.
 - ii. Impose disciplinary action in accordance with Section 145 of the JSA.
- f. If the allegation of harassment has been proven against judicial service personnel, the Chief Justice of Bhutan may take appropriate action in accordance with the Constitution of the Kingdom of Bhutan, JSA, and other applicable Rules.

10. Amendment

No part of this Guideline shall be amended except by the written order of the Hon'ble Chief Justice of Bhutan.