

PREVENTION AND PROHIBITION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (POSH) IN INDIA

In the last two decades, the participation of women in organized and unorganized workplaces has increased manifold. While this is encouraging for gender equality, a number of issues persist that drive women to quit the workforce. Among other factors, sexual harassment accounts significantly for women leaving the workforce.

The need to protect and safeguard women at workplaces was realized by the Supreme Court of India in the case of ***Vishaka & Ors. v. State of Rajasthan & Ors. (Vishaka)***. Pursuant to the directions in Vishaka, the Indian legislature enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (**POSH Act**). The objectives of the POSH Act are: (i) to **protect** women from acts of sexual harassment at workplaces; (ii) to **prevent** sexual harassment of women at workplaces and (iii) to provide **effective mechanisms** to redress complaints of sexual harassment at workplaces. In this primer, we explain the process, resolution and protections provided under the POSH Act to aggrieved women (**Victims**) and persons falsely accused of sexual harassment.

1. Which workplaces is the POSH Act applicable to? Are the provisions mandatory for such workplaces?

The POSH Act is applicable exclusively to workplaces in India. It includes the organized as well as the unorganized sector. The workplaces falling within the purview of the POSH Act broadly are as follows:

- (i) Local, state or central government entities;
- (ii) Private sector entities carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities;
- (iii) Hospitals or nursing homes;
- (iv) Sports institutes, stadiums, sports complexes, or competition or games venues, whether residential or not, used for training, sports or other activities relating to it;
- (v) Any place visited by an employee in relation to the employment including the transportation provided by the employer for such journey; and
- (vi) Dwellings or houses.

2. Which acts constitute sexual harassment at workplaces?

The POSH Act provides that no woman shall be subjected to sexual harassment at workplace. It recognizes an inexhaustive list of unwelcome actions and behaviors that may amount to sexual harassment, such as:

- (i) Physical contact or advances; or
- (ii) Demands or requests of sexual favors; or
- (iii) Making sexually colored remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

Moreover, apart from the above, the POSH Act provides that the following actions related to a woman's employment may also amount to sexual harassment:

- (i) Implied or explicit promise of preferential or deferential treatment in her employment; or
- (ii) Implied or explicit threat about her present or future employment status; or
- (iii) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (iv) Humiliating treatment likely to affect her health or safety.

3. Who can make a sexual harassment complaint?

A complaint of sexual harassment can be made by the Victim who has been subjected to an act of sexual harassment at a particular workplace. However, if the Victim is unable to file the complaint due to physical or mental incapacity or death, certain persons having knowledge of the harassment, such as a friend or relative of the Victim, can file the complaint.





4. What is an Internal Complaints Committee (ICC)?

Every employer of a workplace is obliged to constitute a committee known as the Internal Complaints Committee. If a workplace has different offices or administrative units at different places, then an ICC shall be constituted at every such administrative unit and office.

5. Who can be the members of the ICC? What is the tenure of the members of the ICC?

Under the POSH Act, an ICC shall comprise of:

- (i) one presiding member who shall be a woman employed at a senior level at the workplace;
- (ii) At least 2 (two) members from amongst the employees. It is preferable to have such employees who are committed to the cause of women or those who have had experience in social work or have some legal knowledge; and
- (iii) One member from amongst non-governmental organizations or associations committed to the cause of women or a person who is familiar with the issues relating to sexual harassment.

However, one half of the members of the ICC shall be women. The tenure of each member of the ICC cannot exceed 3 (three) years.

6. What is the procedure to make a complaint?

A complaint made by a Victim must be: (i) in writing to the ICC and (ii) within 3 (three) months from the date of the incident.

In a situation where the Victim is unable to file a written complaint, ICC shall aid in filing the complaint in writing.

7. Who is an employee?

Under the POSH Act, an employee is a person who is employed directly or through an agent at a workplace on a regular, temporary, ad hoc, or daily wage basis. Such an employee may or may not be remunerated for his / her / their services.

The POSH Act states that an employee includes a co-worker, contract worker, probationer, trainee, apprentice or called by any other name.

8. Who is an employer?

Under the POSH Act, an employer means:

- (i) Head of a department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the Government or the local authority as the case maybe; or
- (ii) Any person who is responsible for the management, supervision, and control of the workforce; or
- (iii) Any person who is discharging contractual obligations with respect to his / her / their employees; and
- (iv) In relation to dwelling place or a house, a person or a household who benefits from the employment of a domestic person irrespective of the number, period or type of such worker(s) employed, or the nature of employment.

9. What are the duties of an employer?

Under the POSH Act, an employer plays an important role in maintaining a safe workplace for the employees. Since the objective of the POSH Act is curb sexual harassment at workplaces, the duty cast upon an employer is strict and mandatory in nature. An employer is required to take the following steps at the workplace:

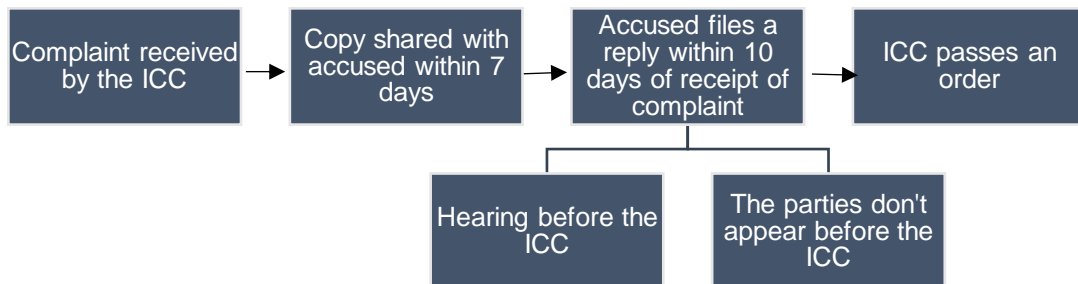
- (i) Provide a safe working environment for persons directly or indirectly connected to the workplace;
- (ii) Display the penal consequences of sexual harassment at a clearly visible place;
- (iii) Display the order constituting the ICC;
- (iv) Organize workshops, awareness and orientation programs for sensitizing employees and members of ICC with the POSH Act;
- (v) Provide requisite facilities to the ICC or the local committee to deal with and conduct inquiry of sexual harassment complaints;
- (vi) Assist in securing the attendance of accused persons and witnesses before the ICC or the local committee;
- (vii) Make information available to the ICC or the Local Committee as may be required;
- (viii) Provide assistance to the complainant if she chooses to proceed under the Indian Penal Code, 1860 or any other law in force;
- (ix) Initiate action for misinformation; and
- (x) Monitor timely submission of reports by the ICC.





10. What are the steps involved for resolution of a complaint?

The broad steps involved in resolution of a complaint are:



Upon the receipt of a complaint of sexual harassment, the ICC will take steps to conduct an inquiry. The ICC will serve a copy of the complaint upon the person against whom the complaint has been made (**Respondent**). The Respondent will be provided an opportunity to file his / her / their reply within 10 (ten) days of receipt of complaint. If parties fail to present themselves for 3 (three) consecutive hearings, without any reason, the ICC will pass an order and terminate the proceedings. If both the parties appear for the hearing, the ICC will hear both the sides and pass an order on merits within 90 (ninety) days.

It is pertinent to note that, while making an inquiry in a complaint of sexual harassment, at least 3 (three) members of the ICC must be present.

11. What is the maximum time within which a complaint must be made?

A complaint may be made by the Victim within 3 (three) months from the day of the incident. The time limit can be extended by the ICC by another 3 (three) months upon satisfaction of circumstances that prevented the Victim from filing the complaint.

12. Can ICC take temporary measures till the disposal of the complaint? If yes, what measures?

During the pendency of inquiry of a complaint of sexual harassment, certain actions can be taken by the ICC or the local committee on a written request made by an aggrieved complainant. The ICC or the local committee may provide recommendations to the employer to:

- (i) Transfer either the Victim or the Respondent to another workplace; or
- (ii) Grant leave to the Victim for a period of up to 3 (three) months; or
- (iii) Restrain the Respondent from reporting on the performance of work or writing confidential reports and assign the same person to another office; or
- (iv) Or any other recommendation as the committee may deem fit.

13. What is the punishment for contravention with the provisions of the POSH Act?

Under the POSH Act, an employer is liable to be punishable with fine up to INR 50,000 (Indian Rupees Fifty Thousand) in the following cases:

- (i) failure to form an ICC; or
- (ii) failure to make an inquiry report; or
- (iii) failure to take action against misleading information; and
- (iv) failure to include information of sexual harassment cases in its annual report.

Further, if the employer is punishable with the above-mentioned for the second time, then the employer will be liable to:

- (i) Twice the punishment that was imposed upon being convicted the first time; and
- (ii) The employer's license and / or registration will be cancelled or withdrawn.





14. Can an appeal be filed against the decision of the ICC?

Yes, an appeal can be filed against the decision of the ICC before a service court or a tribunal as per the service rules applicable to such person. If no service rules are applicable to the aggrieved person, then the appeal may be preferred before the appellate tribunal as notified under the Industrial Employment (Standing Orders) Act, 1946.

However, such an appeal shall be filed within 90 (ninety) days after the District Officer receives the recommendations of the ICC.

15. Who is a District Officer?

A District Officer may be a District Magistrate or an Additional District Magistrate or the Collector or the Deputy Collector as notified by the appropriate government.

16. Is the ICC statutorily required to report the complaints? If yes, how?

The ICC is required to prepare an annual report under the POSH Act and submit the same to the concerned District Officer. The report shall contain the following details:

- (i) Number of cases filed;
- (ii) Number of complaints of sexual harassment received in a year;
- (iii) Number of complaints disposed in a year;
- (iv) Number of cases pending for more than 90 (ninety) days;
- (v) Number of workshops or awareness programs conducted against sexual harassment; and
- (vi) Nature of action taken by the employer.

17. Is there a punishment for instituting false or malicious complaint or presenting false evidence?

Yes, if the ICC arrives at a conclusion that the complaint is false and malicious, then actions can be taken against the complainant as per the applicable service rules. If there are no service rules applicable, the following actions can be taken:

- (i) The complainant can be asked to tender a written apology;
- (ii) A warning can be given;
- (iii) The complainant can be reprimanded or censured;
- (iv) The promotion of the complainant can be withheld;
- (v) The increment or pay rise for the complainant can be withheld;
- (vi) The complainant can also be terminated from services.
- (vii) The complainant can be directed to undergo counselling session or carry out community service.

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