

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT & RULES, 2013

THE ACT Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

Prohibition ? Prevention ? Redress In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act hereinafter). Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements. It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings

What is POSH policy?

The POSH Act- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) 2013 was enacted to protect women from sexual harassment and provide a safe and secure work environment.

What is POSH law?

A law to protect and prevent harassment of women at workplace and also redressal of the registered complaints.

A Glimpse on Prevention Of Sexual Harassment (PoSH) Act,2013

1. When was the Sexual harassment of women at workplace (prevention, prohibition & redressal) Act 2013 passed?

The Ministry of Law & Justice has passed the Act on 22nd April 2013. The Rules were passed on 9th December 2013.

2. What are the objectives of the said Act?

This Act is to provide

- Protection against sexual harassment of women at workplace
- Prevention
- Redressal of complaints of sexual harassment

3. What is sexual harassment?

The Act in its Section 2n, defines sexual harassment. Sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely

- Physical contact and advances, or
 - A demand or request for sexual favours, or
 - Making sexually coloured remarks, or
 - Showing pornography, or
 - Any other unwelcome physical, verbal, non verbal conduct of sexual nature
- Section 3 (2) of the Act further elaborates that if any of the following circumstances occurs or is present in relation to or connected with any act or behavior of sexual harassment among other circumstances, it may amount to sexual harassment-
- Implied or explicit promise of preferential treatment in her employment, or
 - or
 - Implied or explicit threat of detrimental treatment in her employment, or

- Implied or explicit threat about her present or future employment status, or
- Interference with her work or creating an intimidating or offensive or hostile work environment for her, or
- Humiliating treatment likely to affect her health or safety

4. Who is an aggrieved woman according to the Act?

According to the Act (Section 2a) aggrieved woman means

In relation to a workplace, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent

- In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling or house

5. What is the meaning of a respondent?

Respondent means a person against whom the aggrieved woman has made a complaint. (Section 2 m)

6. Who is an employee?

According to the Act (Section 2f), employee means a person employed at a workplace for any work on regular, temporary, adhoc or daily 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.

7. What is the tenure of the members of the Internal Complaint Committee?

The Chairperson and every members of the Internal Committee shall hold office for a period not exceeding three years from the date of nomination as member. (Section 7(2) of the Act).

8. How will a complaint be done?

Any aggrieved women may make in writing a complaint of sexual harassment at workplace to the Internal committee/ Local Committee within 3 months from the date of incident or the date of the last incident in case of a series of incidents. In case the women cannot write, the Presiding officer/ any member of Internal Committee/Chairperson/ any member of Local Committee shall render all reasonable assistance. (Section 9(1) of the Act)

9. What is to be done when both the parties are employees?

Where both the parties are employees, the parties during the course of the inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

10. When can the ICC forward a complaint to the police?

The ICC can forward a complaint to the Police for registering the case under Section 509 of the IPC and any other relevant provisions of the IPC within 7 days. (Section 11(1)) In the event of non compliance by the respondent of the terms and conditions of a settlement agreed upon and when the aggrieved woman informs the ICC about it, the ICC may make an inquiry or forward the complaint to the Police.(Section 11(1))

11. What is the time limit for an aggrieved woman to give a complaint?

Any aggrieved women may make in writing a complaint of sexual harassment at workplace to the Internal committee within 3 months from the date of incident or the date of the last incident in case of a series of incident (Section 9(1)).

12. Can the time limit of 3 months be extended?

The Internal Committee can extend the time limit not exceeding another 3 months if it is satisfied that the circumstances were such which prevented the woman from filing the complaint within the said period (Section 9(1)).

13. Can someone else file the complaint under the Act?
If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs or such other person as may be prescribed may do so. (Section 9(2) of the Act)
14. What is the scope and process for Conciliation and Settlement?
Before initiating an inquiry, the ICC or LCC may and at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1) of the Act) Where such a settlement has been arrived at, the ICC or the LCC, record the settlement and forward the same to the employer or the District officer to take action as specified in the recommendation (Section 10(2) of the Act). The ICC or the LCC shall provide copies of the settlement to the aggrieved woman and the respondent (Section 10(3)).
15. Can further inquiry be made after settlement?
Where a settlement is arrived at, no further inquiry shall be conducted by the ICC. (Section 10(4) of the Act). However, if the aggrieved woman informs the ICC that any term or condition of the settlement has not been complied with by the respondent, the ICC shall proceed to make an inquiry into the complaint or forward the complaint to the police. (Section 11(1) of the Act)
16. What is the time limit of inquiry?
The inquiry should be completed within a period of 90 days (Section 11(4)).

17. What can the ICC recommend to the employer during the pendency of an inquiry? What does the employer do on such recommendations?

During the pendency of the inquiry of the ICC, on a written request by the aggrieved woman, the ICC can recommend the following to the employer (Section 12(1) of the Act):

- Transfer the aggrieved woman or the respondent to any other workplace or Grant leave to the aggrieved woman upto a period of 3 months or
- Grant such other relief to the aggrieved woman as may be prescribed
- The leave granted to the aggrieved woman under Section 12(1) is in addition to the leave that she is otherwise entitled.

The employer shall implement the recommendations made by the ICC send the report of such implementation to the ICC . (Section 12(3)).

18. What is to be done by the ICC on completion of inquiry?

On completion of inquiry the ICC will provide a report of the findings to the employer or the District Officer within 10 days from the date of completion of the inquiry and such report will be made available to the concerned parties. (Section 13(1) of the Act).

19. What can the ICC recommend to the employer or the District Officer on completion of the inquiry?

Option 1 : If the ICC arrives at the conclusion that the allegation against the respondent has not been proved, it will recommend to the employer and the District Officer that no action is required to be taken. (Section 13(2) of the Act)

Option 2 : If the ICC arrives at the conclusion that the allegation against the respondent has been proved, it will recommend to the employer and the District Officer, the following as per Section 13(3):

- To take action for sexual harassment as a misconduct in accordance with the provisions of the service rule applicable to the respondent or

person who has made the complaint in accordance with the provisions of the service rules. (Section 14(1) of the Act.)

22. What will the ICC do if it arrives at a conclusion that the witness has given false evidence etc?
- If the ICC arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer to take action in accordance with the provisions of the service rules or in such manner as may be prescribed. (Section 14(2) of the Act)

23. Can the ICC recommend compensation payment of an amount to the aggrieved woman? If yes, who will pay, on what basis and how?

If the ICC arrives at the conclusion that the allegation against the respondent has been proved, it will recommend to the employer and the District Officer to deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs. In case the employer is unable to make such deductions from the salary of the respondent due to his being absent or cessation of employment, the ICC may direct to the respondent to pay such sums to the aggrieved woman. In case the respondent fails to pay the sum, the ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer. (Section 13 (3) ii of the Act)

As per Section 15, the basis of determining sums to be paid to the aggrieved woman under Section 13(3) ii under the Act will be –

- Mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
- Loss in career incurred by the victim for physical or psychiatric treatment
- Income and financial status of the respondent
- Feasibility of such payment in lumpsum or instalments

where no such service rules have been made , in such manner prescribed

- To deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs
- In case the employer is unable to make such deductions from the salary of the respondent due to his being absent or cessation of employment, the ICC or the LCC may direct to the respondent to pay such sums to the aggrieved woman.
- In case the respondent fails to pay the sum, the ICC or the LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer. (Section 13 (3) ii of the Act)

Option 3 : If the ICC arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint. (Section 14(1) of the Act.)

20. What is the time limit for the employer to act on the recommendations of the ICC?

The employer or the District Officer have to act upon the recommendations within 60 days. (Section 13(4) of the Act)

21. What will the ICC do if it arrives at a conclusion that the allegation against the respondent is malicious?

If the ICC arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the

24. Can contents of complaint and inquiry proceedings be made public?

The contents of the complaint, identity and address of the aggrieved woman, respondent and witness, information relating to conciliation and inquiry proceedings , recommendations of the ICC and the action taken by the employer shall not be published, communicated or made known to the public, press and media. However information may be disseminated regarding the justice secured to the victim of sexual harassment without disclosing the name, address, identity or any other particulars. (Section 16 of the Act)

25. What is the penalty for publication or making known contents of complaint or inquiry?

If any person contravenes the provisions of Section 16 of the Act, he shall be liable to penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be applicable. (Section 17 of the Act)

26. What are the provisions for appeal?

Person aggrieved due to the following conditions may prefer an appeal to the Court or Tribunal or in such manner (Section 18(1) of the Act):

- Recommendation under Section 13(2) of the Act : If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has not been proved, it will recommend to the employer and the District Officer that no action is required to be taken.
- Recommendation under Section 13(3) i/ii: If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has been proved, it will recommend to the employer and the District Officer, the following : To take action for sexual harassment as a misconduct in accordance with the provisions of the service rule applicable to the

respondent or where no such service rules have been made , in such manner prescribed and/or to deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs.

- Recommendation under Section 14(1/2): If the ICC or LCC arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint. (Section 14(1) of the Act.).
- If the ICC arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer to take action in accordance with the provisions of the service rules or in such manner as may be prescribed. (Section 14(2) of the Act)
- Recommendation under Section 17 : If any person contravenes the provisions of Section 16 of the Act, he shall be liable to penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be applicable.
- Non implementation of recommendations

27. What is the time limit of the appeal?

Appeal has to be done within a period of 90 days. (Section 18(2) of the Act)

Employee Awareness under POSH Act

POSH awareness is very important as sexual harassment is a sensitive topic and employees must know what is acceptable and what is not in the workplace. It is important that the following topics are covered in the POSH training:

- Definition of sexual harassment.
- The message that the organization has a zero-tolerance policy towards any act of sexual harassment.
- Scope and applicability of the policy.
- Complaining mechanism and the contact details of Internal Committee Members Redressal process – formal and informal Rights and the protection provided to the complainant, respondent and witnesses in a sexual harassment case.
- Responsibility of the employer and employees in ensuring safety within the workplace.
- Employee and Employer according to POSH Act.
- Internal Committee, its responsibilities and the details of IC members.
- Process for filing a sexual harassment complaint.
- Punishments for sexual harassment.
- Consequences of filing a false complaint.
- Difference between an unsubstantiated complaint and a false complaint.
- Consequences of retaliation.
- Responsibilities of someone who has witnessed harassment.
- Responsibilities of employees in preventing sexual harassment in the organization.
- Twice the punishment that was awarded the first time and/or

Contact Details of the Internal Complain Committee

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