

# POSH

Prevention of Sexual Harassment at Workplace

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# Evolution of The Law

One of the foundations of India's constitutional structure has been the removal of gender-based prejudice. In the Constitution's Preamble, fundamental rights, basic duties, and Directive Principles, the concept of gender equality is incorporated.

However, the Supreme Court of India ("Supreme Court") recognized workplace sexual harassment for the first time in its historic ruling of Vishaka vs. State of Rajasthan ("Vishaka Judgment"), in which the Supreme Court defined certain criteria and directed the Union of India to pass an adequate law to address workplace sexual harassment. The POSH Act and Rules were implemented 16 years after the Vishaka Judgement, which is nothing short of ironic.

In the context of a particular law in India, the Supreme Court issued the Vishaka Judgment, which established some rules mandating that every employer provide such a system to remedy workplace sexual harassment concerns ("Vishaka Guidelines"), that companies obeyed until the adoption of the POSH Act.

# The Vishaka Judgement

In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court under the banner of Vishaka.

The Supreme Court for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

# The Sexual Harassment of Women at Workplace Act, 2013

The unfortunate Nirbhaya incident of 2012 brought to fore the much needed push and the Government of India sprung into action and immediately promulgated The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (POSH) and The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 and made it effective from 09th December 2013.

The POSH Act has been implemented to prevent and protect women from sexual harassment at the workplace and thereby ensure a safe working environment for women.

The POSH Act, as mandatory compliance, requires every company having more than ten employees to constitute an Internal Complaints Committee (ICC) in the prescribed manner to receive and address the complaints of any sort of sexual harassment from women in a time-bound and extremely confidential manner.

# Why is this training important

1. To familiarize all employees with the acceptable and unacceptable behavior at work.
2. To create a working environment where all employees are treated with dignity, courtesy and respect.
3. To sensitize managers to maintain the Company as equal opportunity employer and refrain from any favoritism.
4. Protection from victimisation or reprisals.
5. Encourage the reporting of behavior which breaches the sexual harassment policy.
6. Promote appropriate standards of conduct at all time.
7. To make employees aware of the procedures to register a complaint, if they encounter any harassment issue at workplace.
8. To provide an effective procedure for complaints, whenever required.
9. To inform employees about the Internal Complaints Committee (ICC) and its role in case a conflict arises.
10. Treat all complaints in a sensitive, timely and confidential manner.
11. To ensure that irrespective of the intensity of the accused or the level of impact, every incident has to be taken seriously and investigated by the ICC.

# What is Sexual Harassment?

Any form of discrimination that includes unwelcome attention of sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors is considered sexual harassment. It involves a range of behaviours from seemingly mild transgressions and annoyances, to actual sexual abuse or sexual assault. Anyone from either gender can be a victim of sexual harassment, and anybody from either gender can be a perpetrator.

Sexual harassment also includes the conduct of co-workers who engage in verbal or physically harassing behaviour which has the potential to humiliate or embarrass an employee or the company.

The harasser can be the victim's manager, a manager in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer, and harassers or victims can be of any gender.

Any form of communication whether on email / messages / whatsapp or via any other media can be taken as a case against the sender whether on duty or off duty hours.

## Definition of Employee

The definition of an 'employee' under the Prevention of Workplace Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

## Definition of Workplace

Recognising that sexual harassment of women may not necessarily be limited to the primary place of employment, the Prevention of Workplace Sexual Harassment Act has introduced the concept of an 'extended workplace'. As per the statute, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.



# Types of Sexual Harassment

**Quid Pro Quo** - Quid pro quo harassment is typically done by people in a position of power to a subordinate, such as between a supervisor and a junior employee. The exchange in favor doesn't have to be explicit either, it can be implied or suggested.

Some example of quid pro quo include:

- Threatening to terminate an opportunity or job if the victim declines sexual advances.
- Keeping a promotion or pay raise at bay until the victim agrees to sexual acts.
- Asking for sexual favors in exchange for a promotion, hiring, or other opportunities.
- Pressuring an employee to accept unwelcome sexual advances.



**Hostile Environment** - This type includes any instance of sexual harassment that creates a hostile work environment in the office. The victim doesn't have to be the one directly being harassed; this means you can be a victim of a hostile work environment if the sexual harassment incident doesn't directly involve you.

Likewise, the perpetrator can be anyone, including supervisors, managers, co-workers, and even clients.

Further examples of sexual harassment ending with hostile work environment claims may include:

- Sexual jokes, or offensive comments that are sexual, crude, or graphic in nature.
- Sending images, texts, emails, or memos with sexual innuendo.
- Unwelcome physical conduct of a sexual nature, such as touching, groping, hugging, or rubbing.

# How can you, as an individual, prevent harassment?

If you are being targeted, let the person know that such behavior will not be tolerated.

If a person makes a lewd comment or gesture, ask him not to.

If you are an observer or the incident happens in your presence, you must report it to the HR or ICC committee members immediately, else you are a party to the crime and appropriate action will be taken against you as well.

## Appropriate use of Internet & Email

- Employees should not forward offensive emails from another source to each other; by doing so they make themselves responsible for the material.
- Employees should be careful with words, what they think is a joke, might be offensive for the other person.

# Employees Responsibility

- Comply with the organization's Sexual Harassment policy.
- Offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves)
- Maintain complete confidentiality if they provide information during the investigation of a complaint.
- They should avoid spreading gossip or rumors about the incident or details that they are aware of.
- Anybody who is aware of any harassment taking place in the organization & does not highlight harassment is equally responsible for the act.

## Do's & Don'ts

- As a Manager, you may call a senior female colleague while discussing performance / any official issue with a female colleague of your team.
- Do not talk to female colleagues behind closed doors.
- Maintain complete professionalism while communicating with colleagues whether on duty or off duty.
- Do not use abusive / improper language in the vicinity or in front of an office colleague.
- Be careful of your body language while talking to colleagues.

## What should you do?

- Confront the harasser directly (but only if you feel confident enough to do so)
- Make a formal complaint to your Manager
- Use the organizations internal complaint procedures (POSH) and approach the HR or Internal Complaint Committee (ICC). The way that complaints will be handled should be documented in the policy or in a separate complaints procedure.

# Internal Complaints Committee (ICC)

The Company has instituted a Internal Complaints Committee for redressal of sexual harassment complaint (made by the victim) and for ensuring time bound treatment of such complaints.

The Presiding Officer reserves the right to nominate more members of appropriate seniority and rank in the committee to conduct such enquiries to ensure equal representation of the gender as that of the complainant or for any other valid reason.

## **The Internal Complaints Committee consists of following persons:**

- a) Mrs. Pratiksha Shinde – Project Manager (Chairman)
- b) Mr. Shashindra Hegde - PAN India Service Manager (Member)
- c) Ms. Kamini Sawant - HR & ESG Executive (Member)
- d) Ms. Pushpa Yadav - Sr. Purchase Executive (Member)
- e) Ms. Komal Wakulkar – Social Worker (Member)

A complainant can approach any member of the committee with her/ his written complaint.

# Redressal System

The complaint must be given to the concerned person within 3 months of the occurrence (the complaint can be made within 6 months if the person is able to prove that there were some exceptional circumstances due to which complaint could not be made earlier) and we advise you to be vigilant and keep any document with you which can be used to substantiate an allegation. The redressal system will work based on other evidence if you cannot produce any documentary evidence.

## Timelines as per Act:

Submission of Complaint	Within 3 months/180 days of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days
Submission of Report by ICC to employer	Within 10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days
Appeal	Within 90 days of the recommendations

# Local Complaints Committee (LCC)

In case organisations have less than 10 employees, complaint against their employees are heard and decided by the Local Complaints Committee constituted by the District Officer.

LCC is a committee constituted in each district by the District Officer to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

## **DISTRICT OFFICER**

Means an officer notified by the Government for every District from amongst District Magistrate or Additional District Magistrate or the Collector or Deputy Collector to exercise powers and discharge functions under this Act.



# Indian Penal Code, 1860

Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. Listed out below are the key offenses under the IPC that could be triggered in a case of sexual harassment.

Section	Offence	Punishment
294	<b><u>Obscene acts and songs—whoever, to the annoyance of others</u></b> 1. does any obscene act in any public place, or 2. sings, recites or utters any obscene song, ballad or words in or near any public place	shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.
354	<b><u>Outraging the modesty of a woman</u></b> Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.	Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine

Section	Offence	Punishment
354-A	<p><b><u>Sexual harassment by a man.</u></b>  Physical contact and advances involving unwelcome and explicit sexual overtures;  ii. Demand or request for sexual favours;  iii. Showing pornography against the will of a woman; or  iv. making sexually coloured remarks</p>	<p>Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.</p>
354-B	<p><b><u>Assault or use of criminal force to woman with intent to disrobe</u></b>  Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.</p>	<p>Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.</p>
354-C	<p><b><u>Voyeurism</u></b>  Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.</p>	<p><b>First conviction:</b> Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine.  <b>Second or subsequent conviction:</b> Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.</p>

Section	Offence	Punishment
354-D	<p><b><u>Stalking</u></b> Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or Monitoring the use by a woman of the internet, email or any other form of electronic communication.</p>	<p><b>First conviction:</b> Simple/ Rigorous imprisonment for a term which may extend to three years, and fine;  <b>Second or subsequent conviction:</b> Simple/ Rigorous imprisonment for a term which may extend to five years and fine.</p>
509	<p><b><u>Insulting the modesty of a woman</u></b> Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.</p>	<p>Simple imprisonment for a term which may extend to three years, and fine.</p>

# What does POSH Act say about False Complaints?

POSH Act takes a serious view about false complaints. Section 14 (1) of the POSH Act talks about false complaints and punishment for the same.

## **Punishment for false or malicious complaint and false evidence.**

Where the Internal Committee or the Local Committee, as the case may be, 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, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, ... in such manner as may be prescribed.”

## **Lack of Evidence = False Complaint?**

Section 14(1) of the POSH Act states it very clear that mere inability to substantiate a complaint or provide adequate proof will not automatically prove that the complaint was false.

While the POSH Act allows for penalties to the complainant for filing a false complaint, there is no provision for compensation to the respondent.

Thank You!