POSH ACT, 2013 – GUIDELINES TO EMPLOYEES

Human Resources Development Department - 20 Nov 2024

COMMONWEALTH INCLUSIVE GROWTH SERVICES LTD. No.27, Dr. Ambedkar Road, Kodambakkam, Chennai – 600 024

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1. An Overview of POSH Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, also known as the POSH Act, is a law in India that protects women from sexual harassment in the workplace. The Act includes the following provisions:

- **Definition of sexual harassment**

The Act defines sexual harassment as including threats, promises, or interference with work, or creating an intimidating or hostile work environment.

- **Internal Complaints Committee**

The Act requires employers with 10 or more employees to establish an Internal Committee (IC) to handle complaints of sexual harassment.

- **Complaint filing**

A woman can file a complaint in writing with the IC or the Local Committee within three months of the incident.

- **Response to complaint**

The respondent must respond to the complaint within 10 working days and provide a list of supporting documents and witnesses.

- **Inquiry**

The inquiry must be completed within 90 days of receiving the complaint.

- **Appeal**

An appeal against the Committee's decision can be filed within 90 days of the recommendations.

- **Annual reporting**

The Act requires employers to prepare an annual report on the number of complaints, investigations, and actions taken.

- **Action against false complaints**

The Act includes provisions for taking disciplinary action against complainants who make false or malicious allegations.

2. Preventive Measures

All the employees are advised to refrain from indulging in any such activities / behaviours that might give room for, or, lead to, complaint of Sexual Harassment.

The indicative list of activities / behaviours ***an employee should never indulge in*** is furnished hereunder:

1. Gender biased remarks / behaviour

2. Using endearments, crude or offensive language

3. Staring, cornering, following, blocking the pathway, or stalking

4. Persistent requests for dates, outings, lunches, dinners etc.

5. Telling obscene jokes

6. Showing / Forwarding sexually suggestive pictures, memes, videos, notes, magazines or cartoons

7. Talking about sex

8. Talking about /spreading rumours about someone's sexual orientation or sex life

9. Using sexually suggestive gestures

10. Unsolicited or unwanted touching of any part of clothing or body or commenting on someone's physical appearance.

Note: The above is only an indicative list and not an exhaustive one. Every employee should exercise extreme prudence while dealing with people from the opposite gender, during their discharge of official duties in particular and at all times in general, so that no employee even accidentally triggers complaints under the POSH Act.

3. Internal Committee / Internal Complaints Committee at CIGS

The Members of the Internal Committee at CIGS, re-constituted effective from 08.01.2025, are listed hereunder:

- Chairman of the Committee: Ms. M. Kanimozhi
- External Member: Ms. Uma Baskaran
- Members of the Committee:
    - Ms. G. Madhuri
    - Mr. K.G. Sridhar
- Management Representative: Mr. P. Swaminathan

Contact:

Email ID: posh.ic@cigs.in

Postal Address:

POSH Internal Committee
Commonwealth Inclusive Growth Services Ltd.
No.27, Dr. Ambedkar Road
Kodambakkam, Chennai – 600 024

Complaints, if any, coming under POSH Act 2013 shall be sent to the email address or Postal address mentioned hereinabove, within the specified timeframe.

All the complaints shall be handled strictly in accordance with the extant provisions of the POSH Act, 2013. The complainants, respondents and witnesses shall be offered all necessary protections offered by the POSH Act, 2013 and there shall be no discrimination or victimization or confidentiality breach whatsoever under any circumstances.

Important Note:

1. **Women Associates**: Aggrieved Women Associates – employees or Business Correspondent Agents or any other women associated with the Company in Official capacity – shall lodge the complaints with the Internal Committee.

In case a Business Correspondent Agent, while discharging their Official duties, faces sexual harassment issues with any external person(s), then the Company shall either take up the matter with the appropriate authority or advise the aggrieved Business Correspondent Agent on the appropriate course of action.

2. **Male Associates**: Shall lodge the complaints with the Human Resources Development Department of the Company, by addressing the email or post to the following address:

Email: hrdd@cigs.in

Postal Address:

Human Resources Development Department
Commonwealth Inclusive Growth Services Ltd.
No.27, Dr. Ambedkar Road
Kodambakkam, Chennai – 600 024

4. Information Material on POSH Act, 2013

For gaining more knowledge on this subject, pertinent information available on this subject have been copied hereunder:

4.1 Information Material – 1

Introduction:

The Prevention of Sexual Harassment (POSH) Act, enacted in 2013 in India, aims to address and prevent instances of sexual harassment at the workplace. The legislation places significant responsibilities on employers to foster a safe, inclusive, and respectful work environment. Understanding and implementing the duties mandated by the POSH Act is crucial for employers to ensure the well-being of their employees and compliance with the law.

Who is the employer?

"Any person who is the head of any department, organisation, undertaking establishment, enterprise, institution, office, branch or unit […]" is defined as an employer under Section 2(g) of the POSH Act.

An employer is someone who is "in charge of the management, supervision, and control of the workplace."

What obligations do employers have under the Act?

In order to prevent workplace sexual harassment, an employer is required by the POSH Act to establish preventive and redressal mechanisms. This includes creating a POSH policy, setting up a POSH Committee, planning training sessions and awareness campaigns, and more.

Duties of Employer under POSH Act

The goal of an employer's responsibilities under the POSH Act is to give their female employees a safe workplace. To create both a safe and inclusive workplace, it is crucial to take a gender-neutral approach.

- **Constituting the POSH Committee**

Employers are required to form POSH Committees in accordance with the POSH Act of 2013. Every company office or branch with ten or more employees should establish a Committee.

The POSH committee's main goal is to hear complaints about sexual harassment in the workplace and address them.

The employer may also be fined by the court if they disregard the POSH Act, 2013 and fail to form the POSH committee. The Madhya Pradesh High Court fined Medanta Hospital, Indore Rs.50,000/- for failing to form the POSH Committee in Mrs. Arvinder Bagga & Ors. v. Local Complaints Committee, District Indore.

- **Implementing the POSH Committee's suggestions**

The POSH Committee prepares a report and sends it to the employer upon completion of its investigation and inquiry. The POSH Committee's conclusion from the investigation is included in the report.

It also includes a suggestion for the course of action the employer ought to follow. The employer has sixty days from the date of receipt of the recommendation to take appropriate action.

The POSH committee's main goal is to hear complaints about sexual harassment in the workplace and address them.

POSH Act Employee Awareness

The POSH Act requires employers to train their staff members in POSH awareness and to inform them of the Act's provisions. Given that sexual harassment is a delicate subject and that workers need to be aware of what is and is not appropriate in the workplace, POSH awareness is crucial. It is imperative that the POSH training encompasses the following subjects:

- What constitutes sexual harassment?
- The declaration that any act of sexual harassment will not be tolerated by the organisation.
- The policy's application and scope.
- The internal committee members' contact information and the complaint procedure the formal and informal rights and protections afforded to the complainant, respondent, and witnesses in a sexual harassment case comprise the redressal process.
- Both the employer and the employees bear responsibility for maintaining workplace safety.
- Both the employer and the employee under the POSH Act.
- The duties of the Internal Committee and the specifics of its members.
- Procedure for reporting instances of sexual harassment.
- penalties for inappropriate behaviour.
- repercussions for making a fraudulent complaint.
- The distinction between a false complaint and one that is not supported by evidence.
- The results of reprisal.
- Obligations for someone who has seen harassment.
- Employee accountability for stopping sexual harassment within the company.
- Twice the original penalty that was given and/or
- Revocation of the business licence or refusal to renew it

Submission of Annual Report

Every company with ten or more employees is required by the POSH Act to submit two reports annually:

- The Annual Report that the Internal Committee provided to the District Officer and Employer.
- Directors' Report to the ROC (in the event that the company is a Public or Private Limited Company).

Annual Report to the Employer and District Officer, provided by the Internal Committee

The report should contain the following information:

- number of reports of sexual harassment that were made during the year.
- number of complaints that were resolved

- number of cases that have been open for more than 90 days without a resolution.
- The type of action(s) that the district officer or the employer took and
- The number of workshops or awareness campaigns the company has held to raise awareness about sexual harassment in the workplace.

Conclusion:

Compliance with the duties outlined in the POSH Act is not only a legal obligation but also a critical step toward creating a work culture that is respectful, safe, and free from harassment. Employers play a pivotal role in fostering an environment where employees can work without fear of harassment, knowing that their concerns will be taken seriously and addressed appropriately. By adhering to the provisions of the POSH Act, employers contribute to building a workplace that promotes dignity, equality, and professional growth for all.

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Written by: Avichal Singhal Adv.

4.2 Information Material – 2

Sexual harassment at workplace: do's & don'ts | Know about law relating to sexual harassment at workplace:

Most working women have forever faced issues with sexual harassment. In spite of being victims they are not able to fight for justice. Read what is the laws against sexual harassment.

Prevention of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013

India being a patriarchal society is trying very hard to remove the bias against women; by educating them and seeing them step out of homes and fulfil duties as an earning member in their own right. But in all this advancement, the question remains if women in India are safe in the workplace? Is she an entity, a being, or just a commodity to be used in the eyes of the men who are working alongside her?

Contrary to popular belief, most working women have faced issues with sexual harassment at their workplace. It is just that now more women are coming forward and reporting incidents of sexual harassment, for they refuse to take such treatment without giving a fight.

What is Sexual Harassment? What is the Law?

What is sexual harassment at the workplace? Well, it does not just include a creepy man forcing himself on a helpless working woman. There are many others ways that men find to subtly harass a woman sexually just because they get an adrenalin kick out of it.

Here are a few ways and means in which men harass women, but the instances largely remain unreported for the women have no idea as to how to deal with the situation:

- Showing pornographic pictures on the computer, or phone, either with intent, or as if by accident.
- Using suggestive language and saying inappropriate things.
- Staring at the chest while speaking.
- Touching the back, shoulder or knees without any reason or permission.
- Stalking on any of the social platforms.
- Any rumours/ talk at workplace with sexually coloured remarks about a working woman, or spreading rumours about a woman's sexual relationship with anybody.
- Calling on the pretext of work and taking the conversation to a zone which is extremely uncomfortable for the woman.
- Humming, or singing provocative, sexually explicit songs every time the woman concerned is in the vicinity.

The perverts are, unfortunately, very imaginative in their skills at harassing women sexually. However, all such acts that compromise the position of a working woman are illegal under the Prevention of Sexual Harassment at Workplace Act, 2013. The Act clearly states the following:

- It is mandatory for any company, or organisation having more than ten employees to have a sexual harassment committee called the Vishakha Committee.
- The committee should comprise two, or three people from the said organisation and two people from outside, so that it's balanced and independent.

- The sole job of the committee is to investigate cases of sexual harassment in the workplace and list appropriate actions for the employer.
- Workplace is not just the four walls of a physical office space, but any 'place of work'. An out-of-office meeting, online conversations as a freelancer, 'casual' meeting in a cafe, or even an interview in a company where you are not employed yet—you're entitled for protection against sexual harassment under the Act.
- It's the employer's duty to make available the names of the chairperson and committee members.

What To Do in Case You Are Being Sexually Harassed

The laws are in place to protect the women. It is time to say 'No' to the furtive glances and inappropriate touching and sometimes even outright sexual favours demanded in lieu of work.

- Speak up. Say 'No'. Walk away from any man who makes you feel uncomfortable.
- Convey that you are uncomfortable with any such advances by a colleague, which establishes a line of misconduct.
- Keep your friends informed.
- Collect evidence.
- Avoid being alone with the harasser.
- Do not accept explanations from the HR saying that this was the first offence. Remember, an offence is an offence.
- Approach the Sexual Harassment Committee at the earliest.
- Give a written complaint asking for a confirmation, which cannot be ignored.
- Do not worry about colleagues accusing you of slander and shaming you. Remember, you are fighting for your self-esteem.
- Never think that what has happened was because of some fault of yours. It is the fault of the man who is sexually harassing you, and NEVER yours.
- In extreme cases, counselling and therapy is advised.
- In case this is happening with someone you know, take a stand along with them and help them.
- Sharing the experience on social media is not enough. A proper official complaint has to be made.

Sexual Harassment Cases in India

While there are innumerable sexual harassment cases registered in India, a survey conducted by the Indian National Bar Association (INBA) found that of the 6,047 participants (both male and female), 38% said they'd faced harassment at the workplace.

Of these, 69% did not complain about it. Here are a few of the famous sexual harassment cases:

- In 2002, Phaneesh Murthy, a director with Infosys was accused of sexual harassment by his secretary Reka Maximovitch. They reached an out-of-court settlement at US$3 million. Murthy

was again accused of the same crime in his next stint as CEO and president of iGate. He was removed by the company from his position.

- In 2012, an employee working at a restaurant at the Indira Gandhi International Airport, New Delhi, filed a case against a senior Air India official, accusing him of sexually harassing her by showing her porn clips and making physical advances. The woman alleged that the Assistant General Manager at Air India ignored her complaint.
- Wipro was dragged to court by Shreya Ukil in 2015, when she alleged that she was being discriminated against when it came to increment of salary and that her manager forced her to have an affair with him. In the GBP1.2-million lawsuit filed in London, Wipro won the case when UK Employment Tribunal upheld the dismissal of the complainant from the services of the organisation as appropriate and rejected claims of adverse cultural attitude towards women in the organisation.
- In the most recent case of sexual harassment, a former employee alleged rampant sexual harassment by the CEO Arunabh Kumar of the the Viral Fever (TVF). The complaint was made anonymously on social media and several other TVF employees came out in support, recounting their own incidents of molestation. The CEO, blatantly wielding his position of power in his unapologetic comment to the Mumbai Mirror, said, "The kind of insinuations the FB post makes are untrue. I am a heterosexual, single man and when I find a woman sexy, I tell her she's sexy. I compliment women. Is that wrong? Having said that, I am very particular about my behaviour – I will approach a woman, but never force myself."

Unfortunately for the working women, while the laws against sexual harassment are very much in place, the wheels of justice take their own time in churning out the right judgement.

Here are some quick do's and don'ts for businesses to bear in mind as they take steps towards a harassment-free workplace:

Do:

- Take sexual harassment seriously! This sets the tone for rolling out a zero tolerance policy and creating a positive work environment. And this better flow from the top.
- Put in place an anti-sexual harassment policy in line with the Act, considering the specific requirements of your business.
- Follow due process (Set up an Internal Complaints Committee ("ICC") to deal with complaints, investigate complaints in a fair manner and recommend disciplinary action accordingly).
- Provide periodic awareness sessions for employee sensitization, besides training the ICC members.
- Treat all such matters with utmost confidentiality respecting the privacy of the concerned parties.
- Assist the complainant if she decides to file a criminal complaint against the accused.

Don't:

- Do not ignore complaints of employees.
- Trivialise/ignore/hush up the complaint. It's the complainant's prerogative to draw the line at what she perceives as welcome or unwelcome conduct!
- Retaliate or threaten the complainant with adverse consequences.

- Sack the accused rightaway! (Or still worse, sack the complainant).

More than 90% of women and girls experience sexual harassment. Commonly known as "eve-teasing", sexual harassment is not as minor as the word "teasing" may sound. Unwanted comments and songs, leering and whistling, kissing noises, vulgar gestures, unwanted touching, stalking, flashing, demanding sexual favours, or showing pornography against one's will all constitute as instances of sexual harassment.

There is a flip side, too, to the entire scenario of sexual harassment cases. While some women misconstrue a general show of friendship as sexual harassment, many also manipulate men making advances, putting the genuine contenders for justice in a very compromising position. In spite of being victims, as a result, they are not able to fight for justice.

4.3 Information Material – 3:

POSH Act, Challenges, Implementation, Procedure to Complaint

POSH Act in India refers to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Know all about Associated Challenges and Implementation of POSH Act.

Posted by Sakshi Gupta Published On December 28th, 2023

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Context: More than half — 16 — of India's 30 national sports federations lack an Internal Complaints Committee (ICC), mandatory under the 2013 PoSH Act, as highlighted in the Mary Kom-led government committee's report.

POSH Act Overview

The "POSH Act" in India refers to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Bhanwari Devi Incident (1992): Bhanwari Devi, a social worker with Rajasthan's Women's Development Project, was gang-raped for trying to stop a child marriage.

Supreme Court 1997/Vishakha Guidelines (Vishaka vs. State of Rajasthan case in 1997):

Following pleas against the crime, the Supreme Court recognized the lack of laws against sexual harassment at workplaces.

The Court established guidelines to address this gap until relevant legislation could be passed.

Sources for the Guidelines:

Article 15 of the Indian Constitution, which prohibits discrimination based on religion, race, caste, sex, and place of birth.

International conventions, notably the CEDAW General Recommendations, which India ratified in 1993.

The Prevention of Sexual Harassment (PoSH) Bill:

Introduced by the Ministry of Women and Child Development in 2007.

Underwent several amendments before being enacted by Parliament on December 9, 2013.

Procedure Under Prevention of Sexual Harassment (PoSH) Act

Prevention of Sexual Harassment (PoSH) Act

Definition of Sexual Harassment:

Under the 2013 law, sexual harassment includes "any one or more" of the following "unwelcome acts or behaviour" committed directly or by implication:

Physical contact and advances

A demand or request for sexual favours

Sexually coloured remarks

Showing pornography

Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Additionally, it also lists down five circumstances that would constitute sexual harassment if they are connected to the above-mentioned acts:

Implied or explicit promise of preferential treatment in employment.

Implied or explicit threat of detrimental treatment in employment.

Implied or explicit threat about present or future employment status.

Interference with work or creating an intimidating offensive or hostile work environment.

Humiliating treatment is likely to affect health or safety.

Coverage Applies to all workplaces and covers all women, irrespective of their age or employment status.

Committees:

Internal Complaints Committee (ICC): Mandatory for employers with ten or more employees.

Headed by a woman.

Minimum two female members, with at least one external member.

Local Complaints Committee (LCC): For workplaces with less than 10 employees, a Local Complaints Committee at the district level must be formed. LCC, appointed by the state government, can instruct employers on necessary actions for victim protection.

Role Of ICC And LCC:

Compliance with Act and Natural Justice:

ICCs and LCs must conduct inquiries according to the POSH Act, adhering to the principles of natural justice as outlined in the Act's Rules.

Filing a Complaint:

A woman can submit a written complaint to either the internal (ICC) or local (LC) complaints committee within 3 to 6 months of the sexual harassment incident.

Resolution Methods: The issue can be resolved in two ways:

Through Conciliation: Between the complainant and the respondent, without involving financial settlements.

Initiating an Inquiry: The committees may start an inquiry and take actions based on their findings.

Procedure For Complaint Under The Act

Filing a Complaint: The aggrieved woman "may" file a complaint, but it's not mandatory for action.

If she can't, an ICC member "shall" assist in filing it in writing.

Alternate Complainant: In cases of the woman's incapacity, death, or other reasons, her legal heir can file the complaint.

Time Frame for Complaint: Complaints must be filed within three months of the incident.

The ICC can extend this limit under certain circumstances.

Conciliation Option: Before the inquiry, the ICC can try to resolve the issue through conciliation, without monetary settlements.

Inquiry Process: The ICC can forward the complaint to police or conduct its own inquiry within 90 days.

It has similar powers to a civil court for summoning and document production.

Report Submission: Post-inquiry, the ICC submits its report to the employer within 10 days, and it's shared with both parties.

Confidentiality: Identities and details of the inquiry and actions taken must remain confidential.

Actions After The ICC Report:

If Allegations are Proved: The ICC recommends employer action per company service rules.

Actions vary across companies.

Compensation Recommendations: The ICC may suggest salary deduction of the guilty for compensation.

Compensation considers factors like emotional distress, career loss, medical expenses, income status of the respondent, and payment feasibility.

Right to Appeal: Both the aggrieved woman and the respondent can appeal in court within 90 days if dissatisfied.

Challenges To Implementation Of POSH Act

Inaccessibility in Informal Sector: The law is difficult to access for women in the informal sector, where over 80% of India's female workforce is employed.

High Rate of Underreporting: Factors like organisational power dynamics, fear of losing jobs, and the absence of tangible evidence contribute to significant underreporting.

Gaps in ICC Formation: As seen with 16 out of 30 national sports federations, many organisations have not established an Internal Complaints Committee (ICC).

Flaws in ICC Composition: Many ICCs suffer from having too few members or missing a mandatory external member.

Unclear Legal Guidelines: There's ambiguity in the law about conducting inquiries and a lack of awareness among women employees on how to report harassment.

Supreme Court Directions on POSH Act Implementation (Oct 2023):

Appointment of 'District Officer': The Supreme Court emphasised the mandatory appointment of a 'District Officer' in each state and union territory as per Section 5 of the POSH Act.

Time-Bound Assessment for Committees: The SC directed the Union of India, state governments, and union territories to conduct time-bound assessments to ensure the formation of Local Committees (LCs) and Internal Committees (ICs) across ministries, departments, organisations, and public sector undertakings.

Capacity Building Initiatives: The Court advised regular orientation programs, workshops, and awareness campaigns to improve the expertise of LC and IC members.

Justice Verma Committee Recommendations:

Proposed establishing an employment tribunal instead of an ICC for addressing workplace sexual harassment.

Suggested that the committee may adopt its own procedures for expedient complaint resolution.

Recommended including domestic workers under the Act's protection.

Advised against penalising women for false complaints, to preserve the law's objective.

Read more at: https://www.studyiq.com/articles/posh-act/