

WOMEN SAFETY AT WORKPLACE

Prevention of Sexual Harassment at Workplace



#POSH

Knowledge Partner

“Gender equality must become a lived reality. Women have the right to be free from violence, harassment, and discrimination. Removing the barriers of an unsafe workplace will help women fulfil their potential as individuals and as contributors to work, communities and economies.

Organisations need to implement policies and processes that women can trust, with an emphasis on addressing the harmful social and cultural norms and behaviours that can leave women at risk. This is a moral obligation, and essential to maintain the trust and reputation that companies aspire to.” **Dr Sangita Reddy, Past President, FICCI; Chair, G20 EMPOWER and Joint Managing Director, Apollo Hospitals Group**”

“Tourism and Hospitality sector employs around half of the women in the workforce across all levels. POSH Act has played a tremendous role in security of women at the workplace. The knowledge of POSH related laws, rules and standards will sensitise the upcoming cohort who are aspiring to have a career in the hospitality industry, thus enabling them to not only protect themselves as young professionals but also in creating a secure environment at the workplace as they move forward to take on leadership roles.” – **Dr. Jyotsna Suri, Past President, FICCI; Mentor, FICCI Tourism & Culture Committee and CMD, The Lalit Suri Hospitality Group**”

“Women’s Safety in the workplace is one of the most critical aspects of women empowerment. Therefore, removing barriers to women’s safety is essential for enabling women to reach their full potential as individuals and contributors to their workplaces, communities, and economies. The POSH (Prevention of Sexual Harassment) Act is a landmark legislation in India that aims to prevent sexual harassment of women in the workplace. The act was passed in 2013 and is applicable to all workplaces, including government and private organizations, and covers women of all ages and employment statuses. We are talking about a very significant tool in promoting gender equality in the workplace by providing women with equal opportunities and protecting them from discrimination and harassment. This can help in creating a more inclusive and diverse workplace.

As the National President of FICCI Ladies Organization (FLO), which is a 40-year-old business chamber working towards women empowerment, I strongly believe that there is an immediate need for more awareness on the POSH Act so that it is effectively implemented and enforced in workplaces across India. Women are an essential part of the workforce, and their contributions to the economy are significant. By ensuring safety for women in the workplace, we can help remove these barriers and enable women to contribute fully to the economy. It is not just an ethical and moral need of a civilised society but also an economic imperative.” **Ms Sudha Shivkumar, President, FICCI Ladies Organization (FLO)**”

“The safety of women should be a priority for all because it is a human issue and affects us all. Safety and security are the result of collective consensus and public investment. Safe environments allow women to thrive, leading to progress and prosperity for all. And this can be possible only in a world free from the fear of violence, discrimination and harassment, where women can contribute their talents and abilities to society, improving the world for everyone. We at MBD have zero tolerance towards discrimination and harassment, especially towards women.” **Ms Monica Malhotra Kandhari, Co- Chair, FICCI Publishing Committee and MD, MBD Group**”

**WOMEN SAFETY
AT WORKPLACE**



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FOREWORD



The brutal Bhanwari Devi rape case and the PIL filed thereafter, against the Rajasthan Government and the Government of India led to the landmark judgement with the issue of Vishakah guidelines by the Supreme Court in 1997. It provided with the basic definition of sexual harassment of women at workplace and issued guidelines to deal with it. This was seen as a significant legal victory for working women in India. In 2013, India finally enacted a law Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

Women currently make up 22 per cent of India's GDP, which is lower than the global average of 45 per cent. But the brighter side is that the percentage of women in workforce has been increasing rapidly, due to the changing mindsets and socioeconomic factors, and more recently, due to aspirations of women to become self-reliant to lead a better life besides courage to take on challenging assignments. They have countless women role models in business, public services, science and sports. According to recent figures, women comprise 14 per cent (roughly 8 million) of the total entrepreneurs in India, with approximately 20 per cent of the MSMEs led by women and 13-15 million businesses owned by women¹.

With the increase in the number of women joining the workforce, the need to ensure safe and secure environment becomes imperative for the organizations. The POSH Act 2013 has significantly impacted workplaces in India, providing victims of sexual harassment with the legal protection they need. The Act not only puts in place necessary mechanisms for the safety and security of working women, but also ensures an unbiased and gender-neutral workplace.

Sexual harassment negatively impacts the working environment for women. It makes them undergo psychological and physiological trauma which compels them to leave their jobs. FICCI's India Risk Survey 2022 ranked threat to women safety at workplace at the 5th position out of 12 key risk parameters that could impact business continuity².

Sexual harassment at the workplace is a very sensitive issue and is required to be handled with great care to ensure a harmonious and harassment-free workplace for all employees. Objective of this report is to provide insights on POSH Act, its scope, applicability, complaint mechanism, relief, compensation and other related legal issues. I am sure this report will serve as a handbook for employers to follow the regulations and make their organisations POSH compliant.

Ms. Manjari Jaruhar

Advisor – FICCI Committee on Private Security Industry

¹ <https://news.abplive.com/business/international-womens-day-contribution-of-women-entrepreneurs-towards-india-s-economic-growth-how-they-are-shaping-the-future-1586785>

² <https://ficci.in/publication.asp?spid=23775>



FOREWORD



Sexual Harassment at workplace as a phrase creates fear and apprehension among all, whether it is a man, woman or a nonbinary. The men fear of becoming inadvertent victims of false complaints while women fear that they will never have a voice in the envisaged scenario and the non-binary fear that their woes of sexual harassment will be trivialised or worse, not understood. Businesses run on the belief that zero complaints imply that there are no instances of sexual harassment in their organisations. This



belief needs to be altered, as it just might mean a ticking bomb that has been shoved under the table.

The United Nations research has studied in great detail the power imbalance and inequity that is the underlying reason for this menace. The power dynamics create position of privilege which either make the occupier a perpetrator, a bystander, disinterested or worse a victim. The traditional system complaints may take many colours depending on the organizational culture. If the system is mature and open, the complaints will be addressed which will fix the leaks in the system and the number will soon settle down and the automatic flow of the redressal system will take everything in its purview.

The current definition of sexual harassment at workplace do not take into view the cultural landscape of any organisation, it has been left to the organisational policies to fine tune the definitions to fit in with the law, nor does the legal lexicon define the follow up and preventive policies in detail to control the gender inequities.

The United Nations¹ has stressed on the leadership to strengthen the systems and create avenues for allyship by engaging men in dialogue even before they enter the workplaces. To make these engagements meaningful, the leadership's commitment is the key. The culture always flows from the top and permeates all the floors before reaching the bottom down. The practical solutions for creating a well-oiled machinery will involve use of technology, people as a resource as well as recipients with regular information flow and trainings.

To emphasize on the impending need of businesses to aptly address sexual harassment claims, Deloitte conducted a study in 2018 on costs of Sexual Harassment to businesses around the world² which ran as follows "Workplace sexual harassment imposes a range of costs that impact on individuals – including victims, perpetrators, and bystanders – employers, the government, and society. These costs include lost productivity (that reduce gross domestic product); other costs such as for healthcare, complaints and investigations (that do not reduce gross domestic product); and lost wellbeing of victims. There has been little prior research into the economic costs of workplace sexual harassment, i.e. the extent to which economic output is lower, and economic resources are allocated sub-optimally, due to workplace sexual harassment. The costs included in this model were: **USD 2.6 billion in lost productivity, or USD 1,053 on average per victim. USD 0.9 billion in other costs, or USD 375 on average per victim.**"

The aforesaid figures highlight that a mechanism to redress sexual harassment claims is not only an imperative for welfare of employees but also for the employer to make better business sense.

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1 www.unwomen.org

2 The economic costs of sexual harassment in the workplace Final report March 2019



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TIMELINE

Rupen Deol Bajaj vs. KPS Gill, 1995 SCC (6) 194

This was popularly known as ‘butt slapping case’ and it was the first of its kind that gave a wider interpretation of the word “modesty”. It was held that Mr. Gill’s alleged act of slapping on the posterior of a woman amounted to outraging of modesty as it was not only an insult to the normal sense of feminine decency, but also an affront to the dignity of women.

Vishaka & Ors. vs. States of Rajasthan (Vishaka Guidelines), AIR 1997 SC 3011

The case led to a landmark judgment in the name of ‘Vishaka Guidelines’ wherein the Supreme Court dealt with the issue of sexual harassment at workplace and laid down the guidelines to be observed at workplaces. In this case, a social worker named Bhanwari Devi was gang-raped for trying to prevent a child marriage. The case led to the recognition of sexual harassment as a violation of women’s rights in the workplace. In its verdict on November 15, 1995 the district and sessions court in Jaipur dismissed the case and acquitted all the five accused. Later, a writ petition was filed in the Supreme Court for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India.

Apparel Export Promotion Council vs. A.K. Chopra, AIR 1999 SC 625

The case was filed in the Supreme Court by way of Special Leave Petition wherein the Apex Court upheld the guidelines passed in the Vishaka case and stated that each incident of sexual harassment of women at workplace results in violation of the fundamental rights enshrined under Article 14, 19 and 21 of the Indian Constitution. It also upheld the validity of various international conventions. It was also observed that physical contact is not a sole factor to constitute sexual harassment and there can be no compromise with such violations of dignity and honour of a female.

P.K.S vs Union of India, (2011) ILLJ 371 Del

The Petitioner, who is the complainant worked at Safdarjung Hospital and had accused the respondent of sexual harassment. She complained that the respondent used to remain close to her and touched her. The IC inquired only about one incident out of many and declared that it was not sexual harassment, whereas the court held that sexual harassment must be analyzed from the complainant’s perspective and a hospital is workplace so a proper IC is to be constituted as per Vishakha Guidelines.

Medha Kotwal Lele vs Union of India, AIR 2013 SC 93

A Public Interest Litigation was filed for the compliance of guidelines of sexual harassment of women at workplace and to insist the government to enact a proper legislative framework with an aim of provide a safe and better working place for women. The Court repeated the Vishakha Guidelines and stressed additional measures for their enforcement. Further, it was also directed by the court that in the event of non-compliance of the Vishakha guidelines, an aggrieved individual shall be entitled to approach the High Court of the concerned state for redressal.



M.K vs The Chairman, University Grants Commission, MANU/MH/0912/2014

The petitioners were students of the university who were sexually harassed by other students. Madras High Court held that the definition of aggrieved woman includes non-employees. Section 3(1) of the POSH Act, 2013 states that 'no woman shall be subject to sexual harassment at any workplace'. The section states 'no woman' and not 'no woman employee' so it was held that the petitioners fell within the definition of aggrieved woman.

Mukesh and Anr. Vs. NCT of Delhi (Nirbhaya Case), (2017) 6 SCC 1

The case shocked the conscience of the country and led to major amendments in the Criminal Law and Indian Penal Code 1860. A new section 354A was inserted in the IPC for the purpose of defining the sexual harassment and punishment for the same. Further, the definition of rape under the Code of Criminal Procedure was also widened post this case.

#MeToo Movement (2018):

The #MeToo movement in India gained momentum following the global #MeToo movement approximately in 85 countries, where women who had previously kept quiet from all walks of life came forward with their stories of sexual harassment and assault, especially at the hands of perpetrators in senior positions.

Navtej Singh Johar vs. Union of India; AIR 2018 SC 4321

This case marked a history as it overturned the 150 year old section legalizing consensual homosexual activities between adults. It was held by the Apex Court that if not amended, section 377 of the IPC would violate Article 14 of the Indian Constitution, which states that every citizen has equal opportunity of life and is equal before law. Therefore, the court has upheld provisions in Section 377 that criminalize non-consensual acts or sexual acts performed on animals.



DEFINITION OF SEXUAL HARASSMENT UNDER THE POSH ACT

2.1. Sexual Harassment: Meaning

It is wrongly conceived by the majority that the sexual harassment is solely related to sex. Ironically, it is not merely about sex, but about the power as well that is used to seek advantage of others of being in a superior or dominant position. Sexual harassment can be referred to as coercion of a sexual nature that includes any unwelcome acts or behaviour. It stems from patriarchy wherein men are believed to be power-holders and superior to women.

Sexual harassment must be construed in a wider sense and not in a narrow sense (*M v. Union of India*,)¹ so as to include sexual advances or verbal or physical harassment of sexual nature. Further, it must be understood that the kind of behaviors considered as sexual harassment may vary with the difference in cultures. In all likelihood, the degree of tolerance of any act that can be considered as sexual harassment and topics that are appropriate to be discussed in workplaces also differ with the cultural differences.

As per Black's Law Dictionary, "sexual harassment" has been defined as:

"A type of employment discrimination consisting in verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks, and unwelcome touching."²

The International Labour Organization (ILO) has adopted a number of conventions and recommendations for the elimination of sexual harassment in the workplace, including the *Violence and Harassment Convention, 2019 (No. 190)*.³

Convention No. 190 defines sexual harassment broadly as "unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."

2.2. Definition of Sexual Harassment Given Under The Posh Act

Section 3 of the POSH Act lists down the following circumstances which if occur will amount to sexual harassment at workplace:

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

[In view of the guidelines and norms prescribed by the Hon'ble Supreme Court in the case of Vishaka & Ors vs. State of Rajasthan & Ors (1997)]

1 196 (2013) DLT 741

2 Black's Law Dictionary

3 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190



2.3. What are the behaviours that can be construed as sexual harassment?

Certain behaviors which might be construed as sexual harassment:

- a. *An unwelcome hug at a workplace;*
- b. *A brushing himself against B saying it's for fun;*
- c. *A always asking B unwelcome questions about her married sex life;*
- d. *A asking B personal questions about her body;*
- e. *A asking B out and even on refusal continues to do so;*
- f. *A and his friend cracking a joke with sexual innuendos every time B passes by.*

2.4. What Acts and Circumstances constitute Sexual Harassment under the POSH Act?

2.4.1. Unwelcome Act:

An unwelcome conduct is a conduct that is unsolicited or uninvited by the employee and can be considered as offensive.

- Silence does not mean that the act is welcome:

In ***Styles v. Murray Meats Pty Ltd, (2005)***⁴, the Victorian Civil and Administrative Tribunal, Australia held that if a comment or gesture is silent, it does not automatically mean that the comment is welcome.

- Encouraging some behavior does not mean all kinds of behaviors are welcome:

In the case of ***Horman v. Distribution Group Ltd. t/as Repco Auto Parts (2002)***⁵, Federal Magistrates Court of Australia held that even if the complainant had initiated and encouraged some behavior, this does not prevent other behavior from being unwelcome and constituting sexual harassment.

2.4.2. Physical Contact and Advances:

In ***Samridhi Devi v. Union of India (2005)***,⁶ the Hon'ble Delhi High Court applied the test of decency and modesty and held that the act of the Respondent was against the moral sanction and amounting to 'sexual assault' of the aggrieved woman.

- Sexual advances:

In ***Manisha Sharma v. Union of India (2013)***,⁷ the Hon'ble Delhi High Court held that sexual harassment cannot be construed in narrow sense and includes sexual advances within its ambit.

- Actual physical contact not necessarily to constitute sexual harassment:

In ***Pankaj Kumar v. Union of India and Ors (2013)***⁸, the Hon'ble High Court of Tripura in this case held that making of remarks so as to destroy the career of an unmarried lady officer of CRPF and other remarks meant to harass the officer amounted to sexual harassment.

- All physical contact not sexual harassment:

4 (2005) Victorian Civil and Administrative Tribunal CAT 914 (Australia)

5 (2002) Federal Magistrates Court of Australia

6 125(2005) DLT 284.

7 186 (2013) DLT 741

8 WP (C) 408 of 2013



In *Shanta Kumar v. ABC & Ors (2017)*⁹, the Hon'ble Supreme Court held that *a mere accidental physical contact which had no sexual context or undertone will not amount to sexual harassment*. In this case, the alleged harasser had held the arm of the Petitioner in the nature of an altercation and even thrown a material in her hand in a fit of anger. Hence, the incident could not qualify as sexual harassment.

2.4.3. All Demand or Request for Sexual Favours:

In *R.B.S. Chauhan v. Bank (2003)*,¹⁰ the Hon'ble High Court of Allahabad held that objectionable overtures with sexual overtone were enough to constitute sexual harassment.

2.4.4. Making Sexually Colored Remarks:

The most common types of behavior reported by people alleging sexual harassment are sexually suggestive comments or offensive jokes, intrusive questions about personal matters and inappropriate staring or leering.¹¹

- Held as sexually colored remarks:

In the case of *Albert Davit Limited v. Anuradha Chawdhary (2004)*¹², the Hon'ble Calcutta High Court, held that asking the complainant to stay late in office, accompany him after office hours to drink with him and making remarks with sexual innuendos established a *prima facie* case and balance of convenience in complainant's favour.

- It was also noted by the Court that the remarks and behaviors would have to be seen in the cultural context of both the Respondent and the complainant.

2.4.5. Showing Pornography:

Mere presence of sexually explicit material can be sufficient to constitute sexual harassment.

The issue of display of pornography and sexual harassment was taken up by the Circuit Court of Leon County, Florida in the case of *Lee v. Smith (2007)*¹³, wherein it was held that *pornographic calendars and screen savers in the workplace showed an ongoing act of sexual harassment even if it was not specifically directed to them. As it can create hostile or demeaning atmosphere in the workplace environment.*

In *K.A. Abhas v. the Union of India (UOI) (1971)*,¹⁴ the court observed that the test for pornography should be that of an ordinary man of common sense and prudence and not "out of the ordinary or hypersensitive man."

2.4.6. Any Other Unwelcome Physical, Verbal Or Non-Verbal Conduct Or Sexual Nature

In the case of *Dishu Sengupta v. State of Bengal and Anr. (2016)*¹⁴, the Hon'ble High Court of Calcutta was of the view that using of metaphors which had romantic and indirect sexual connotations would also fall under sexual harassment.

- Use of abusive language can lead to sexual harassment:

Similarly, in the case of *M/s T. Abdul Wahid & co. v. the Labour Court Vellore and V.*

9 2017 SCC OnLine Del 11327

10 2003 2 AWC 1117 All.

11 Australian Human rights commission, Effectively Preventing and Responding to Sexual Harassment: A Quick guide, 2008 Edition.

12 (2004) 2 CaLT 421 (HC)

13 (2007) FMCA 58 at [198]

14 CRRs 1204, 1205, 1212 and 1213 of 2016



Somalingam (2012)¹⁵, the Hon'ble Madras High Court was of the view that abusing a woman employee in front of 150 employees was an act of sexual harassment.

- Proclamation of love and demands to spend time alone may lead to sexual harassment:

Proclamation of love interest without intention to sexually harass may also lead to sexual harassment if it is unwelcome to the aggrieved woman.

2.5. Can ‘Flirting’ be considered as ‘Sexual Harassment’?

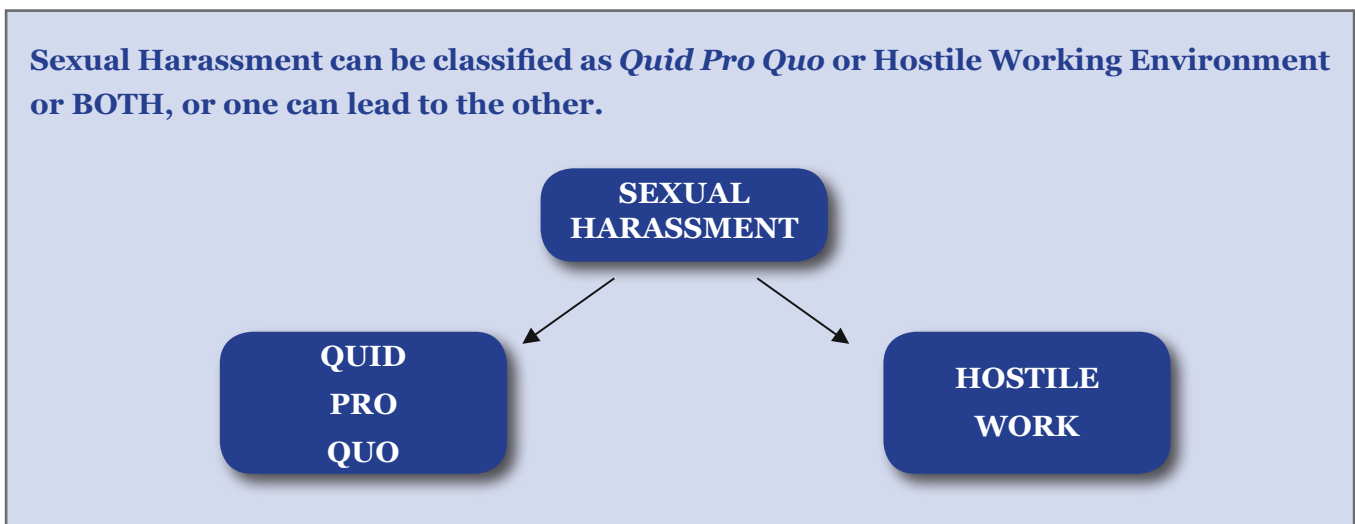
‘Flirting’ can also be termed as interaction which is consensual and welcome and does not constitute sexual harassment per se. When flirting takes a different colour and becomes uncomfortable or unwelcome then the element of it being consensual and welcome is taken away, Such continued behaviour can be termed as sexual harassment.

2.6. Can a one-time incident be termed as Sexual Harassment?

The question that whether the act has to be repetitive and there has to be follow ups to be regarded as sexual harassment has been raised frequently. Thus, in finality, sexual harassment does not have to be repeated or continuous to be against the law. It can be a one-time off incident. Certain conduct can be so offensive that it can be sexual harassment in its entirety. In **Insitu Cleaning Co. Ltd. V. Heads (1994)**,¹⁶the Employee Appeal Tribunal of the United Kingdom held that a single act can constitute sexual harassment. In case of **Rupen Deol Bajaj v. KPS Gill**, that act of the respondent was considered to be act of outraging the modesty of a woman as it being an insult to the normal sense of feminine decency. In this case a one-time incident was taken into consideration by the court to constitute an act of sexual harassment.

2.7. What are the different forms of Sexual Harassment?

Section 3(2) of the Act talks about the circumstances which may amount to sexual harassment which includes an explicit/implicit threat or a promise of preferential/detrimental treatment in an employment or any implied/explicit threat about her present or future status in an employment or interfering with her work or any humiliating treatment. All this may be further classified into a quid pro quo or hostile working environment as stated under the International laws on sexual harassment at workplace.



Sexually harassing behavior is often classified as:

❖ **QUID PRO QUO SEXUAL HARASSMENT:**

This harassment takes place when a job benefit is made dependent on acceptance of sexual demands

¹⁵ (2012) 3 LLJ 237 Mad.:2012 LLR 422

¹⁶ [1994] UKEAT 576 92 0505 (United Kingdom Employment Appeal Tribunal)



of the perpetrator by the victim. Quid pro quo is like a give and take situation and changes the conditions of employment in return or denial of a sexual favour. Quid pro quo as a form of sexual harassment was prohibited for the first time in the United States in the case of **Williams v. Saxbe (1976)**,¹⁷ by the US District of Columbia.

SCENARIO:

Anisha works as a copywriter in an advertisement agency of which, Manish is the Director. Manish promises Anisha to promote her to the position of content head if she spends a night with him. When she refuses to the proposal, he replaces her with someone else and demotes her to the position of a junior copywriter. This scenario is an example of quid pro quo or this-for-that type of sexual harassment as Manish asked Anisha for a sexual favour in return of a job benefit.

❖ HOSTILE WORK ENVIRONMENT:

The hostile work environment is created when the act of sexual harassment has the effect of interfering with the victim's work performance making it difficult to work in the organization. There may be number of instances of hostile work environment. The act only covers those instances of harassment which are a result or are followed by acts of sexual harassments.

SCENARIO:

Samridhi works as a cashier in a bank with Ritik who is also the cashier. They both have common friends and everyone has lunch together. Ritik asks Samridhi for a relationship to which Samridhi refuses. By this, Ritik is offended and spreads rumors about her that she is a woman of an 'easy virtue'. As a result, two of her other colleagues also propose relationships to her to which she refuses and is eventually singled out. This scenario is an example of hostile work environment as Samridhi's workplace has become humiliating for her.

2.8. What does not constitute Sexual Harassment?

Some examples of workplace behaviors that may not constitute sexual harassment are as follows¹⁸:

- Follow-up on the work performance or leave
- Terms and conditions or policy of the workplace
- Consensual relationship
- Work pressure to meet the deadlines or the quality standards
- Feedback on the work performance
- Normal exercise of management rights
- Using of intemperate language, bias or favoritism
- Misunderstandings, Personal Feuds, etc. in the workplace
- Accidental or mere physical contact of non-sexual nature

¹⁷ 413 F. Supp 654 (DDC 1976)

¹⁸ <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/policies-and-acts-1/sexual-harassment-of-women-at-workplace/workplace-sexual-harassment#:~:text=Some%20examples%20of%20workplace%20behaviours,normal%20exercise%20of%20management%20rights.>



It is pertinent to note that while these actions may not constitute sexual harassment, they can still add to an undesirable work environment if they are not handled appropriately. The corporate culture depends on the diverse issues to be handled sensitively even if they do not constitute sexual harassment.

In the case of **Union of India vs. R**¹⁹ the Hon'ble Madras High Court held that “*a solitary allegation of intemperate language against a female employee does not constitute an offense under the Act*”.

It was further observed in the case that “*If a woman employee is discriminated against due to her inefficiency or for any other official reasons, the recourse for her is not the one taken by this complainant.*” That is to file a complaint under the POSH Act.

2.9. Myths About Sexual Harassment

Myth 1: Sexual harassment is rare.

Fact: Sexual harassment is widely spread and omnipresent just not spoken about openly.

Myth 2: Only intentional acts can constitute sexual harassment.

Fact: Any act that has the impact of sexualizing the harassment felt and suffered by the victim can constitute sexual harassment. In all the cases, the perpetrator can very easily claim that he had no intention of doing so and try and escape the consequences of his actions.

Myth 3: Most of the time sexual harassment is exaggerated and is harmless flirtation.

Fact: Flirtation is very different from sexual harassment, first of all, the element of consent is missing in sexual harassment, and secondly, it is unwelcome and has the effect of being offensive and insulting and has got nothing to do with ‘flirtation’ or social interest.

Myth 4: Women provoke harassment.

Fact: This is a stereotypical way of blaming the victim for being sexually harassed and often used as an excuse by harassers to hide.

Myth 5: Ignoring harassment would help.

Fact: Ignoring the harasser will have the effect of encouraging his acts thereby allowing such behavior.

¹⁹ WP.Nos.10689, 24290 and 4339 of 2019



SCOPE AND APPLICABILITY OF POSH ACT

“Dear harasser,

We with zero regrets would love to inform you that we would not be able to offer you employment currently or in future—near or distant.

Yours Responsibly,

Workplace”

The POSH Act was implemented to address the struggles of women at workplaces with the aim and object to provide a safeguard for women across the nation against instances of sexual harassment at places of work.

3.1. How is POSH Act Applicable on “Employers”?

The POSH Act refers to “Employer” as a person who is responsible of ensuring a safe and healthy work environment and who implements the POSH Act in the organization.

As per Section 2(g) of the POSH Act an “Employer” means:

- **Government organisations:**

Head of the department, organisation, undertaking, establishment, enterprise, institution, office, branch or any unit of government organisation or any officer specified in this regard;

- **Private sector organisations/Non- government organisations:**

The person or board or committee responsible for formulation and administration of policies of such organisations;

- Any person discharging contractual obligations with respect to his/her employees.

For the purposes of the POSH Act, following are the examples of an Employer:

- a. Consumer co-operative society
- b. President of co-operative society
- c. Director General of Police
- d. Government Ministries and Public Sector Undertakings
- e. Management of a Company

3.2. What does the POSH Act say about “Employee”?

Section 2 (f) of the POSH Act defines “Employee” as a person employed at workplace for work that may be:

- ✓ Regular;
- ✓ Temporary;
- ✓ Ad hoc or daily wage, either directly or indirectly through an agent;
- ✓ Probationers or trainee or apprentice and/or intern



- ✓ A person employed on voluntary basis (not being employed for remuneration);
- ✓ A person working under implied or express contract (contractual worker).

In the case of **JK v. RTMN University**,¹ the Hon'ble Bombay High Court referred to several definitions under the POSH Act to identify the scope and applicability of the Act and observed that the terms 'Employer' and 'Employee' are not mutually exclusive. Thus, it must be understood that some posts fall under both. Thus, this implies that in an organisation, a high-ranking lady officer occupying managerial or supervisory post may also become a victim of sexual harassment.

3.3. What Places can be considered as “Workplace” under the POSH Act?

Section 2(o) and Section 2(p) of the POSH Act enlist the places that constitute workplace under the POSH Act.

The definition is further expanded² to include:

- any **private and public sector** organization;
- the definition also **includes hospitals or nursing** homes to be “workplace”;
- sports institute, stadium, sports complex or competition or games venue;
- definition of the workplace is also **not only limited to the four walls of a building** rather it could also be **any place visited by the employee during the course of employment;sss³** and
- The Act has also defined **unorganized sector⁴** in relation to a workplace including workplaces which are owned by individuals or self employed workers, engaged in production and sale of goods or providing services of any kind . It could be a house where a **woman who works as a house-help, ASHA worker, Agricultural Labourer or otherwise.**

The POSH Act under section 2(o) (iv) extends its applicability to Sports Federations and other governing bodies as employers in relation to sports institute, stadium, sports complex or venues for competitions, hotels, and games villages too.

3.3.1. Is POSH Act applicable to an Unorganized Sector?

The POSH Act not only covers the organized sector but also the unorganized sector. The complaints of sexual harassment in the unorganized sector, as defined under Section 2(p) of the POSH Act, are to be submitted to the Local Committee as established in each district.

Further, Section 2(p) further defines the workplace in relation to unorganized sector means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.⁵

3.3.2. What is the Concept of Extended Workplace?

In the case of **JK v. R.T.M.N University**,⁶ the Hon'ble Bombay High Court interpreted the definition of 'workplace' and observed that the same should be inclusive and non-exhaustive since the Parliament intends to protect women from all kinds of sexual harassment hence, the legislation is open for further interpretation.

1 Writ Petition No. 3449, 3450 & 3451 of 2013

2 Ibid.

3 Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University (MANU/MH/0912/2014)

4 Section 2(p) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

5 Section 2(p) of the of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

6 Writ Petition No. 3449, 3450 & 3451 of 2013



It is to be understood that the definition of workplace as provided under section 2(o)(v) of the POSH Act has to be construed not in restrictive manner but liberally. Therefore, considering the changing dynamics at work, the POSH Act includes within its ambit the concept of ‘extended workplace’.

In spirit of extended workplace principle, the **National Commission for Women** directed⁷ all the Chief Secretaries of the respective States and Union Territories to direct the coaching/educational institutes to ensure implementation and compliance of the POSH Act for the protection of female students within their respective establishments and to conduct public awareness programmes and campaigns on the POSH Act among all the stakeholders to make sure that such incidences of sexual harassment at workplace are effectively reported and dealt with.

The Courts have time and again propounded the test to determine the relationship of the place where the incident of sexual harassment took place with the employment.

In **S v. Comptroller and Auditor General of India and Anr**,⁸ the Hon’ble Delhi High Court highlighted the need to consider the advancements in technology in the arena of sexual harassment as well, thereby clarifying that a narrow and pedantic approach while defining the workplace should not be followed. The Court in the present case upheld that though the scope of workplace will depend on the facts and circumstances and no strait jacket formula can be laid down yet a test to determine as to what can include extended workplace will involve:

- Proximity from the place of work;
- Control of management over such place/residence where working woman is residing; and
- Residence must be an extension of the working place.

3.3.2.1. How is Virtual Workplace included under the Concept of “Workplace” under the POSH Act?

Virtual workplaces have become inevitable and organizations across the globe adopted work from home pursuant to the global pandemic. With this paradigm shift in the mode of working, the menace of sexual harassment has also entered the sphere of virtual workplace, thereby making way for need to construe the provisions of the POSH Act in relation to the virtual workplaces. Virtual harassment takes form and shape of offensive remarks and overtones during video calls, sexual advances during online calls, messages, calls after work hours, non-consensual image sharing, inappropriate comments and jokes.⁹

In view thereof, the Courts in India have taken a broad view to include the concept of virtual workplaces as extended form of workplaces and thus would fitting the same into the definition of workplaces under the POSH Act.

In the case of **SM v. Disciplinary Authority and General Manager, Bank**,¹⁰ the Hon’ble High Court of Rajasthan after analyzing the facts and circumstances of the case endeavored to include virtual workspaces within the ambit of ‘workplace’. The Court also observed that even if a person is posted in another location and on digital platform is harassing another lady who is posted in another location, in a different State altogether, even then it would come under the definition of sexual harassment as defined under the act.

Cyber Harassment

With massive and exponential growth in the technology and innovative adoption of technology in to different aspects of businesses, the organizations are also facing difficulty in dealing with instances of sexual harassment on online platforms. The chat technologies available in today’s arena have expanded the workplace that extends beyond the boundaries of work thereby posing risk of entering into the private lives of each other. Harassment over digital space in the garb of official communication raise some serious

⁷ Available at: <https://ssrana.in/articles/ncw-states-implementation-posh-act-coaching-educational-institutes/>

⁸ Civil Writ Petition No. 8649, Delhi High Court (2008)

⁹ Refer to: <https://thedailyguardian.com/scope-of-posh-act-in-the-era-of-virtual-reality-and-work-from-home-space/>

¹⁰ S.B. Civil Writ Petition No. 150/2021



obligations, based on ethics and responsibility, on the employers.

As rightly quoted by Dr. Ranjana Kumari, “the misogyny works online as much as it works offline”,¹¹ the only difference between the offline sexual harassment and online sexual harassment is of the medium through which it is done. While anything that happens in the offline space gets magnified in the digital space. However, there is need to conceptualise harassment in cyber space in the forms that it can take place in, that is:

1. Non-consensual image taking and non-consensual image sharing;
2. Sexual threats;
3. Bullying;
4. Unwanted sexualisation

Therefore, the organisations should work towards evaluating the workplace ecology to prevent and effectively deal with cases of sexual harassment. It is important for the organisations to eradicate the conditions that arise from gender gaps and dynamics to make the workplace more inclusive and safe.

The challenge with sexual harassment is under reporting due to the feeling of shame and the fear of retaliation that is associated in such cases is what must be considered by the organisations. Thus, there comes in the need to address and redress online sexual harassment for the organisations in order to set up a safe working environment.

¹¹ Refer to: <https://www.unwomen.org/sites/default/files/2021-11/Making-zero-tolerance-a-reality-en.pdf>



COMPLAINT MECHANISMS

4.1. Introduction

Complaint is a statement, a request alleging that a public or private body failed to meet its legal obligations. It is accompanied by a claim for relief. In simple words, it refers to raising a voice backed by legal provisions/law as applicable.

Sexual Harassment at Workplace is a pervasive issue faced all over the world which comprises of actions, behaviors explicit or implicit that insult, defame or degrade the victims' dignity and respect coupled with sexual connotations. Such conduct which is unwelcome and creates a hostile working environment for women is construed as sexual harassment at workplace, and the same is actionable and not acceptable in the eyes of law.

Though the POSH Act has been in effect in India for almost a decade now, but its implementation and compliance are still a big concern.

The dilemma faced by most women while reporting a complaint of sexual harassment are:

- To identify the cause;
- To report the cause;
- Awareness of the redressal mechanism and;
- Awareness of their rights and responsibilities under this framework as;
- Awareness of the applicability;
- Tends to or made to feel guilty for the act that has been committed by someone else or;
- Worse, the act is often trivialized;
- The fears of retaliation, loss of career, loss of dignity, and trauma of the incident generally refrain a woman to raise their voices and therefore, majority of the cases go unreported in India;

However, to create better and safer workplaces, the aforesaid fears and speculations have to be eradicated from the minds of the victim.

What Kinds of complaints are tenable under the POSH Act?

Only complaints of those acts/instances/behaviours that are coupled with sexual connotation are admissible under the ambit of POSH Act.

Note: Complaints pertaining to religion, caste or creed are not tenable under the POSH Act.

4.2. Who can complain?

The POSH Act is a welfare law and recognizes that the aggrieved women at workplace will not be limited to the remunerated employees of any particular age. Thus, the definition specified under the Act has been expanded continuously by the Indian Judiciary and the same will keep on evolving in view of dynamic work scenarios and emergence of new circumstances in day-to-day lives.

Any woman, whether employed or unemployed, who alleges to have been subjected to any act of sexual



harassment¹ in the workplace, may file a POSH complaint in accordance with the provision of *Section 9 of the POSH Act, 2013*.²

Three Main Conditions for an act to be actionable under the POSH Act:

- First, the complaint of sexual harassment must be made by an **aggrieved or by any person having the knowledge of the incident subject to the consent of the aggrieved woman**
- Second, the accused person is **alleged to have committed sexual harassment** as defined under the POSH Act
- Third, but most important, the act of sexual harassment has been conducted by the accused person in the **workplace** that falls within the purview of the Act

Section 2 (a) of the POSH Act defines “aggrieved woman” as under—

- i. *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;*
- ii. *in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;*³

Aggrieved Woman:
 Visitor
 Customer
 Client
 Intern
 Trainee
 Volunteer
 Visitor
 Staff

Note: A Student may also file a POSH complaint.

Reference to Case: **PKN vs. Union of India**⁴ wherein, the Respondent contended that the complaint filed by a school student under the POSH Act is inadmissible and therefor the provisions of the Act is non-applicable.

These contentions were rejected by the Hon’ble Calcutta High Court and it was held that the provisions of the POSH Act shall also be applicable on students of the school and hence, the Internal Committee must be established for addressing and handling such complaints. **It holds up the definition of an aggrieved woman of any age, whether employed or not.**

4.3. What if you are unable to complain?

It is not mandatory that the complaint under POSH Act must be filed by the victim herself. ⁵

Despite living in this 21st century or in the so-called “modernized world” wherein there has been an upward trend in technological and scientific advancements in every sector, women have continued to be a vulnerable section of the society and easy victims of gossip or aggression over the years.

The legislature recognizes that there may be **numerous reasons that may inhibit or restrict a woman from filing a complaint** against the perpetrator and why she may choose not to report against the perpetrators belonging to any category at workplace i.e. supervisor, co-worker ,senior managers, clients, visitors etc.

Recognizing the vulnerable section, the Act provides a provision for a person to file a complaint on behalf of the victim/aggrieved woman, in order to protect her fundamental rights.

1 Refer to Section 2(n) of the POSH Act, 2013
 2 Refer to Section 9 of the POSH Act, 2013
 3 Refer to Section 2 (a) of the POSH Act, 2013
 4 Refer to <https://muds.co.in/posh-for-school-implemented/>
 5 Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013



<p><i>In case the victim is unable to make a complaint on account of her physical incapacity, the following persons may file the complaint on her behalf:</i></p> <ul style="list-style-type: none"> ○ <i>Her relative or friend, or</i> ○ <i>Her co-worker, or</i> ○ <i>An officer of the National Commission for Women or State Women’s Commission, or</i> ○ <i>Any person who has the knowledge of the incident, with the written consent of the aggrieved woman</i> 	<p><i>In case the victim is unable to make a complaint on account of her mental incapacity, the following persons may file the complaint on her behalf:</i></p> <ul style="list-style-type: none"> ○ <i>Her relative or friend, or</i> ○ <i>A special Educator, or</i> ○ <i>A qualified psychiatrist or psychologist, or</i> ○ <i>The guardian or authority under whose care she is receiving treatment or care</i> ○ <i>Any person who has the knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care</i> 	<p><i>In case the victim is unable to file a complaint for any other reason,</i></p> <ul style="list-style-type: none"> ○ <i>Any person having the knowledge of the incident, subject to written consent.</i>
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It is pertinent to mention herein that in order to file a complaint on behalf of the aggrieved woman, the person filing the complaint must obtain a **written consent** from the victim. The consent from the victim must be obtained freely in the form of a written document only. Any consent in the form of verbal communication or gesture shall not be admissible.

Please note: **Anonymous Complaints pertaining to Sexual Harassment are not acceptable** and the reason being, it will violate the principles of natural justice and curtail the rights of the Respondent. Moreover, it will increase the number of complaints without any accountability. Certain corporates have taken initiatives of putting special boxes, online as well as offline, for addressing such complaints at workplace. However, such complaints are not actionable under the Act unless a written complaint duly signed by the victim or the victim’s consent is attached with the copy of the complaint.

SCENARIO: If any co-worker/witness intends to complain on behalf of the aggrieved woman/victim, he/she may approach the Internal Committee. However, the IC shall take cognizance of such offence only if an approval in the form of a written document is received from the victim.

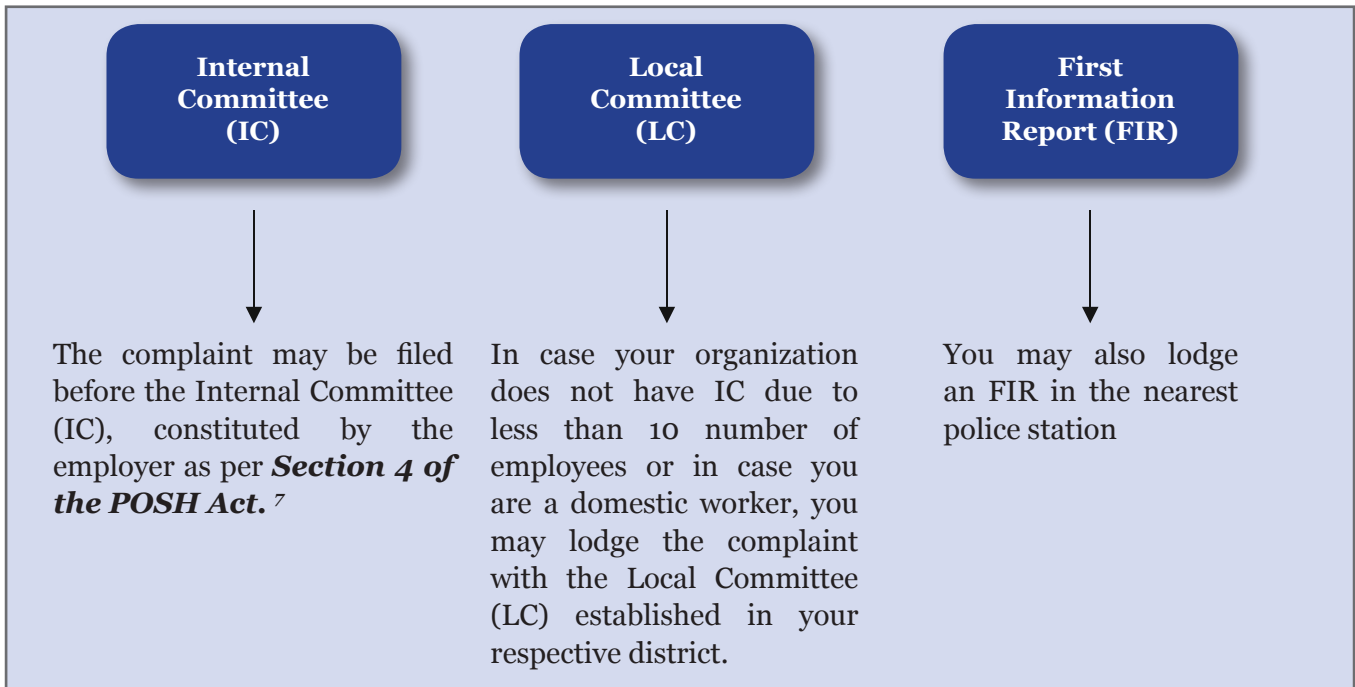
4.4. What if the victim is dead?

In case the victim is dead, her legal heirs or any person having the knowledge of the incident may file a complaint on her behalf subject to written approval from her legal heirs.⁶

⁶ Rule 6(iv) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013



4.5. Where can you complain?



Note: Notwithstanding anything contained in the provisions of the POSH Act, an aggrieved woman may pursue to avail any other remedies available under any other law as enforceable. This implies that there is no dispute with regard to the fact that civil and criminal proceedings can be initiated by the victim simultaneously.

Filing a complaint with an IC does not preclude the complainant from simultaneously filing a police complaint under the Act in various scenarios under the Act. She may choose to withdraw the police complaint at any given point of time or may pursue it to its logical legal end.

In certain cases, it has been noted that the woman satisfied with the IC proceedings has withdrawn her police complaint.

The Act also provides choice to the woman in case she wants to file a Zero FIR in the nearby police station against the perpetrator.

It is usually done in cases where the woman may be away from her physical workplace or has suffered third party harassment or is unable to reach the jurisdictional police station for any reason whatsoever.

Zero FIR is similar to FIR, except that it can be filed in any police station without relying on the jurisdiction aspect.

The Act has specifically imposed the responsibility upon the Employer to provide assistance to the woman, in case she chooses to file a complaint in relation to the offence under Indian Penal Code or any other law for the time being in force as specified under Section 19(g) of the POSH Act.⁷ The other legal remedies are always open to her as a common citizen, as per the applicable laws.

An aggrieved woman, if so desires, may also file an online complaint pertaining to sexual harassment at workplace through **SHe-Box** portal. [**The link for the same is: <http://www.shebox.nic.in/>**]

[The same is covered in detail in the chapter titled: Role of various departments and Government Bodies]

⁷ Refer to Section 19 (g) of the POSH Act, 2013



In case she is unable to use any of the redressal mechanism, she also has the option to file a complaint with the National Commission for Women on the official website of the Commission ncwapps.nic.in or a written complaint can also be filed along with supporting documents/details as required.

On receipt of the complaint, the concerned authority shall scrutinize the complaint as per the NCW mandate and shall proceed further with the proceedings in accordance with the provisions of the POSH Act.

4.6. How can you file a complaint?

A written complaint must be filed to the Internal Committee (IC) or the Local Committee (LC), as the case may be.⁸

The complaint filed must include the following details⁹:

- Name and address of the complainant;
- Name and address of the accused;
- Date and time of specific event(s) which constitute sexual harassment as defined under the Act;
- Name and address of the witnesses, if any;
- Nature of the charge explaining in detail as why the act/instance/behavior constitutes sexual harassment under posh act; and
- Any other document/evidence supporting the allegations.

Note: Only a complaint pertaining to sexual harassment shall be accepted by the IC. No other complaint/harassment shall be entertained by the IC.

4.7. When can you file the complaint?

The limitation period for filing a complaint pertaining to sexual harassment is explicitly defined in Section 9 of the Act which states that the complaint must be reported within **three months** from the date of incident or the last date of the series of incident, as the case may be.¹⁰

4.8. Can extension be granted for filing the complaint?

The IC may extend the time limit for filing the complaint, for another three months, if it is satisfied that there were reasonable grounds that prevented the complainant from filing the complaint within the stipulated period.¹¹

*However, there is a provision in law to the effect that the Court may take cognizance of the offences even beyond the limitation period if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. But the chances of the Court exercising such extraordinary power would be limited if the incident is too old and there is no satisfactory explanation for the delay in filing of complaint.*¹²

Usually the Court would take it up if it satisfied that the incident of sexual harassment took place continuously and the last incident of sexual harassment as per that explanation was either 3 months or 6 months from the date of filing of the complaint.

⁸ Refer to Section 9 of the POSH Act, 2013

⁹ Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

¹⁰ Refer to Section 9(1) of the POSH Act, 2013

¹¹ Refer to Section 9(1) of the POSH Act, 2013 with reference to Case Law: Tejinder Kaur vs. UOI, (2017 SCC Online DeL 12221)

¹² Refer to <https://www.barandbench.com/columns/me-too-limitation-periods-for-filing-complaints-myths-and-realities>



4.9. What if the perpetrator is not an Employee?

Third party sexual harassment at workplace differs from the traditional concept of workplace sexual harassment. These are caused by a person who is not an **employee, supervisor or any other role** at the company. That is to say, the perpetrator may be either of the following:

- Client
- Customer
- Vendor
- Contractor
- Any External Person

Third party sexual harassment may arise anywhere and at any time.

For instance, when any client or his/her representative visits your office and passes lewd remarks or deliberately attempts to touch you in an inappropriate manner or request you for sexual favours, this is what is called “third party sexual harassment”. The third party is not under the control of the employer so the employer in his good business practice will render all assistance to the aggrieved woman to the extent possible.

Supposedly, a woman visits a hotel for a client meeting and is harassed by a hotel staff. What can be her redressal mechanisms?

In such scenarios, an aggrieved woman to seek assistance from her organisation or the IC so formed at her organisation. Thereafter, the IC may contact the third party’s organization (in this case, it is the hotel) or may also conduct a joint investigation to take appropriate action against the perpetrator. She may also file a complaint in the Local Committee established in her respective district/are and/or may also lodge an FIR in the nearby police station.

In such circumstances, the organization may assist her in the interest of social justice and good governance and try to put a pressure on the employer of the third party by invoking special clauses in the contracts to seek their co-operation in the concerned matter.

In accordance with the provision of the POSH Act, the Employer is responsible to take reasonable steps and provide assistance to the aggrieved woman and affected parties, in the event of filing of complaint against third party.

SCENARIO: In case a third party employee touched inappropriately to you during a business meeting or passes a sexual comment, the same shall amount to third party sexual harassment.

4.10. What if during the pendency of the proceedings the accused or respondent leave the employment?

Even if the complainant or the Respondent leave the employment during the pendency of the proceedings, the proceedings shall still be conducted in accordance with the provisions specified in the Act and Rules thereto, taking into consideration that the complainant and/or the Respondent were a part of the organization at the time the incident occurred and the alleged action took place at the workplace.

In case the accused person has been proved guilty, then the IC or the LC, as the case may be, may award compensation or deduct from the salary or the wage of the Respondent such sum as it may consider appropriate to be paid to the aggrieved woman or her legal heirs.¹³

Further, in case the employer or the organisation is unable to deduct the amount from the salary or wages of the accused or in case the accused leaves the employment during such period and fails to pay the amount due to any reason whatsoever, the IC or the LC, as the case may be, may forward the order for

¹³ Refer to Section 13(3) of the POSH Act, 2013



recovery of the sum as an arrear of land revenue to the concerned District Officer. That is to say, a civil recovery suit may also be filed against the perpetrator for the recovery of the sum due.

4.11. What if the inquiry is not completed within 90 days?

In accordance with the provision of Section 11(4) of the Act, the inquiry has to be completed within a period of 90 days.

Sometimes it may be beyond the control of the IC due to which the proceedings may be delayed or not completed within the prescribed period of 90 days as specified under Section 11(4) of the Act. However, that does not lead to automatic abandonment of the case.

Recently, in the case of *N vs. ICAI & Ors.*,¹⁴ it was held by the Hon'ble Delhi High Court that the complaint of sexual harassment and inquiry proceedings cannot be quashed merely on the ground that the inquiry of the IC was not completed within the period specified under Section 11(4) of the Act.

Further, the Bench observed that the complaints containing allegations of sexual harassment needs to be inquired into and taken to their logical conclusion in the interest of both the complainant and the alleged person (accused).¹⁵ In such cases, the IC can record the reasons why the proceedings have been so delayed.

4.12. Can you file a complaint against a woman under the POSH Act, 2013?

Section 2(m) of the Act defines “respondent” as a person against whom the aggrieved woman has made a complaint under Section 9.¹⁶

The said definition does not indicate a specific gender of the perpetrator thereby including, persons of all gender. Hence, the complaint under the POSH Act can be filed against any person and there is no dispute in case the complainant and the respondent is of the same gender. Therefore, a woman can file a complaint against a man/woman/trans-person, as the case may be. It is interesting to note here that this is in contrast to the definition of complainant which includes only women under the POSH Act.

Reference: The Hon'ble High Court of Calcutta in the case of *M B v. Internal Complaints Committee, College & Ors.*,² held that the same-gender Sexual Harassment complaints are maintainable under the POSH Act and also noted that definition of “sexual harassment” under Section 2(n) cannot be a static concept and that Sexual harassment, as contemplated in the 2013 Act has to pertain to the dignity of a person, which relates to her/his gender and sexuality; which does not mean that any person of the same gender cannot hurt the modesty or dignity as envisaged by the 2013 Act.

In case the company has adopted a gender neutral POSH policy, the sexual harassment complaints by men and other genders can be filed with the HR Department, Grievance cell or the Management of the company and be dealt under the Rules of misconduct by the Disciplinary Committee. The instances of gender based violence can be many and organizations can come out with innovative ways to deal with such complaints.

It cannot be denied that unless a legislative change is brought about, the POSH Act largely protects women. However, the companies must promote a cohesive work culture by creating a gender inclusive policy and provide equal protection and security to all employees.

¹⁴ <https://legiteye.com/in-wpc-882023-del-hc-complaint-of-sexual-harassment-and-inquiry-proceeding-cannot-be-quashed-simply-because-internal-complaints-committee-failed-to-complete-inquiry-within-time-frame-of-90-days-given-in-sec114-of-posh-act-delhi-hc-justice-vikas-mahajan-05-01-2023/>

¹⁵ Refer to <https://indianexpress.com/article/cities/delhi/sexual-harassment-case-internal-complaints-committee-inquiry-posh-act-delhi-high-court-8377148/>

¹⁶ Section 2(m) of the POSH Act, 2013



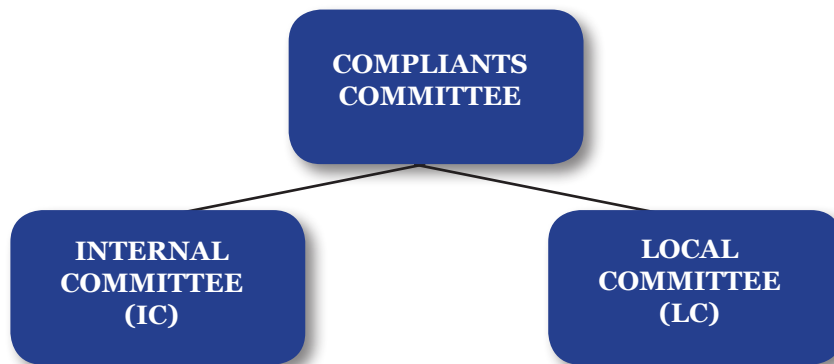
COMPLAINT COMMITTEE(S) UNDER THE POSH ACT

5.1. Introduction

For effectively responding to and addressing issues emanating from sexual harassment at workplace, it is important to have a proper grievance handling mechanism that is accessible to by all workers in an organization or company.

The Act requires every employer, having more than 10 workers, to set up a Committee known as the Internal Committee (IC), a quasi-judicial body to act as a redressal forum for incidents of sexual harassment. ¹

The Act also requires every District Officer to set up a Committee known as the Local Committee (LC) to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted on account of having less than 10 workers or if the complaint is against the employer himself/herself.



5.2. Internal Committee (IC):

The name of “Internal Complaints Committee” has been amended to “Internal Committee” vide the Repealing and Amending Act dated May 09, 2016.²

Under the POSH Act, all employers (private/government) are mandated to constitute an Internal Committee (IC) at each of the administrative units and offices located at each of its divisional and sub-divisional levels. All employers must provide necessary facilities for the IC to deal with the complaint and to conduct an inquiry.

Some intrinsic features of the IC are as under:

- IC is a Quasi-Judicial Body.
- It has powers vested in the nature of a Civil Court.
- The IC conducts inquiries in to the complaints of sexual harassment.
- IC is obligated to submit a final report of each case to the District Officer.
- IC has to prepare a report of its findings to the Employer.

¹ Refer to Section 4 of the POSH Act, 2013

² Refer to Second Schedule of the Repealing and Amending Act, 2016 published in the Gazette of India on May 09, 2016



5.2.1. Composition of the Internal Committee:

The composition of the IC as prescribed by the Act is explained in the Table below:

Member(s)	Qualifications
Presiding Officer/ Chairperson	Woman employed at a senior level at the workplace from amongst the employees; If not available, then nominated from other office/units/ department/ workplace of the same Employer. ³
Members	Not less than two (2) members from amongst employees preferably committed to the cause of women or having legal knowledge/ experience in social work. ⁴
External Member	From amongst an NGO/association committed to the cause of women or a person familiar with the issues pertaining to Sexual Harassment. ⁵ As per the Rules ⁴ , a social worker with at least five (5) years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in addressing workplace sexual harassment or a person who is familiar with labour, service, civil or criminal law. Such member is entitled to an allowance of INR 200 per day for holding the proceedings of the IC and also reimbursement for travel cost incurred by him or her.
Tenure	Term of the members shall be for a maximum period of 3 years.
Quorum	Minimum quorum for the meeting of IC shall be 3 members including the Presiding Officer.

Section 4(2) of the Act clearly states that: “At least one-half of the total members so nominated shall be women”

Note:

The Presiding officer or any of the other members can be removed by the Committee before the expiry of three (3) years' time period as specified under the Act⁷, if:

- Publishing, communicating or making known to the public, press and media the information related to sexual harassment cases against the legal provisions;
- Convicted for an offense under any law or undergoing an inquiry into an offence under any law;
- Found guilty in any disciplinary proceedings against him/her;
- Abuse his/her position as a member of IC;
- The Members of the IC are also entitled to fees and allowances under the Act for holding the proceedings of the IC;

³ Refer to Section 4(2)(a) of the POSH Act, 2013

⁴ Refer to Section 4(2)(b) of the POSH Act, 2013

⁵ Refer to Section 4(2)(c) of the POSH Act, 2013

⁶ Refer to Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

⁷ Refer to Section 4(4) of the POSH Act, 2013



5.2.2. Constitution of IC in Film Production Units:

Case Law – Women in Cinema Collective Vs. State of Kerala

Citation - WP(C) NO. 33994 OF 2018

The Hon'ble Kerala High Court held that there exists an employer-employee relationship between the actors and their respective production units, and that the film production units served as 'workplace' as defined under Section 2 (o) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Thus, as far as the film industry is concerned, it was held that each individual production unit was a workplace of an individual film, and therefore, they would be mandated to constitute an IC.

The definition of workplace is not exhaustive, temporary as well as permanent both are recovered. Therefore, film units/ production houses/TV sets, having a limited duration or we can say short term duration, will also be covered under the regime of workplace as defined under the Act.

5.2.3. Consequences of Non-Constitution of Internal Committee:

In the case of G vs. XYZ Ltd., the Hon'ble Madras High Court held that the Employer had an obligation imposed by the decision of the Supreme Court, to constitute the Committee to redress the grievances of women employees and grant an amount equivalent to severance benefit⁸ of INR 1,68,00,000 (Rupees One Crore and Sixty-Eight lakhs), as compensation to the aggrieved women- Petitioner as damages due to non-constitution of IC in the Respondent Company.⁹

5.2.4. What if the Employer has less than 10 employees, is he/she liable to constitute an IC?

In accordance with Section 4 of the Act read with Section 6 of the Act, Employers having more than 10 number of employees in their organizations are obligated to constitute an IC.

Therefore, in case the Employer has less than 10 employees then he/she is not obligated to constitute an IC but it must be kept in mind that in case the number of employees exceeds ten, an IC must be constituted with immediate effect, unless it shall result in violation of the provisions of the Act.

5.2.5. Can a centralized IC be constituted for different administrative units?

Section 4(2) of the Act explicitly states that: "*where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.*"¹⁰

In view of the aforementioned provision, every branch/office/administrative unit of a workplace is required to have a separate IC. This provision was incorporated to provide easy redressal mechanism to the complainant or the victim. However, the constitution of ICs in different branches shall also be prudent for an organization as it would help them to smoothly deal with the allegations of sexual harassment and would also ease the burden of duplication.

Employers can think of having same members of IC for more than one branch within defined geography. For instance, Employer A has 2 (two) offices and 6 (six) factories in Delhi- then they can form an IC comprising of minimum 4 members responsible for all 8 locations of Delhi.

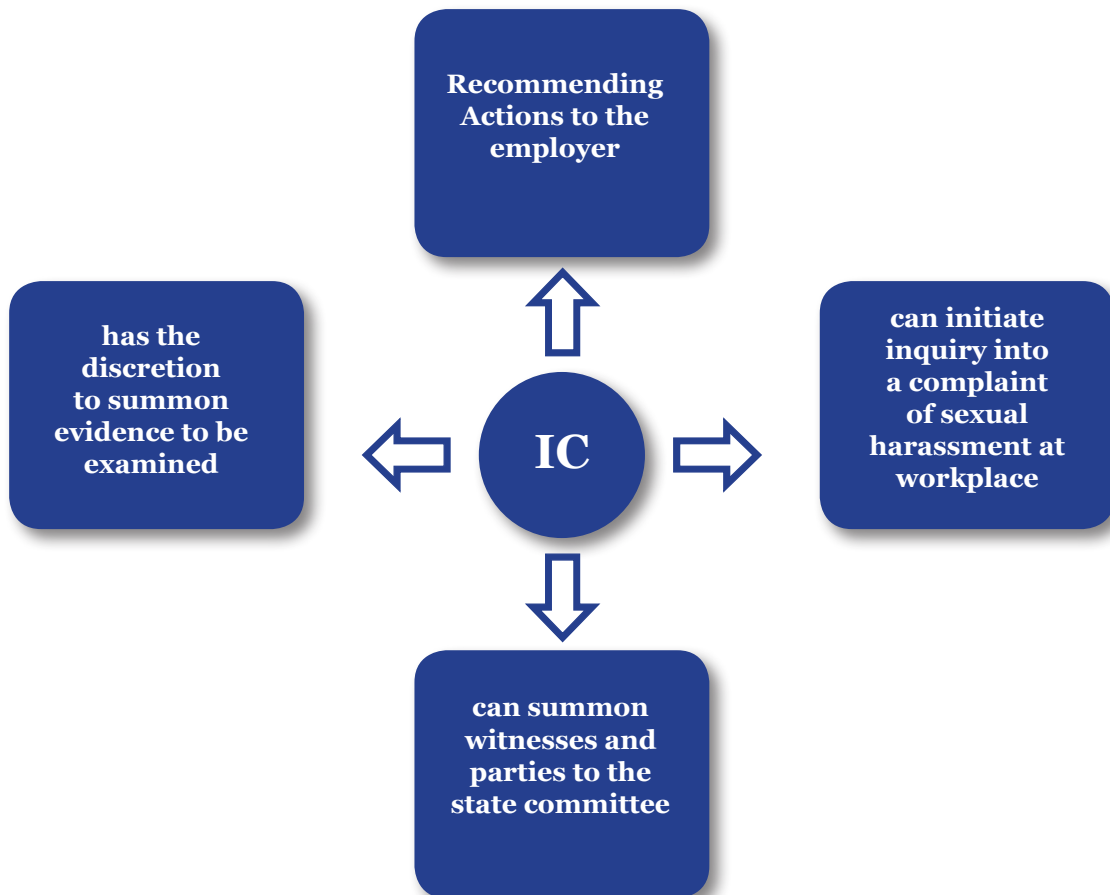
8 Severance benefit refers to the compensation/ benefit payable to the employee by employer when the employment is over

9 <https://indiankanoon.org/doc/29530984/>

10 Refer to Section 4(2) of the POSH Act, 2013



5.2.6. Powers of Internal Committee:



5.3. Local Committee:

The name of “Local Complaints Committee” has been amended to “Local Committee” vide the Repealing and Amending Act dated May 09, 2016.¹¹

Central and State Governments are mandated to notify either of the following individuals to be a District Officer for each District to implement the requirements under the Act:

- District Magistrate
- Additional District Magistrate
- Collector
- Deputy Collector.

Every District Officer must constitute a Local Committee (LC) to receive complaints of sexual harassment from establishments where the Internal Committee (IC) has not been constituted as a consequence of having less than 10 employees.

Each LC is required to prepare an Annual Report and submit it to the District Officer.

The District Officer must designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward it to the concerned LC within a period of 7 days.¹²

¹¹ Refer to Second Schedule of the Repealing and Amending Act, 2016 published in the Gazette of India on May 09, 2016

¹² Refer to Section 6(2) of the POSH Act, 2013



5.3.1. Composition of the Local Committee (LC):

The composition of the LC as prescribed by the Act states that it must have at least 5 members, out of which at least 3 must be women.

The composition is explained in Table below:

Member(s)	Qualifications
Chairperson	To be nominated from amongst the eminent women in the field of social work and committed to the cause of women. ¹³
Local Woman	One of the members to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district. ¹⁴
Other Members	To be nominated from amongst such non-governmental organizations or associations committed to the cause of women or familiar with the issues relating to sexual harassment ¹⁵ : <ul style="list-style-type: none">• <i>At least one must be a woman;</i>• <i>At least one of the members must have a background of law or legal knowledge;</i>• <i>One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward classes or minority community notified by the Central Government.</i>
Ex Officio Member	The concerned officer dealing with the social welfare or women and child development in the district. ¹⁶
Tenure	Term of the members shall be for a maximum period of 3 years from the date of appointment by the District Officer. ¹⁷

5 Refer to Section 7(1)(a) of the POSH Act, 2013

6 Refer to Section 7(1)(b) of the POSH Act, 2013

7 Refer to Section 7(1)(c) of the POSH Act, 2013

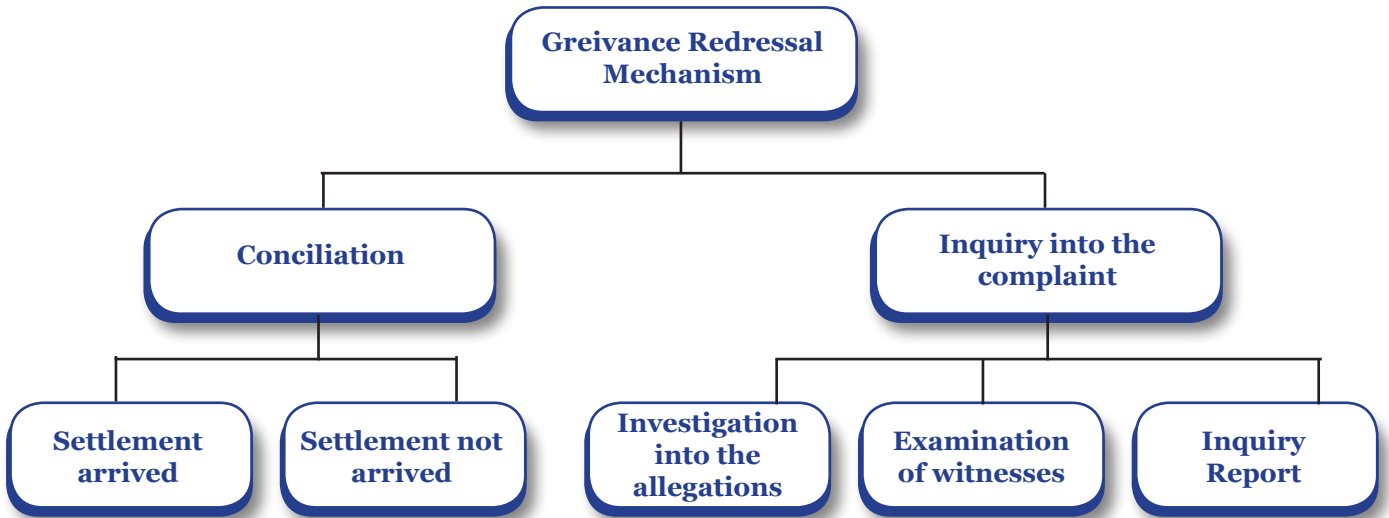
8 Refer to Section 7(1)(d) of the POSH Act, 2013

9 Refer to Section 7(2) of the POSH Act, 2013



HOW DOES INQUIRY FLOW

6.1. Handling Sexual Harassment Complaints:



Once the complaint is filed with the IC, there are two ways under which the IC can proceed with redressing the complaints of sexual harassment and they are:

6.2. Informal Mechanism

6.2.1. Conciliation: Meaning

Conciliation refers to proactive method/way of resolving the issues between the parties involved without initiating any legal proceedings.

As per Halsbury’s Law of England, ‘Conciliation’ is a process of persuading parties to reach agreement, and is plainly not arbitration, nor is the chairman of a conciliation board an arbitrator.¹

6.2.2. Concept of Conciliation under the POSH Act

Section 10(1) of the POSH Act provides for conciliation as a mode of informal redressal mechanism to the aggrieved woman/victim. However, the said section must be invoked prior to the inquiry into the complaint and can only be made at the request of the aggrieved woman/complainant.

“The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.”

[Note: Unlike the complainant, the respondent has no right to make any request for conciliation]

6.2.3. Whether Money can be the sole factor for conciliation?

Section 10(1) of the Act explicitly mentions, “No monetary settlement shall be made as a basis of conciliation”. Thus, money cannot be the factor for conciliation.

¹ <https://ghconline.gov.in/library/document/conference2728072018/II2Conciliation%20as%20an%20Effective%20Mode%20of%20Alternative%20Dispute.PDF>



Case Reference: *H.S vs. State of Maharashtra & Anr.*²

The High Court buttressed the provision of Section 10 of the Act and iterated that it is permissible for the IC or the LC, as the case may be, to settle the dispute. However, no monetary settlement shall be made as a base for conciliation.³

6.2.4. Whether conciliation be opted in cases of severe offences?

The Parliamentary Standing Committee*, with regard to the question as to whether the conciliation be taken as a recourse in the case of severe or minor offences only, suggested that there should be a distinction between a minor and a severe one.

However, the Act does not provide any such distinction. Therefore, there are no classification as to the degree of conduct causing sexual harassment. The gravity of punishment however, would be proportional to the severity of the conduct of sexual harassment.

It is the sole discretion of the aggrieved woman to opt for conciliation, irrespective of the degree of act.

6.2.5. What compliances are to be made after arriving at a settlement?

Once the settlement has been agreed upon, the IC or the LC, as the case may be, is required to keep a record of the terms of the settlement so arrived. The said record must be submitted to the Employer or the District Officer to take action as specified in the recommendation in order to comply with Section 10(2) of the Act.

Further, as per Section 10(3) of the Act, the copies of the settlement must also be provided to both the aggrieved woman/victim and the respondent.

6.2.6. Can the IC conduct an inquiry after settlement?

Section 10(4) of the Act clearly mentions that in case where a settlement is arrived at by both the parties, no further inquiry can be conducted by the IC or the LC, as the case may be.⁴

An investigation cannot be requested again by the complainant once recommendations have been made on the basis of a conciliation process

6.2.7. What if the terms of settlement are not implemented?

If any of the conditions of the settlement are not complied with by the respondent, the aggrieved woman is permitted to go back to the Committee who will proceed to make an inquiry.

As per Section 11(1) of the Act, in the event of non-compliance with the terms of a settlement agreed upon and so informed by the aggrieved women, the IC or the LC may make an inquiry or forward the complaint to the police.

Further, Section 16 of the Act strictly prohibits disclosure of the terms of settlement in any manner either by IC, Employer, Complainant as well as Respondent. The IC is obligated to ensure that confidentiality is the essence of the terms of settlement and should make it clear to all the parties involved that breach of confidentiality is not acceptable and shall lead to penal consequences.

² 2017 SCC Online Bom 6292

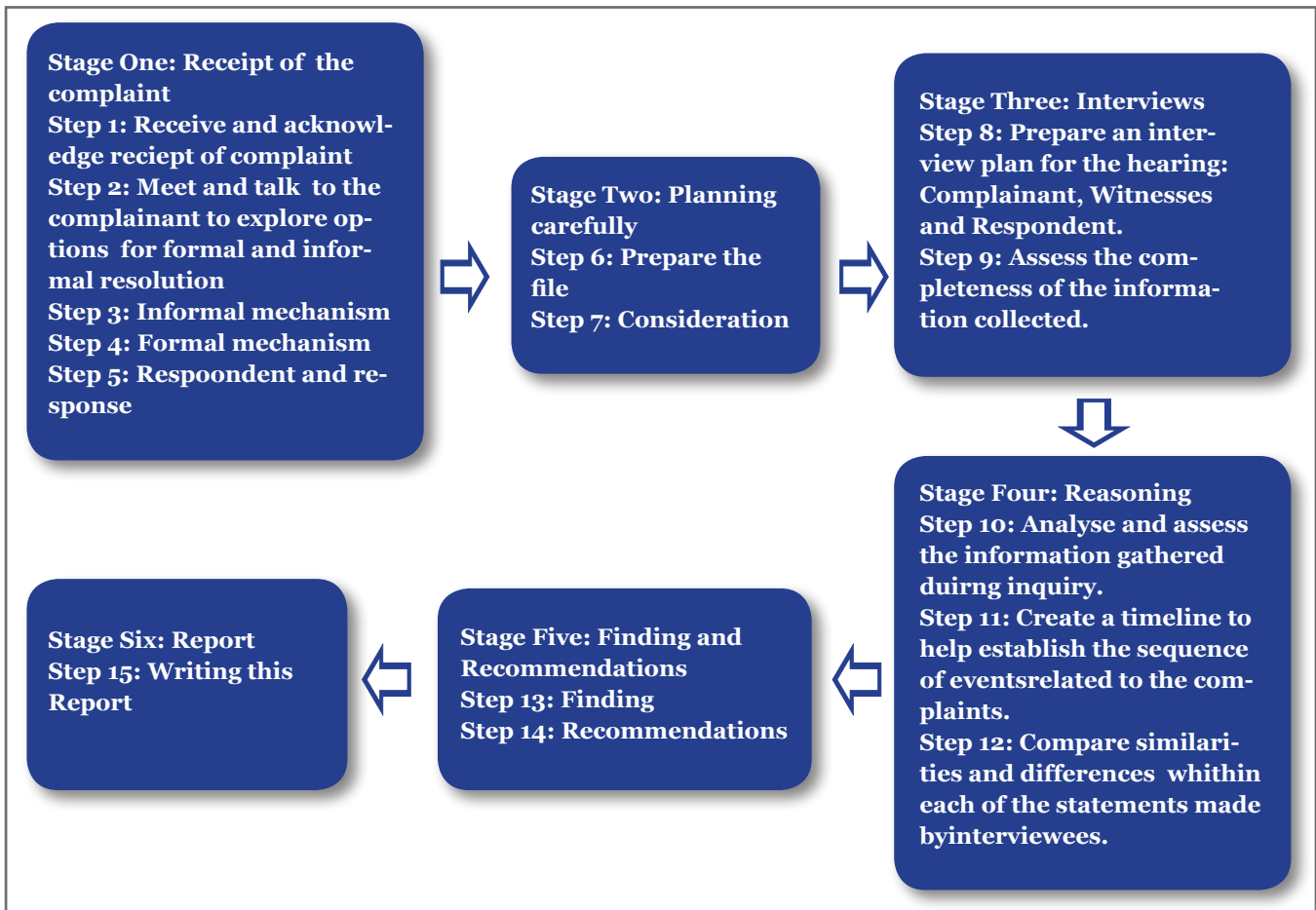
* Refer to the Report of the “Parliamentary Standing Committee on Human Resource Development” on the Protection of Women against Sexual Harassment at Workplace Bill, 2010, dated December 08, 2011.

³ <https://indiankanoon.org/doc/188344391/>

⁴ Refer to Section 10 of the POSH Act, 2013



6.3. Formal Mechanism



6.3.1. Inquiry into complaint:

The IC/LC, as the case may be, is bound to complete the inquiry within a time period of 90 days⁵ upon receiving the complaint. If the complainant opts for formal redressal mechanism, the Committee is obligated to adopt the formal route with due consideration to the severity of the situation, if necessary. The members of the Committee should be free from any conflict of interest with the concerned parties to the complaint/case.

While conducting the inquiry procedures of the case, the Committee has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 with respect to the following:

- Summoning and enforcing the attendance of any person
- Examining the individual on oath
- Requiring the discovery and production of documents essential to the case.

[Note: In case the perpetrator is an Employer, the aggrieved woman can file the complaint to the LC as stated in Section 6(1) of the Act’ after LC]

6.3.2. Investigation of the Allegations⁶

For ensuring safety of the complainant and fairness for alleged harasser, investigation may be carried out according to the steps as follows:

⁵ Refer to Section 11(4) of the POSH Act, 2013

⁶ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_630227.pdf



- a. The complainant is interviewed to document the details of the incidence;
- b. The allegations are conveyed to the respondent in full;
- c. The copy of the written complaint filed by the complainant is submitted by the IC/LC to the respondent within a period of 7 days from the date of receipt of the complaint⁷;
- d. The respondent is given the opportunity to respond and defend themselves against the allegations;
- e. The respondent is required to submit his written reply to the complaint to the IC/LC, along with the list of documents as mentioned under the Act, within a period of 10 working days⁸;
- f. A copy of the reply submitted by the respondent must also be provided to the complainant;
- g. If there is a disagreement over facts, statements from any witnesses and other relevant evidence are gathered;
- h. Relevant allegations made during the investigation are made known to both the complainant and respondent.

The Employer should authorize the Presiding Officer/Chairperson of the IC/LC to procure all documentation and other evidence from appropriate departments during the investigation.

The Employer may assist in action against the perpetrator under the Indian Penal Code or any other law if the aggrieved woman so desires. This is also applicable if the perpetrator is not an Employee (third party).

Scenario: What if the aggrieved woman fails to produce any evidence?

The Supreme Court in the case of Apparel Export Promotion Council vs A.K. Chopra in 1999, observed that if evidence and witnesses may not always be forthcoming, reliance has to be placed on the circumstantial evidences and whether it, in overall terms, inspires the confidence of the judges.

6.3.3. Examination of Witnesses

The cross-examination of witnesses is to be conducted in the presence of the accused in criminal cases.

Sometimes the very presence of the complainant/respondent may result in putting pressure upon the witnesses, particularly, if they are children, and may discourage them from coming out with the truth. Therefore, in POSH proceedings, the cross-examination of witnesses of the complainant should not be done in the presence of the complainant or the respondent so that the statements and questionnaires can be used to aid in the processes of cross questioning.

It must also be noted that Rule 7(6) of the Sexual Harassment of Women at Workplace Rules, 2013 states:

“The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee”

7 Refer to Section 11(1) of the POSH Act, 2013 read with Rule 7(2) of the Sexual Harassment of Women at Workplace Rules, 2013

8 Refer to Rule 7(3) of the Sexual Harassment of Women at Workplace Rules, 2013



Section 16 of the Act further states that the Committee must ensure complete confidentiality of the complainant during the investigation is in the process.

6.3.4. Can the IC terminate the inquiry proceedings or pass an ex-parte decision?

There might arise a situation wherein the respondent may not be present or fails to appear before the IC for three consecutive hearings, then in such case the IC has been authorized to terminate the proceedings or pass an ex-parte decision after serving a notice.

Rule 7(5) of the Sexual Harassment of Women at Workplace Rules, 2013

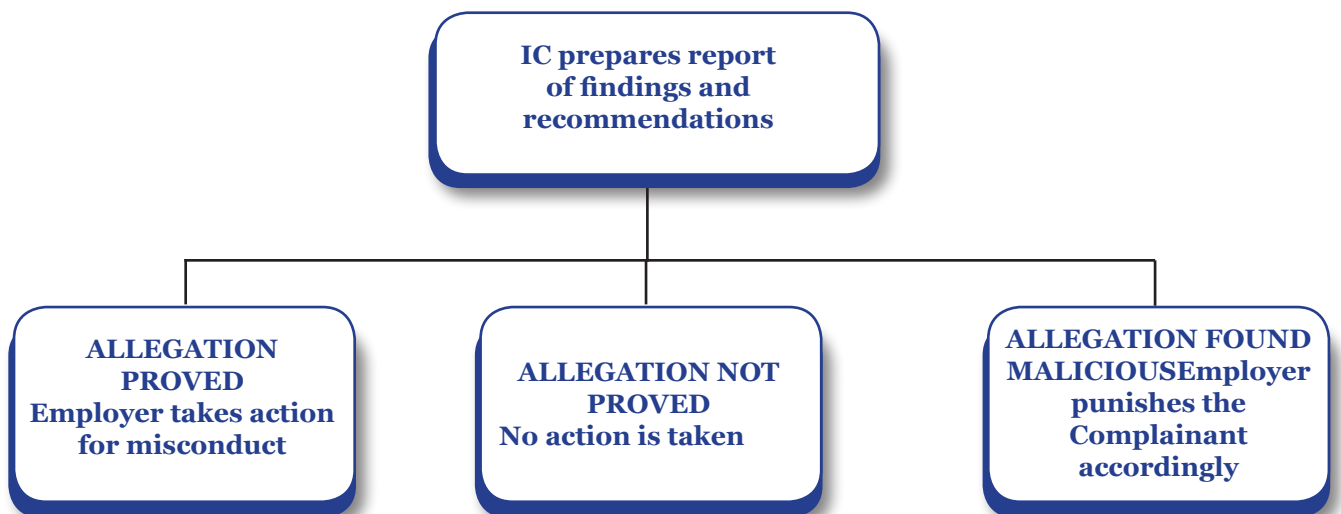
“The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or the respondent fails, without sufficient cause to present herself/himself for three consecutive hearings conveyed by the Chairperson or Presiding Officer, as the case may be”

6.3.5. Inquiry Report

The Committee has to prepare a report of its findings, on completion of the inquiry, and submit the report to the Employer within a period of 10 days from the date of completion of the inquiry and such report be made available to the concerned parties.⁹

The report must present all the evidence that has been acquired during the inquiry proceedings. It shall build up an argument of the conclusion reached in the case and a rationale for the suggested penalty to be imposed if the case of sexual harassment had been proven against the respondent.

The report of the Complaints Committee shall be deemed to be the final inquiry report. In accordance with the Terms of Reference of the Committee, the report shall be submitted by the Chairperson, to the Employer/ head of the institution or disciplinary authority for consideration. If no action needs to be taken because of lack of evidence or the case not been proved against the alleged perpetrator the IC shall record the same in its final inquiry report.



⁹ Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.



ANNEXURE- CHECKLIST FOR THE IC

1	The Inquiry must be conducted in accordance with the service rules in case applicable to the Respondent
2	Must determine whether the alleged act falls under the definition of Sexual Harassment as specified under the Act
3	Must ensure that the alleged act of sexual harassment has occurred in the workplace, as defined under the Act
4	Must determine whether the complaint has been filed within the time-frame as specified under the Act
5	If there is a delay in filing the complaint, the IC must record the reasons for the same before admitting the complaint
6	Determine whether the complainant falls under the definition of Employee
7	Determine whether the respondent is an employee/employer/third party
8	Determine whether any of the IC Members is a party to the complaint
9	Ensure that the rights of the complainant as well as the respondent been protected
10	Ensure that the due process of law is followed for summoning the witnesses and evidences during the proceedings
11	Ensure Confidentiality is maintained
12	The IC proceedings shall not be vitiated due to lack/absence of hard evidence
13	Ensure that moral character/personal life of the complainant is not permissible
14	No legal representation should be permitted
15	Each complaint should be seen in a contextual manner
16	Follow the Principles of Natural Justice



RELIEF AND COMPENSATION

7.1. Meaning

Relief as per the dictionary of law is assistance or support pecuniary or otherwise granted to indigent persons by the proper- administrators.¹ It is a remedy available to the person against whom any wrong has been committed and such a relief is given by the accused party.

Compensation on the other hand means *an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another.* The term 'Compensation' is anything given to make amends for loss, recompense, remuneration or bay. It is counter balancing of the victim's sufferings and loss that result from victimization.

In the case of *Medha Kotwal Lele vs. Union of India*², the Hon'ble Supreme Court of India observed that for a long time only lip service, hollow statements and sloppy enforcement without true and genuine upliftment of our half most precious population-the women has been done. So to provide new initiative for education and advancement of women and girls in all spheres of life, the Act seeks to protect and provide relief to the aggrieved women at workplaces.

7.2. Interim relief/measures during the pendency of the inquiry proceedings

As per the Dictionary of Law, interim relief refers to a temporary remedy that is granted to the claimant by the court during the trial process. As the name suggests, it is a preliminary relief that grants short term benefit to the complainant until the final order is passed or delivered.

Therefore, Section 12 of the POSH Act provides the interim/temporary measures which may be provided by the Employer on a written request of the complainant, based on the recommendations of the IC or the Local Committee (LC), as the case may be. This clause has been incorporated with the aim of providing certain relief(s) to the complainant during the pendency of the complaint.

After filing the complaint, the IC shall inform the complainant of her rights to claim interim relief but cannot force her to accept a particular relief in any manner. The relief is decided depending on the facts and circumstances of the case in hand. For instance, the IC cannot force a victim to get transferred or to go on a forced leave.

Key aspects of this provision includes:

- ***A written request is to be made by the complainant***
- ***The IC or the LC, as the case may be, has the discretionary power to either accept or disregard such request.***

The IC or the LC, as the case may be, must exercise its discretionary power with respect to interim measures, taking into consideration the following principles

- Nature and extent of the alleged act/instance/behavior;
- Number of complaints;
- Safety of complainant;
- Behavior of the perpetrator;

1 <https://thelawdictionary.org/relief/#:~:text=The%20assistance%20or%20support%20pecuniary,is%20also%20called%20%E2%80%9Crelief.%E2%80%9D>

2 AIR 2013 SC 93: [2012] 9 SCR



- Past history or track records of the perpetrator indulged in acts of sexual harassment, if any;
- Chain of communication between the complainant and respondent (i.e., alleged perpetrator);
- And most importantly, implementing the principle of natural justice i.e., without any bias or undue influence.

The Kerala High Court in a case³ held that every IC must follow the principles of natural justice as has been indicated under Rule 7(4) of the POSH Rules, 2013. The same principles have to be adopted while granting the interim relief.

7.2.1. Can IC transfer the Respondent without his/her consent?

The Act does not require the IC to take consent of the respondent before making the recommendation(s) to the Employer for providing interim relief. However, the IC must adopt the principles of natural justice and weigh the benefits of such interim measure or relief against the hardship which may be caused to the respondent as a result thereof.⁴

7.2.2. Possible Interim Relief(s) Provided During The Pendency Of An Inquiry

Depending upon the facts and circumstance of the case in hand, the IC or the LC, as the case may be, may recommend the Employer to take following actions during the pendency of the inquiry, such as

- ✓ **Transfer the aggrieved woman or respondent to any other workplace:** It is generally preferred that the complainant and the respondent do not come into contact with each other during the pendency of the inquiry or proceedings in order, to protect the rights of both the parties.

Case Reference: *R vs. Union of India (Delhi High Court)*⁵

The Delhi High Court in the aforementioned case held that the Tribunal had correctly applied Section 12 (1) of POSH law to the facts and circumstances of the case and correctly transferred the Petitioner for sexually harassing a female employee.

- ✓ **Leave shall be granted to aggrieved woman up to a period of three months:**

Section 12 (2) of the Act stipulates that leaves granted under section 12 (1) (b) shall be in addition to those leaves which the aggrieved woman would have been entitled to in her normal course of employment.

Leaves which would otherwise be granted to her in her normal course of employment cannot in any situation be camouflaged in the leaves granted to her during the pendency of inquiry in sexual harassment cases.

In some scenarios, the IC may also provide facility to work from home to the complainant or the respondent or both so as to avoid any possible confrontations. In one case both the parties were provided separate labs, offices and different supervisors.

In accordance with the provision of Rule 8(a) of the Act, the appraisal of the complainant cannot be done by the respondent. The respondent must be restrained from reporting on her work performance or writing her confidential report. The power equation between the two has often been held responsible for quid pro quo scenarios or creating a hostile working environment in cases of workplace sexual harassment.

- ✓ Pursuant to the recommendations of the Internal Committee or Local Committee as the case

³ Refer to <https://indiankanoon.org/doc/121304718/>

⁴ Refer to <https://indiankanoon.org/doc/815758/>

⁵ W.P.(C) 6549/2016 and C.M.No.26858/2016



maybe, the Employer should take action as per those recommendations and further, send the report to the Local Committee or Internal Committee regarding the implementation of the action taken.

- ✓ The suspension of the respondent is generally the last resort adopted by the IC. In case the IC suspend or terminate the respondent before the receipt of the IC report or during the pendency of the proceedings, the decision may be challenged in the court of law as it may be considered as a bias and not a fair trial.
- ✓ While granting interim relief, the interests of the team should also be kept in mind to ensure no disruption in the workflow during the pendency
- ✓ The principles of confidentiality should also be kept in mind while granting the relief.

Note: *Special Leave to aggrieved female government employees may be granted on the recommendations of the Internal Committee during the pendency of the inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, as per the Central Civil Services (Leave) Rules, 1972.*⁶

7.3. What happens when allegation(s) against accused is proved?

In this context, **Section 13(3) of the Act** provides that, when the Internal Committee or Local Committee, arrive at a conclusion that the allegation against the accused has been proved, it shall recommend to the Employer or the District Officer to take the following actions:

- ❖ **To take action for sexual harassment as a misconduct** in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.
- ❖ In cases of private organisations, the POSH Policy and the rules of misconduct will decide the action that will be taken against the perpetrator or the complainant if need arises.
- ❖ **To deduct certain sum from the salary or wages of the respondent/accused**, as it deems appropriate, and the deducted amount shall be paid to the aggrieved woman or to her legal heirs, as the case may be in accordance with the provisions of Section 15 of the Act.

In situations where the employer is unable to deduct certain sum from the salary or wages of the respondent due to his being absent from the duties or cessation of employment, it may be directed to respondent to pay the sum of money to aggrieved woman. Also, in situations where Respondent is unable to pay the sum of money to the aggrieved woman, Internal Committee or Local Committee may order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

- ❖ In accordance with the provision of Section 15 of the Act, **Compensation is to be paid to the victim** in consideration with the:⁷
 - (a) The mental trauma, pain, suffering and emotional distress caused to the victim;
 - (b) The loss in the career opportunity due to the incident of sexual harassment;
 - (c) Medical expenses incurred by the victim for physical or psychiatric treatment;
 - (d) The income and financial status of the accused;
 - (e) Feasibility of such payment in lump sum or in instalments.

⁶ <http://www.shebox.nic.in/assets/site/main/images/DoPT%20Notification%20regarding%20Special%20Leave%20during%20SH%20Inquiry.pdf>



❖ Further, as per **Rule 9 of the POSH Rules, 2013**, the IC may recommend the Employer or the District Officer, as the case may be, to take following actions which include but is not limited to:

- **A written apology; or**
- **Warning; or**
- **Reprimand or censure; or**
- **Withholding of promotion; or**
- **Withholding of pay rise or Increments; or**
- **Termination of service; or**
- **Undergoing a counselling session; or**
- **Carrying out any community service**

❖ **Determination of Compensation**



The purpose of monetary compensation is specifically to compensate the victim for the physical as well as the mental harm suffered by aggrieved woman. The aim is to create a safe and sound working space for women through preventive as well as deterrent means and a liability to pay compensation would add to the deterrent effect of punitive clauses.

The Parliamentary Standing Committee* observed that various losses suffered by the aggrieved woman have to be taken into consideration while deciding on the quantum of compensation. Compensation is not intended to be an alternative to punishment for an act of sexual harassment but should act like a deterrent. In *M.S vs Union of India* the appellant was awarded the compensation of INR 5,00,00,000 as well the legal cost payable by the other party.

❖ **Implementation of Recommendation:**

The Employer is bound by the recommendations of the IC given in the final inquiry report. If the allegations against the accused person has been proved, the IC shall recommend punitive actions to be taken by the Employer against the accused person and the Employer is obligated to act upon such recommendations (under Sec13 (4)) and failure to do so would invite penalty for the employer as non-compliance (under sec 25) **within a period of 60 days from the date of receipt of it.**

7.4. Where can appeal against the recommendations of the IC be preferred?

Section 18 of the POSH Act states that any person aggrieved from the recommendations or non-implementation of recommendations of the IC may prefer an appeal to the court or tribunal in accordance with the provisions of services rules applicable to the said person. Where there are no service rules, then in any other law being in force, the aggrieved person may prefer an appeal in the manner as may be prescribed.

Rule 11 of the POSH Rules specify that any aggrieved person from the recommendations of the IC may prefer an appeal to the appellate authority notified under clause (a) of section 2 of the Industrial Tribunal Employment (Standing Orders) Act, 1946.

Key points:

- ✓ **What is the time limit within which an appeal can be filed?**

* Clause 18 of the Report of the “Parliamentary Standing Committee on Human Resource Development” on the Protection of Women against Sexual Harassment at Workplace Bill, 2010, dated December 08, 2011.

7 Section 15 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.



Appeal under Section 18 shall be preferred within a period of 90 days of recommendations, However, the time limit for redressal and disposal of appeal has not been provided under the Act.

✓ **When will the courts be appellate authority?**

In the case of *RT v. Union of India*,⁸ the court held that the judicial review in appeal is directed against the decision making process and the question of choice and the quantum of the punishment is within the jurisdiction and discretion of the authority empowered to show impose the punishment. That means, the punishment given should not be vindictive or unduly harsh or be so disproportionate so as to shock the conscience.

✓ **Can an order of disciplinary authority be subject to appeal?**

In *AKS v. University*,⁹ the High Court of Delhi held that the order of the disciplinary authority passed under section 13(3) of the POSH Act would be subject to appeal under section 18 of the POSH Act.

✓ **Appeal has to be in accordance with service rules?**

It must be noted that an employee to whom service rules apply must appeal in accordance with the provisions of those service rules. Hence, where CCS (CCA) Rules apply to an employee and the employee is aggrieved by the recommendations of the IC, such employee may prefer an appeal as per the provisions of the CCA (CCA) Rules.

✓ **What is the forum for filing an appeal under the service rules?**

In *P v. Union of India*,¹⁰ the High Court of Calcutta observed that section 18 of the POSH Act identifies the appellate forum as a court or tribunal in accordance with the service rules therefore, the term ‘tribunal’ should be construed in larger sense so as to include quasi-judicial or adjudicating authority, even if such body is not primarily constituted for such purpose.

✓ **What happens in cases where service rules do not exist?**

In cases where service rules don’t exist, appeal is to be preferred to the appellate authority notified under Section 2(a) of the Industrial Employment (Standing Orders) Act, 1946, which states that “appellate authority” means an authority appropriate Government by notification in the official Gazette to exercise in such area as may be specified the the notification, the functions of appellate authority under this Act.

For instance, in Delhi, Notification dated August 06, 2004 was issued regarding appointment of Presiding Officers, Industrial Tribunal No.1, Delhi as appropriate authority to exercise function of Appellate Authority.

In the case of *SB v. Regional Joint Labour Commissioner, Earnakulam and Ors*,¹¹ the High Court of Kerala interpreted the intention of the legislature and observed that in matter where there are no service rules, the appellate authority notified under section 2(a) of the Industrial Employment (Standing Orders) Act, 1946 is the competent authority to deal with the appeals under section 18 of the POSH Act.

✓ **Can a punishment be quashed by the appellate authority?**

The appellate authority will only go into the quantum of the punishment imposed by the IC only when the matter before it shakes the conscience of the law.

It was held in the case of *G.P & Anr. v. High Court of Judicature at Madras*,¹² In cases when

8 (1987) 4 SCC 611

9 WP (C) No. 7371/2016

10 WP No. 2991 (W) of 2016

11 WP (C) No. 35914 of 2016



evidence available has not been appreciated and does not attract any of the conditions set under the Vishaka Guidelines, then the punishment can be declared as illegal and would be liable to be quashed.

- ✓ **The appellate authority can see whether the principles of natural justice have been violated.**

The POSH Act says under Rule 7(4) that IC shall make inquiry into the complaint in accordance with the principles of natural justice. The appellate authority can look into the factual dispute to see if the IC has followed the mandate.

- ✓ **Can you file an appeal before the proceedings are over?**

The Supreme Court in **SB v. SBM SS School**,¹³ has held that challenge to proceedings can be made before conclusion, at interim stage and which results in derailing and delaying of the original proceedings.

- ✓ **Can a writ be filed against the employer who contravenes the provision of POSH Act?**

There has been a dichotomy of opinion of Courts when it comes to whether a writ can be filed against private wrong.

While the Hon'ble Supreme Court in the case of **Binny Ltd. v. Sadasivan and Ors.(2005)**¹⁴ held that the remedy under the writ of mandamus or Article 226 of the Indian Constitution is a public law remedy and cannot be enforced against private wrongs. However, in the case of **Samridhi Devi v. Union of India (2005)**,¹⁵ the High Court in the present case held that the same can also be issued against the private body discharging public function. The Employer has a duty to protect the female employees and any contravention of the said duty would undermine the confidence, morale of female employees as a whole class.

When the fundamental rights are being violated, the victim can approach the court for purpose of enforcement of her fundamental right specially when the she belongs to the weaker section of the community and is unable to wage a legal battle against s strong and powerful opponent, who is exploiting him.

12 (2007) 4 MLJ 692.

13 218 (2015) DLT 575

14 (2005) III LLJ 738 SC

15 125 (2005) DLT 284



ARE YOU POSH COMPLIANT?

8.1. Introduction:

When one looks at the Preamble of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'Act'), it mentions that sexual harassment results in violation of the fundamental rights of a woman to "...live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business with includes a right to a safe environment free from sexual harassment".

The reason why organizations should be posh compliant arises out of this very understanding.

8.2. Definitions:

Section 2 of the Act contains the Definitions clause, which has covered a wide scope of terms in order to avoid any instance of loop holes arising in the interpretation of the Act.

The definition of "Employer" as provided in Section 2(g) includes the following¹:

- i. *With respect to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the Government or a local authority- **the head of that place.***
- ii. *With respect to any workplace not covered under point no. (i) above, any person responsible for **the management, supervision and control of the workplace.***

However, the workplace under this Act includes the organized as well as unorganized sector.²

The Employer is defined as any person who is responsible for the compliance of the POSH Act. In the changing scenarios, online aggregators have also been held classified as "Employer" under the POSH Act.³

In certain cases the senior management can also be held responsible for the acts committed by the immediate supervisor of the victim, even if it claims that it had no knowledge of such incident/act.

The test of being an employer is whether or not such person is in actual control of the workplace. For instance, Director-General of Police is an Employer. [Reference to Case: **K. N vs. The Home Secretary and Ors. (2011)** ⁴

8.3. What constitutes compliance under POSH Act?

The Act imposes certain obligations on the 'employers' in the form of compliances, that are required to be implemented in order to give effect to the provisions of the Act, as well as to avoid penalties under the law.

The compliances required to be followed by the employers are as under:

1 Refer to Section 2(g) of the POSH Act, 2013
2 Refer to Section 2(o) of the POSH Act, 2013
3 <https://ssrana.in/articles/liability-online-aggregators-posh-act-2013/>
4 Refer to <https://indiankanoon.org/doc/1950372/>



8.3.1. Formulation of POSH Policy:

POSH Policy formulation, in accordance with the Act, is the foremost step an organisation/employer must take towards being compliant under the Act. The policy so formed must explicitly cover the objective and the purpose in clear and readily understandable terms for the employees without any scope of ambiguity, to the extent possible.

Though the POSH Act offers protection merely for women but organisations may adopt a gender neutral POSH Policy to set a good example and to ensure better and safe working environment for all, irrespective of orientation. The basis for such approach is fundamentally rooted in the constitutional ideals of India i.e., Equality before Law, Right against Discrimination and Right to Life and Liberty.

In case the policy is extended to employees of other genders but the procedures under the POSH Act is not followed, the Employer cannot be held liable for non-compliance by such employee since the Act has been explicitly enacted for the protection of women.

The POSH Policy must include the following terms:

- **Objective;**
- **Scope and Applicability;**
- **Definitions**, as to complainant (aggrieved woman), perpetrator, workplace, sexual harassment, Employer, Employee, etc.

For instance, what instances, actions and/or behavior shall be considered as sexual harassment at workplace, what instances, actions and/or behavior shall not be construed as sexual harassment at workplace;

Workplace and concept of **Extended Workplace**- An indicative list;

Employee, Employer, Aggrieved woman

- **Complaint Redressal Mechanism** as to ensure that the Internal Compliant Committee has been formed in the organisation in accordance with the Act and the committee is well equipped to address the complaints and provide adequate redressal. The procedure of filing the complaint and its flow of inquiry must be explained in detail.
- **False and Frivolous Allegations**
- **Reliefs and Penalties**
- **Zero Tolerance Policy** to sexual harassment and inappropriate behavior. That is to say, appropriate disciplinary action must be taken by the organisation against the perpetrator.
- **No Retaliation Policy** in any form against the complainant or any person who raised his/her concerns.
- Kinds of **Awareness Programmes** such as conducting seminars, workshops
- **Role and responsibilities** of Employee, Employer, Human Resources (HR), Manager
- **Miscellaneous**: For instance, amendments must be made in the policy to make it flexible in order to suit the need.
- **Details of IC**

8.3.2. Access to POSH Policy:

The Employer is obligated to ensure that all the employees/interns or any other member, whether temporary or permanent, have access to the POSH Policy at any given point of time. For visitors, the organization may provide an easy access to the policy on demand.



For the Employees, the access to the POSH Policy may be provided by the Employer via email or by providing a handbook/outlet at the time of joining the organisation, as it deems appropriate.

In cases where employees are working from home, the employer may provide the POSH Policy in electronic form or any other form, as case may be. It may also be circulated via internal work groups or in the form of a newsletter. It is prudent that if the policy is shared electronically, there is a receipt option so that the organization is aware that which of its employees have received and read that policy.

8.3.3. Establishment of Committee:

In accordance with the provision of Section 4 of the POSH Act, 2013 a POSH Committee is to be formed at each organisation and/or administrative units that employs 10 or more number of employees. This section mandates that an IC has to be constituted by a written order, and in case the workplace is located at different places or divisional or sub-divisional level, the IC shall be constituted at all such places. For purposes of ease, the IC can have common members.

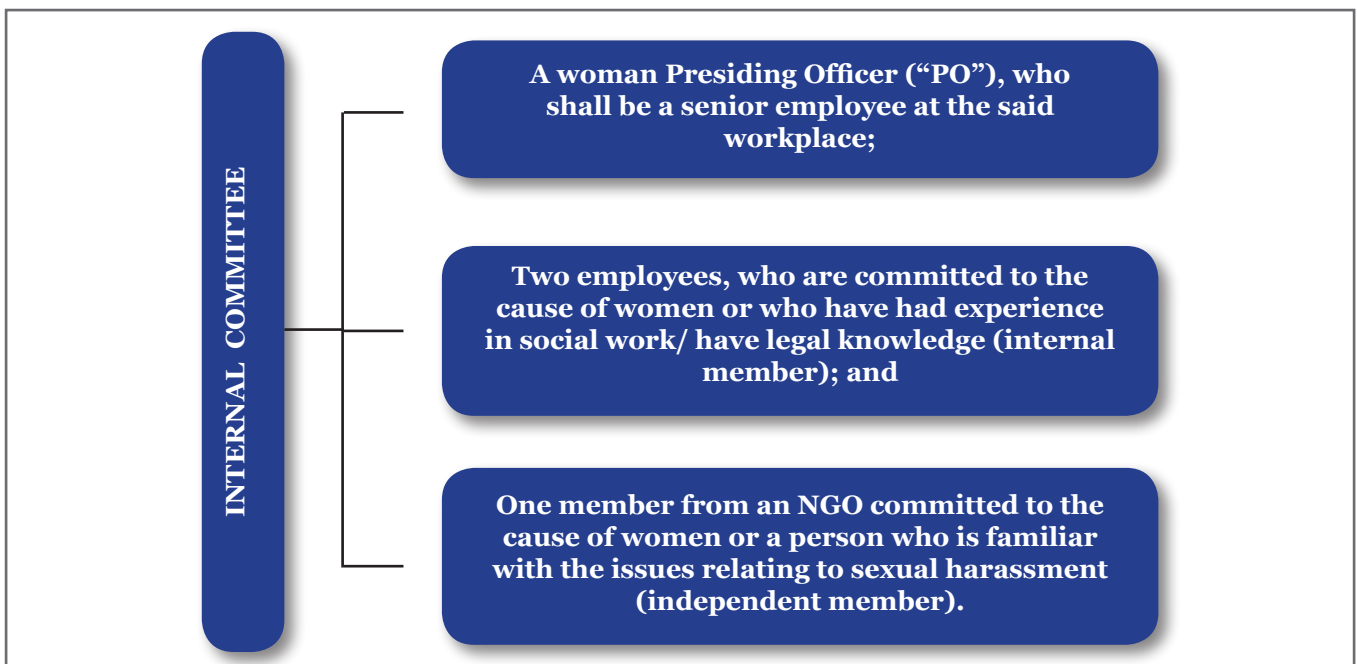
Non-compliance of the organisation to formulate an IC or any other provision of the Act or rules made thereunder may face penalty of INR 50,000 as specified under **Section 26 of the Act.**⁵ Repeated violations of the provisions by the organisation could also lead to double the punishment or cancellation of relevant licenses of the organisation.

Reference to Case:

In the case of **XYZ Pvt. Ltd. vs. Local Complaints Committee**⁶, wherein the aggrieved woman who was an employee at a hospital and had received unwelcome sexual advances at her workplace, the Hon’ble Madhya Pradesh High Court had passed an order granting her compensation of Rs.25,00,000/- and imposed a cost of INR 25,00,000 on the employer due to non-existence of internal committee at the relevant point of time.

A & Ors. Vs. Local Committee, District Indore wherein the Madhya Pradesh High Court imposed a penalty of INR 50,000 on a Hospital for not constituting the POSH Committee.⁷

This internal committee must consist of the following persons acting as its members:



5 Refer to Section 26 of the POSH Act, 2013
 6 2019 SCC Online MP 5453
 7 <https://indiankanoon.org/doc/89246438/?type=print>



The purpose of having an independent member is to ensure the presence of a person who can aid, advice and assist the Committee. It obviates an institutional bias. In fact, the Hon'ble Supreme Court of India in the case of ***P & Ors. vs. D⁸***, awarded INR 50,000/- as costs to the aggrieved woman for the reason that, there was a fundamental defect in the constitution of the Internal Committee formed by the Appellant Bank, due to inclusion of a paneled advocate of the bank acting as the independent member.

The Hon'ble Delhi High Court, in the case of ***R vs. M/s ABC*** reprimanded the organization for the IC created by the respondent which did not have an eligible external member as prescribed under the rules.⁹

Further, it is pertinent to mention herein that the failure of an organisation to establish a committee, even though it is mandated by statute, does not refrain or restrict the aggrieved woman from filing the police complaint or writ petition before the appropriate forum for redressal.

8.3.4. Display of Notice:

As per Section 19(b) of the POSH Act, the employer is compelled to display notices at any conspicuous place in the workplace. The notices so displayed must be in a prominent location which can be easily accessed by all and it must be stated in the regional language, as well as in English.

Every act has a consequence and every employee/visitor must be made aware of that. Such a display would serve as a deterrent and may also help sensitize both employees as well as visitors, third parties about the constitution of IC, apart from the legal compliance. Such a display would enhance the brand value as it will reflect an employer to be a responsible and the one that values diversity.

Disclaimer: The afore-mentioned list is just indicative and not an exhaustive one.

The Notice must include the following details:

- Names of the existing IC Members;
- Contact Details of the IC Members (individual as well as comprehensive email id, phone numbers, designation, etc.);
- Penalties and repercussions for committing an act of sexual harassment;
- Provisions of the POSH Act;
- Procedures for filing the complaint
- List of Prohibited Behaviour(s)

This will facilitate and ensure that everyone is aware of their rights and responsibilities regarding sexual harassment in the workplace and the company is equipped to deal with any instances of sexual harassment, if they arise, thereby resulting in creating a better and inclusive work culture.

8 (2020) 19 Supreme Court Cases 46

9 Refer to <https://indiankanoon.org/doc/158080828/>



Type of Organisation	Prominent Location
Organisation	For instance, nearby water coolers, workstations
Hotels/Malls/Restaurants	For instance, nearby common dining area, reception, cashier desk, etc.
Gyms	For instance, Locker room
Hospitals	For instance, nearby reception area, account section, pantry areas, guard rooms, etc.
Factories	For instance, nearby trade union meeting areas/ rooms, entry or exit gateways.
Hybrid Workspaces	The notices can be displayed in electronic or digital forms and an also be shared in their internal work groups.

Further, it is recommended to have a comprehensive email id for all the IC Members so that in case any one of them is unable to contact, the other members may access the same and handle the issues or complaints addressed by the aggrieved woman, without any un-reasonable delay.

8.3.5 Organise Awareness Campaigns:

An employer is obligated to organize seminars, workshops, and awareness campaigns and provide training to its employees and staff members, etc. regarding POSH Policy, at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassments.

This awareness campaigns will help the employees to have a better understanding of the human behaviours and to encourage them to report such instances, without any fear of retaliation or humiliation. These must include but is not limited to:

- What constitutes sexual harassment?
- What is the meaning of extended workplace under the POSH Act?
- Instances of virtual workplace harassment?
- What cannot be construed as workplace sexual harassment?
- How can you file the complaint?

The seminars cum workshops must also give a detailed analysis of the rights and the responsibilities that are vested upon the employees as well as the employers in an organisation. The recent cases can also be referred as scenarios to engage people to participate in such events.

The sensitization must be done for all categories of employees. For instance, a workshop for the blue collar workers can be done in vernacular language, but it cannot be the same for the management as there would be different behavioural scenarios, different duties in an organization and different language requirements for both.

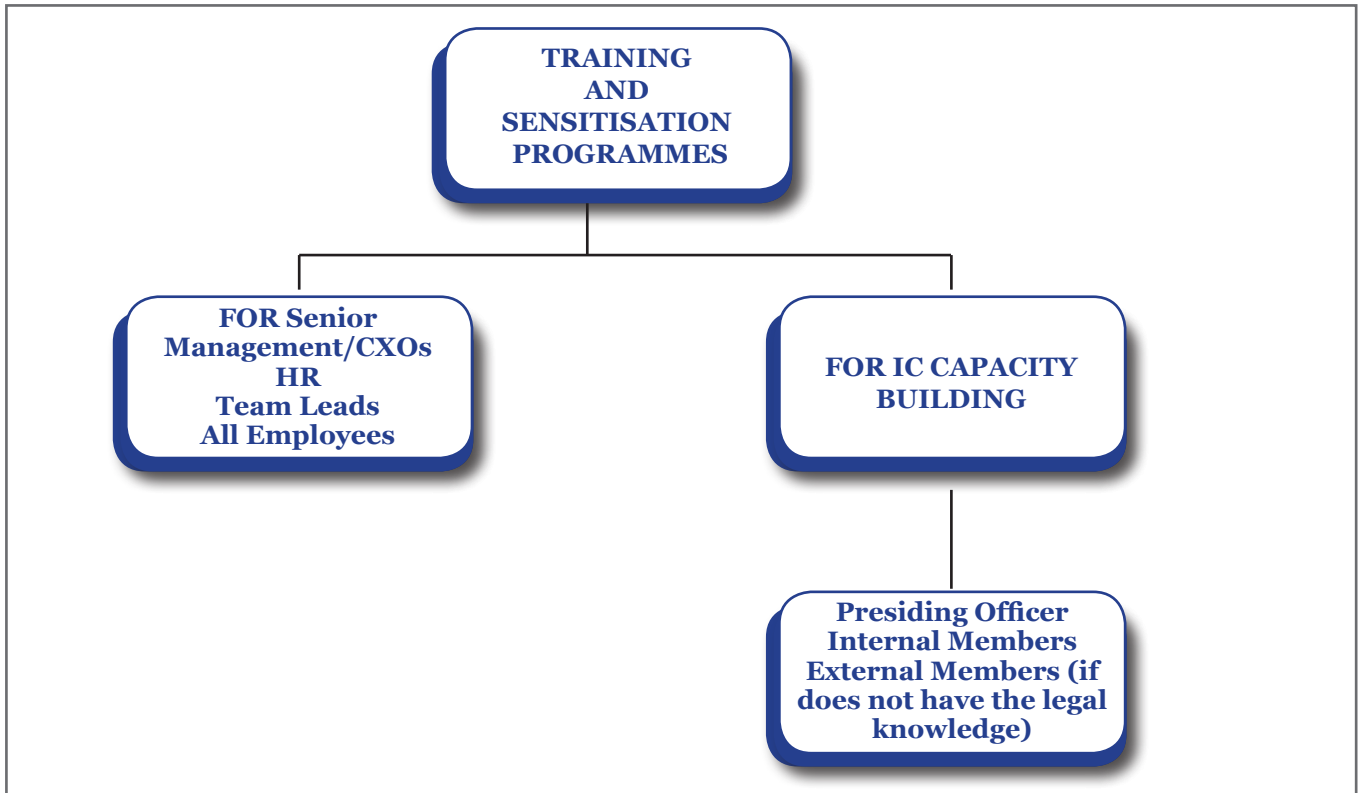
The IC Members must also have periodic capacity building trainings:

- To understand how to conduct the proceedings;



- What procedures to be followed?
- What pitfalls to be avoided?
- How to avoid biases?
- Understand the principles of Natural Justice
- Have Counselling and Communication Skills

It has been seen in most appeals that the IC reports are attacked on the basis of not following the correct procedures as defined under the Act and not on fact findings, unless it shakes the conscience of the court.



8.3.6. Provide support and assistance in filing the complaint:

The Act mentions that a complaint to the IC has to be in writing, and if for any reason the aggrieved woman is unable to submit a written complaint, the Presiding Officer or any other member of the IC, has to render all reasonable assistance to the woman for the same. If the woman cannot submit the complaint due to physical or mental incapacity or death, the same can be made by her legal heir/ person authorized.¹⁰

Further, an employer shall also be responsible to provide assistance to the victim in case she opts to file a complaint under IPC or initiate a proceeding against the perpetrator under any other applicable law. As per the report, it is found that only half of victims worldwide had disclosed their experiences to someone else, and often only after they had suffered more than one form of violence and harassment. The most common reasons given for non-disclosure were “waste of time” and “fear for their reputation”. Women were more likely to share their experiences than men (60.7 per cent compared to 50.1 per cent). This is more likely to lead to higher attrition rate and venting out on social media which can harm the company much more than dealing with sexual harassment complaints in-house.

For instance, Ms. Avantika is an employee of an organization called “XYZ Ltd.” She was asked to attend an official meeting with client outside the office. Post completion of the meeting, the client sexually harassed her or placed a sexual demand or asked for a date. This is the case of third party sexual harassment and the place where official meeting took place shall be construed as extended workplace as defined under the Act.

¹⁰ Refer to Section 9(1) of the POSH Act.



Here the woman will find it easier to contact her organization i.e., XYZ and inform them of the incident. At that point, the IC so established in her organisation as well as her employer can use their resources to contact the employer or organization of the perpetrator. Employer should also assist Avantika in filing the complaint against the client under the POSH Act by guiding as to how, where and when to file the complaint.. If she desires, she may also file a police complaint in parallel with the POSH complaint. **[Third party sexual harassment has also been discussed in our chapter titled: Complaint Mechanism]**

The Employer cannot be immune or get rid of his/her own liabilities or responsibilities merely on the ground that the act of sexual harassment has not been committed by any of its employees or office representatives, as it is always the Employer's responsibility to provide a better and safe workplace to its employees.

The same has been explicitly stated under **Section 19(h) of the POSH Act-**

“The Employer shall cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place”

Therefore, in such cases the Employer must take reasonable steps and provide assistance to its employee for filing the complaint against the perpetrator. Failing to do so may result in penal consequences to the Employer.

What actions can be taken by an Employer in case of Third Party Sexual Harassment at Workplace?

- Transfer the project or the task to maintain distance from the perpetrator
- Intimating the incident to the senior management of the client's organization to take strict action against the perpetrator
- Ensure the complainant that appropriate action shall be taken and there shall be no retaliation or discrimination against the victim/complainant for initiating a legal action against the perpetrator.

A workplace wherein employees feel secure and free to raise their voice or concerns and are backed by the fact that there is no fear of retaliation or discrimination for standing up for their rights makes it productive and a better place to work.

8.3.7. Maintaining Confidentiality:

Section 16 of the POSH Act deals with the provision pertaining to “Prohibition of publication or making known contents of complaint and inquiry proceedings.”

Complaints relating to sexual harassment shall be handled and investigations shall be conducted under the principles of natural justice, basis of fundamental fairness, in a confidential manner.

The Confidentiality here includes but is not limited to the following:

- a. Identity and address of the complainant;
- b. Contents of the complaint;
- c. Details of the Accused;
- d. Details of the Witness (es);
- e. Details on the IC Inquiry and its proceedings
- f. Any information on IC Report and/or its recommendations



g. Any details of the Settlement(s)/Relief(s)

It is the duty of an organisation to ensure that confidentiality and privacy vis-à-vis the complaint is maintained in order to create a safe working environment and a zero tolerance attitude towards employees who infringe upon the said duty.

However, monetary penalty amounting to INR 5000 is levied on the person in the event of breach of the aforementioned confidentiality, as specified under the Act and Rules thereunder. It does not preclude the organization from putting a larger penalty amount.

Exception under the law:

“Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses” [Section 16 of the POSH Act]

This Exception will allow the organization to create examples as to how they deal with perpetrators and witnesses of sexual harassment.

The concern of maintaining confidentiality lies mostly in situations where a person is a witness to the incident of sexual harassment or is engaged in the proceedings for sharing any information. Therefore, as a matter of general industry practice, the same is ensured by requiring all the stakeholders involved in an inquiry to sign Non-Disclosure Agreements. This includes complainant, respondent, all the IC Members and the others.

Further, the penalty for publication or making known contents of complaint and inquiry proceedings is explicitly stated under Section 17 of the POSH Act.

The Employer has an obligation and commit to maintaining the confidentiality along with the liability to ensure that the external members of the IC have executed stringent confidentiality obligations as specified under their appointment letters. This also protects the organization from the liability of defamation suits as it had done due diligence for maintaining confidentiality.

The Hon'ble Bombay High court, in the case of **P v. A¹¹** while observing the predicament that there are no established guidelines so far to protect the identities of the parties from disclosure, even accidental disclosure in POSH related matters, laid down certain guidelines which will have to be followed so as to maintain confidentiality.

The guidelines that were laid down by the Bombay High Court are:

- **No mention of name of the parties** in order sheets/body of the order, and no **mention of any personally identifiable information**.
- **No uploading of orders/judgements** on merits, and all the orders/judgements have to be delivered in private.
- **Restricting access to the records of the matter** only to the Advocate on Record with a current Vakalatnama, and the sealing of records.
- All hearings were ordered to be in-chamber or in-camera, and no facility of online/hybrid hearings in the matter was to be provided. Further, the **recording of proceedings were strictly forbidden**.
- **No order of the Court can be made public** without specific order of the Court.
- **Failure to comply with requirement of anonymity by media**, would lead to contempt of Court

¹¹ Suit No. 142 OF 2021, Bombay High Court



proceedings.

- **Prohibition on disclosure of contents** of any documents, like order, judgement, etc. by any mode, without leave of court.
- **Signing of non-disclosure statements** by witnesses, in addition to the oath.

8.3.8. Assistance to IC:

The Employer is also vested with a responsibility to provide adequate place and assistance to the IC members for conducting meetings and hearings for the purpose of addressing and handling the complaints/grievances pertaining to sexual harassment filed by an aggrieved person. The place may be physical or online, but the same must be provided regularly along with all the infrastructural support.

The Employer must undertake to increase the frequency of orientation, training and sensitization, capacity development programmes for senior management and IC members to enable them to have a better understanding of human behavior and instances that can be under the ambit of the POSH Act

8.3.9. Act upon the Recommendations of the IC:

Under Section 13(4) of the Act, the employer has to receive the 'Inquiry Report' from the IC or the Local committee, and has to act upon the recommendations made therein **within sixty days** of its receipt. Rule 9 of the POSH Rules, 2013 provides the manner in which such an action has to be taken.

Even though the word recommendations has been used but alongside the word "shall" has been quoted that means, in all circumstances unless there is a legal or administrative exception, the employer shall act upon the recommendation within a period of 60 days.

It specifies that, where the IC has come to a conclusion that the allegations made against a Respondent have been proved, then the employer has to take any of the following actions or the action that has been recommended in the report:

- A written apology;
- Warning;
- Reprimand or censure;
- Withholding of promotion, withholding of pay rise or increments;
- Termination from service or undergoing a counselling session;
- Carrying out community service.

Note: It is pertinent to mention herein that the Employer has no right to vary the report of the IC in any manner.¹²

It is also very important for an employer that the reports of IC is read by him/her as a whole. This will allow the employer whether the inquiry has been conducted within the due procedure of law and would facilitate to take action as per the recommendations issued by the IC.

8.3.10. Meetings:

Employees must be permitted to address their issues at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee meetings as stated in the Vishaka guidelines. This has been recommended but still does not constitute a part of the POSH Act.

According to Article 9 of Convention No. 190, employers should take appropriate steps, commensurate with their degree of control to prevent violence and harassment in the world of work. This includes, so far

¹² Refer to <https://indiankanoon.org/doc/121304718/>



as is reasonably practicable, the adoption and implementation of a workplace policy, the identification of hazards and assessment of risks and the provision of information and training.*

8.3.11. Annual Report:

Another essential compliance to be undertaken is the preparation of Annual Reports. Section 21 requires the Internal Committee, through the Presiding Officer, to prepare an Annual Report and submit the same to the employer and the District Officer.

This Report must contain certain details such as, number of cases filed, and their disposal under the Act¹³. The corresponding Rule to this is Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013, which states that the Annual Report must mention in the following details, as listed below for ready reference:

- ***Number of complaints of sexual harassment received in the year;***
- ***Number of complaints disposed off during the year;***
- ***Number of cases pending for more than 90 (ninety) days;***
- ***Number of workshops or awareness programme against sexual harassment carried out;***
- ***Nature of action taken by the employer or District Officer.***

It is important to maintain records of submitting the Annual Report, both to the employer and the District Officer. Therefore, it is better to send the same by Registered Post and email.

Some States may have their own format and place for submission of the Annual Report.

Practical Queries	Answers
Who Should Sign the Annual Report?	The Presiding Officer or an Employee Member
How to incorporate the details pertaining to Conciliation Settlement in the Annual Report?	Can come under the number of cases disposed off.
In case of no complaints, do we need to submit an Annual Report?	Yes, it still has to be submitted stating that zero (0) no. of complaints were there in the calendar year and the number of workshops/trainings conducted during that year. It's a part of the organisational disclosure and non-filing shall amount to breach of the provisions of the Act.

8.3.12. Mandatory Disclosure in Annual Reports of Companies as per Companies Rules, 2014:

In 2018, the Ministry of Corporate Affairs vide notification dated July 31 made it mandatory for every organization incorporated under the Companies Act 2013 or the erstwhile Companies Act, 1956 to disclose compliance under the Act in the annual Directors Report. Therefore, by virtue of the aforesaid notification, POSH Policy compliance, is now a mandatory compliance under the Companies Act, 2013 and rules thereunder. The corollary to the mandate is that non-compliant organisations and officers in default are now subject to penal provisions under the Companies Act, 2013 which prescribes a penalty of INR 3,00,000 on the organization and a penalty of INR 50,000 for every officer in default.

¹³ Refer to Section 22 of the POSH Act, 2013

*https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190#A9



Further, the aforesaid mandate can also be extrapolated to the following:

- Duties of Directors, specifically, duty to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- Failure to do the aforesaid may make the Director in default liable for a fine of INR 1,00,000 which may extend up to INR 5,00,000.
- Disqualification of Directors, specifically, if the Director he has been convicted by a court of any offence, whether involving moral turpitude.

8.3.13. Dealing with False/Frivolous Complaints and production of forged documents:

The employer is also under an obligation to take action against an aggrieved woman in case the IC comes to a conclusion that,

- a) The allegations made against a Respondent are malicious, or
- b) That the complaint was made knowing it to be false, or
- c) If any forged documents were submitted by the aggrieved woman.

The types of action that are taken when a complaint is proved to be made out, are taken against the aggrieved woman when it is proved that the complaint was false.¹⁴ The employer is also obligated to take the same action against a witness who has produced any forged document on recommendations of the IC.

It is also important to note here that the mere inability of the woman to substantiate her claims or insufficient proof would not be a ground of action under this section, and the malicious intent on part of the complainant has to be established only on an inquiry being made.

Thus, while the objective of the Act was to provide a safe and secure environment to the women employed, the makers were also conscious of the need to provide protection to the accused in cases of false complaints by the complainant. The Courts have also been vigilant in enforcing such a provision.

Recently, in the case of **A vs. XYZ**.¹⁵, the Hon'ble Delhi High Court imposed a cost of Rs.50,000/- on the Petitioner (aggrieved woman) who had filed a complaint of workplace sexual harassment but was unable to prove any evidence, or witness to substantiate her case.

The Petitioner had filed the present writ being aggrieved by the order of IC wherein the Respondent was given benefit of doubt. The Court in the present case held that, the Petitioner could not, at the time of inquiry, name any person present during the incident despite alleging that the incident took place in the presence of her colleagues/ staff members, and that none of the persons on duty on the date of incident supported the claim of the petitioner when they were examined by the IC.

8.3.14. Other Additional Obligations:

With an aim of creating a safe and harassment free environment, the employer must ensure to provide to its employees the following

- a. Gender Inclusive Working Environment
- b. No bias or discrimination among the office employees in respect of caste, creed or sex.
- c. No retaliation Policy

¹⁴ Refer to Rule 10 of the POSH Rules

¹⁵ Refer to 2019 SCC OnLine Del 9116



- d. To include any act of sexual harassment or discrimination as chargeable as “misconduct” as defined under the service rules and the consequences or repercussions of such incidents, including but not limited to termination, salary deduction, penalty, etc. must also be promptly made clear to all employees.
- e. To make amendments in their service rules in order to be in compliance with the provisions of the POSH Act.

To conclude, it is the responsibility of the employer to contemplate each and every incident of sexual harassment or discrimination with utter gravity, even if the incident is a minute one. It is not only important to be aware of the afore-mentioned obligations but also to implement them to protect employees from workplace sexual harassment and to provide them a respectful workplace.

As rightly quoted in Vishaka guidelines 26: ***“It is the duty of the employer to see that such an environment is created for the purpose of creating the society in which women can work in peace and put their efforts for the development of our great nation and contribute their services.”***

8.4. PENALTIES FOR NON-COMPLIANCES:

The penal provision for non-compliance of the provisions of the Act is contained under Section 26. It is specified that, if an employer fails to constitute the Internal Committee under Section 4, or does not take action under sections 13 & 14, or if the employer does not submit the Annual Reports as required by Section 22, then he/she shall be liable to pay fine which may extend to INR 50,000, and on second conviction, shall be liable to twice the punishment in addition to the license being cancelled or registrations/approvals/renewals required for carrying on business being withdrawn.

The non-compliance by an employer has been construed in a strict manner by Courts as well. In the case of ***F v. Delhi Woman Commission & Ors***¹⁶, the Delhi High Court held the employer liable under Section 26 of the Act for non-constitution of an Internal Committee as required under Section 4, even though the complaint had been pending since 2019. The court also awarded INR 50,000 as cost to the Petitioner in view of Section 26.

Further, in the case of ***G v. XYZ Ltd***¹⁷, the Hon’ble Madras High Court awarded the Petitioner a compensation of INR 1.68 Crores while holding that no ombudsmen or grievance committee could act as an excuse for not setting up Internal Committee for prevention of sexual harassment, as required by law. The Court further set aside the findings of the learned Arbitrator who had held that, the Petitioner had not alleged or proved any physical, mental or emotional injury.

It was held by the Court that, ***“what is res ipsa loquitor needs no proof, and that emotional or mental injury for a woman is an automatic and natural result of sexual harassment at work place, unless it is pleaded by the offender that the woman in question was happy about it.”***

8.5. WHY IS IT IMPORTANT TO BE POSH COMPLIANT:

The reason why it is important for organization and workplaces to be POSH compliant is not only because it is mandatory under law and non-compliance can cause incurring of costs, but also because:

- ❖ It gives a sense of security to the employees who are engaged in your organization, and lets them know that their employer is concerned about their welfare. When sexual harassment is common and not

¹⁶ Refer to 2023 SCC OnLine Del 623

¹⁷ Refer to 2014 SCC OnLine Mad 6568



attended to in a workplace, it results in high attrition rate, making it difficult to attract new talent to an organization that does not have a positive image in the industry.

- ❖ It is like the Hon'ble Madras High Court held in **Gayatri** (supra), emotional or mental injury for a woman is an automatic and natural result of sexual harassment at work place. If employees at a workplace are expected to work in an environment where sexual harassment is rampant with no provision for submitting a complaint, it can be a highly demotivating factor. Furthermore, actions like these do spread through word of mouth in the immediate circle, which eventually leads to losing goodwill and reputation.
- ❖ Lack of appropriate compliances with POSH can also lead to tarnishing the organization's reputation. When cases of this kind go before a Court of law, the combined bad press in itself will be enough to ruin a business' reputation in the industry and amongst its customers. Therefore, it is always prudent to not only be compliant on paper but also implement that compliance when actual instances of workplace sexual harassment occur.
- ❖ Non-compliance of POSH Act can lead to loss of brand value and can have serious reputation cost.
- ❖ In today's digital times, social media connections can pose a major threat and challenge to any organization.

8.6. MAJOR INSTANCES OF SEXUAL HARASSMENT THAT MADE THE NEWS:

In India there is a specific legislation governing sexual harassment at workplace. However, the recent past has shown us the backlash and legal action organizations have faced due to their non-compliance of ensuring a safe work environment for its employees. Some of these instances are as under:

1. The troubles for a global cab aggregating company in US began when one of its former engineer published a blog¹⁸, wherein she recounted how she was sexually harassed at the Company, faced discrimination, and how her complaints were paid no heed as according to the management, the man who was accused was a 'high performer'. Following such allegations, a former US Attorney General, was hired to conduct an independent review, and the investigation revealed that the company's culture was broken. He recommended various steps that could be taken to fix things at the company, one among them was relocating, the CEO of the company As more and more women came out with their own similar encounters, and following the internal investigations, the company fired around 20 employees, and the Chairman also resigned from his post following calls from investors that he quit.¹⁹

As the company's work culture came under scrutiny post the incident, it prompted the US Equal Employment Opportunity Commission (EEOC) to conduct an investigation. The EEOC found "reasonable cause to believe that the company permitted a culture of sexual harassment and retaliation against individuals who complained about such harassment". The company ultimately agreed to a 4.4 Million US Dollar settlement, which was to be deposited as a fund with the EEOC, for it to be utilized in compensating anyone the EEOC determines experienced sexual harassment or retaliation after January 1, 2014.²⁰ In addition to this settlement with the EEOC, the company also agreed to establish a system that identified employees who have been accused multiple times of harassment and managers who do not respond to harassment complaints in a timely manner. It is worth noting here that after this instance, the company even removed the mandatory arbitration clause from agreements with drivers, riders, and employees.*

2: Even before the #MeTooMovement gained traction, one of the leading news channels in the US, faced a series of high-profile sexual harassment claims where many of the network's anchors, models, and other employees went public with their encounters of sexual harassment at their workplace.

¹⁸ Susan Fowler, Reflecting On One Very, Very Strange Year At Uber, February 2017, Available at- <https://www.susanjowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber>

¹⁹ Refer to <https://www.theguardian.com/technology/2017/jun/20/uber-ceo-travis-kalanick-resigns>

²⁰ Refer to <https://www.usatoday.com/story/tech/2019/12/18/uber-sexual-harassment-investigation-me-too/2694091001/>

* Refer to <https://www.uber.com/us/en/safety/womens-safety/>



It all started when a former TV anchor, accused the Chairman of the network of sexual harassment. Many other women also came out in support of the complainant claims and made similar allegation against. Thereafter, the company hired a law firm to investigate such accusations, post which the Chairman resigned from the network, even though he denied all of the claims made against him. The lawsuit filed by the complainant was settled for 20 Million US Dollars and a public apology was also made by the network.

Not only the Chairman, other top executives of the network also came under the fire. In an investigation by Times, it was even found that a top executive and the network had allegedly paid 13 Million US Dollars to certain women in order to dissuade them from litigating or speaking out in public. Following an allegation by a former guest of the network, the claims against were investigated by a law firm, pursuant to which the network cut ties with him too.

The series of scandals as mentioned above, led to calls for an investigation, which was acted upon by the New York City Commission on Human Rights. The said investigation was eventually settled by the network for a 1 Million US Dollar fine in 2021, which happened to be the largest civil penalty in the Commission's history at the time. As part of the settlement, the network was also mandated to make certain critical changes to its policies, such as:²¹

- a. Removing the forced arbitration clauses in employee contracts for the next four years (2021- 2025), which stopped the employees from filing certain claims/ disputes in Court;
- b. Hold regular sexual harassment prevention and bystander training sessions for all employees, including executives;
- c. Employ a multi-tiered system for reporting discrimination and harassment complaints for at least 2 years.

3: The respondent was widely credited for his contributions in making the Company one of the largest IT companies. However, his downfall and the company's reputation took a dive, when his executive secretary, made accusations against him for sexual harassment in 2002, and filed a lawsuit. Following the incident, the company had to allegedly pay Three Million US Dollar as settlement in the lawsuit, and the respondent submitted his resignation in the company as well. The said incident also lead to a fall in share prices of the company, and attracted a lot of bad press for the company in general. On the bright side though, it may have gotten Indian Corporations to start taking sexual harassment at workplace issues seriously.

Following the incident of 2002, the respondent founded his own business services provisioning company. However, he was again accused of sexual harassment and of failure to report his relationship with a subordinate employee. The company alleged that it resulted in violating its policy, as well as respondent's employment contract, and a decision to fire the respondent was made by the company post an investigation by outside legal counsel engaged by the board.²²

²¹ Refer to <https://www.cnn.com/2021/06/29/fox-news-agrees-to-1m-fine-in-new-york-city-sexual-harassment-probe.html>

²² Refer to <https://www.businesstoday.in/latest/corporate/story/igate-fires-ceo-phaneesh-murthy-on-sexual-harassment->



Annexure- CHECKLIST FOR EMPLOYER

1	Drafting of POSH Policy as per the norms prescribed in the POSH Act, 2013 The employer may adopt a gender inclusive policy to set a good example and to provide a better and secure workplace for all its employees.
2	To ensure that the policy keeps updating with times. The policy must cover all workplaces including virtual workspaces.
3	To constitute the Internal Committee (IC) in accordance with the provisions of the POSH Act
4	To provide assistance and necessary facilities to the IC for conducting inquiry and carrying out the proceedings of sexual harassment
5	To provide contact details of the IC in the POSH Policy
6	To display notices of the IC along with their contact details and the penal consequences of committing an act of sexual harassment to make people aware of it. Such notices must be displayed in a regional language as well as in English
7	The notices must be displayed in a prominent place which can be easily accessed by anyone.
8	To take action(s) against the complainant for making false and frivolous complaints
9	To provide training and sensitization programmes, workshops, seminars for all employees (irrespective of their job profile), HR, senior management on a frequently basis to make them aware as to what instances/acts/behaviour are considered as workplace sexual harassment and what adequate measures can be taken against the perpetrators in a legal way.
10	To organize orientation programmes for IC Members for their capacity building at least twice a year. This would aid them to conduct and build capacity building.
11	To act on the recommendations of the IC, without any interference or objection in the inquiry process. To take interim measures as directed by the IC.
12	To assist in securing the attendance of respondent/witness(es) before the IC
13	To prepare an Annual Report and include all the relevant information(s) as defined under the POSH Act, 2013
14	To ensure timely submission of annual reports to the District Officer by the IC
15	To maintain Confidentiality and enter into Non-Disclosure Agreement(s) with the parties involved
16	To assist the Complainant in filing a police complaint under the Indian Penal Code 1860 or any other applicable law in force.
17	To implement No-Retaliation and Zero Tolerance policy in its organization. The employees must be well acquainted with the fact that any act/instance/behavior of sexual nature shall be construed as misconduct under the service rules, so defined.
18	To monitor the timely submission of the reports submitted by IC



ROLE OF VARIOUS DEPARTMENTS AND GOVERNMENT BODIES

9.1. Introduction

The POSH Act vests the primary responsibility on the employer to create a safe working environment for all the employees, more specifically for female employees. Practically, it is the responsibility of the management and leadership teams of an organization to ensure that the workplace is free from any form of gender discrimination and violence. What must be understood here is, that an organization or an employer cannot function in isolation and would require the active participation of all the departments and verticals to maintain an environment conducive for everyone. Therefore, keeping that in view, the employer's responsibility corresponds with that of various other departments in an organization to ensure that the POSH Act is being complied with both in letter and spirit.

In this Chapter we have discussed the role of various departments in an organization and Government Bodies in regulating and providing grievance redressal mechanism for expedient disposal of complaints of sexual harassment.

9.2. Human Resource (HR) Department

The Human Resource (HR) department of an organization is a division of business that is primarily vested with the responsibilities as to management of human resources, such as recruitment, hiring, training and remuneration of new and existing employees. It is responsible for managing an entity's entire employee experience. It also ensures that the organisation complies with various rules and policies formed by the organization and the government.

- The role of HR is extremely important in POSH matters or sexual harassment cases that come up in an organization because it acts as an intermediary between the employees and the Employer.
- The HR is the one of the main organs of the organization which is responsible for the implementation of the policies framed under the organization.
- The POSH Act mandated the formation of an IC with at least three (3) internal members, one of them would be a Presiding Officer, a Senior Female Employee and the rest of the two would be members well versed either in the legal field or in issues of sexual harassment. The HR is given the responsibility of implementing this mandate.
- Each organization will have its own policies as to elect and choose the members of the IC since the Act does not explicitly specify any rules or procedure in this regard. Therefore, there is huge responsibility entrusted upon the HR. The HR has the responsibility of hiring and promoting keeping in mind the wider goals of diversity and inclusion so as to promote mutually respectful behavioral practices based on gender diversity and equality.
- There may be situations wherein some employees who are part of the HR Department, might be chosen to be a part of the Internal Committee, be witnesses in the proceedings or even be the respondents/complainants in a particular proceeding. Then the role of the HR becomes more demanding.



9.2.1. Measures To Be Taken By Human Resource (HR)

In the case of *P vs. Union of India & Ors.*, the Delhi High Court emphasized on the fact that “*the management and authorities of the organisations have to behave in a responsible manner*” and that the institutions cannot escape liability by dragging on such sensitive complaints.¹

Steps that can be taken by HR for effective implementation of POSH Act are as follows:

- ❖ **To maintain a healthy corporate culture** by increasing employee retention through responding to the reasonable needs and demands of the employees and improving communication with employees.
- ❖ **Formulation and Dissemination of POSH Policy:** Understanding the stigma around sexual harassment and sensitivity involved therein, it is important to create a comprehensive document that entails the definition of sexual harassment, who can file a complaint under the POSH Act, against whom the complaint can be filed, what is the redressal mechanism, etc. having a POSH Policy would serve twofold purpose, one is whereby, it can be clearly stated that the organization practices ‘Zero Tolerance against sexual harassment’ and second will be to provide answers to the questions that the employees generally would have apprehension discussing them with anyone.
- ❖ In case the complainant because of ease of redressal seeks the HR Department in a case of sexual harassment at workplace, the HR must be aware of the fact that they cannot take up the case at hand but may **assist the complainant** to file a complaint.
- ❖ It is imperative that they form **proper channels of communications** that the employees can use to communicate their concern. It must be kept in mind that even a slightest error or negligence in fulfilling their duties may result in injustice to the victim.
- ❖ The HR can direct the complainant to address the complaint to the IC, or even become a conduit for the purpose of arranging the meetings physically with any of the members of the IC or help the complainant in sending a complaint in physical or electronic form to any of the IC Members.
- ❖ The HR can share the contact details of the IC Members, in case the complainant is over-whelmed or unaware.
- ❖ The HR **under no circumstances should take up the complaint** themselves as it is not a statutory body authorized under the Act.
- ❖ The HR may be able to take up other cases of harassment which do not fall under the definition of sexual harassment in accordance with the policies and the rules of the organization.
- ❖ The HR must be **trained to have counselling skills** so as to deal with both the complainant and the respondent and try to maintain neutrality till the final inquiry report comes up.
- ❖ The HR also has the duty to **maintain complete confidentiality** as prescribed under the Act as they will be privy to all the information and proceedings in a complaint of sexual harassment at workplace. They must be well aware of the fact that breach of confidentiality may result in penal consequences as defined under the Act.
- ❖ The HR in consultation with the management, plays an important role in selecting the appropriate **methodology to conduct the training sessions and capacity building programmes** that imparts legal awareness on the scope and applicability of the Act.
- ❖ The HR should be made to sign **Non-Disclosure Agreements** so as to make them bound to ensure the confidentiality. They may be holding records which will be required for IC proceedings as well as

¹ P v. Union of India & Ors (W.P.(C) 14403/2022)



in case the matter goes on appeal, they may be summoned to present such records/information as required.

- ❖ Ensure that the rights of accused are protected. Even if there is a minute chance that the accused is innocent, the HR department must do everything within their power to protect the rights of the accused proper until justice is served.
- ❖ The HR has to be **sensitized** to the specific requirements under the law as to the procedure and their roles.
- ❖ Their roles demand that they remain **unbiased and maintain equanimity**.
- ❖ The Employer may assign to the HR the duty of **summoning witnesses, handling terminations, leaves, transfers, separating the teams of the complainant and respondent** and giving effect to the interim relief as determined by the IC.
- ❖ The HR also has a duty to appoint External Members to complete the quorum of the IC.
- ❖ The HR must ensure that the **updated POSH Policy** is circulated among all employees, irrespective of their job profile and this circulation may be either in physical or digital form.
- ❖ The POSH policies implementation must be equally done whether the workspace is online, offline or hybrid.

For instance, in a scenario where two people belonged to the same department having different cultural backgrounds. The man was of a friendly nature and had a habit of putting an arm around a person. The woman complained of sexual harassment to the HR against that person for putting an arm around her. The HR advised the woman to approach the IC. The IC used its counselling skills to help both of them to reach a conciliation agreement where the perpetrator tendered a written apology to the woman and the HR was advised to separate the two in the same entity. **The HR prudently separated the two on two different floors so that the interaction between the two become minimal.**

9.2.2. What can the HR do if there is a rumor doing rounds in the organization about an Instance of Sexual Harassment?

If the HR gets to know of any such instance of sexual harassment, it can either, after perusing the matter, inform IC or council the aggrieved woman to file a formal complaint in the IC. The HR, however, cannot go ahead with the matter and deal with it themselves or ask the IC to take cognizance of an anonymous complaint.

Though the HR may like to work in an organization culture and may want to address the incident of sexual harassment in an educational manner without naming the individuals involved in the case, the same is not allowed under the POSH Act and thereby bars the jurisdiction of HR to deal with the complaints of sexual harassment.

9.3. Management

Management is the administrative body of an organization, whether they are a business, a non-profit organization, or a government body. Management is how businesses organize and direct workflow, operations, and employees to meet organisational goals. The primary goal of management is to create an environment that let employees work efficiently and productively.

The management would also fall in the category of “Employer” as defined under **Section 2(g) of the Act** which also includes:



“Any person who is responsible for the management, supervision and control of the workplace”.

The Management along with other stakeholders of an organization is equally responsible for providing a safe working environment for all its employees as well as to any visitor of its workplace. The Management has the vision and mission to create the policies and code of conduct to be applicable in an organization for promoting a better and safe work culture.

It must be noted that as an Employer of the organization, the Management can also be held liable for non-constitution of the IC or for not providing a robust redressal mechanism as defined under the Act.

9.3.1. Measures to Be Taken by the Management to make a Better Workplace?

With the advent of globalization, there is a general growing acceptance of the fact that inclusive workspaces impact an organisation positively and help it grow much more effectively. Gender diversity and inclusivity are no more concepts restricted only to paper but now are a major social responsibility. Inclusive workspaces make for content employees that show more initiative and heightened productivity because of the supportive environment.

Steps that can be taken by management for effective implementation of POSH Act are as follows:

- ❖ **No Discrimination:** All the complaints or concerns of alleged or possible sexual harassment shall be taken extremely seriously no matter how minor it is. Management shall refrain from any kind of personal biases as to who is involved and shall deal with all matters fairly.
- ❖ **No Retaliation Policy:** All necessary and appropriate actions shall be taken to prevent any retaliation or prohibited conduct from recurring during and after any investigations or complaints.
- ❖ **Constitution of IC:** It is the responsibility of the Management to ensure that the IC so formed is a proper functioning one and well equipped with the resources for the purpose of addressing and handling complaints pertaining to sexual harassment. The Board Resolution for constitution of IC is to be passed by the Management itself.
- ❖ **Assistance:** The Management need to ensure presence, protection and assistance to the witness (es), if any. If the respondent is an employee, the Management has the resources to ensure the appearance of the perpetrator before the IC.
- ❖ **Training and Gender Sensitisation Programmes:** Gender equality is a state in which people have access to rights or opportunities regardless of their gender. Gender inclusivity and sensitivity means a way that does not discriminate against a particular sex, social gender or gender identity and does not perpetuate gender stereotypes. Management shall conduct gender inclusive and sensitization workshops for every employee in the workplace at all levels. Training and workshops shall not be restricted only to a particular gender and shall be conducted for everybody. In order to ensure a proper functioning both men and women should be explained as to how they shall behave with each other in a social setting.
- ❖ **Gender Inclusive POSH Policy:** Management should create gender neutral policies as a neutral policy has better results. The sole purpose of the POSH Act is to maintain harmony at workplace, if policies are not gender neutral then it defeats the whole purpose of the Act.
- ❖ **To provide safe and secure working environment:** Complainant or aggrieved person shall not hesitate to reach out to the management and they shall absolutely refrain from passing any biased opinions. Often aggrieved women do not take this recourse due to the social stigma that has been attached to it. An effective management shall eradicate this situation and the complainant shall feel secure and safe in addressing their grievance.



A special box can be put up for the employees to address their complaints or dissatisfaction with the organization or its members anonymously, without any fear of retaliation, social stigmas, etc. This will increase work efficiency and aid in creating a better and safe working environment.

9.4. Government Bodies

9.4.1. National Commission For Women

Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 states that:

“Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by an officer of the National Commission for Women or State Women’s Commission”

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.²

9.4.1.1. Powers and Functions of National Commission for Women

- ❖ Facilitate redressal of grievances and advise the Government on all policy matters affecting women.
- ❖ Investigate and examine all issues concerning the protection and safeguards provided to women under the Constitution and other laws.
- ❖ Report on the effectiveness of those safeguards to the Central Government.
- ❖ Make recommendations in such reports for the effective application of those protections for improving the conditions of women.
- ❖ It takes up cases of violation of provisions of the Constitution and of other laws relating to women with the appropriate authorities.
- ❖ It looks into complaints and takes suo moto notice of matters relating to deprivation of women’s rights, non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities.³

The National Commission for Women (NCW) has issued strict advisories to all educational institutions/coaching institutes:

1. To strictly comply with the provisions of the POSH Act, 2013
2. To conduct frequent training and awareness programs cum seminars cum workshops on sexual harassment
3. To have a background check on such educational institutes/coaching centers.

² Refer to <http://ncw.nic.in/commission/about-us>

³ Refer to <http://ncw.nic.in/functions>



The Government of India had set up a dedicated fund called ‘NIRBHAYA FUND’ for implementation of initiatives aimed at enhancing the safety and security for women in the country.

9.4.2. District Officer

Section 5 of the Act imposes an obligation on the appropriate Government to:

*“Notify a District Officer or Additional District Magistrate or the Collector or Deputy Collector as a **District Officer** for every district to exercise powers or discharge functions under this Act.”*

Section 20 of the Act deals with the “Duties and Powers of District Officer”.

The District Officer shall-

- (a) *Monitor the timely submission of reports furnished by the Local Committee;*
- (b) *Take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women.*

9.4.2.1. Role of the District Officer:

- ❖ **Constitution of Local Committee:** It is mandatory for District Officer to constitute a Local Committee in every district to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than 10 number of workers or in case the complaint is against the Employer himself. **[Section 6(1)]**
- ❖ To designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints of sexual harassment and forward the same to the LC within 7 days. **[Section 6(2)]**
- ❖ **Appointment of LC Members:** To nominate the members of the LC and their date of appointment. **[Section 7]**
- ❖ **Implement Recommendations:** To act upon the recommendations of the Local Committee within 60 days of the receipt of the report.
- ❖ **Annual Report:** The annual report so prepared by the IC or LC, as the case may be, is to be submitted to the Employer and the District Officer. On receipt of the same, the District Officer is required to submit a brief of the received annual report to the State Government. **[Section 21]**
- ❖ **Furnish information:** The District Officer may also be called upon to furnish in writing such information relating to sexual harassment as it may require. **[Section 25(1)(a)]**
- ❖ **Inspection:** The District Officer may be authorized to make inspection of the records and workplace in relation to sexual harassment as it may require in public interest or the interest of women at workplace. **[Section 25(1)(b)]**
- ❖ **Awareness:** To take such measures as may be necessary for engaging NGOs for creating awareness on sexual harassment and the rights of the women.

9.4.3. Chief Labour Commissioner

The Chief Labour Commissioner was established in 1945 and is primarily responsible to maintain



harmonious industrial relations under the regime of the Central Government. The functions with which the Commissioner is entrusted *inter alia* includes settlement of industrial disputes through conciliation/mediation and the enforcement of Central Labour Laws and Rules.

Functions

- ❖ Prevention and Settlement of Industrial Disputes
- ❖ Enforcement of Labour Laws and Rules made
- ❖ Names of the Enactments Enforced in Central Sphere
- ❖ Quasi-Judicial functions
- ❖ Verification of Trade Union membership

Prohibition of Night Work

Relevant extracts from various Statutes herein below which prohibit night work for women in India are listed below:

- ❖ **Section 66(1) (b) of the Factories Act, 1948** states that no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.⁴ (Madras High Court Declared that contravening the provisions of Section 66 of the Factories Act is unconstitutional as it violates Article 14 and 15 of the Indian Constitution.⁵)
- ❖ **Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966** stipulates that no woman shall be required or allowed to work in any industrial premise except between 6 a.m. and 7 p.m.
- ❖ **Section 46(1) (b) of the Mines Act, 1952** prohibits employment of women in any mine above ground except between the hours of 6 a.m. and 7 p.m.

Prohibition of Sub-terrain Work:

Section 46(1) (b) of the Mines Act, 1952 prohibits employment of women in any part of a mine which is below ground.

9.4.4. Police Department

❖ Crime Against Women (CAW) Cell

The Crimes against Women Cell was set up by the National Commission for Women with the object of providing counselling to women through trained personnels. Established in 1983, the Cell works towards rebuilding dignity and self-esteem of violated woman, offer immediate services such as counselling, providing shelter or medical aid, awareness about legal rights and providing police support etc.

The Cell is first of its kind specifically meant for women in India as, crimes, or other forms of harassment faced by women were handled by the normal police stations. There was need for a gender-specific police response as-

- ✓ Women were hesitant to take their problems to police stations that were staffed largely by male police officers.
- ✓ The normal police force was largely overworked and understaffed.
- ✓ There was no sensitiveness of a male police officer when dealing with a harassed and frightened woman

4 State Government vs Jiwa Bhai Nathabhai And Anr (1953 CriLJ 1030)

5 Vasantha R. vs Union Of India (2001 IILLJ 843 Mad)



❖ **Special Police Unit for Women and Children (SPUWAC)**

SPUWAC, a Delhi Police Unit was established with the object to safeguard the rights of women and children in New Delhi. It helps provide special services like counselling, mediation and self-defense training. The Unit works in tandem with various NGOs, schools, colleges and other agencies and spread legal and social awareness about issues relating to women and children in Delhi.

Functions

- ✓ Address cases related to women issues like, dowry, domestic violence, abuse, neglect, commercial exploitation and trafficking.
- ✓ Highlight and spread awareness about varied social issues pertaining to women and children.
- ✓ Raise concerns and assist aggrieved women and children.
- ✓ Encourage participation of civil society for prevention of crime against women and children.

9.4.5. Cyber Cell

Considering the unprecedented use of technology, it cannot be denied that cyber crimes in India are at an all-time high. Subsequently, Cyber Cells were established across the nation to provide redressal to the victims of cybercrime. The cyber cells function as a part of the criminal investigation department and specifically deal with criminal activities taking place online or digitally. In case there is no cyber cell at place of residence, then an FIR can be filed in the local police station.

The National Cyber Crime Reporting Portal or NCRB has been established by the Ministry of Home Affairs to facilitate victims of cybercrime to file their complaints online. The complaints filed online are dealt by respective law enforcement agencies based on the nature of complaint filed.

CERT-IN or the Indian Computer Emergency Response Team is a national nodal agency entrusted with the function to tackle issues occurring on account of computer security threats. The agency issues guidelines about the procedure, prevention, reporting, and response to cyber incidents and crimes on the internet.

The National Crime Records Bureau or NCRB was established in 1986 as a repository of information on crime and criminals based on the recommendations of the Tandon Committee, the National Police Commission (1977–1981) and the Task Force of the Ministry of Home Affairs (1985). The NCRB compiles data and analytics on sexual harassment at workplace in India its publication, namely, “Crime in India”.

9.4.6. SHe-Box

The Sexual Harassment electronic Box or the SHe-Box is an effort of the Ministry of Woman and Child Development to provide a complaint reporting mechanism to every woman, irrespective of her work status. Any woman facing sexual harassment at workplace can register their complaint through this website. On submission of complaint to the ‘SHe-Box’, the same is directly sent to the concerned authority which has the jurisdiction to take appropriate action under the law in the respective matter.

Registering Complaints under She-Box

- A valid email id is required.
- Go to <http://www.shebox.nic.in/>
- Click on Register Your Complaint.
- The website will ask information about the nature of office where alleged act of sexual harassment took place.





- Then it will open a complaint registration form.
- After filling all the necessary details click on **submit**.
- A **confirmation message** is sent to complainant's email id.
- The complainant view the status of the complaint from time to time by creating an account via the email id.

9.4.7. Other Measures

- ❖ The ***Companies (Accounts) Rules, 2014*** was amended to make mandatory inclusion of a statement in the Report of the Board of Directors regarding compliance with the provisions on constitution of IC under the POSH Act⁶. The Report is prepared by the Board of Directors as per the provisions of Section 134 of the Companies Act, 2013.
- ❖ The Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, has also issued advisories to all the Central Ministries/ Departments directing them to complete the inquiry in a time bound manner and to include the information related to number of cases filed under the POSH Act and their disposal in their annual report.
- ❖ In November 2019, the District Magistrate, Gautam Buddha Nagar, issued a notification mandating all the companies of district of Noida, Uttar Pradesh, to form an IC and upload the Annual Report on the Sexual Harassment Online Redressal webiste/app. Further, the Additional Deputy Commissioner, Gurugram, issued a POSH Act⁷ Compliance Checklist to all the non-governmental organisations requiring their urgent attention towards forming an IC. Similarly, the District of New Delhi also issued an urgent notice dated Januray 13, 2023 to all the companies to form an IC.

6 The amendment has been in effect since July 31, 2018.

7 <https://ssrana.in/articles/government-notifications-posh-compliance-india/>



POSH AND GENDER NEUTRALITY

10.1. Introduction

The POSH Act, 2013 aims at safeguarding **women** subjected to sexual harassment at workplace. However, harassment is a social evil which can be indulged in irrespective of gender and does not spare anyone. Thus, it becomes imperative that everyone irrespective of their gender shall fall under the purview of the Act, including *men, transgenders, gender neutrals, and non-binaries, amongst others, in the spectrum*. The act of sexual harassment committed by genders other than women must be actionable as misconduct under the code of ethics and conduct. However, the specific cases of sexual harassment must be covered under the umbrella of the Act as well, which requires re-working and hence, there is a need for a gender-neutral law against sexual harassment at workplace.

10.2. Definition under Law

Are Transgender Persons included under the POSH Act of 2013?

Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019 defines “transgender person” as

“A person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone sex reassignment surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta”.

The Hon’ble Supreme Court, in the case of **National Legal Services Authority v. Union of India**¹, recognized that transgender people are distinct from binary people and declared them as the third gender under the Indian Constitution, that is, the right to self-identify without sex re-assignment surgery.

Further, in the case of **Navtej Singh Johar v. Union of India**², Section 377 of the Indian Penal Code that criminalized unnatural offences³ was scrapped by the Apex Court and subsequently homosexuality was decriminalized. In 2019, the Government also passed the **Transgender Persons (Protection of Rights) Bill** (now Act) with an aim to provide for protection of rights of transgender persons and their welfare and for matters connected therewith or incidental thereto.

10.3. What Genders are covered in the Act with respect to the Complainant and Respondent?

For the first time, in the year 1997, the Hon’ble Supreme Court of India recognized sexual harassment at workplace as a violation of human rights and a personal injury to the affected woman⁴. However, no mention of sexual harassment at workplace against other genders were made in the judgment. Pursuant to Apex Court’s judgment, the Legislature also enacted the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* or the POSH Act, however no mention has been made in the statute about applicability of the Act on other genders other than women.

Interestingly, in the case of **Malabika Bhattacharjee v. Internal Complaints Committee**,

1 (2014) 5 SCC 438

2 AIR 2018 SC 4321

3 Unnatural offence under Section 377 referred to carnal intercourse against the order of nature with any man, woman or animal.

4 Vishaka & Ors vs State Of Rajasthan & Ors. AIR 1997 SC 3011



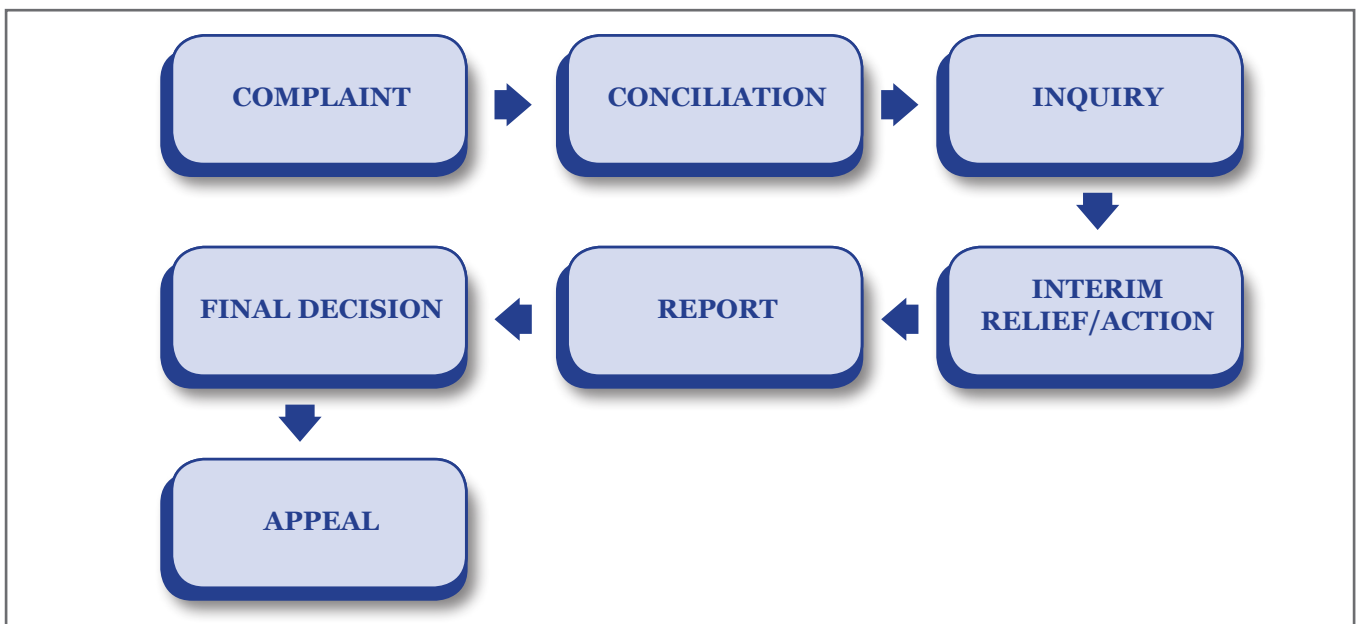
Vivekananda College and Ors.,⁵ the Hon’ble High Court of Calcutta gave consideration to the validity of a complaint made against a "Respondent" of the same gender as the Complainant. The complainant and Respondent in this instance were both women. It was held that:

- ✓ Section 2(m) of the 2013 Act defines the term “respondent” as “a person”, thereby including all genders.
- ✓ Although it might seem a bit odd that people of the same gender complain of sexual harassment against each other, it is not improbable, particularly in the context of the mode which the Indian society is adopting, even debating the issue as to whether same-gender marriages may be legalized.
- ✓ A person of any gender may feel threatened and sexually harassed when his/her modesty or dignity as a member of the said gender is offended by any of the acts, as contemplated in Section 2(n), irrespective of the sexuality and gender of the perpetrator of the act.

Thus, while the Respondent can be a male or a female, the definition of Complainant should also not be restricted to just the female gender.

10.4. What is the Mechanism for Redressal of Complaints and Gender Inclusivity?

The POSH Act gives the Internal Complaints Committee and the Local Complaints Committee the powers as are vested in a Civil Court by the *Code of Civil Procedure, 1908*. The Committees have the power to adjudicate on a complaint filed by the “aggrieved woman” as per the following procedure:



However, the Act does not empower the Committees to adjudicate a complaint filed by a man or a transperson, though a police complaint can be filed for the same.

Further, all genders are governed by the Code of Conduct at work. So, while women may seek direct protection under the POSH Act, other genders may do so under the Employer’s Code of Conduct.

10.5. What is the Limitation under the Act and Policy?

The redressal of complaints under an employer’s policy is not bound to follow the procedure laid down by the Act and may not be very effective or efficient, thereby raising the need to include all genders under the POSH Act.

5 WPA 1198 of 2021



10.6. What is a Gender Inclusive Posh Policy?

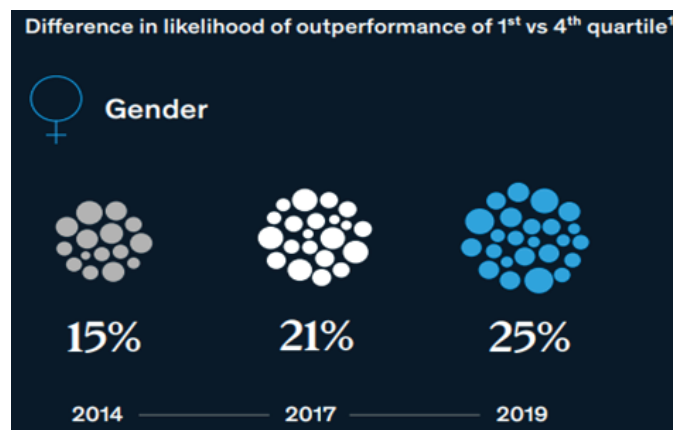
The aim of gender inclusive POSH policy is to protect:

- The right to equality before law enshrined under **Article 14** of the Constitution.
- The right to life, personal liberty and dignity under **Article 21** of the Constitution.
- The discrimination on grounds of sex under **Article 15** of the Constitution.
- The equality of opportunity in public employment under **Article 16** of the Constitution.
- The freedom of speech and expression under **Article 19** of the Constitution
- The interests of minorities under **Article 29** of the Constitution.

The same can be achieved by a few steps in this direction such as:

- ✓ Conducting gender sensitization trainings and workshops;
- ✓ Framing a policy to tackle harassment of all genders by all genders;
- ✓ Building a workplace culture that provides psychological, emotional, mental and physical safety to all its employees and patrons equally irrespective of their gender identities;
- ✓ Inculcating a spirit of equality and respect at all levels of working and all stages of employment.

As per McKinsey & Co.’s report on Diversity and Inclusion of May 2020⁶, “**diverse companies are more likely to financially outperform their peers**”.



Source: McKinsey & Co.

Thus, for increased productivity and success at work, diversity is a must and the same requires inclusion, access and equity.

A recent research study funded by Deloitte, Herbert Smith Freehills and Brunswick⁷, makes a strong case for greater inclusion of LGBTIQ in the workforce. In 2019, International Labour Organisation (ILO) came up with the Violence and Harassment Convention which is gender-neutral in nature.

In 2014, the World Bank’s⁸ report “**The Economic Cost of Homophobia and the Exclusion of LGBT People: A Case Study of India**” revealed that homophobia and exclusion of LGBT from the

6 <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

7 <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/about-deloitte/deloitte-uk-working-globally-open-for-business.pdf>

8 <https://www.worldbank.org/content/dam/Worldbank/document/SAR/economic-costs-homophobia-lgbt-exclusion-india.pdf>



workplace causes 01.-1.7% loss of GDP. 56% of the LGBT people reported discrimination in white collar jobs as well. The Indian LGBT Workplace Climate Survey 2016 revealed that more than 50% of the Indian LGBT could be fired for being LGBT. A study by NHRC on the rights of transgenders states that around 92% of transgender persons are denied the right to participate in any form of economic activity and even qualified ones are denied jobs.

In India, a Workplace Equality Index Report 2020 revealed that out of 65 top companies surveyed, 13 did not meet the minimum thresholds of anti-discriminatory policies in favour of transgenders.

10.7. How to Build a Corporate Culture of Equality?

The POSH Act was aimed at protection of women at the workplace which would result in an increased feeling of safety resulting in increased employment of women. The same intention ought to be kept in mind for all genders. Having a proper legal mechanism to address cases of sexual assault at work would result in a sense of psychological safety, leading to increase in participation and efficacy at work across genders.

It cannot be denied that men or transgenders are not victims of sexual harassment. In fact, we often come across news covering sexual assault against men. In May 2017, a Mumbai-based entrepreneur and founder of entertainment company, Only Much Louder (OML), shared his story of being sexually harassed by a woman in an article published by the Huffington Post⁹. The Trans community is often the target of sexual harassment in all walks of life, including employment.

The ***UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations 2015***.

10.8. How to Integrate the Trans People in the Workforce?

The transgender community regularly faces discrimination, oppression, and exclusion, especially in the field of healthcare, employment and education.

As per the 2011 census¹⁰, in India, there are a total of 4.88 lakh transpeople. 14,000+ applications have been filed and 11,000+ applications registered with the National Portal for Transgender Persons¹¹ in India (the Transgender ID is now a valid document for the Aadhaar Card amongst others).

However, according to the National Human Rights Commission's survey in 2018, 96% per cent transgenders are denied jobs and are forced to take low paying or undignified work for livelihood (6% were employed in private sectors or NGOs).

To properly integrate the Trans community in the workforce, there has to be sense of equality and safety, and the POSH Act can help cover one aspect of the same.

❖ **Section 3 of the Transgender Persons Act, 2019** states, “No person or establishment shall discriminate against a transgender person on any of the following grounds, namely: (b) the unfair treatment in, or in relation to, employment or occupation and (c) the denial of, or termination from, employment or occupation”.

❖ **Section 9** states that, “No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues”.

9 https://www.huffpost.com/archive/in/entry/when-vijay-nair-unmasked-his-vicious-cyberstalker-the-story-tur_in_5c11f327e4b0295df1fa44e6

10 <https://www.census2011.co.in/transgender.php>

11 <https://transgender.dosje.gov.in/>



- ❖ **Section 10** states that, “Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed”.
- ❖ **Section 18(d)** states that any person who harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

Many businesses have recognised the importance and benefits of diversity and inclusion in the workforce. The Lalit Suri Group is an example of a business creating opportunities for the Trans community, including scholarships and educational provisions for Trans genders and employment for people with disabilities and the Trans people.

The Hon’ble Division Bench of Justice DY Chandrachud and Justice Hima Kohli directed the Central Government to consult the National Council for Transgender Persons and devise a policy framework so that accommodation can be provided to transgender people in seeking recourse to avenues of employment in establishments covered by the provisions of the **Transgender Persons Act, 2019**. They also directed the Central Government to implement the provisions of the Act by formulating policies and providing guidance and standards to all other entities.¹²

Similarly, in case of **Shanavi Ponnusamy v. Ministry of Civil Aviation**¹³, a writ petition was filed in the Hon’ble Supreme Court by a transwoman seeking direction to the Respondents to consider her candidature for the post of cabin crew in Air India.

Reliance was placed on **National Legal Services Authority v. Union of India**¹⁴, wherein the Apex Court had recognized the fundamental rights of the transgender community, mainly the right to self-determination of their gender and the right to education and employment opportunities under **Article 21 of the Indian Constitution**. The Court also referred to the **Transgender Persons Act, 2019** and noted that no person or establishment shall discriminate against a transgender person by giving unfair treatment in employment or an occupation, including recruitment, promotion, etc.

It is relevant to mention herein that **Section 18(d) of the Transgender Persons Act, 2019** protects transgenders against harms and injuries, including sexual abuse and physical abuse. It states that, “Whoever harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine”.

10.9. What if a complaint is filed by a man or third gender person?

One practical problem that can be faced in an organisation will be when the harassment is by a trans employee against another trans employee or by a trans/ gay employee against a man/ woman vis a vis harassment by a man against woman. The organisations are still grappling with reasonable woman standard, so now implementing a reasonable person standard might become practically difficult to judge whether the referred alleged behaviour hurts the sentiments of any gender or not, as it is a subjective experience. The solution may lie in gender sensitization trainings which the organisations must give to their employees so as to understand behaviours and actions that may be called offensive.

In cases of gender neutral policies, such complaints are normally investigated and dealt by the disciplinary

¹² <https://timesofindia.indiatimes.com/india/form-policy-to-provide-job-opportunities-to-trans-people-sc/articleshow/94086235.cms>

¹³ 2022 SCC Online SC 1581

¹⁴ (2014) 5 SCC 438



proceedings committees, or ethics committee or by the Human Resource (HR) Departments.

Further, as there is no statutory obligation on the employer to have a gender neutral policy, the employer is free to solve such complaints on case to case basis as per the Employee Agreements and organisational policy.

Secondly, in case an Internal Committee (IC) is formed to investigate these issues, the practical issue that will come up shall be as to *who shall be the Presiding Officer of that IC* (in case of involvement of two different genders) and in cases of interim reliefs or final relief, *who shall be transferred* (in cases of 2 different genders) by the Employer, so as to satisfy the question of being unbiased and following the preinciples of natural justice. These practical problems will only be solved when certain legislative changes are brought into place.

Till the time a gender inclusive legislative framework is formed, all organisations are advised to treat complaints of workplace sexual harassment brought by genders other than women as a “misconduct” in accordance with the Service Rules so defined or as per the organisational policy.

To promote diversity at workplace, it is crucial to provide enhanced security and better workplace for all gender identities and orientations. The Employer has adequate options to choose what syncs well with the vision and mission of the organisation.

10.10. Other Indian Laws

The POSH Act may follow the footsteps of the *Indian Penal Code, Protection of Children from Sexual Offences Act of 2012, Criminal (Amendment) Act 2013/the Nirbhaya Act and University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015*, all of which have a gender-neutral approach.

The POSH Act may include takeaways from the *Transgender Persons (Protection of Rights) Act, 2019 and Rules 2020* which states that no person or establishment shall discriminate against a transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues. The Rules prohibit conversion therapy, mandate sensitization and training of teachers and staff, provide for gender-neutral restrooms and separate wards in hospitals for Trans persons.

10.11. Opinion of the Parliamentary Standing Committee on Gender-Neutral Law

The Parliamentary Standing Committee on Human Resource Development duly heard the views of organizations and groups advocating for gender-neutral laws and how the POSH Act is biased and only addressed the plight of aggrieved women workforce and expressed the following concerns:

- The presumption that only women can be victim is not right;
- Percentage of women workforce is increasing;
- Gender should not get precedence over human rights;
- Employers are under the duty to provide safe working environment to all employees;
- The Ministry has no data to claim that sexual harassment is faced by women only;
- Countries like Portugal, Denmark, Italy, UK, Spain, Netherlands, etc. have gender-neutral laws.

The Ministry of Women and child Development, in its reply, stated that:

- While there may be incidents of men facing sexual harassment at workplace, it cannot be denied that it is women who have to face the disproportionate brunt of this scourge;



- That the Supreme Court in the ***Vishaka Case***,¹⁵ held that sexual harassment at workplace was a form of discrimination against women which violated the constitutional right to Equality;
- The Ministry further informed that the countries across the world adopt two-predominant approaches, one is to formulate a separate legislations prohibiting sexual harassment at workplace which may be gender specific or gender neutral and the other one was inclusion of provisions as part of existing anti-sex determination or equal opportunities frameworks, like in Australia.

10.12. Worldwide Scenario

Gender inclusive laws have found a place in 70+ countries including ***Denmark, Australia, Switzerland, the U.S, and the U.K*** etc. *(This has been dealt in detail under Chapter: POSH Law in other countries, which provides about the POSH laws prevalent in other nations.)*

10.13. Conclusion

The International Labour Organization states that, *“high levels of diversity and inclusion in the workplace are associated with greater productivity, innovation and workforce well-being, yet too little is being done to promote them, particularly among minority groups, meaning that enterprises, workers and societies are missing out on considerable potential benefits”*.

Thus, it is imperative for all businesses looking for a holistic growth to appropriately integrate the entire community in the workforce, to make sure that each member feels comfortable in bringing their authentic and whole selves to work, for which there has to be a proper legal system to lay down the redressal mechanism in cases of sexual harassment.

A few steps that can be taken into consideration are:

- ✓ Training during orientation and thereafter on a regular basis
- ✓ Detailed policy on diversity and inclusion
- ✓ Sensitization regarding gender identities and acceptable behaviors at work
- ✓ Review of the same via feedbacks
- ✓ Updating personnel records and dress codes, providing gender-neutral facilities, etc.

There is a push and a recommendation looking at the present and evolving social and economic global climate for making POSH a gender inclusive law rather than one that only benefits women. Members of every gender should feel safe at the workplace to bring their best selves forward rather than discriminated against in the workplace environment. The system should ease the process of complaints and redressal of sexual harassment of men and the LGBTQIA+ community as the harassment against them is hardly paid heed to. While we talk of diversity and inclusion at work, one of the first steps is to have amendments in the law to make it an inclusive one.

¹⁵ <https://indiankanoon.org/doc/1031794/>



INTERCONNECTION WITH OTHER APPLICABLE LAWS IN INDIA

11.1. Introduction

The Vishaka Guidelines and the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are progressive steps towards providing a broad legal framework that exclusively deals with the on prevention of sexual harassment of women at workplace. However, there are other laws in general that buffer the laws on prevention of sexual harassment of women and complement the POSH Act.

11.2. How does the Indian Constitution Provide Protection to Women?

The right to life and liberty, as well as the right to equality, are guaranteed under **Article 21** and **Article 14** of the Constitution, respectively. It must also be noted that the Constitution under **Article 19(1) (g)** grants “freedom to practice any profession, or to carry on any occupation, trade or businesses.” Any act of Sexual harassment at workplace violates, limits, and restricts the said right to practice any profession.

❖ *Vishaka v. State of Rajasthan*,¹(1997)

The Hon’ble Supreme Court, for the first time, in this landmark judgment tried to fill the lacunae that existed in the Indian legal system with reference to protection of women against sexual harassment at the workplace. The Apex Court stated that every instance of sexual harassment faced by a woman is violation of fundamental rights guaranteed under **Articles 14, 15 and 21** of the Constitution of India. Additionally, it amounts to violation of the “**Right to freedom**” under **Article 19**. It was in this case that the Apex Court outlined the guidelines for prevention of sexual harassment of women at workplace which eventually were codified as the POSH Act in 2013.

❖ *Apparel Export Promotion Council v. A. K. Chopra*,² (1999)

The Hon’ble Supreme Court in this case opined that, “*There is no gain saying that each incident of Sexual harassment, at place of work, results in violation of fundamental right to gender equality and right to life and liberty*”.

❖ *Union of India and Ors v. Mudrika Singh*³ (2021)

The Hon’ble Supreme Court in this case recognized the right against sexual harassment as a fundamental right as enshrined under Article 21 of the Constitution.

11.3. What are the Penal Provisions for Sexual Harassment of Women Available under the Indian Penal Code, 1860 (IPC)?

The Indian Penal Code also addresses the issue of sexual harassment of women and outlines the penal consequences emanating from the same. In this context, **Section 228A of IPC** forbids printing or publishing the name or any information that reveals the identity of a rape victim and **Section 509 of IPC** criminalizes any utterances or gestures intended to insult the modesty of a woman, etc.

¹ AIR 1997 SC 3011

² AIR 1999 SC 625

³ LL 2021 SC 705



❖ ***State of Punjab v. Major Singh*,⁴ (1967)**

The Hon'ble Supreme Court in the present case held that the act of outraging the modesty of a woman was not restricted by the age of the victim and neither it was dependent on the fact that whether the woman knew or was conscious about the acts being performed on her.

❖ ***Rupan Deol Bajaj and Ors v. Kanwar Pal Singh Gill & Anr.*⁵ (1996)**

Sections 354 and 509 of the IPC were invoked in the present case where the Hon'ble Supreme Court held that the act of slapping on the posterior of a woman amounted to outraging her modesty.

[Section 354: Assault of criminal force to woman with intent to outrage her modesty]

[Section 509: Word, gesture or act intended to insult the modesty of a woman]

❖ ***In Ramkripal v. State of Madhya Pradesh*,⁶(2007)**

The Hon'ble Supreme Court defines that “**The essence of a woman's modesty is her sex.**”

“The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence.”

11.3.1. The Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013 was passed as an aftermath of the Nirbhaya Rape Incident (***Mukesh v. NCT of Delhi*, 2017**). By way of this amendment, certain new offences against women were recognized and incorporated into the Indian Penal Code.

❖ ***Section 166A IPC*** was introduced as a new provision for punishing police officers who do not record an FIR in cases of crimes against women such as rape.

The concept of **Zero FIR** was propounded in the Justice Verma Committee after the incident of Nirbhaya Rape Case to put an obligation on police to take a quick action and prevent them from using the excuse of jurisdiction. Therefore, under the provision of Zero FIR, a police officer is bound to take the complaint lodged by the informant and transfer it to the police station in whose jurisdiction the offence has occurred.

Following this the impact on POSH Law has been that a woman filing a complaint of sexual harassment has the freedom to go to the most convenient police station irrespective of the jurisdiction and not seek the police station under whose jurisdiction the act might have been committed or fallen in regular circumstances.

❖ Further, ***Section 166B IPC*** was introduced to punish those in charge of hospital for refusing to provide free of cost treatment to a victim of rape. In ***SK v. State (Government of NCT of Delhi)***,⁸ it was held that a rape victim can register her complaint from any police station under Zero FIR ruling by the Supreme Court.

❖ The provision further enunciates that in cases where the police station under which the incident occurs refuses to register the victim's complaint in order to keep clear of responsibility, the victim has the right to lodge an FIR at any police station under the provisions of **Zero FIR**.

4 1967 AIR 63

5 1996 AIR 309

6 Appeal (Criminal) 370 of 2007

7 (2017) 6 SCC 1

8 1999 Supp (3) SCR 348



Section 354 of IPC was amended to increase the quantum of punishment from two years to minimum 1 to 5 years and with fine for exercising criminal force on women with the intention to outrage her modesty.

354A of IPC was added in to bolster the POSH Act. The section criminalizes the acts of sexual harassment of women that may include physical contact, demanding sexual favors, showing pornography, etc. prescribing a rigorous minimum punishment of 3 years.

Section 354 C: Voyeurism

This provision penalizes the acts of gaining pleasure from watching others naked or engaged in sexual activity. It is punishable by imprisonment of 1 year which may extend to 3 years and a fine.

Section 354 D: Stalking

It includes acts of attempting to make contact a woman despite her disinterest, using physical or electronic or even monitoring her usage of the electronic means of communication. The section prescribes imprisonment which may be extended for a period of 3 years for first time followed by 5 years for a second conviction.

Section 375: Rape

The Amendment of 2013 widens the ambit of the offence of 'rape' by widening the definition and providing harsher punishments for more grievous acts classified as rape under the section.

11.3.2. The Criminal Law (Amendment) Act, 2018 Vis-À-Vis The Changes Made thereunder the Protection of Children from Sexual Assault Act, 2012

Some major changes were made in the criminal laws as a consequence of **Kathua Rape and Unnao Rape Case**. Kathua Rape-Murder Case (**The State of Jammu and Kashmir & Ors v. Shubam Sangra**,)⁹ relates to the brutal gang-rape and murder of an eight year old girl in Kathua, Jammu and Kashmir in 2019. The developments in the aforementioned cases led to some major changes made by the Amendment of 2018 in the IPC, Cr. PC and Protection of Children from Sexual Assault Act, 2012. The Amendment of 2018 has made law on sexual harassment stricter by increasing the punishments under the existing provisions with regard to rape of children.

Section 42 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was amended to provide that that no questions can be asked from the victims of sexual offences during cross-examination which are immoral in nature or which are related to previous sexual experiences of the victim so as to prove the consent or test the quality of the consent by the victim.

❖ P v. Union of India,¹⁰(2021)

The Hon'ble High Court of Calcutta in this case held that as per Section 2(a) of POSH Act an 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. That being so, the provisions of the Act squarely apply to the students of the school.

There is an apparent overlap of POCSO Act and POSH Act with the increasing number of underage (below the age of 18) people entering the workforce, they can often become victims of sexual harassment or become complicit in such cases.

⁹ Criminal Appeal No. 1928 of 2022

¹⁰ WP.CT 86 OF 2021



11.4. What are the Rights of Women in Criminal Procedural Matters?

11.4.1. A woman may file for a civil remedy under the organization's redressal mechanism i.e., the IC but that does not derogate her right to simultaneously file for a criminal law remedy under the relevant sections of the Indian Penal Code, 1860.

11.4.2. As per Section 46(4) of Criminal Procedure Code, 1973, (CrPC), a woman cannot be arrested after sunset and before sunrise. The arrest can be made in exceptional circumstances only, by obtaining the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed, or the arrest is to be made.

11.4.3. Section 53(2) of CrPC further provides that whenever a female is to be examined by a medical practitioner, the examination shall be made only by, or under the supervision of, a female registered medical practitioner.

A “**registered medical practitioner**” means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register.

11.4.4. Under no circumstances can the identity of a rape victim be revealed. Under Section 228A of the Indian Penal Code, the person revealing the identity of a rape victim shall have to undergo imprisonment for a period of two years and shall also be liable to fine.

11.4.5. The POSH Act under Section 16, further, prohibits publication of or making known contents of complaint or inquiry proceedings.

The Hon'ble Bombay High Court in ***P v. A & Ors***, ***“(2021)”*** held that there is absolute prohibition on publishing the names, addresses or other personally identifiable information of the parties in media.

11.4.6. Under Section 164 of the CrPC, a woman who has been raped can record her statement before District Magistrate when the case is under trial and no one else needs to be present. Alternatively, she can record the statement with only one police officer and woman constable in a convenient place that is not crowded and does not provide any possibility of the statement being overheard by the third person.

11.4.7. The provision further states that in cases where the police station under which the incident occurs refuses to register the victim's complaint in order to keep clear of responsibility, the victim has the right to lodge an FIR at any police station under the provisions of Zero FIR.

11.4.8. Further, a rape survivor can approach a doctor for medical examination without filing an FIR. According to Section 357C, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

11.4.9. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate First Class shall try any offence punishable under the POSH Act.

11 Suit No. 142 of 2021



11.4.10. Section 27(3) of the POSH Act states that the offences under the Act are non-cognizable. Therefore, it implies that non-compliance of any of the provisions would not give any police officer the authority to make arrest under the POSH Act. Though the complaint filed under Section 354A of IPC would be a cognizable offence.

11.5. What are the Safeguards under the Indian Evidence Act, 1872 for a Victim of Sexual Harassment/Assault?

Character of victim of sexual harassment/ assault

Section 53 A was added in the Indian Evidence Act by virtue of the Criminal Procedure Code (Amendment) Act, 2013. This provision states that the evidence as to the character of the victim of sexual harassment/ assault shall not be relevant when determining the issue of consent or the quality of consent.

The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. P,*¹² (2005)** declined entertaining any argument on behalf of the accused based on the contention that victim herself was an unchaste woman and a woman of easy virtue unless the character of the prosecutrix itself was an issue. It was held that her character was not relevant to be taken into consideration at all.

Section 114A was inserted in the Evidence Act by virtue of the Criminal Law (Amendment) Act, 2013, providing for cases where sexual intercourse is proved and the question of consent where the woman states otherwise in her evidence. Then in such cases, the Court goes with the presumption that such sexual intercourse happened without consent.

11.6. Protection under Information Technology Act, 2000 regarding the Sexual Harassment of Women

The Information Technology Act, 2000 supplements the Indian Penal Code and **criminalizes publication and/or transmission of sexually explicit material online** and prescribes punishment of 5 years and a fine which may extend to INR 10,00,000 rupees. The implementation of this Act is an attempt to keep up with the advancing technology and adoption of same as a medium for committing aggravated forms of traditional crimes.

11.7. Are there any Other Laws that Provide for the Safety and Security of Women from Assault and Harassment?

11.7.1. The Protection of Women from Domestic Violence Act, 2005:

This Act provides for protection against domestic violence, including sexual harassment for women who live in a shared household with the abuser.

11.7.2. The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Employment (Standing Orders) Rules, 1946:

This Act read with the Rules provide for the regulation of conditions of employment in industrial establishments, including provisions for the prevention of sexual harassment.

Rule 14 (3) (1) classifies sexual harassment as a misconduct which can become the ground for suspension or dismissal of the employee.

The Karnataka Government in 2019, issued a notification to extend the exemption from the applicability of the Industrial Employment (Standing Orders) Act, 1946 for a period of 5 years for industries complying with the POSH Act, more specifically as to the constitution of the Internal Complaints Committee, amongst other compliances.¹³

¹² AIR 2005 SC 1248

¹³ <https://www.mondaq.com/india/employee-rights-labour-relations/812846/karnataka-extends-exemption-from-standing-orders>



11.7.3. The Bonded Labour System (Abolition) Act, 1976:

This Act provides for the abolition of the bonded labour system, including provisions for protection against sexual harassment and exploitation of bonded labourers.

The said Act has been helpful in providing a piece of legislation so as to cover and regulate sexual harassment in unorganized sector.

11.7.4. The Equal Remuneration Act, 1976:

This Act provides for equal remuneration to men and women workers for the same work or work of a similar nature, including provisions for protection against sexual harassment.

11.7.5. Indecent Representation of Women (Prohibition) Act (1987):

The Act prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

The Act further, under Section 7, prohibits indecent representation of women within the premises of a company.

11.7.6. The University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions)

The Act is applicable on all Higher Educational Institutions (HEI) and universities for preventing sexual harassment at workplaces. The Act acts on all HEI campuses and even includes within its scope '**Extended Campuses**' such as transportation provided for commutation purposes and like.

The Regulations put forth the 'Gender Inclusive' approach by prohibiting gender based violence not only against women but men and third gender as well.¹⁴

The Regulations have broadened the scope of the term 'victim' by not limiting the applicability of the POSH Act on employees but also **students, interns, and visitors of the premises**.

11.7.7. Central Civil Service (Conduct) Rules 1964

These Rules are applicable to every person appointed to a civil service or post (including a civilian in Defence Service) in connection with the affairs of the Union. The said Rules are not applicable on the following categories of employees:

- **Railway Servants as defined under Section 3 of the Indian Railways Act, 1980;**
- **Member of All India Service;***
- The holder of any post in respect of which the President has, be it general or special order directed that the rules shall not apply.

The All India Services (Conduct) Rules, 1968 have been enacted to lay down conduct rules for the members of All India Services.

In **Union of India v. S,**¹⁵(2015) the Hon'ble High Court of Delhi held that though the IC need not follow the strict procedure as laid down under the CCS(CCA) Rules, it must adhere to the fundamental principles, i.e. the IC must ensure substantial compliance.

¹⁴ Regulation 3 (d) of the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015.

¹⁵ W.P. (c) 453/2015

* Rule 1- Short Title, Commencement and Application of the Central Services (Conduct) Rules 1964



In ***AP v. the Gauhati High Court and Ors.*¹⁶(2020)** the Hon'ble High Court of Gauhati held that in case of conflict between the Service Rules [Assam Services (Discipline and Appeal) Rules, 1964] and a Special Act (POSH Act), the provisions of the Special Act would prevail.

11.7.8. The Shops and Establishments Acts

Various States in India have legislated their respective Shops and Establishments Acts with the primary objective of regulation of hours of work, payment of wages, holidays, terms of service, and other conditions of work of persons employed in shops and commercial establishments.

Section 14 of the *Delhi Shops and Establishments Act, 1954* provides that no young person or woman shall be allowed to work in an establishment between 9 p.m. and 7 a.m.

The *Karnataka Shops and Commercial Establishments Act, 1961*, provides for maternity leave of maximum 12 weeks to female employees.

The *Telangana Shops and Commercial Establishments Act, 1988* prohibits women employees from working in any establishment before 6 a.m. and after 8:30 p.m.

Some other states have also promulgated special rules related to protection of women.

11.7.9. Maternity Benefit (Amendment) Act, 2017

The Maternity Benefit Act regulates the employment of women in organizations and establishments for certain prescribed durations before and after childbirth and vests the employers with the responsibility of providing prescribed maternity benefits to female employees.

11.7.10. Factories Act, 1948

Section 22(2) of the Factories Act provides that no women shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while prime mover or any machinery that is in motion.

Section 66 (1) (b) of the Factories Act prohibits women employees to work in any factory except between the hours of 6 a.m. and 7 p.m. Section 19 provides for separate urinals for female workers in a factory.

11.7.11. The Mines Act, 1952

Section 46(1) (a) of the Mines Act, 1952 prohibits employment of women in any part of a mine which is below ground. Further Section 46(1)(b) of the Mines Act, 1952 prohibits employment of women in any mine above ground except between the hours of 6 a.m and 7 p.m.

11.8. Is the Right to Information Act, 2005 applicable on POSH cases?

The objective of the Right to Information Act, 2005 (RTI Act) is to empower citizens with promoting transparency and accountability in working of the Government. The aim to enact this piece of legislation was to contain corruption and to enhance people's participation in democratic process.

Section 16 of the Act specifically excludes any information relating to the contents of the complaints under the POSH Act, identity of the parties, details of the proceedings conducted by the IC/LC, information related to conciliation proceedings, contents of the implementation report forwarded to the employer/ District Officer, etc. from the purview of the RTI Act.

A v. University,¹⁷(2013), Central Information Commission observed that Section 16 prohibits undue publicity or publication of contents of the complaint made under Section 9 of the POSH Act, identity

¹⁶ WP(C)/1604/2020

¹⁷ Cic/rm/a/2014/000313-sa)



and addresses of the aggrieved women, etc. The section specifically prohibits publication of any of the contents or to be making known to the public, press and media. However, the section does not prohibit disclosure of certified copy of the complaint to the person against whom the complaint is filed.

RIGHT TO FORGOTTEN AND RIGHT OF ERASER:

The plea of one's right to be forgotten has been discussed by various High Courts in India before, and as such is not a new point of law. Recently, in a short but significant order stressing on the importance of 'right to be forgotten' and 'right of eraser' being part of one's right to privacy, the Hon'ble Supreme Court of India in the case of XXXX vs. Kancharla Durga Prasad & Ors.¹ has directed its Registry that, personal information of a Petitioner and a Respondent in a sexual harassment case be masked on the internet so that their details are not thrown up by search engines.

<https://ssrana.in/articles/the-right-to-be-forgotten/>

11.9. Applicability of the Data Privacy Laws

Although the confidentiality obligation under the Section 16 of the POSH Act would cover any disclosure, electronic or otherwise, the data Privacy Rules' disclosure of sensitive data or information by body corporate to any third party requires prior permission from the provider of such information.

11.10. What are the Changes in the Companies Act, 2013 post the enactment of POSH Act, 2013?

11.10.1. Companies (Accounts) Amendment Rules, 2018 ("Companies Rules")

Companies Act, 2013 was amended in 2018 order to ensure safe workplaces for women in the private sector.

"A statement that the Company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

Accordingly, as per the amended Companies Rules, the above statement (on the status of the company's compliance with the requirement to **constitute an IC** under the POSH Act) is required to be included in the directors' responsibility statement, which forms a part of the company's annual report.

11.10.2. The Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)

All listed companies are to provide for the details in the Corporate Governance Report which forms part of the Annual Report. It is a mandatory requirement under LODR under Section (c) of Schedule V – item 10(i).

The top 1000 listed companies are required to report the number of cases filed by the employees during the year and number of cases pending at the end of the financial year in the Business Responsibility and Sustainability Report prescribed under the Regulations 34 of LODR.

[Note: This list is not exhaustive as to laws protecting women at workplace but just indicative and with society constantly evolving and progressing we will continue to see more such laws being legislated.]



PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE IN OTHER COUNTRIES: A COMPARATIVE ANALYSIS

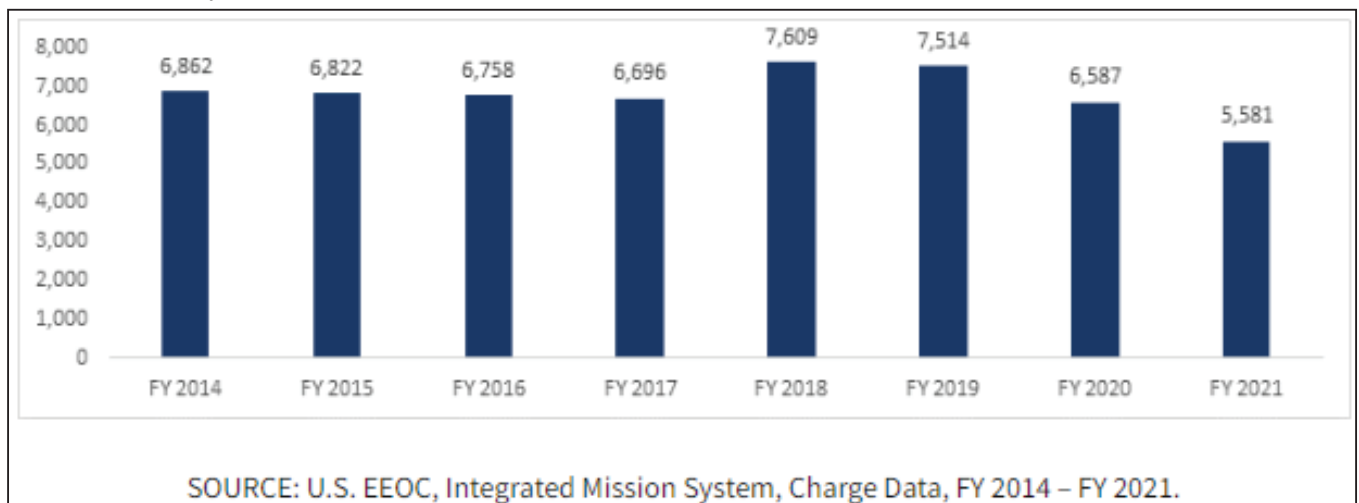
12.1. Introduction

Sexual harassment at Workplace has emerged as one of the nasty facets of corporate work culture. The unprecedented use of technology has further exalted the gruesome encounters associated with it. Interestingly, the offence is no more restricted within the four walls of workplace/ office premises but has transgressed its limits and even left traces in the digital world, including the Metaverse! Hence, in this era of diminishing boundaries, it becomes imperative to delve into the laws pertaining to sexual harassment and its prevention at the workplace in other jurisdictions as well.

Herein, we have analysed sexual harassment laws prevailing in other nations and dissected the legal provisions pertaining to the scope of protection against sexual harassment, the applicability of legal provisions, employer’s liability in cases of sexual harassment, complaint mechanism, and process of complaint, case studies and other relevant aspects in such nations.

12.2. Laws on Prevention of Sexual Harassment at Workplace: UNITED STATES OF AMERICA (USA)

It is pertinent to mention here that figures indicate heightened instances of sexual harassment at workplace in the U.S. A survey conducted by Redbook Magazine in 2017 indicated that 80% of women faced sexual harassment at workplace¹. The remarkable #MeToo movement and #TimesUp movement, which stirred and galvanized women all over the world against sexual harassment and assault, including India, originated in the USA. It has also been reported that after the viral #metoo movement in 2017, number of complaints filed for sexual harassment at workplace in the U.S. increased significantly and below numbers released by the **U.S. Equal Employment Opportunity Commission or the EEOC** bear a testimony to the same².



1 <https://www.redbookmag.com/life/money-career/a49220/sexual-harassment-in-the-workplace/>

2 The Charge Data in this graph represents all charges filed by individuals in the private sector and state and local government workplaces.



12.2.1. What is Sexual Harassment under the Laws of U.S.A.?

The U.S. Equal Employment Opportunity Commission (EEOC)³, defines the term “sexual harassment” as *Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:*

- Submission to questionable conduct has been made either explicitly or implicitly in return to term or condition of employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or;
- The questionable conduct unreasonably interferes with an individual's profession performance and creates a hostile or offensive working environment.⁴

12.2.2. What is the Governing law and body regulating sexual harassment at workplace?

Unlike India, U.S.A. does not have any exclusive codified law that deals with sexual harassment at workplace. The EEOC issued its *Guidelines on Discrimination because of Sex⁵ in 1980 which stated “sexual harassment” to be a violation of Title VII of the Civil Rights Act of 1964. Hence, in USA, sexual harassment is treated as a form of sexual discrimination that is provided for under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, colour, religion, sex and national origin.*

The Guidelines further divide sexual harassment at workplace into “*quid pro quo*” harassment and “*hostile environment*”, wherein the former refers to denial in growth at employment⁶ due to the refusal to grant any sexual favours and the latter refers to sexually abusive language or gestures that made the workers feel humiliated or discriminated at work.

12.2.3. What should be the strength of workplace for application of above laws?

The law applies to employers with 15 or more employees, including federal, state and the local governments in the U.S. The Law also applies to colleges, universities, employment agencies as well as labour organizations.

12.2.4. What are the obligations of Employers in sexual harassment at workplace cases?

The Employer is responsible for acts of sexual harassment in the workplace where the Employer knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

In cases of sexual harassment of employees at workplace, an Employer can also be held responsible for the acts of non-employees (such as a client or visitor at the workplace) where the Employer knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

In cases where employment favours are granted because of an individual's submission to employer's sexual

³ The EEOC is the body responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.

⁴ Code of Federal Regulations- Title 29- Labour (1604.11) on Sexual Harassment-

⁵ <https://www.eeoc.gov/youth/sex-discrimination#:~:text=Title%20VII%20of%20the%20Civil,sexual%20orientation%2C%20and%20gender%20identity>.

⁶ This can include instances such as blocked promotion, frozen wages, outright dismissal from employment;



advances or requests for sexual favours, the Employer may be held liable for unlawful sex discrimination against other persons who were similarly qualified but were denied that employment or benefit.

It would be relevant to mention herein about the Employer's obligation under the Indian POSH or Prevention of Sexual Harassment at Workplace Law which mandates every workplace having 10 or more than 10 employees provide a "safe working environment" for its employees. It also provides for constitution of "Internal Complaints Committee" or the IC at workplace. The main role of IC is to inquire into the complaints of sexual harassment made by employees.

12.2.5. Is the law gender inclusive in nature?

Yes, the law is gender inclusive and both victim and the harasser can be either a woman or a man, and the victim and harasser can be of the same sex also.

12.2.6. Where can the victim file a complaint?

The victim can file a formal complaint, called a "charge of discrimination," with EEOC. Thereafter, EEOC may mediate or investigate the charge and take legal action to stop any illegal discrimination.

EEOC applicants, employees (full-time, part-time, seasonal, and temporary), and former employees, regardless of citizenship and work authorization status.

12.2.7. What are penal consequences against the perpetrator?

The Laws in the US does not provide penal consequences against the perpetrator in cases of sexual harassment at workplace. However, the Civil Rights Act of 1964 was amended in 1991. Pursuant to amendment, Section 102⁷ of the Civil Rights Act declares *Damages in cases of Intentional Discrimination*. Hence, victims of sexual harassment can claim damages including punitive damages under the federal laws. Prior to 1991, in such cases, the relief available to the victim included injunctive relief.

12.2.8. What if the perpetrator is non-employee, can the aggrieved file a complaint against such person?

Yes, the aggrieved can file complain even if the perpetrator is a non- employee. The harasser can be the perpetrator's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

12.2.9. Why should Companies have proper policies to handle sexual harassment cases?

Apart from moral, ethical and legal factors, economic costs is also a factor that gets hugely impacted on account of sexual harassment cases at workplace. The economic downtrend of a company not appropriately dealing with sexual harassment cases was analysed in Deloitte's Report on *The economic costs of sexual harassment in the workplace (published in March 2019)*. The Study estimated that each case of workplace sexual harassment represented approximately 4 working days of lost output and the largest loss of productivity, including, staff turnover, 32% of costs – resulted in lost income to individuals, lost profits to employers, and reduced tax paid to government.

Case Study:

Clinton v. Jones⁸: This can be safely earmarked as one of the landmark cases falling under the purview

⁷ <https://www.eeoc.gov/statutes/civil-rights-act-1991#:~:text=%2D%20A%20complaining%20party%20may%20recover,with%20malice%20or%20with%20reckless>

⁸ 520 U.S. 681 (1997)



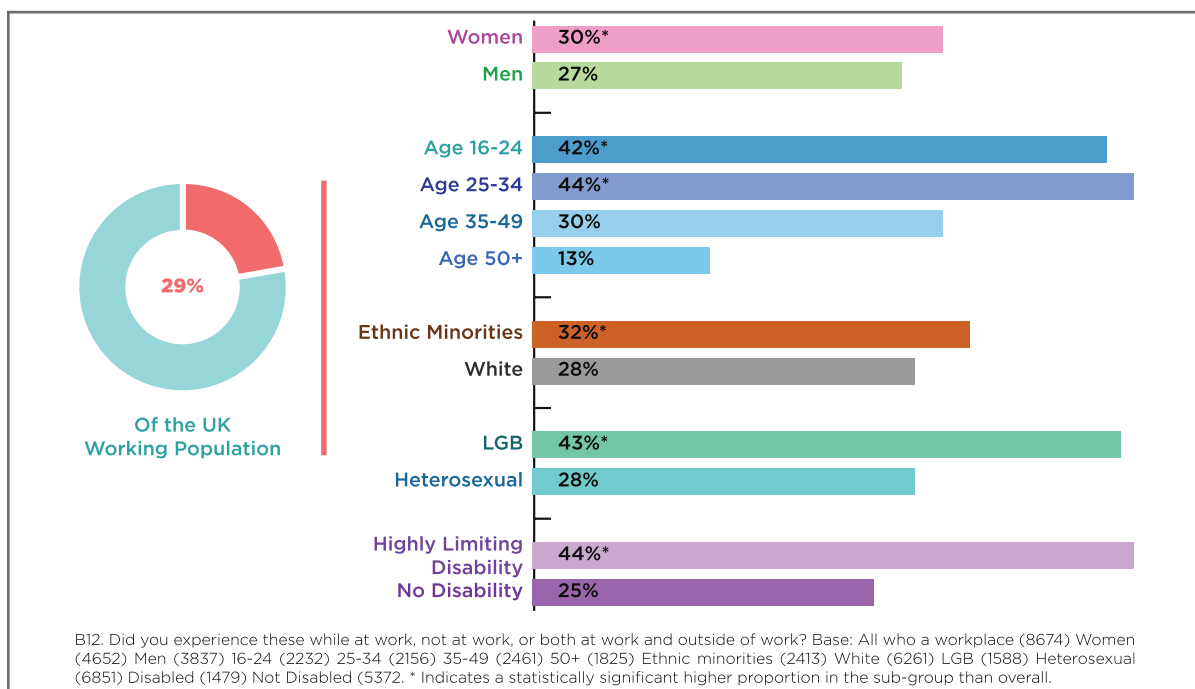
of sexual harassment law of the USA. In this case, the Respondent sued the then President of the United States to recover damages from petitioner while alleging that petitioner made "abhorrent" sexual advances to her, and that her rejection of those advances led to punishment by her supervisors in the State job she held at the time.

Eventually, he was not granted presidential immunity and was imposed administrative sanctions. Payment of more than \$850,000 in settlement was made to Paula Jones and the Federal Court ruled that President Clinton had engaged in contemptuous conduct.

12.3. Laws on Prevention of Sexual Harassment at Workplace: UNITED KINGDOM (UK)

The instances of sexual harassment at workplace have rather been a significant issue in the United Kingdom as well. The issue was very much in news in 2022, when an MP was caught watching porn in the House of Commons. It was also remarked in the Guardian that the offence could be punishable under the Indecent Displays (Control) Act, 1981 which states that if any indecent matter is publicly displayed, then the person making the display shall be made guilty of an offence. The Government Equalities Office released figures in 2020 which indicates that approximately 29% of women had experienced at least one form of sexual harassment at the workplace the past 12 months. The Office also remarked that harassment took place online as well and the numbers did not reduce due to work from home scenario during the Covid-19 period⁹.

Some of the most common experiences of sexual harassment at workplace included, unwelcome sexual jokes and unwelcome staring harassment behaviours were experienced by at least one in twenty (5%) in the workplace in the last 12 months. The glaring numbers also show that men were almost as likely to experience workplace harassment as women. Below is a representation of sexual harassment experienced in the workplace by demographics¹⁰.



Source: 2020 Sexual Harassment Survey by Government Equalities Office

9 <https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace/outcome/consultation-on-sexual-harassment-in-the-workplace-government-response>

10 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002873/2021-07-12_Sexual_Harassment_Report_FINAL.pdf



12.3.1. What is Sexual Harassment under the Laws of U.K.?

The Equality Act of 2010 defines “sexual harassment” as an unwanted conduct specifically of a sexual nature or related to gender reassignment and has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or violating his or her dignity¹¹.

The Government of UK also provides protection against harassment under the ***Protection from Harassment Act, 1997***. This Act also does not exclusively cover sexual harassment at workplace but prohibits a course of conduct which “amounts to harassment of another” and which “he knows or ought to know” amounts to such harassment. Hence, unlike India, even the UK does not have a specific legislation handling issues relating to sexual harassment at workplace only.

12.3.2. Which authority manages sexual harassment complaints in the UK?

The Equal Opportunities Commission or the EOC¹² manages sexual harassment complaints in the UK. The EOC was established in the United Kingdom to tackle sex discrimination issue.

12.3.3. What can trigger harassment under the laws of UK?

Even a single incident can give rise to harassment under the Equality Act. In *Bracebridge Engineering Ltd. v. Darby*¹³, the Employment Appeals Tribunal held that even if a single incident is sufficiently serious and in the course of employment, then the same is enough to constitute an act of violation.

Moreover, under the Laws of the UK, the person does not have to be the direct recipient of the unwanted conduct and they just can be a mere witness to a third party’s harassment.

If the work environment hostile and offensive then the victims can also be those who are working in such an environment, even though they are not specific targets of the acts of harassment at work.

12.3.4. What are the obligations of Employer in sexual harassment at workplace cases in UK?

The Employer is obliged to stop an employee from harassing another employee. The Law in UK provides that if harassed by an employee, the victim can make a claim in the employment tribunal against both the Employer and against the harasser. Section 109 of the Equality Act of 2010 also imposes a vicarious liability on the Employer for civil wrongs perpetrated by their staffs or agents.

The Act does not exclusively state about the steps that are to be taken by the Employer for redressal of sexual harassment cases at workplace, but it states that if Employer proves that all reasonable steps were taken, then they can escape liability in sexual harassment claims against them.

Reasonable steps in such cases will include a well- drafted anti-harassment policy, proper training to employees.

The EU Rules on Gender Equality also encourages employees to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.

12.3.5. What if sexual harassment takes place outside office premises?

An Employer can be held liable even in cases where sexual harassment act takes place outside office

¹¹ Section 26 of the Equality Act of 2010

¹² <https://www.eoc.org.uk/>

¹³ [1990] IRLR 3



environment i.e. in an office party or even on social media.

In *Chief Constable of Lincolnshire Police v. Stubbs*¹⁴, the Employment Tribunal of the UK had held that *work-related social functions are an extension of employment and hence there was no reason to restrict scope of the course of employment to workplace only.*

12.3.6. In sexual harassment cases, with whom does the burden of proof lie?

The Equality Act of 2010, imposes the liability or burden of proof upon a perpetrator of sexual harassment to prove his case and in the absence of any explanation, the claims are assumed in the favour of the victim.

12.3.7. Where can the victim file a complaint in sexual harassment at workplace cases?

A victim can bring a claim to the employment tribunal and seek compensation. However, the timeline for the same is three months from the last act of harassment that they are complaining of.

12.3.8. What is the procedure of filing a complaint in sexual harassment cases?

The law does not provide for any specific procedures for filing complain in sexual harassment cases, however, employers can lay out specific procedures to mitigate instances of sexual harassment during employment.

12.3.9. Is the law gender inclusive in nature?

Yes, the law is gender inclusive and the victim can be either men or women.

Case study:

Porcelli v Strathclyde Regional Council¹⁵- This case can be earmarked as one of the first cases, where sexual discrimination/ harassment at workplace was recognized in the UK under the Sex Discrimination Act 1975. In this case, Mrs Porcelli was employed as a science lab alogwith two male laboratory technicians Porcelli alleged that the two men sexually harassed her as part of a campaign to try to persuade her to leave the school, which eventually led Mrs Porcelli to apply for a transfer to another school.

Thereafter, Porcelli complained about the discrimination, to the Employment Tribunal which held that such sexual overtones could not be relevant to how they would have treated an equally disliked man and that she sought a transfer as she had suffered a detriment and had been discriminated against.

The Tribunal also observed that the weapon used herein was the sex of the victim. As the form of treatment would not have been employed against an equally Since this form of treatment would not have been used against an equally disliked man.

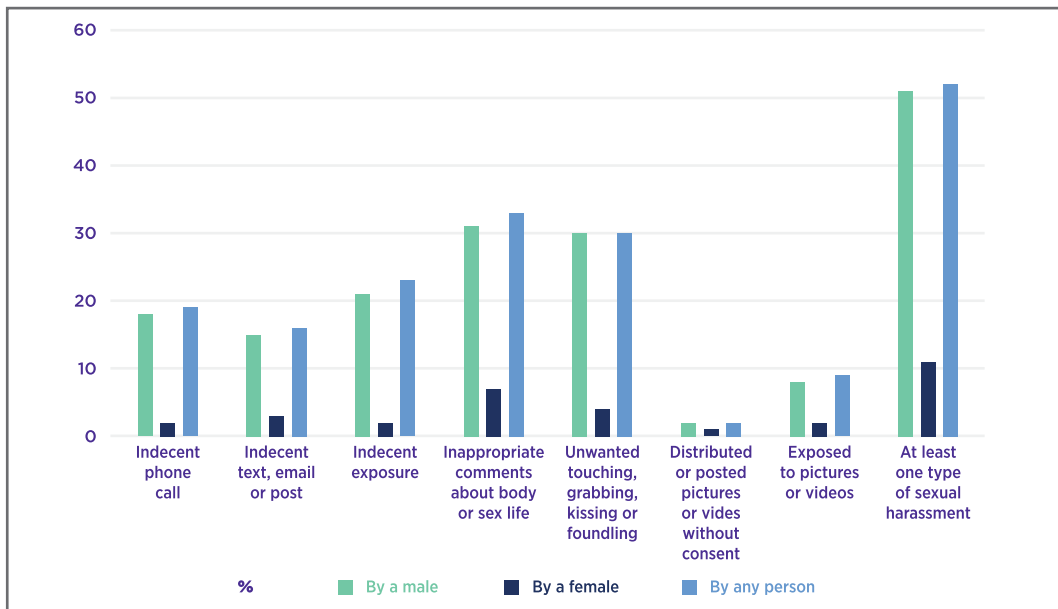
12.4. Laws on Prevention of Sexual Harassment at Workplace: AUSTRALIA

The menace of sexual harassment at workplace has been prominent in Australia too and the Australia Human Rights Commission also reported increase in sexual harassment at workplace complaints pursuant to the infamous #metoo movement.

The Australian Bureau of Statistics also released a report in 2021 wherein it stated that the survey found

¹⁴ [1999] ICR 547

¹⁵ [1986] IRLR 134



that 5 million women (53 per cent) and 2.2 million men (25 per cent) had experienced at least one incident of sexual harassment. Through the survey, the Bureau also analysed the types of sexual harassment, a women had undergone during their lifetime.

12.4.1. What is Sexual Harassment under the Laws of Australia?

Section 28 A of the Sex Discrimination Act of 1984, defines *sexual harassment* as when a person makes an unwelcome sexual advance, an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to a person.

The Act under Section 28A provides that a person sexually harasses another person if:

- a. The person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- b. Engages in other unwelcome conduct of a sexual nature in relation to the person harassed.

12.4.2. What can be acts of sexual harassment under the Laws of Australia?

Sexual harassment acts can either explicit or implicit or subtle. It can also include staring or leering, suggestive comments or jokes, displaying posters, magazines or screen savers of a sexual nature, stalking, sending sexually explicit emails or text messages, or unwelcome touching.

Some sexual conduct like, sexual assault, indecent exposure, stalking or obscene communications also attract penal and criminal implications. In the case of *O'Callaghan v. Loder*¹⁶, defined sexual harassment as a form of gender discrimination and also held that even a single incident of sexual harassment can give rise to sexual harassment.

12.4.3. What are the obligations of Employer in sexual harassment at workplace cases?

The Australian Human Rights Commission also requires an Employer to have a sexual harassment policy, whereby training is provided to employees on how to identify and respond to sexual harassment, implement an internal complaints-handling procedure, and take appropriate remedial action.

¹⁶ (1984) EOC 92-022



12.4.4. What can be defined as Workplace?

In the case of *Q v. Defelice*¹⁷, the Equal Opportunity Commission of Australia extended the definition of workplace to hold that sexual harassment may also be covered by the legislation if it occurs away from the workplace but is an extension of events occurring in the workplace. Hence, sexual harassment is not limited to actual workplace only.

12.4.5. Who all are included under the purview of Sex Discrimination Act?

The Act includes within its purview almost all types of employers and employment relationships, such as, Commonwealth Government employees and private sector employees, full-time, part-time and casual employees, contract workers apprentices, trainees, as well as those on probation.

Case study

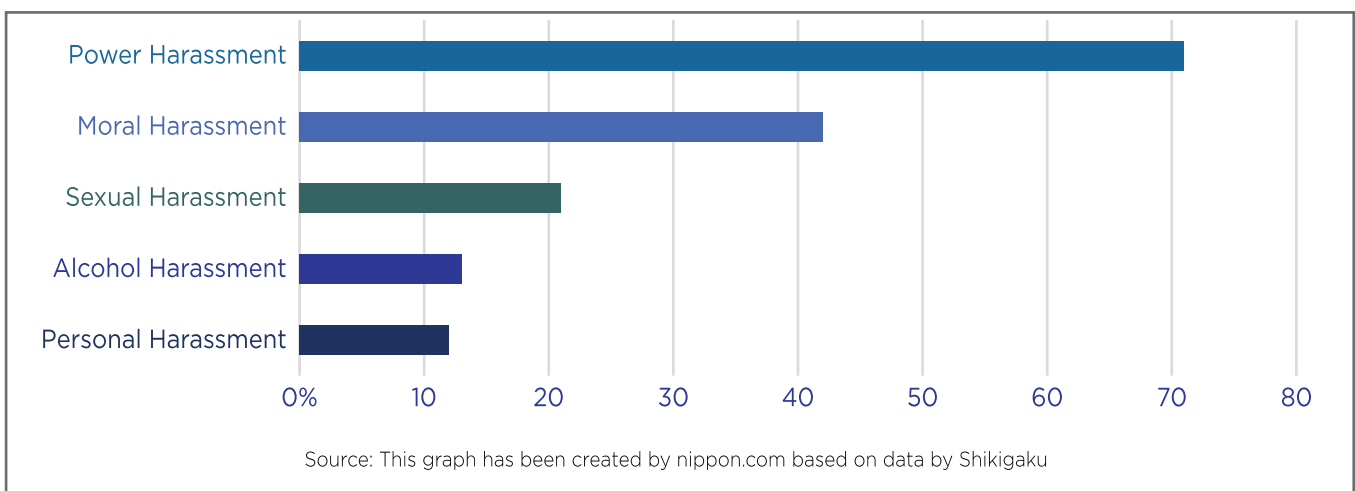
Hughes v Hill: In this case, the complainant, Ms. Hill, a paralegal resigned and filed a sexual harassment claim with the Australian Human Rights Commission against Mr. Hughes, the principal of Firm of Solicitors, for sending unsolicited messages to Ms Hill, offering romantic relations etc. Eventually, Mr Hughes was ordered to pay Ms Hill \$170,000 in damages.

Aggrieved by aforesaid order, Mr. Hughes appealed to the Federal Court on the ground that the damages were “manifestly excessive”. However, the Full Court of the Federal Court dismissed Mr. Hughes’ appeal and denied that the award was excessive, saying that if the court had been asked to reconsider aggravated damages, he would have awarded a larger sum. In view of Mr. Hughes conduct and hurt and humiliation suffered by Ms. Hill, the Court additionally remarked that it would have awarded more damages than this and that the Appellant’s conduct of the Trial and Appeal continued to be a harassment against the victim.

12.5. Laws on Prevention of Sexual Harassment at Workplace: JAPAN

A Survey of 2022 conducted to analyse sexual harassment at workplace in Japan reported that approximately 34.8% of respondents had experienced an act of harassment in the workplace¹⁸. The Survey also reported that 47.2% of the victims stated that the employer did nothing in response to the filing of sexual harassment complaint.

The Survey accounted for type of harassment suffered by women as under:



17 (2000) EOC 93-501

18 <https://www.nippon.com/en/japan-data/h01513/>



12.5.1. What is Sexual Harassment in Japan?

Act on Comprehensive Promotion of Labor Policies of 2019

This Act provides for Ensuring working environments to address workplace harassment. Making of efforts toward public awareness and reinforcement of countermeasures against power harassment as well as consideration of approaches ensuring the effectiveness of employers' actions to prevent sexual harassment, etc.

The Revised Act on *Comprehensive Promotion of Labor Policies of 2019*. The Revised Act of Japan has provided for employer obligations in cases of sexual harassment at workplace, known as *Pawahara Preventive Measures*.

12.5.2. What are the obligations of Employer in cases of sexual harassment at workplace?

The Act obligates the Employer to take *Pawahara Preventive Measures*. Employers are also prohibited from dismissing or showing unfavourable behaviour to employees who seek consultation from their employers about power harassment at workplace.

Fukuoka case of 1989

Regarded as the foremost landmark case on sexual harassment, the District Court of Japan in this case recognized sexual harassment as an act violating the dignity and sexual equality that constituted the personal right of the victim. The District Court in the case ruled that a company and one of its male employees had violated a woman's right because of crude remarks that made her leave the job. In the case, the victim alleged that one of her supervisors had spread unwanted rumours about her about promiscuity.

Eventually, the Fukuoka District Court held that both the supervisor and the employer were liable to the victim and awarded damages of amount of 1.65 million yen (approx. USD 12412).

12.6. Laws on Prevention of Sexual Harassment at Workplace: CHINA

The issue of sexual discrimination and gender equality in China was proclaimed loudly and prominently when President Xi Jinping asked the women of China “to embrace their “unique role” in the family and “shoulder the responsibilities of taking care of the old and young, as well as educating children.”¹⁹ A report published by the New York University School of Law on *Workplace Gender-Based Violence Harassment in China* in the year 20121, states that pursuant to aforesaid, the women's labour force in China dropped from 73 percent in 1990 to 61 percent in 2019.

The #MeToo movement stirred the issue of workplace harassment in China, when in 2018, a college student accused her former thesis advisor of sexual assault²⁰. Also a survey conducted in 2016 found out that over 70 percent of recent University graduates reported that they were sexually harassed²¹.

12.6.1. What is sexual harassment in China?

The Law on the Protection of Women's Rights and Interests was amended by China in 2022 to strengthen the laws preventing sexual harassment against women (***Women's Protection Law***).

19 <https://www.nytimes.com/2019/07/16/world/asia/china-women-discrimination.html>

20 <https://static1.squarespace.com/static/55d21ffee4b0d22e803fdca1/t/60doeddof10e7a0a8e77ea8d/1624305105382/Halegua%2C+Workplace+GBVH+in+China+-+FINAL+%282021.06.21%29.pdf>

21 <https://www.reuters.com/article/us-china-harassment-insight/chinas-metoo-movement-in-colleges-initially-encouraged-by-authorities-then-frustrated-idUSKBN1FJ33W>



The Revised Act is considered as the most comprehensive amendment brought in the Women's Protection Law. The amended Law makes it mandatory for employers to take action to review and formulate corresponding policies and procedures to prevent sexual harassment at workplace.

12.6.2. What are the obligations of Employers in sexual harassment cases?

The Employer's and Companies under the Revised Act are expected to:

- ✓ Designate a responsible organizational body or person in charge for sexual harassment claims;
- ✓ Impart training to employees to prevent sexual harassment.
- ✓ Adopt necessary safety and security measures;
- ✓ Establish sound redressal mechanism and complaint handling procedures.

12.6.3. What acts can amount to sexual harassment in China?

Harassment includes:

- Restricting a job offer to women.
- Investigating the marital status of women job applicants.
- Requiring pregnancy tests as an entry physical examination while applying for a job.
- Making maternity status a condition for recruitment and employment.
- Refusing to hire women on the grounds of gender.
- Sexual harassment includes verbal remarks, written language, images, physical behaviours, or other actions against the will of women;

The Revised Act while strengthening the sexual harassment at workplace law in China, provides for penal actions against Companies and states that companies in violation of the provisions of the Revised Act will be ordered to rectify, any refusal or a serious circumstance will be subject to fines between 10,000 RMB to 50,000 RMB i.e. approximately USD 1456 to USD 7281.

12.7. Laws on Prevention of Sexual Harassment at Workplace: SWITZERLAND

Similar to other countries, sexual harassment is also a grave issue of concern in the Switzerland. A press release by *Amnesty International*, also reported that one in five women surveyed had been a victim of sexual violence²². Switzerland's Federal Office for Gender Equality in its Report on Sexual Harassment in the Workplace stated that around 28 percent of women and 10 percent of men had suffered sexual harassment at workplace. Though there is no law specifically dealing with the vices of sexual harassment at workplace, a number of laws, such as the Gender Equality Act, the Employment Act, the Code of Obligations and the Swiss Criminal Code regulates protection of employees against sexual harassment at workplace in Switzerland.

²² <https://www.amnesty.org/en/latest/press-release/2019/05/switzerland-one-in-five-women-is-a-victim-of-sexual-violence/>



12.7.1. What is Sexual Harassment in Switzerland?

Gender Equality Act of 1995

The Act describes harassing behaviours as threats, the promise of advantages, the use of coercion and the exertion of pressure in order to obtain favours of a sexual nature. It also includes sexist remarks, unwanted body contact, or displaying offensive material in an office.

12.7.2. What are the obligations of Employer in sexual harassment cases?

The Law in Switzerland though requires Employers to take measures to prevent sexual harassment, however it is unclear on what kind of measures are to be taken.

12.7.3. How can the victim lodge complain in sexual harassment cases?

A civil case can be lodged against the employer, to receive compensation of up to six months of one's salary if the employer did not take reasonable steps to prevent harassment.

A victim of sexual harassment at workplace can claim for both civil and criminal remedies. Remedies includes interim relief or compensation of up to 6 months' salary. Under Civil claims, the claimant can seek injunctive relief as well as claim damages and satisfaction from the Court. The employee can also bring criminal charges against the employer.

Case study

Yannick Buttet case: In this case, the Parliamentarian Yannick Buttet resigned pursuant to allegations of stalking which also prompted for a robust law in Switzerland for preventing sexual harassment at workplace.

12.8. Laws on Prevention of Sexual Harassment at Workplace: GERMANY

General Equal Treatment Act of 2006

The *General Equal Treatment Act* ensures equal treatment for all and prevents discrimination. The Act has been formulated based on equality rights as embedded under the Basic Law of Germany.

12.8.1. What is Sexual Harassment in Germany?

The Act defines Sexual harassment as an unwanted conduct of a sexual nature that has the effect or purpose of violating the dignity of the person involved. While hostile environment is a requisite condition for general harassment, it is not required for the proof of existence of sexual harassment.

12.8.2. What are the rights of complainant of sexual harassment?

In cases of harassment or sexual harassment, if the employer fails to adopt appropriate measures to remedy the complaint of sexual harassment, then the employee has the right to refuse performance without the loss of pay.

12.9. Laws on Prevention of Sexual Harassment at Workplace: CANADA

Canada does not have any codified Law dealing exclusively with complaints of sexual harassment at workplaces. The provisions relating to harassment at workplace are incorporated under Part III (Occupational Health and Safety) of the Canada Labor Code. Part III establishes and protects workers' rights to fair and equitable employment conditions.



The Code confers power on the Governor in council to make regulations to prohibit “harassment” and “violence”.

12.9.1. To what type of organizations does sexual harassment apply?

The provisions relating to sexual harassment applies to federally regulated private sector workplaces and federal Crown corporations. However, the same does not apply to federal public service.

13.9.2. Where can sexual harassment complaint be filed?

A sexual harassment complaint can be filed in writing with the Canada Industrial Relations Board.

In the absence of legislation expressly prohibiting sexual harassment at workplace in Canada, initially sexual harassment was a form of discrimination based on sex, which is prohibited by human rights legislation of Canada.

In view of recent developments, sexual harassment at workplace is now considered to violate Canadian human rights legislation.

As per the *Ontario Human Rights Code*, an employee has a right to freedom themselves from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

Bell v. The Flaming Steer case:

This case is regarded as a landmark case as it brought about a change in the way of thinking about sexual harassment at workplace in Canada. In this case, two complainants made allegations against the alleged harasser. The complainant made accusations that the respondent subjected her to gender-based insults and propositioned her and that she was also fired for failing to comply with the propositions. It was also alleged that the respondent slapped complainant’s buttocks and inquired about her personal life.

The Board of Inquiry found that the allegations made by the complainant were not established and that there was no concrete finding of sexual harassment in this case, but the adjudicator, namely, Owen Shime still held that sexual harassment could amount to sex discrimination under the Ontario Human Rights Code. It was observed in the case *that clearly a person who is disadvantaged because of their sex is being discriminated when employer conduct...exacts some form of sexual compliance to improve or maintain her existing benefits.*

12.10. Laws on Prevention of Sexual Harassment at Workplace: RUSSIA

Russia also lacks any codified law exclusively preventing sexual harassment at workplace. Acts of sexual harassment can be reported under Article 133 of the Russian Criminal Code that provides for "coercion in acts of a sexual nature." Coercion under this Article provides for coercion "through blackmail, threats of destroying, damaging or confiscating property or by making use of the material or other dependence of the victim [male or female]" and covers cases of sexual harassment in the workplace.

There are Russian cases, which elaborate the law and remedies relating to sexual harassment in Russia.

Russian case on sexual harassment at workplace

In this case, a female employee accused one of male colleague of sexual harassment and filed a police complaint. Additionally, the complainant gave a copy of the complaint to media was subsequently published and made available to all on the internet. When the employer’s representative found out, he



filed a claim demanding that the allegation be deleted as it was false, and he also claimed compensation for moral damage /defamation caused by publication of this news.

The court also held that the employee did not provide appropriate evidence confirming sexual harassment. As a result, the court ordered for the alleged accusations of harassment to be deleted from the media website.

12.11. Laws on Prevention of Sexual Harassment at Workplace: FRANCE

France prohibits sexual harassment under both its *Criminal Code* as well as *Labour Code*. In 1992 the *French Parliament approved legislation criminalising sexual harassment*. This law applies to the workplace, public spaces and online.

12.11.1. What is sexual harassment in France?

The French Criminal Law defines sexual harassment *as an act of repeatedly subjecting a person to unwelcome verbal or physical conduct of a sexual nature when such conduct either compromises the victim's dignity through demeaning or humiliating words or actions, or creates an intimidating, hostile or offensive environment for the victim.*

1.11.2. What are obligations of Employer in cases of sexual harassment at workplace?

The law also obliges Employers to take all necessary measures to prevent acts of harassment. Sexual harassment is also a crime in France.

1.11.3. What are the penal consequences against perpetrator of sexual harassment at workplace?

Sexual harassment is punishable by two years of imprisonment and a fine of ₹30,000 and the penalty has now been increased to three years of imprisonment and a fine of ₹45,000.

12.12. Laws on Prevention of Sexual Harassment at Workplace: KOREA

Sexual harassment at workplace is also adequately prevalent in Korea and a campaign namely 'Gapjil 119' has been launched in Korea against workplace harassment. An article published by The Korean Herald indicated the marginal redressal and acknowledgement of sexual harassment at workplace complaints in China and estimated that between January 2021 to March 2022, only 12.3 percent cases were acknowledged as cases of sexual harassment.

12.12.1. What is Sexual Harassment in Korea?

Labour Standards Act

South Korea recently in 2019 introduced changes in its Law i.e., the Labour Standards Act to take legal action against allegations of workplace harassment and bullying. The newly added law provides as under:

- ✓ It requires that most organisations should address about non-sexual workplace bullying and harassment in their Rules of Employment or workforce rules.
- ✓ It shall impose various obligations regarding how to respond to allegations of non-sexual workplace bullying and harassment.



12.12.2. What are the penal consequences against perpetrator of sexual harassment at workplace?

The Act does not provide for any specific statutory penalty, however it states that any retaliation against a victim for reporting workplace harassment is punishable by imprisonment for up to three years or a fine of up to KRW 30 million (approx. USD 28,500).

Further, a failure to adequately address the new anti-harassment law in an organization's workforce rules can also lead to corrective orders and imposition of fines.

From the aforesaid, we can infer that India is one of the few countries which specifically addresses issues relating to sexual harassment at workplace. The Indian law though provides a proper mechanism for redressal of POSH complaints, the only criteria wherein it falls behind when compared to its foreign counterpart is that the law in India addresses the needs and requirements of women only and is not gender neutral. We hope that in view of recent recommendations and progressive developments in India, POSH Act in India may be made gender neutral in the years to come.



SPECIAL CONTRIBUTIONS

Chapter-13

ILO, UN WOMEN AND UNDP'S PERSPECTIVES ON GENDER EQUALITY AND DIGNITY AT WORKPLACE: SOME KEY LESSONS FOR CORPORATES IN INDIA

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“Empowering women is key to building a future we want”

– Amartya Sen

13.1. Introduction

Everyone has the right to live and work in a safe environment free of violence and harassment. Despite this supposedly accepted norm, workplace violence and harassment against women exists in all professions, vocations, and areas of the economy in all countries across the world. Violence and harassment against women in the workplace are a serious infringement of women's human rights and a significant impediment in attaining equal opportunity and access to work. It has a devastating impact on the health, well-being, and efficacy of female employees. It is also linked to social norms, values, and beliefs that promote gender inequality. Discrimination against women involves unequal power dynamics between men and women, including discrimination based on both gender and race, disability, or socioeconomic background.

Some women are affected by abuse and harassment more than other women because of their job, the type of work they do, or the way things work in their business. Discrimination based on race, social background, migrant, disability, motherhood, family duties, sexual orientation, and gender identity may also be the reasons for women to experience violence and abuse. Women's level of education and skill as well as the business they work in and the type of work they do, are also important factors.

The chapter highlights the perspective of the ILO-UN Women's combined Handbook addressing violence and harassment against women in the world of work¹. It starts with some key concepts/definitions like scope of 'sexual harassment' and 'work place'. Further, it examines the violence against women at workplace from different angles like its underlying causes, implications on employees, their families and communities, businesses, and economy. Thereafter, it specifically gives some practical advice which can be adopted by the corporate sector in making their businesses more humane, inclusive, and dignified places to work.

13.2. What is Sexual Harassment? What all comes under it?

ILO- UN Women defines Sexual harassment as sexualized forms of unwarranted or unacceptable actions or behaviour. Its purpose is to infringe on a person's dignity and to create an intimidating, hostile, demeaning, humiliating, or insulting atmosphere. Although sexual harassment may affect anybody, majority of reported victims are women.

¹ ILO-UN Women, Handbook addressing violence and harassment against women in the world of work, (2019). <https://www.unwomen.org/en/digital-library/publications/2019/03/handbook-addressing-violence-and-harassment-against-women-in-the-world-of-work>



Sexual harassment can be:

- *Physical, psychological, verbal, or nonverbal, and can include sexual violence and assault, including rape;*
- *Unwanted requests for sexual favours and dates; unwanted touch;*
- *Leaning over, cornering, stalking;*
- *Making sexually lewd comments or*
- *Unwanted sexual communications, such as displaying or sharing sexually lewd pictures and pornographic material.²*

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)³ defines sexual harassment to frequently include quid pro quo and hostile environment as its elements.

[Note: The two forms of sexual harassment i.e., quid pro quo and hostile working environment has been covered in detail in our Chapter titled: Definitions of Sexual Harassment]

13.3. What is the ambit of workplace in contemporary times?

ILO- UN Women elaborates the workplace as follows⁴:

It must be clearly understood that violence and harassment are not restricted to the traditional, physical workplace; they can also occur in other contexts. The concept of world of work that goes beyond the actual workplace takes into account things like women's safety in public places, transportation, working at night, and when the home or street is the place of work. Also, after the world saw advent of Covid-19, working remotely in virtual spaces has also become new normal. Hence, the world of work also includes online/ remote working.

13.4. Which are the settings wherein violence and harassment against women in the world of work can happen?

According to ILO-UN Women, the women workers may experience violence and harassment in several interrelated settings⁵:

- Physical Workplace;
- Extended workplace such as work-related events;
- Travel to and from work;
- Employer-provided accommodation or through technologies such as mobile phones and computers;
- Violence and harassment experienced in their private lives may spill over to the workplace;
- Workplace violence and harassment perpetrated by coworkers may also follow workers into their private lives.

13.5. What are the underlying reasons for violence and harassment at the workplace?

Women are subjected to violence and harassment because of unbalanced gender roles and unequal power relations between men and women in society, including at home, the workplace, the school, and across

² Supra note 1 at Pg 6.

³ International Labour Organisation (ILO), C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111

⁴ Note 1 at Pg 7.

⁵ Note 1 at Pg 11.



institutions. These are embedded in and reinforced by societal norms that perpetuate negative attitudes, prejudices, behaviors, and other kinds of (intersectional) discrimination.

According to ILO (2017), unconscious prejudice has a detrimental influence on women's autonomy and integrity at work and is directly tied to societal gender norms, which might restrict women's professional chances. Gender stereotypes are the result of deeply embedded attitudes, beliefs, conventions, and biases against women that help to preserve men's control over women. Women are assumed to have less power in the family and society, to be subordinate to males, and to undertake the majority of unpaid domestic and care labor.

Therefore, bias may become entrenched in important economic and social institutions such as companies, local governments, and public service organisations. This is made possible by patriarchal organisational cultures, policies, procedures, and decision-making that reinforce societal norms. Gender stereotypes, whether individual or institutional, disadvantage women disproportionately in the workplace, but they may also harm males, for example, by preventing them from working in "feminine" jobs.

13.6. What is the impact of violence and harassment on aggrieved women workers?

According to ILO-UN Women, workplace violence and harassment against women may have severe consequences for women's safety, health, and well-being, and, ultimately, their participation in the labour force.⁶ Some of the main impacts are as follows:

- The workers' mental, physical, and sexual health, as well as their dignity and self-respect, are affected.
- Motivation, performance, and workplace attachment are compromised.
- Increased absenteeism and employee attrition.
- Serious harm and danger to victims and employees who act to prevent violence and harassment.
- Detrimental effect on workplace relations, team productivity, and corporate reputation.
- Impact on the quality of services supplied (for example, to the general population).
- Victims' ability to execute their jobs efficiently or reach their full potential at work is impaired.
- A victim's career prospects are jeopardized, especially if she quits her job without a reference.
- Consequences beyond the workplace, such as impaired social functioning and detrimental coping mechanisms (such as alcohol/drug misuse).

13.7. What are the benefits for companies if they timely take care of harassment related situations?

It makes perfect sense for companies to timely take care of harassment related situations as listed in points⁷ below:

- Sick leave absences will be reduced.
- Contributes to an environment conducive to worker health, safety, and happiness.
- Companies' reputation improves allowing them to attract and retain employees.
- In the absence of violence and harassment, former victims, perpetrators, and bystanders are more productive.
- Worker satisfaction increases when they can discuss their problems with someone they can trust and obtain dependable solutions.
- Identifying and preventing workplace violence and harassment has a positive effect on the larger community and family relationships.

⁶ Note 1 at Pg 9.

⁷ Note 1 at Pg 10.



13.8. What should be done to combat sexism in the workplace?

The workplace has a crucial role to play in altering the power relations, social norms, beliefs, attitudes, and behaviors that lead to and sustain gender inequality, violence, and harassment against women. Workplace is a crucial entry point for the prevention of violence and harassment against women in society as a whole. To combat sexism in the workplace, decision-makers must take responsibility for addressing gender inequalities and promoting equality through the implementation of gender equality policies, the promotion of workplace culture change, and gender-responsive public services.

ILO and UN Women recommends nine dimensions⁸ as a practical starting point for organisations that can help in eliminating violence and harassment against women in world of work.

Some of them are listed here:

13.8.1. Tackling Gender Inequalities, Discrimination And Social Norms That Underpin Violence And Harassment

Companies can take following steps in this regard:

- ✓ Fostering a culture of equality and respect for all. It can even have spillover effect into wider community and in family relationships.
- ✓ Transforming the gendered division of labour by dismantling unequal gender workforce participation present in some sectors.
- ✓ It needs to be recognized that many women experience discrimination based on multiple grounds. For example sex, age, class, ability, race, ethnicity, sexual orientation, gender identity and migration status etc.
- ✓ Increasing the number of women in managerial and supervisory positions and promoting equal workforce participation are crucial means of fostering a respectful and equal workplace.
- ✓ Ensuring a gender-diverse workforce within a respectful working environment that values women, which requires leadership for gender-responsive recruitment, retention, and promotion, as well as compensation and performance evaluation systems.
- ✓ Participatory approaches that empower victims, such as interviews or focus group discussions conducted outside the workplace, would encourage them to share their experiences in confidence.

Case Studies:

UN WOMEN AND INDUSTRY LEADERS “UNSTEREOTYPING”

UN Women, in collaboration with industry leaders including Unilever, WPP, IPG, Facebook, Google, Mars, Microsoft, and J&J, has established the global "Unstereotype Alliance" with the goal of eradicating stereotypical depictions of gender in advertising and all brand-led content in order to shape perceptions that reflect realistic, non-biased gender understandings.

8 Note 1, Pg 52 – 97.



UNILEVER “BE GENDER AWARE. BE GENDER ACTIVE. BE THE NEW NORM”

By promoting positive portrayals of women throughout the supply chain in an effort to challenge stereotypes, Unilever's programme seeks to eliminate detrimental norms that are perpetuated by outmoded business practises.

It has three fundamental priorities:

- **BE GENDER CONSCIOUS:**

Listen to and learn from women and men about the obstacles women face along the value chain, identifying the social cost and business cost of inaction as well as the social benefits and business benefits of action for everyone.

- **BE GENDER ACTIVE:**

Establish policies and practises that respect women's rights and empower professional and personal development, beginning in the workplace; collaborate with business partners to ensure that these rights and opportunities are accessible to women throughout the entire value chain.

- **BE THE NEW NORM:**

Recognise the detrimental effects of unconscious bias and actively oppose harmful norms and stereotypes wherever they appear. Start by identifying the most effective change mechanisms available to your business, given its industry, employee and customer demographics, and other factors. Then, search for opportunities along the value chain in a more systematic manner.

13.8.2. Transformative Prevention Activities In The Workplace

There must be a workplace violence and harassment prevention plan with a strong emphasis on gender-based violence and harassment. Some of the key steps that can be taken in this regard are:

- ✓ Developing gender-responsive workplace guidelines, manuals or protocols on violence and harassment against women.
- ✓ Training all employees, supervisors, and administrators on a regular basis on how to prevent violence and harassment against women and how to address broader gender disparities and social norms.
- ✓ Building and nurturing a climate of trust, dignity, and respect among workers by taking proactive measures to reduce potential work conflicts, incivility, disrespectful behaviour, and certain work process organisation that, if unchecked, can lead to violence and harassment against women.
- ✓ Implementing practical measures that include funding for components such as alarms, ID keys, passcodes, and cameras.
- ✓ Consider mediation as a tool for dispute resolution as it presumes equal authority at the table when pursuing solutions to prevent problems or disputes from escalating among employees.

13.8.3. Effective Human Resource Policies, Procedures And Practices

Some key steps in this regard are:

- ✓ Policies and collective bargaining agreements are crucial for establishing and monitoring commitments to combat violence and harassment against women in the workplace. A policy for tackling sexual harassment at workplace should ideally touch upon following things:



- ✓ Prohibiting violence and harassment with a precise and inclusive definition, including physical, verbal, non-verbal, and sexual forms of violence and harassment against women that is understood by all.
- ✓ By unveiling the policy and issuing a zero-tolerance statement regarding violence and harassment against women, we ensure the strong support and ongoing commitment of leaders and senior managers.
- ✓ Establishing a workplace committee comprised of employer and employee representatives and charged with monitoring the policy's implementation; supervising training programmes and complaints procedures/investigations.
- ✓ Establishing transparent and nondiscriminatory recruitment and promotion procedures by establishing gender-balanced selection committees, assuring appropriate interview questions, and eradicating opportunities for sexual harassment in exchange for favours during the recruitment process.
- ✓ Ensuring the confidentiality of complaints, including those made by third parties; obtaining a victim's informed consent to proceed with any process and taking their views into account when an employer decides to engage a formal reporting process;
- ✓ Outlining and ensuring understanding of informal and formal procedures; and implementing specific timeframes to ensure prompt and diligent resolution.
- ✓ Ensuring the confidentiality of complaints, including those made by third parties; obtaining a victim's informed consent to proceed with any process and taking their views into account when an employer decides to engage a formal reporting process;
- ✓ Outlining and ensuring understanding of informal and formal procedures; and implementing specific timeframes to ensure prompt and diligent resolution.
- ✓ Ensuring the confidentiality of complaints, including those made by third parties; obtaining a victim's informed consent to proceed with any process and taking their views into account when an employer decides to engage a formal reporting process;
- ✓ Outlining and ensuring understanding of informal and formal procedures; and implementing specific timeframes to ensure prompt and diligent resolution.
- ✓ Permitting confidential and anonymous reporting systems, such as online reporting, including for whistleblowers and witnesses.
- ✓ Ensuring transparency in how sexual harassment complaints are handled and reported, while respecting the need for confidentiality.
- ✓ Providing the victim with protection, support, and remedial measures, such as counselling and line-manager support; providing, as appropriate, compensation for material and non-material damages and reinstatement; and ensuring the victim's reinstatement.

It is crucial to go beyond merely complying with the law (with the goal of avoiding litigation) and ensure that policies and procedures promote genuine changes in organisational culture. In order to encourage reporting and the implementation of equitable complaint-handling systems, it is also vital to increase transparency and accountability.

13.8.4. Effective Complaints Procedures

Many women do not report violence and harassment out of skepticism that their complaint will be taken seriously or out of fear of stigmatization, job loss, or other forms of retaliation. Instead of seeking redress, some women avoid the harasser, quit their jobs, or simply endure the situation because they feel mortified or humiliated. In addition, submitting a complaint can be very distressing and lead to retraumatization, especially when the burden of proof resides with the complainant. The presence of efficient and gender-



sensitive complaint procedures reassures victims and witnesses that appropriate action will be taken and encourages them to come forward.

- ✓ Establishing complaints procedures in a manner that is accessible to all employees.
- ✓ Providing protection against retaliation for complainants and others who participate in an investigation in formal and informal procedures.
- ✓ Providing transparency in the complaints process so that complainants are kept informed of developments, timeframes, and results.
- ✓ Informing employees during the complaints procedure about available support from worker representatives and their organisations.
- ✓ Placing the burden of proof on the alleged offender.
- ✓ Responding with promptness and proportionality to incidents of violence and harassment.
- ✓ Educating those in managerial positions on how to handle complaints and the appropriate level at which disputes should be resolved, as well as disciplinary measures.

13.8.5. Remedies And Support For Victims

Emerging effective remedies for women who experience workplace violence and harassment include counselling, paid or unpaid leave, and other measures to support their reintegration into the workforce, as well as monetary compensation.

13.8.6. Perpetrator Accountability

Emerging best practices indicate that workplace violence and harassment policies and procedures that ensure accountability send a clear message that violence and harassment are unacceptable. Depending on the provisions of the law, various disciplinary measures may be implemented. This may result in verbal or written warnings, dismissal, mediation, and coaching, counselling, or ongoing supervision. Depending on the severity of the deed, it may be appropriate to issue a warning or ask for a direct apology.

13.8.7. Raising Awareness: Training, Information, Campaigns, Tools And Guidance

Raising awareness about the unacceptable nature of workplace violence and harassment against women contributes to a shift in perceptions and social norms. Moreover, it contributes to safer, healthier, and more harmonious workplaces. There can be different types of trainings like:

- ✓ Managerial, supervisory, and employee training designed to foster a positive organisational culture
- ✓ Trainings to alter attitudes, stereotypes, and social conventions
- ✓ Training on unconscious and implicit bias
- ✓ Civility training
- ✓ Bystander intervention training
- ✓ Peer-to-peer training
- ✓ Trade union training

Apart from training, there is also a need to understand the interplay of “consent” in relation to the abuse of power and unwelcome behavior. It is particularly important to note that as refusal to concur may not always be feasible, it is particularly essential to consider gender power relations. Therefore, it is essential



to comprehend the "coercive context in which consent is given" and to recognize that submitting to sexual harassment should not be interpreted as a sign that it is wished or desired.

Further, engaging men in the fight against violence and harassment against women in the workplace is also very important step towards gender equality.

13.9. Is there a model policy that corporates can refer to for creating/altering their policy to tackle violence and harassment at workplace?

In this regard, one can refer to the United Nations Development Programme's (UNDP) provides a robust and quite comprehensive policy on harassment, sexual harassment, discrimination, and abuse of authority.⁹

Some key points of its policy are:

- ❖ UNDP is committed to establishing and sustaining a work environment that respects the inherent dignity of all individuals, allowing them to realize their utmost potential and empowering them to deliver the best possible results for UNDP and the people we serve.
- ❖ Every UNDP employee has the right to be treated with dignity and respect and to work in an environment free of harassment, sexual harassment, abuse, and discrimination.
- ❖ The UNDP will not tolerate any form of harassment, sexual harassment, discrimination, or abuse of authority. Any personnel of the UNDP found guilty of exhibiting such behaviour or conduct may be subject to administrative, disciplinary, or contractual measures, including dismissal.
- ❖ It defines and explains the kinds of cases that will fall under Harassment, Sexual Harassment, Discrimination and Abuse of Authority come under the category of "prohibited conduct" under Cl. 4. Also, it provides a detailed list of situations falling under the above-mentioned categories under Annexure 3.
- ❖ It also clearly lists down the different sets of responsibilities for personnel, UNDP as an organisation, Responsibilities of Managers and Supervisors as well as Responsibilities of Complainant.
- ❖ Under the dispute resolution process, the complainant can approach the ombudsman who will explain that the cases falling under prohibited conduct can be investigated through two routes – (1) formal process and (2) informal process. There are detailed provisions explaining both the processes.
- ❖ As a closing remark, it can be stated that the UNDP's stated policy can serve as a good reference point for creating/updating the policies made by Indian corporate sector.

⁹ UNDP Policy on Harassment, Sexual Harassment, Discrimination, and Abuse of Authority, (2018). <https://www.undp.org/sites/g/files/zskgke326/files/migration/pk/SEA-Brochure.pdf> . Also see detailed policy at <https://popp.undp.org>.



Responsibilities of UNDP

- UNDP shall make available appropriate learning resources to all UNDP personnel to ensure awareness of key provisions of this policy, standards of conduct, values and forms.
- UNDP will ensure that timely and appropriate action – including action to protect the safety and well-being of the complainant— is taken when prohibited conduct is reported.
- UNDP will take timely and appropriate measures to protect UNDP personnel from retaliation for reporting prohibited conduct, when such protection is sought. Such measures may include the temporary or permanent suspension of the action alleged to be retaliatory, the temporary or permanent transfer of the accused or the complainant. Disciplinary action, when warranted, will be taken against UNDP personnel found to have engaged in retaliation.

Responsibilities of UNDP personnel

UNDP personnel must:

- Be respectful to others and maintain the highest standards of conduct;
- Maintain a harmonious working environment by behaving in a manner that is free of intimidation, hostility, offence and any form of prohibited conduct;
- Familiarize themselves with UNDP's policies, including an understanding of what constitutes prohibited conduct. In addition, UNDP personnel must take mandatory courses related to prohibited conduct, as determined by the Organization.
- Be aware of the various options and internal channels available to them for reporting and/or otherwise addressing such behaviours; and
- Respect confidentiality and fully cooperate with those responsible for investigating reports of prohibited conduct under this policy.

Responsibilities of Managers and Supervisors

Managers and Supervisors have special obligations to prevent and deter prohibited conduct and must:

- Create a safe and harmonious working environment, free of intimidation, hostility, offence and any form of prohibited conduct. In order to achieve such an environment, managers and supervisors must act as role models by upholding only the highest standards of conduct.
- Communicate the present policy to all UNDP personnel, ensure that they take relevant mandatory courses and certification, and act as a resource for UNDP personnel and external personnel.
- Address, report and escalate alleged incidents of prohibited conduct consistent with the present policy.
- Ensure that incidents of prohibited conduct are promptly addressed through appropriate channels. In such cases, managers and supervisors must demonstrate fairness, impartiality, and be free from intimidation or favouritism; managers should not attempt to pre-investigate allegations.
- Ensure that all discussions, communications and actions are handled with extreme discretion, sensitivity and utmost confidentiality; and
- Ensure appropriate action is taken to prevent UNDP personnel from retaliation.

While consensual, intimate relationships between UNDP personnel are generally not prohibited, managers and supervisors should recognize that such relationships are not appropriate where one person manages, reviews or takes administrative decisions concerning the other person, is subordinate to the other person in the same line of reporting/authority, or is in a position in which some other conflict of interest may arise. The parties to any such relationship must disclose in writing to the next level up in their management and may consult the Ethics Office for advice.



Reporting of prohibited conduct

- To report prohibited conduct, UNDP or external personnel may wish to first contact the Office of the Ombudsman who can guide them on their options under the current policy. Contacting the Office of the Ombudsman will not affect the right of UNDP personnel to file a formal complaint with OAI at any time. Sexual harassment may also be reported to the external sexual harassment helpline where the counseling and guidance on the process will be provided.
- Alternatively, UNDP personnel can contact OAI directly.
- There is no time limit for reporting sexual harassment.
- OAI is responsible for conducting preliminary assessments and investigations of complaints of prohibited conduct.

Responsibilities of the Complainant

- Anonymous reporting by complainants is permitted under this policy. Complainants should be aware that anonymous reporting may make it more difficult for investigators to thoroughly investigate the allegations – despite their best efforts.
- The complaint must be made in good faith, which means that the person reporting the allegations of prohibited conduct must have a reasonable belief that misconduct has occurred. Intentionally making a false report, verbally or in writing, constitutes misconduct for which disciplinary measures may be imposed.

13.10. Conclusion

Violence and discrimination can blight women's lives and hold them back from playing a full part in the workplace, society, and the economy. Apart from international and national governments and members of civil society, with each passing day more and more MNCs are realizing this aspect and valuing the women in their workforce and taking deep rooted and robust steps against this phenomenon, calling for genuine change to create safe, healthy, and respectful workplaces for all women.

It is hoped that women's safety becomes a genuine priority for all establishments, sooner than later, so that women can contribute to their fullest potential towards their workplace, society, and the economy. In the same vein, American politician, diplomat and Secretary of state Hillary Clinton stated "**Women are the largest untapped reservoir in the world**". The sooner the world realizes and act upon it, the better it would be for the world.



SILENT SUFFERING: AN OVERVIEW OF WOMEN'S SAFETY CONCERNS IN INDIAN WORKPLACES

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India is the nation where women have been placed on a high pedestal, elevated to the status of goddesses, representing wealth, power, justice and wisdom. But they were also forbidden from performing sacrifices, denied right to gain knowledge, and were also denied right to property. From the ancient period to the modern period, the women have transitioned in terms their status, and have been able negotiate their respectable position in society.

Across the world, the 20th century women stayed at home in the early part and did not partake in work. The young and unmarried women experimented with work, but most of them gave up their career after marriage. The societal expectations from them were from perspective of homemakers and care givers, and they were always assessed from that parlance. This lowered the participation of women in the workforce. In fact, such views were also internalized in women and may have dissuaded even those women who were not plagued with constraints from working.

The period around world war II forced changed the situation the women, both married and unmarried, were compelled to step out of their homes and take the baton of feeding their family. By the time the war ended, most women ended up working for far longer than they had expected they ever would in their lives. Women who had their husbands serving in wars, those who were war widows had to take up jobs whilst caring for their children and families. The current 21st century marks a period where the position of women is somewhat better in the workforce than before, however the situation remains dismal.

Coming to the situation of working women in India, the country presents unique challenges to the women in its workforce. Deep rooted gender bias and discrimination, such as confining women to the private domestic realm, economic discrimination, reproductive health inequities, poor access to nutrition, education, and employment, exclusion from the public political sphere, and gender-based violence, continue to be the most pervasive and persistent forms of inequalities for women today.

The issue of women's safety in the workplace has been a critical issue in recent years. Workplace harassment is a form of violence against women that can lead to physical and psychological harm, and can also have significant implications for their career development. According to a study conducted by the International Labour Organization (ILO), 35% of women globally have experienced sexual harassment at work. In India, the number is even higher, with 52% of women reporting that they have experienced sexual harassment in the workplace.

Defining Sexual Harassment at the Workplace

The *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* defines sexual harassment to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely - physical contact and advances; a demand or request for sexual favours; making



sexually coloured remarks; showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature. It is to be remembered that the basis of sexual harassment is not sexual attraction, but control and intimidation. Though the victims of sexual harassment can be of any gender typically it is the women who are largely affected. This really serves to maintain gender stereotypes and hierarchical power systems.

Reasons for Occurrence of Sexual Harassment Against Women

The biological theories indicate that men indulge in sexual harassment of women due to their innate propensity to mate and procreate extensively. Sexual harassment is seen as a natural sexual attraction between persons – thus, men have stronger sex drives and are hence physiologically compelled to pursue women sexually. They may wield coercive authority over women to satisfy their sex drive. Going by this explanation, perpetrator's harassing behaviour is not intended to be offensive or discriminatory but is simply the product of biological desires. Men and women having a natural, mutual attraction, men having a larger sex desire, and thus they play the role of sexual initiators.

Sociocultural explanation of sexual harassment suggests that sexual objectification of women and cultural acceptance of violence against women occur due to gender role socialisation practises that support the dominance of men. Sexual harassment may be motivated by masculinity standards comprising of dominance, authority over women, contempt for homosexuals, and sexual conquest. It is suggested men may engage in sexual harassment as a way to assert their manhood.

Under the sex- role spill over theory, it is held that people carry the baggage of gender- based role expectations to their workplace, which guides their interactions with opposite sex. Men tend to have culturally pre- conceived notions about the conventional roles of women. When women break their traditional moulds to join the workforce that is male- dominated, men carry out their interactions with women on the basis of the traditional expectations based on culturally defined gender roles. The sexually harassing behaviour of men is seen as a result of the unsuitable expected role. Men get more prone to sexualising their experiences and make sexual remarks or indulge in sexualized behavior.

The organizational theories, take the power perspectives view on sexual harassment, which looks at it as a strategy for acquiring or retaining power or the perpetrator may use position of authority to subjugate the women workers. Power, defined as having command, authority, or influence over others, is most of the times the root cause of sexual harassment, specifically as the misuse of authority. At the workplace, the power dynamics is usually related with an individual's seniority, age, or importance to a company. For instance, a perpetrator may be in a position of power as the owner of a firm, or his important client, a direct supervisor of a harassed individual, or in a position to affect that person's future career prospects.

Our education, whether through family or institutions, enables women to develop skills and competence to be economically independent, but perhaps fails to empower them to muster up the courage and speak against the perpetrators. Women are capable of pursuing various occupations and working outside the home, yet many are unable to assert themselves and stand up against wrongdoings, especially when they are of a sexual nature. Even within organizations, women colleagues may dissuade each other from taking a justifiable stand against harassment. The pervasive problem of sexual harassment in the workplace constitutes a significant barrier to women's career advancement and professional development and poses long-term implications for their mental health and well-being. Despite women's increasing participation and contribution to various fields of knowledge, including technology, politics, science, medicine, and anthropology, sexual harassment remains an invisible yet persistent challenge that restricts women's access to power, space, movement, freedom, and career opportunities. Addressing this issue is crucial for achieving sustainable development goals and promoting gender equality in India.

The lack of support from family and society also contributes to the feeling of helplessness experienced



by women in these situations. Society and family often perpetuate the notion that it is best to endure and remain silent rather than make a fuss. Women may also blame themselves or not report harassment, which is strongly associated with the aggressor's belief that they can get away with committing such acts.

Silence is not an option for women in the face of harassment. While gender sensitivity, socialization, and zero tolerance towards harassment should be long-term goals for any society, organizations can make a difference by implementing measures to support victims and hold perpetrators accountable. This can be challenging within a social milieu that is embedded in patriarchy and deep-rooted prejudices. However, it is possible to promote a safe and empowering workplace culture through the establishment of clear policies, training programs, and reporting mechanisms. Organizations can also work towards creating a supportive environment where women feel comfortable and confident in asserting their rights.

The current scenario of women in the workplace in India.

1. **Representation in the workforce:** Despite a significant increase in women's workforce participation over the past few years, the gender gap in labor force participation remains substantial. As per the World Bank, in 2020, the labor force participation rate for women in India was 21.2%, compared to 76.1% for men. According to a report by the International Labour Organization (ILO), women's labor force participation rate in India has declined from 35% in 1990 to 25% in 2019. This is one of the lowest rates in the world.
2. **Gender pay gap:** Women in India earn 19% less than men, according to a report by the International Labour Organization (ILO). This is despite the fact that women are more likely to have higher levels of education than men.
3. **Sexual harassment:** Sexual harassment at the workplace remains a significant issue in India. According to a survey conducted by the Indian National Bar Association in 2019, 65% of women in India have faced sexual harassment at their workplace.
4. **Low representation in leadership positions:** Women are underrepresented in leadership positions. According to a report by McKinsey, women make up only 15% of board members and 5% of CEOs in India's top 500 companies.
5. **Maternity benefits:** According to the Maternity Benefit (Amendment) Act 2017, women in India are entitled to 26 weeks of paid maternity leave. However, a report by the World Bank states that only 40% of women workers in India have access to maternity benefits.

Why do women not complain?

That sexual harassment at workplaces is no secret, a recent study conducted by the Indian National Bar Association (INBA) found that 37.8% of their participants reported having been sexually harassed at their workplace. 70% of women said they did not report sexual harassment by superiors because they feared the repercussions.

Overall, economic vulnerability, lack of job security, stigma, isolation, and family pressures are significant reasons why women do not complain about sexual harassment. Despite these pressures, women who do want to come forward and complain, are failed by the ineffective redressal mechanisms. In some instances, women are not even aware of the existence of a legal redressal mechanism (Aravind 2017).

Many women choose to remain silent due to victim-blaming. Their resistance is persecuted with the fear of the tactics of patriarchy. Gender stereotypes and stigma is attached when women speak after years to reveal the harassment, they faced at one point in their lives. They are blamed for their enduring silence rather than being appreciated and protected for speaking out. The moral obligations of society decide the future of women. Their movement, freedom, and liberty are curtailed if women reveal that they have been harassed at the workplace.



Many of the allegations of sexual harassment are made against men who are economically better off compared to the complainant (Manickam 2018). The threat of termination or denied salaries prevents women from seeking redressal.

Sometimes, women may be unsure about where to report incidents of harassment, or they may have little faith in the sincerity of the procedures that are in place. In some cases, women may turn to committees or authorities that are supposed to be impartial, only to find that they are actually being controlled by those in positions of power above them.

One issue that raises concern regarding workplace sexual harassment is the sense of impunity that the perpetrator often feels, believing that the victim will not have the courage to report the incident, or that if she does, it will be difficult to prove. This insolent attitude can be attributed to several factors, such as the lack of awareness among employees about the legal and ethical implications of such behavior, or the belief that they will not face any consequences for their actions.

In addition, the fear of retaliation from the aggressor or other colleagues can also discourage victims from reporting incidents of sexual harassment. This fear can be particularly acute for women who are in precarious employment situations, such as those who are on temporary contracts or in low-wage jobs, as they may feel that they have more to lose by reporting harassment than by enduring it in silence.

Furthermore, the burden of proof in sexual harassment cases can also create a barrier for victims who wish to report the incident. In many cases, the harassment may occur in private or without any witnesses, making it difficult to provide evidence to support the victim's claims. This can be particularly challenging in cases where the perpetrator holds a position of power or authority over the victim, as they may be able to use their position to intimidate or coerce the victim into remaining silent. Women also remain silent and refuse to report due to loss of reputation, stigma, and blame coming on the women themselves.

Case Laws

The POSH Act has been instrumental in creating awareness about workplace harassment and ensuring that women have a safe working environment. There have been several cases where the act has been successfully implemented to address complaints of sexual harassment in the workplace.

One such case is the case of *Vishaka vs the State of Rajasthan*. This case was a landmark judgment that laid down the guidelines for the prevention of sexual harassment in the workplace. The Supreme Court of India recognized sexual harassment as a violation of a woman's fundamental rights and directed all employers to take steps to prevent it. The guidelines laid down by the court were the precursor to the POSH Act. Overall, the POSH Act and the Vishakha guidelines have been instrumental in creating awareness about sexual harassment in the workplace and providing a framework for dealing with complaints. However, there is still a long way to go in terms of implementation and enforcement of the Act. Many organizations still do not have Internal Complaints Committee (ICC) in place, and there is a lack of awareness among employees about their rights and the procedure for filing a complaint.

Another important case is the case of *Apparel Export Promotion Council vs A.K. Chopra*. In this case, the Delhi High Court held that sexual harassment can occur between persons of the same sex and that the POSH Act applies to both men and women. This judgment was significant as it recognized that sexual harassment is not limited to male-on-female harassment. The court observed that "Sexual harassment is not limited to men harassing women. It can be homosexual harassment or harassment of women by women or men by men."

The judgment, in this case, was significant as it recognized that sexual harassment can occur in any workplace and that all employees, regardless of their gender, are entitled to a safe and harassment-free workplace. The judgment also paved the way for the enactment of the POSH Act, which explicitly



recognizes same-sex harassment as a form of sexual harassment and provides for redressal mechanisms for all employees.

Way Forward

Sexual harassment in the workplace is a pervasive issue that has become deeply ingrained in our society. The repetitive nature of sexist behavior has created a pattern of complacency that has normalized the harm caused by sexual harassment.

Feminist consciousness is important because it involves challenging the gender stereotypes and power structures that perpetuate sexual harassment in the workplace. It requires an understanding of the ways in which gender inequality operates and a commitment to challenging it.

Women's representation at higher positions in the workplace is important because it helps to shift the balance of power and create a more inclusive and equitable workplace culture. When women have more decision-making power and are in leadership positions, they can work to promote gender equality and create a more supportive and inclusive environment for women.

The socialization of both men and women plays a key role in indoctrinating their response to such situations. Therefore, it is the primary responsibility of parents to raise children with a sense of equality and respect for girls from an early age. Both boys and girls must also be educated about the laws and their rights. It is our collective responsibility as political leaders, judges, and individuals to work toward changing the cultural norms and beliefs that perpetuate sexual harassment.

We must recognize the importance of speaking up and understand the professional and human worth of doing so. While it may be frightening to confront these issues, it is necessary for us to own our constitutional equality and embrace it as a lived experience. This is not an elusive right that we should aspire towards, but rather something that we should actively strive for on a daily basis. It is crucial to break the cycle of complacency and transform our workplaces into safe and empowering spaces for all individuals. To combat these issues, a long-term approach that addresses the socialization of both men and women and instills values of equality and respect is needed. Additionally, short-term measures can be implemented within organizations to encourage women to speak out against harassment and to foster a culture of zero tolerance. It is crucial that silence is not seen as an option, and that individuals are empowered to assert their rights and hold perpetrators accountable.

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HOW IS POSH APPLICABLE TO THE UNORGANISED SECTOR

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15.1. Abstract

During the #MeToo movement in 2017, many survivors of workplace sexual harassment spoke up about their experiences. However, due to factors such as social stigma, lack of awareness, fear of retaliation, and uncertainty about a lengthy legal process that may ultimately fail them, women employed in the unorganised sector did not participate in the movement.

In India, labour force participation in the informal economy is largely reliant on gender, with the informal sector employing 95 percent of the country's female workers.

Women work in the unorganised sector as domestic workers, agricultural workers, construction workers, manufacturing employees, street vendors, and other occupations. With such a big proportion of the female labour force employed in the unorganised sector, the issue of effective implementation of the law on sexual harassment in the workplace warrants more investigation.

Unlike its predecessor, the Vishakha Guidelines, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act passed in 2013 broadened the scope of protection against sexual harassment in the workplace to cover women in unorganised sectors. However, it is clear that we are far from having a satisfactory impact in terms of the creation of informal workplaces for women.

Jeyasre Kathirvel, a 20-year-old Dalit woman who worked in the unorganised sector at Natchi Apparels, a supplier factory in Dindigul, Tamil Nadu for fast fashion brand H&M, was found dead on January 5, 2021. It was claimed that the supervisor assaulted her and that there was a history of sexual harassment at the factory. Due to institutional failure at multiple levels, we are still a long way from establishing safe redressal processes as envisioned in the Act. In light of this, it is critical to assess the system's efficacy while keeping its own fundamental flaws in mind.

15.2. Legal Framework

Section 2 (p) of the Act defines an unorganised sector as a workplace with less than ten employees.

As per section 5 of the Act, a Local Committee must be formed at the district level for the specified unorganised sector, with members appointed by District Officers, in most cases the District Magistrate. This workplace classification is based on numbers rather than socioeconomic factors. This is its fundamental fault. Many sophisticated workplaces in the organised sectors do not have Internal Committees as prescribed by the Act, thus it is safe to assume, given the paucity of data and reports, that many workplaces, which fall under the organised sectors owing to the technical criteria stated in the activity, do not have Internal Committees. Internal Committees do not exist in this category. These could be locations where women perform strenuous physical activity, such as wage-earning and other demanding casual labour. The legal ambiguity puts them in an even more vulnerable situation than they are already in.

It is clear that women in these industries do not have the choice of leaving or transferring jobs, which is extremely alarming given that 95% of working women in India labour in unorganised sectors. The obvious



reasons for women not reporting continue to include a lack of information of a potential solution or therapy, as well as the fear of an eventual backlash, stigma linked. These are almost universal in nature, but when we look at the class of women who make up the unorganised sectors, these factors are much more severe. It demonstrates a lack of education and exposure, not only for women, but also for the society in which they must work and eventually live, which is generally in accordance with their lower caste status.

15.3. The Importance of Local Committee

In 2016, an amendment¹ renamed the Local Complaints Committee as the Local Committee in an effort to broaden the body's mandate. The amendment attempted to broaden the committee's mandate from only reviewing complaints to proactively implementing awareness creation workshops for women in the unorganised sector in order to fully actualize the objective of the statute.

Section 8 of the POSH legislation authorises the deployment of funding for the outreach programme, but no statistics on such monetary support from the central or the state government is available.

Section 14(1) of the legislation states that if the Local Committee determines that the complaint was false, it can take action against the woman if she is registered with malicious intent. The most concerning aspect of the section is that the deciding elements in the cases are frequently arbitrary, such as the length of time between reporting incidences of sexual harassment or the inability to produce direct evidence. After putting the burden of proof on the complainants in the first place, it is ridiculous to expect women from a likely underprivileged section of society to tick such boxes or even fight back. In the absence of any clarity in the statute, the lines between not being able to establish the case and malevolent intent behind the complaints are muddled. This pattern is unsurprising given that most of the time the priority. The purpose of our institutions is to assist the powerful, in this case a patriarchal power structure.

The LC is a district-level committee with civil court-like authority. It is presided over by the District Officer (who can be a District Magistrate, Additional District Magistrate, Collector, or Deputy Collector) and accepts sexual harassment complaints against employers or firms with less than ten employees.

15.4. Evaluating the Effectiveness of the Law

Women working in the informal economy are one of the most vulnerable segments in the country's labour force. The unorganised industry employs a sizable number of India's socially and economically disadvantaged women. These women are frequently the primary breadwinners for their families, they have no choice but to labour for the sake of survival. Furthermore, given that more than 90% of all working women in India are employed in the unorganised sector, assessing the work of LCs is critical in determining whether the POSH Act is being implemented effectively.

In comparison to an Internal Committee (IC) formed in private organisations i.e., the organised sector, LCs are relatively more formal. They are more powerful since they work in concert with the state apparatus and have jurisdiction over the entire district for which they are formed, whereas ICs' jurisdiction is limited to their specific organisation.

The appalling proportion of existent LCs (only 29 percent) across the country reflects the government machinery's lack of sincerity in supervising the effective operation of the Act. Various factors, including a lack of awareness about the law, a lack of trust in the complaints and redressal mechanism, stigma, embarrassment, and fear of retaliation, all contribute to a very low reporting rate of incidents of sexual harassment at work.

¹ Refer to the Repealing and Amending Act, 2016 published in the Gazette of India on May 09, 2016.



Given that district level LCs are the only option for women working in the informal sector, there is an urgent need for reform of assuring the establishment and proper operation of LCs throughout the country.

The NGO Initiatives for Inclusion Foundation filed a PIL in the Supreme Court in 2017 demanding the effective execution of the POSH Act, which is still ongoing before the Apex Court (Initiatives for Inclusion Foundation & Anr. v. Union of India & Ors. W.P. (C) 1224/2017).

According to the petition, only five states (Madhya Pradesh, Kerala, Karnataka, Haryana, and Chhattisgarh) and two Union Territories (Daman and Diu and Dadra and Nagar Haveli) were able to provide proper details about the LCs formed in their respective jurisdictions.

The petition also stated that none of the states were able to provide information regarding attempts their respective state governments have taken steps to publicize and raise awareness of the POSH Act.

Another Public Interest Litigation (PIL) was brought in 2017 before the Madras High Court (R Karuppusamy v. State of Tamil Nadu & Ors. W.P. 106340/2017) to highlight the state of Tamil Nadu's weak enforcement of the POSH Act, particularly at mills and factories. The Court ordered the Collectors of all districts in the state to provide individual reports describing their attempts to form LCs to handle workplace sexual harassment accusations.

The petition proposed three measures to improve the current situation in order to assure compliance with the POSH Act. First, proper LC formation is required, followed by the appointment of nodal officers in each district comprised of blocks, talukas, tehsils in rural areas, and wards or municipalities in urban areas, as well as effective information dissemination and public knowledge of the POSH Act.

15.5. The Way Forward

A few infrastructure adjustments, such as awareness campaigns, are indeed steps in the right direction, but the issue is implementation. To carry out the reforms mandated by the act, a dedicated budget is required. Furthermore, the lack of documentation and publication about the composition and operation of the Local Committees leads to a lack of accountability on their part, which opens the door for suppression of complaints or rigging of the process by powerful parties. These logistical changes will pave the path for a net positive impact.

Sexual harassment, according to feminist researcher, Catharine MacKinnon, is not merely a private violation, but the outcome of a systematic dominance and suppression. It's not just sex in this scenario, but also class, and in most cases. This is precisely why the magnitude of the burden endured by these women multiplies. This is a group of women that have no job security and no other option but to work. In her theory, Feminist Legal Theorist, Ann C Scales suggests a legal system that takes inequalities into account rather than imposing a fictional objectivity in the name of formal equality that is free of context. This sense must pervade our justice system, particularly for the classes of individuals who do not have many options.

The most crucial part should be to be cognizant of the process's complex power dynamic and women's experience of subordination; this is also true for society as a whole. The formulation and interpretation of rights require a re-evaluation of objectives for women working in the unorganised sector to feel safe. Our institutions must empower women and offer a safe environment free of impediments to access.

The prism through which the law on sexual harassment in the workplace is interpreted is one of its most serious problems. The POSH Act effectively considers workplace sexual harassment as a "women's issue" rather than a labour issue. The Ministry of Labour and Employment is seldom involved, and the matter is instead handled by the Ministry of Women and Child Development (WCD).



This is intrinsically problematic because by categorising workplace sexual harassment as a women's issue, the focus is mostly focused on the women, making women the problem, and diverting attention away from the true problem, which is unfriendly environment. This significantly reduces the significance of the setting in which the harassment occurs.

The law governing sexual harassment in the workplace is critical to ensuring that traditionally male-dominated companies be inclusive and inviting environments for women. Changing the way sexual harassment is perceived in the workplace and accepting it as a labour issue will be a huge step towards more inclusive workplaces.

To address the current problem, the government must take comprehensive action that includes all parties to ensure that the law is followed.

15.6. Conclusion and Recommendations

- ✓ Ensuring the formation of LCs
- ✓ Monitoring LCs to ensure they are operationally sound
- ✓ Establishing a distinct budget for LC activities
- ✓ Imposing penalties for noncompliance with the law
- ✓ Gathering and releasing data on the number of incidences of sexual harassment in the workplace on an annual basis
- ✓ Auditing the operation of LCs, including the number of cases disposed of and training sessions carried out
- ✓ Facilitating interaction between civil society organisations and labour organizations/unions to ensure that working women are aware of their rights and the redressal process provided by the legislation, as well as increasing public comprehension of the law through publicizing it.

India will also benefit from ratifying the ILO Convention against Violence and Harassment in 2019 and taking appropriate steps to align national legislation with the global norms outlined in the Convention.

Following the #MeToo movement, the POSH Act was reviewed by a Group of Ministers (GoM). The GoM finished its recommendations in January 2020, but they have yet to be made public. These proposals should help to fill in the gaps in the law.

Although the POSH Act exists on paper, its goal of preventing sexual harassment and providing women with a redressal mechanism for their complaints has not been fully realised. Streamlining the problem requires a different approach. Women working in the informal sector have a better chance of exercising their right to work in a safe environment if domestic legislation is aligned with international norms and active efforts are made to publicise the provisions of the law.



INDIVIDUAL AND ORGANISATIONAL FACTORS IN CREATING WOMEN SAFE WORKPLACE

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Introduction

Sexual harassment in the workplace is a pervasive and distressing issue that affects individuals across various industries and professions. It is a term that refers to unwanted sexual approaches, demands for sexual favours, or other verbal or physical behaviour of a sexual character that produces an intimidating, hostile, or unpleasant working environment. Such behaviour can have severe consequences on the victim's well-being, career, and overall workplace dynamics. In recent years, increased attention has been placed on addressing and preventing sexual harassment, fuelled by a growing recognition of its detrimental impact and the importance of fostering safe and respectful work environments. Employers and employees alike are realizing the significance of creating a culture that promotes dignity, equality, and respect for all.

This article aims to shed light on the complex and sensitive issue of sexual harassment in the workplace. It will explore its underlying social dynamics and the human relationships that are pivotal in considering for designing preventive measures. Considering the far-reaching consequences of sexual harassment, both for individuals and organizations, the article delves far into the discussion of proactive measures and effective policies in preventing and addressing sexual harassment, fostering a workplace free from discrimination, and promoting a culture of inclusivity and mutual respect. By understanding how sexual harassment affects and actively working towards its eradication, we can create workplaces that are safe, supportive, and conducive to personal and professional growth for everyone involved.

Understanding Sexual Harassment

Numerous research studies have revealed shocking causes and effects of sexual harassment. The most prevalent form of sexual harassment was verbal, including frequent remarks about the woman's appearance, sexually suggestive remarks, and jokes about her conduct. Most of the women who faced the harassment were touched and kissed. Those who faced any type of sexual harassment had always faced threat to their career. A supervisor who had the power to directly refuse the woman a raise or promotion or to terminate her was the harasser in many cases. The victim-offender relationship, thus, always has a power inequality in terms of job roles such as subordinates, clients, customers and supervisors. The harassers usually in the mid-40s, married and the victims are typically in their 30s, either single, divorced or widowed. When the women declined the approaches or innuendos aimed at them sexually, most of them experience what seemed to be retribution. Promotions, training opportunities, and reference letters were all denied to them. In other cases, their work was harshly condemned, and they were brought up in front of superiors or customers for professional and social contempt. And, women are likely to quit their jobs if they face harassment at workplace or been dismissed if they protest against it.

Whether women kept their jobs or lost them, virtually all of the them had crippling stress responses as a consequence of the workplace sexual harassment and discrimination. These consequences of stress are of three types as follows



- Negative impact on productivity at work
- Overall impact on psychological wellness
- Physical health issues

Sexual harassment frequently begins subtly and progresses as the offender believed their earlier actions were acceptable (Paludi & Barickman, 1991). Therefore, it is crucial that people speak up as soon as possible. The key concerns that must be addressed in the context of sexual harassment are just briefly touched upon in this essay. These should undoubtedly be covered in crisis intervention work with sexual harassment victims. It should also include any of the practical coping skills or legal information that the counsellor may provide for the client. More research studies in these aspects are required to identify the factors that lead to the stress patterns as well as to investigate other consequences of the sexual harassment situations.

Instruments to tackle sexual harassment at workplace

Sexual harassment clearly violates the fundamental rights of a women to equality, life and profession and safe environment. It has been designated as a difficult term to define because it encompasses a variety of behaviours. Both national and international efforts have been made to define this term. Frequently, the concept is subjected to a various inference.

The Supreme Court of India in Vishaka and others v. State of Rajasthan (SCC, 1997), defined sexual harassment in the workplace and called for a its prevention, prohibition and redressal of the same through an appropriate legislation. In the year 2013, Section 354A of the Indian Penal Code (IPC), 1860 was included by defining sexual harassment as “*an unwelcome physical contact and advances, including unwanted and explicit sexual overtures, a demand or request for sexual favours, showing someone sexual images (pornography) without their consent, and making unwelcome sexual remarks*”. The code further specifies other criminal acts such as forcing women in undress (Sec 354B, IPC, 1860), voyeurism (Sec 354C, IPC, 1860), stalking (Sec 354D, IPC, 1860). However, need for comprehensive and special legal measures were felt even after such amendments in the IPC. This led to the enactment of The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, also known as PoSH Act, which makes formation of Internal Complaints Committee mandatory at all workplace to sensitively and formally handle sexual harassment complaints.

In November 2015, Ministry of Women and Child Development in India has issued an elaborate handbook on Sexual Harassment of Women at Workplace to elaborate on the PoSH Act. It further features various seven-point norms and six good practices adopted globally (Ministry of Women and Child Development, 2015). This article focuses on how such norms and values from practices can be transformed into specific workable strategies rather than the legal procedures carried out based on a complaint.

Social structure within workplaces

Many feminist scholars view sexual harassment as a pattern of interpersonal behaviour that frequently manifests itself within an existing social structure. Sexual harassment serves as a means of reinforcing women's class subordination at such a structural level. This behaviour frequently arises as a by-product of discrimination and gender power imbalances, which cause structural disparities among the employees.

Harassment may be viewed as a method of social control used to keep women in their so called ‘proper’ subordinate roles. Men may perceive women's attempts to acquire more power by abandoning their subservient roles at home in order to achieve equality as a menace. Men who interact sexually with women in the workplace or at universities draw attention to their sexuality and passivity, which takes attention away from the work that women are doing. In the end, women's ambitions are constrained.



Individual propensities and proneness

Individual development factors, such as a history of propensity to harass others in order to make up for a lack of a masculine self-image, are thought to be the root causes of harassment. Men who engage in harassment are typically those who have had unresolved adolescent conflicts that caused them to suffer severe ego wounds, such as not being the most well-liked athlete in college. These men act in ways that are consistent with the development of relationships with female students as a means of establishing a strong masculine self-image.

Similar to the individual propensities of the harassers, the victim also has certain precipitating characters that they are mostly unaware of. Some aspects of victim precipitation are tendency to obtain favours without hard work, jumping to conclusions, unresolved past relationship traumas, to name a few. However, one must be very careful to understand victim precipitation and not confuse with characteristics for which the victims have to be blamed for. Some women particularly those are physically or psychologically challenged, single, economically backward, or belong to a socially backward class are considered to be prone to harassment. These characteristics define the person as a suitable target by the harassers. While precipitating characters need to be dealt by developing interpersonal relationship skills, communication skills, etc, the latter proneness is widely addressed by the institutional policies to safeguard women.

Organisational socialization

For the most part, it is seen to be vital to seek an institutional level of analysis in order to explain the prevalence of sexual harassment, and to identify more clearly the circumstances within which harassment is more likely to occur in order to prevent victim blaming. Both of these goals may be accomplished by recognizing more explicitly the situations in which harassment is more likely to occur. The process through which a person learns the beliefs, standards, and needed actions that allow them to participate as a member of an organization is referred to as organizational socialization. People have a tendency to think of organizational socialization as a process through which they acquire accepted beliefs and actions, with severe repercussions for disobedience (Paludi & Barickman, 1991).

Measures to prevent sexual harassment through the prompt implementation of anti-discrimination policies and correction measures could be a good start post the verification of a complaint. However, deterring such incidents from happening involves more than basic changes in the work environment's policies. It requires the development of workplace culture, enhancing the ability of employers, management, and supervisory personnel.

Development of preventive strategies

It is crucial to recognize that it is natural for men or women to be sexually interested in anyone when they are put in close proximity, such as in a workplace. Some employers are considering this fact and developing policies against the mingling of their employees with sexual behaviours, including those that are consensual or voluntary. They even go so far as to discourage employees who are married from working for the same company. In such scenarios, if any employees were found to be violative of such policies, both were disciplined, even though there is a possibility that one of them was forced. Therefore, such preventive policies are rather a challenge in themselves. Understanding that sexual harassment always has a power play component to it, the better strategy is to prevent sexual relationships in specific employment roles such as supervisor-supervisee, trainer-trainee, or any other superordinate-subordinate role (Howard, 2007). Though few employees feel that it is better to avoid interacting with their female counterparts to avoid any claims of sexual harassment, it is not viewed as best for the individual's career and organisational prospects. The concerns on the offenders of sexual harassment are comparatively low when complaints of this nature often go unreported (Sheetal, 2022).



The most imperative aspect of developing a respective work culture is to encourage and facilitate effective communication among one another. Oftentimes, we find people say what they mean, do not mean what they say, do not pay attention when someone talks, make assumptions, and jump to conclusions immediately. As much as it is important to train employees on developing effective communication skills within different work contexts, it is also crucial to encourage employees to communicate the demarcated personal boundaries they want to maintain with their colleagues. When someone experiences any unwelcome behaviour, the affected person should be able to communicate their feelings safely. At the same time, the person who might have behaved by crossing the other's boundary should also keep an open mind to accept and understand the other. Moreover, the person should not be harshly criticized or labelled to be a bad person.

Fear among the targeted employees and employers is another barrier that ought to be broken. Employees who experience harassment always worry about punishment or retaliation from their harasser or their employers, regardless of their awareness of the corrective and non-discriminatory policies in place, and employers fear legal consequences and associated defamation. Therefore, employers ought to reassure the affected party that there are no other options besides the legal remedy the committee has recommended. It can be helpful to explain the process and timeline of the legal proceedings to ease any concerns or anxieties they may have. Additionally, it is important to maintain confidentiality and protect the privacy of all parties involved. One effective method is to publish a statement outlining the action taken without revealing any personal details. This helps to separate individuals when necessary and prevent further harm from occurring. It is crucial to emphasize that everyone has a right to feel safe and respected in their workplace or community and that any violations of these rights will not be tolerated. By taking swift and appropriate action, we can create a culture of accountability and prevent similar incidents from happening in the future.

Abuse of individual, group, and/or organizational power is another aspect of sexual harassment that is found to be hidden in the work culture. Poor interpersonal skills of supervisors show their disregard for the needs of their subordinates which often results in crossing personal boundaries. Sometimes, some people despite having a good individual character might have a predisposition to harass when they get associated with a group that tends to normalize hurtful comments as jokes. In addition, organizational powers can also be misused particularly when well-known harassing behaviours are being ignored. In the bigger picture, all these abuses of power cost reputation and settlements for the organizations. To tackle this and create a more positive working environment, rewards for managers and supervisors excelling in complying with anti-discriminatory policies, implementing training programs to develop group thinking, and acting against abusive group behaviours, encouraging observers of abusive group behaviour to communicate their disapproval, and checking departments with higher transfer requests, complaints, resignations, and sick leaves (Lightle et.al, 2010). Employers can also take a step ahead by including gender sensitivity and effective responses to complaints as indicators in their yearly assessments.

Although it is widely acknowledged that all types of training regarding prevention of sexually inappropriate must include addressing gender stereotyping and other forms of sex discrimination, it is imperative to ensure that it is not happening in the everyday affairs of the work. Language used, type of work assigned for women, and appropriate behaviours are things to be taken care of.

Contextualizing preventive programs

Understanding the dynamics of human relationship within the social structure of workplace that has various roles, responsibilities, duties and powers will help us to design creative programs to prevent sexual harassment even before it happens. However, these designs need to be customized for various workplaces. For example, schools, colleges, universities, military and religious organisations are way more unique on its own in comparison to other types of workplaces. Some of them fraught with insularity, secretiveness, male domination, over protectiveness of clergy, and other unique aspects that would come as specific



challenges (Howard, 2007). In designing anti-harassment training modules, one must include certain dos and don'ts. Major points that are typically found to be missing in many programs are the following points

Don'ts

- Touch another person in a way where he or she has not given you the permission to do so
- Make remarks that are construed as harassing
- Say or do things that you would not do it in front of your parent or child

Dos

- When you are in doubt, better be quiet
- Explain what made you uncomfortable in a private place and in a clear and nice manner
- Explain what made you uncomfortable and annoyed without delay

To contextualize the preventive strategies better it is also useful to understand the problematic department or employees based on peer feedback and exit interviews. Although peer feedback can be influenced by several other inter personal problems that are not in a sexual context, it can still be an indicator to denote problematic work areas. Sometimes, exit interviews could reveal actual or perceived sexual harassment. In such cases, the person can be requested to stay back and deal with the case by communicating with the management. The person can be provided an option to leave even after resolution.

Training Focus

Training plays an inevitable role in developing women safety at workplace. As discussed, training components such as gender sensitivity, gender stereotyping, sexual or gender discrimination, interpersonal skills and effective communication skills are crucial to be imparted. Along with these, the following aspects will help organisations come up with specific and innovative measures to deal with women unfriendly work environment.

Key points* upon which training modules can be developed

- ❖ What sexual harassment is and what it is not
- ❖ Clarification on sexual harassment, inappropriate conduct
- ❖ Subtle forms of sexual harassment
- ❖ Importance of not tolerating sexual and inappropriate conduct at workplace
- ❖ Sexual harassment typologies
- ❖ Implication for employer and employees
- ❖ Prerequisite of organizations for ensuring nonretaliation against the complainants and raised concerns
- ❖ Various disciplinary actions on investigated complaints
- ❖ Factors influencing sentencing of selected disciplinary action
- ❖ Role of every supervisor and manager in keep a check on individual's behaviour and encourage speaking up
- ❖ Discussion on experiences of sexual harassment

*Inclusive of points provided by (Wagner, 1992)

Conclusion

Sexual harassment is one of the most disturbing problem women face at workplace and it affects them physiologically, psychologically and professionally. It indicates unwanted sexual advances, solicitation of sexual favours, and other verbal or physical sexual misconduct that often accompanies by a threat for women's career. As several legal measures are in place to tackle effectively, training of employees and



employers is required at individual and organisational levels. This current article elaborates on social factors that play vital role in the work dynamics of individuals within an organisational setup. Individual factors such as victim precipitation, victim proneness, offending propensity were discussed under the light of feminist perspectives. Organisational factors such as nature of work, norms, conduct, power equation between individuals are elaborated to highlight the need for a training program inclusive of effective interpersonal communication. The article calls for designing innovative preventive strategies considering these individual and organisational factors that would vary from one workplace to another.

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AN OPINION SURVEY ON THE EFFICACY OF THE POSH ACT IN DEALING WITH SEXUAL HARASSMENT CASES AT WORKPLACE

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17.1. Introduction

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, hereinafter referred to as the POSH Act, was a significant move by the Union Parliament to address the issue of sexual harassment that women are subjected to in course of their employment.

In sync with the mandates of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India had ratified on June 25, 1993, and considering the *ratio decidendi* of the Hon'ble Supreme Court of India in *Vishakha v. State of Rajasthan* (1997), the POSH Act was enacted with much fanfare. In fact, both the CEDAW and the *Vishakha* Guidelines provided a strong foundational basis in the drafting of the POSH Act.

The Act strives to protect the rights of women, especially working women, and to bestow obligations on the state, body corporates, and other private institutions to ensure safety, security and dignity of women. The aim of this book is to develop a body of jurisprudence governing the POSH Act to underscore its present-day relevance and the way forward.

The main objectives of this book are:

- To know the effectiveness of the POSH Act in dealing with cases of sexual harassment at workplaces;
- To gauge how people tend to construe the issue of sexual harassment at workplaces and how do they react to cases of sexual harassment.

In line with the twin objectives of this study, a closed-ended opinionnaire was developed to gauge the opinions of the respondents. The opinionnaire was administered through an online survey method using a Google Form. 75 respondents participated in the online survey and shared their views. The responses were analysed and interpreted accordingly. With the help of the responses, this study discovered that a majority of the respondents are not aware of the relevant provisions of the POSH Act or the role of the Internal Committees and Local Committees in addressing the issues arising out of sexual harassment. The findings are in fact helpful for creating a blueprint for the future vis-à-vis the POSH Act.

17.2. Methodology

In line with the twin objectives of this study, a closed-ended opinionnaire was developed to gauge the views of the respondents. The opinionnaire was administered through an online survey method using a Google Form (the link to the Google Form is <https://forms.gle/VGG17eGqkAwDSecZ7>), which was sent to numerous stakeholders through emails, social media sites and applications.

The opinionnaire had 20 questions; however, to ensure that the responses are well within the purview of the objects of this study, about 12 questions were analysed and correlated accordingly. All the questions in the opinionnaire were framed in conjunction with the standard rules of questionnaire design and in sync with the best practices. The questions were mapped to the research design, were kept simple and



straightforward and were contextualized accordingly in view of the sample frame. The study was conducted in harmony with the rules of random sampling, through the online survey method. The anonymity of the respondents with regard to their personal details, such as names, email addresses, etc., was ensured. None of the respondents was specifically asked to fill in the opinion survey form and only willing respondents replied to the form. Therefore, any respondent who did not want to take part in the survey because of any personal reason(s) or any other reason(s) was automatically excluded from the study.

Demographic details such as age, sex and income were not asked keeping in mind the fact that asking such details would have frustrated the main objectives of the research. The sample of this study consisted of 75 persons, among which 47 (62.7%) were undergraduate and postgraduate students, 24 (32%) were employees and the rest 4 (5.3%) were employers.

17.3. Findings and Analyses

The following are the question-wise findings and analyses of the responses received through the online survey. The following figure (Figure 1) represents what in the opinion of the respondent's amounts to sexual harassment at workplace.

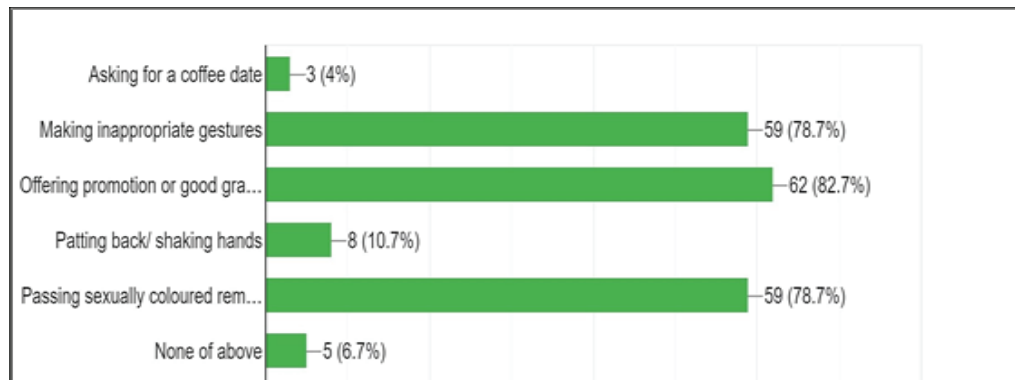


Figure 1: What acts amount to sexual harassment?

On what acts amount to sexual harassment (in reference to a workplace), 3 (4%) respondents opined that asking for a coffee date would tantamount to sexual harassment, 59 (78.7%) were of the view that making inappropriate gestures would amount to sexual harassment, 62 (82.7%) opined that offering promotion/good grades in exchange of sexual favors would amount to sexual harassment, 8 (10.7%) said that patting back or shaking hands would amount to sexual harassment, 58 (78.7%) said that passing sexually colored remarks would amount to sexual harassment and 5 (6.7%) opined that none of the above acts would amount to sexual harassment. The findings indicate that most of the respondents are aware of the acts (making inappropriate gestures, offering promotion/good grades in exchange of sexual favors and passing sexually colored remarks) that amount of sexual harassment. The following figure (Figure 2) represents who all, according to the respondents, are subjected to sexual harassment at workplace.

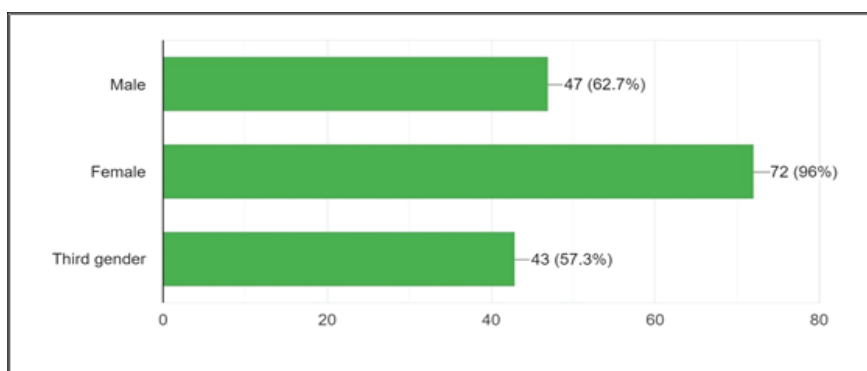


Figure 2: Who do you think are subjected to sexual harassment at workplace/ institution?



On who are subjected to sexual harassment at workplace, 72 (96%) of the respondents said that women are subjected to sexual harassment at workplace, 47 (62.7%) said that men are subjected to sexual harassment at workplace whereas 43 (57.3%) said that the third gender persons are subjected to sexual harassment. The answers indicate that a significant number of respondents believe that even men and third gender persons are victims of sexual harassment. The following figure (Figure 3) represents whether the respondents experienced any kind of sexual harassment at workplace.

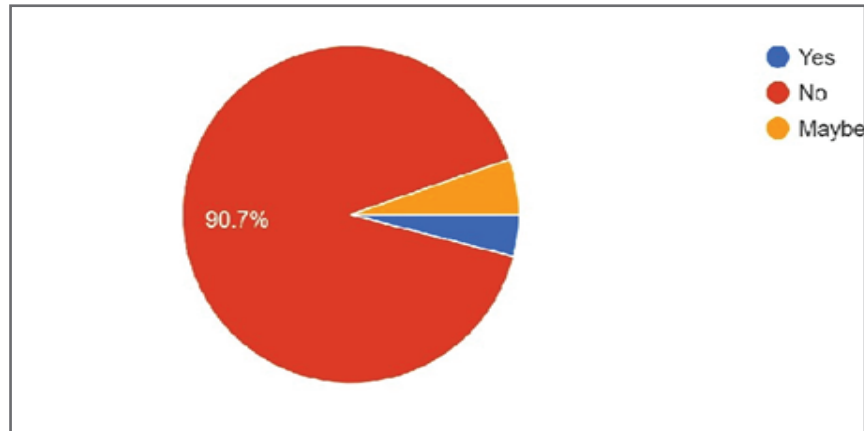


Figure 3: Have you experienced any kind of sexual harassment at your workplace/institution?

On whether the respondents experienced any kind of sexual harassment at their workplace/institution, an overwhelming 68 (90.7%) respondents said 'no', 3 (4%) said 'yes' and 4 (5.3%) said 'maybe'. The answers suggest that although a significant proportion of the respondents are not victims of sexual harassment at their workplaces/institutions, about 10% of the respondents are exposed to some kind of maltreatment in their respective workspaces. The following figure (Figure 4) represents whether the respondents saw someone else being subjected to sexual harassment at workplace.

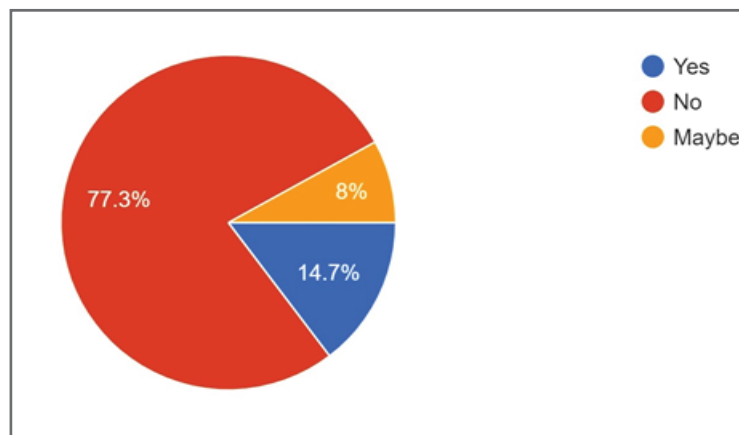


Figure 4: Have you ever seen sexual harassment at your workplace/institution with someone else?

On whether the respondents saw any kind of sexual harassment at their workplace/institution with someone else, 58 (77.3%) respondents said 'no', 11 (14.7%) said 'yes' and 6 (8%) said 'maybe'. The replies indicate that a handful number of respondents are of the opinion that there is prevalence of sexual harassment at their respective workplaces/institutions. The following figure (Figure 5) shows if the respondents are aware about how to make a report of sexual harassment at workplace.

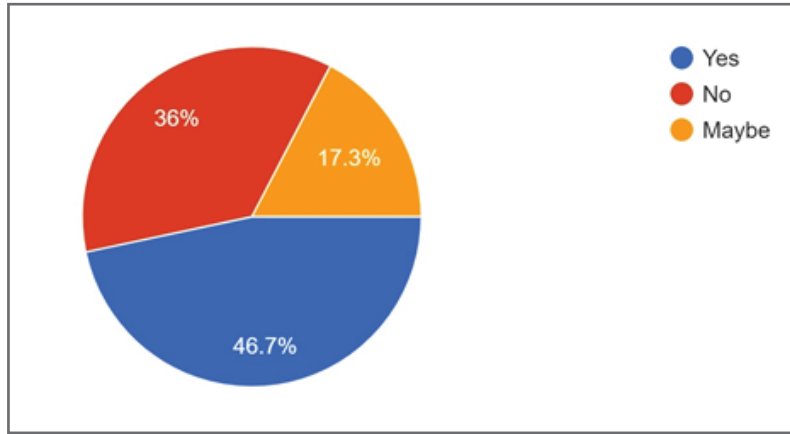


Figure 5: Are you aware about how to make a report of sexual harassment at workplace/ institution?

On whether the respondents were aware about the procedure of reporting cases of sexual harassment at their workplace/institution, 35 (46.7%) respondents said ‘yes’, 27 (36%) said ‘no’ and 13 (17.3%) said ‘maybe’. The replies indicate that a significant number of respondents are not aware of the reporting procedure in cases of sexual harassment at their respective workplaces/institutions. The following figure (Figure 6) tends to reveal why would respondents not report sexual harassment cases at workplace.

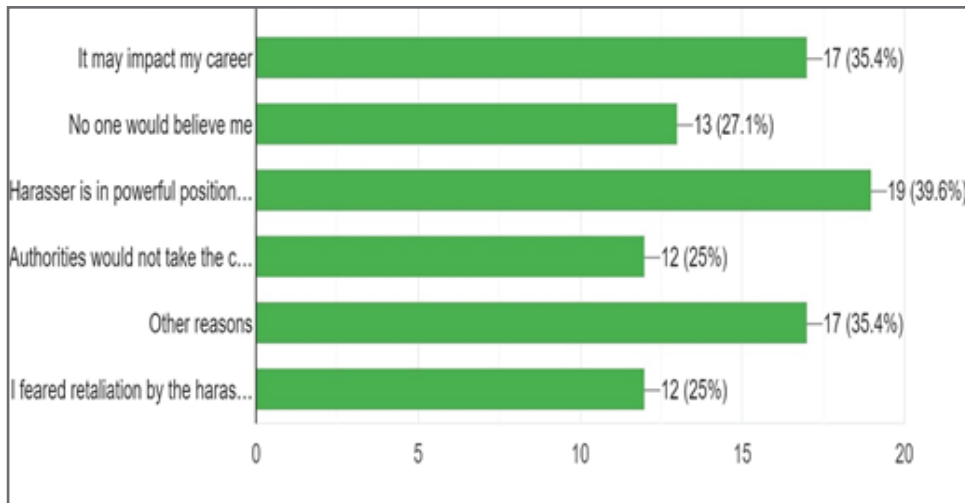


Figure 6: Why would you ideally not report sexual harassment cases?

On why the respondent(s) would not report sexual harassment cases, 17 (35.4%) of the respondents (on this question only 48 respondents had filed their replies) said that they would not report because that might impact their career. 13 (27.1%) out of the 48 respondents said that they would not report because no one would believe them. 19 (39.6%) said that that they would not report because the harasser is in a powerful situation and might influence the authorities. 12 (25%) said that they would not report because authorities would not take their complaint(s). 17 (35.4%) of the respondents said that they would not report because of other reasons. 12 (25%) said that they would not report because of fear of retaliation by the harasser. The replies indicate that a substantial number of respondents would not prefer to report sexual harassment cases based on the reasons mentioned above. The following figure (Figure 7) tends to reveal whether complaints related to sexual harassment are taken up by authorities.

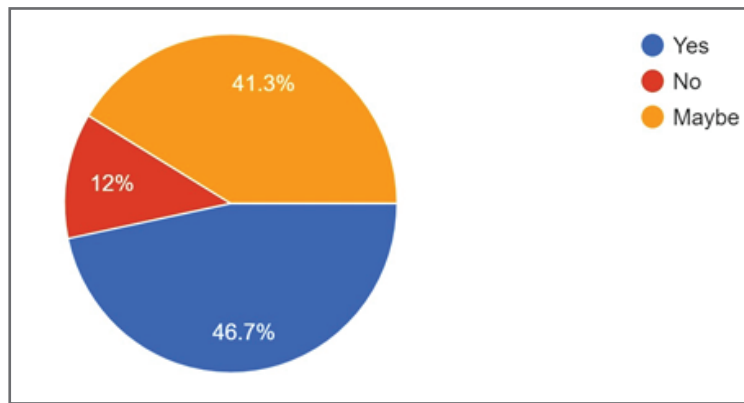


Figure 7: Are complaints related to sexual harassment taken up by authorities of your organisation/institution?

On whether the complaints relating to sexual harassment were taken up by authorities of their workplace/institution, 35 (46.7%) respondents said 'yes', 31 (41.3%) said 'no' and 9 (12%) said 'maybe'. The responses suggest that a considerable number of respondents are of the opinion that authorities of their workplace/institution are not willing to take up sexual harassment complaints. The following figure (Figure 8) shows the number of respondents who are aware of the details of the POSH Act.

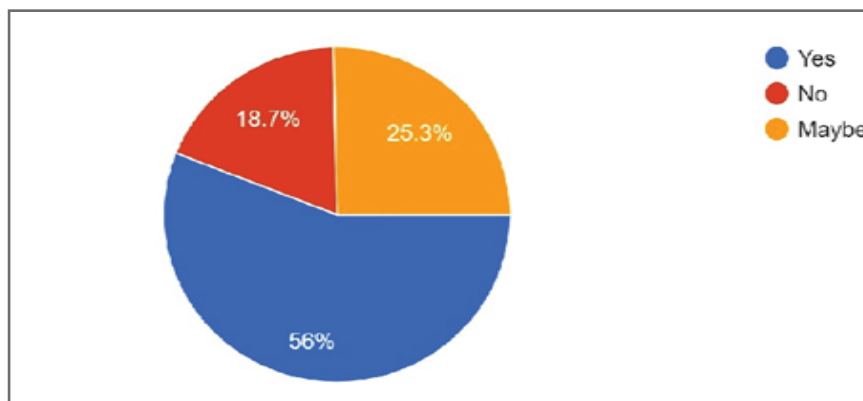


Figure 8: Are you aware about the details of POSH Act?

On whether the respondents are aware of the details of the POSH Act, 42 respondents (56%) said 'yes', 19 (25.3%) said 'no' and 14 (18.7%) said 'maybe'. The responses suggest that a significant proportion (approximately, 44%) of the respondents are seemingly oblivious to the provisions of the POSH Act. The following figure (Figure 9) wants to know whether there is any complaints committee set up at the workplace/institution in conjunction with the mandates of the POSH Act.

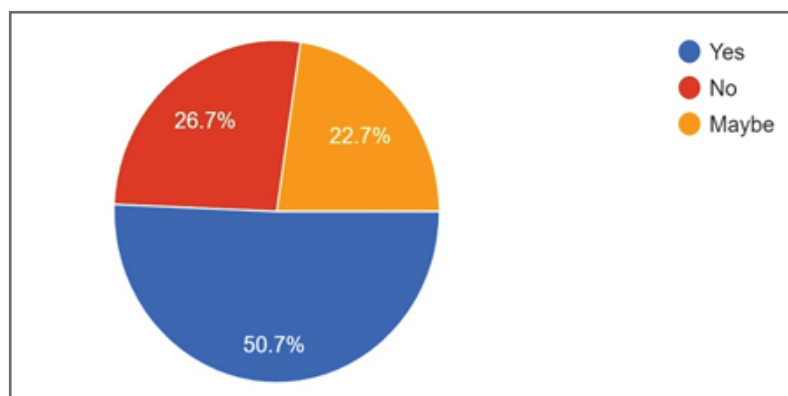


Figure 9: Is there any complaints committee set up at your workplace/institution in conjunction with the mandates of the POSH Act?



On whether any complaints committee has been set up in accordance with the provisions of the POSH Act, 38 (50.7%) respondents said 'yes', 20 (26.7%) said 'no' and 17 (22.7%) said 'maybe'. The answers indicate that about half the respondents are not aware of the provisions of the complaint committees such as the internal committees and the local committees. The following figure (Figure 10) shows if the respondents know whether the POSH Act has provisions to punish false/malicious complainants.

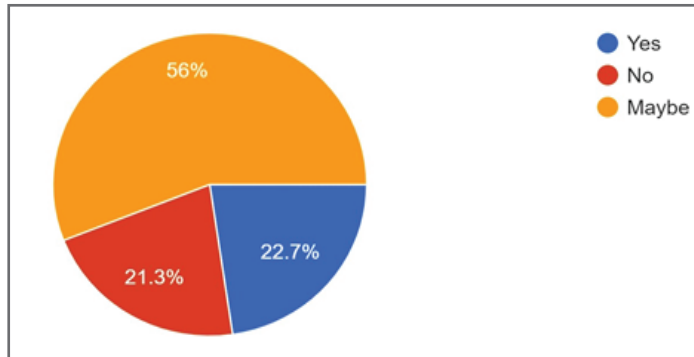


Figure 10: Do you think that the POSH Act has provisions to punish false/malicious complainants?

On whether the POSH Act has provisions to punish false/malicious complaints, 17 (22.7%) respondents said 'yes', 16 (21.3%) said 'no' and 42 (56%) said 'maybe'. The responses reveal that about three-fourth of the respondents are not aware of Section 14 of the POSH Act that stipulates punishment for false/malicious complaints. The following figure (Figure 11) shows if the respondents think that the POSH Act requires a broader interpretation.

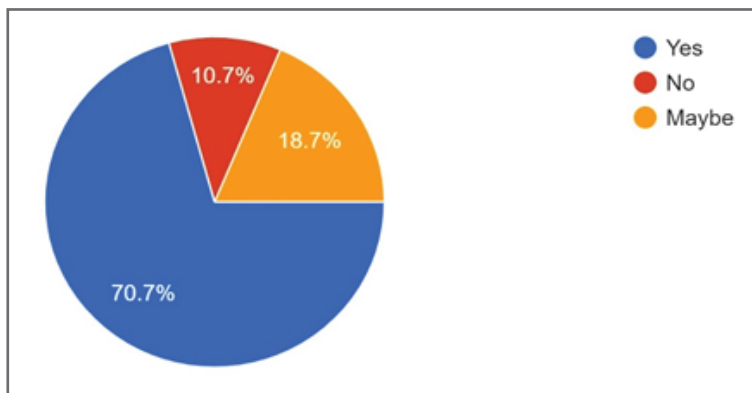


Figure 11: In today's time do you think, the POSH Act requires broader interpretation covering males and third gender?

On whether the POSH Act requires broader interpretation so as to include males and transgenders, 53 (70.7%) respondents said 'yes', 8 (10.7%) said 'no' and 14 (18.7%) said 'maybe'. The replies show that more than 70% of the respondents would want the courts to include males and transgenders within the meaning of the relevant provisions of the POSH Act. The following figure (Figure 12) represents whether the respondents think that the POSH Act has been effective.

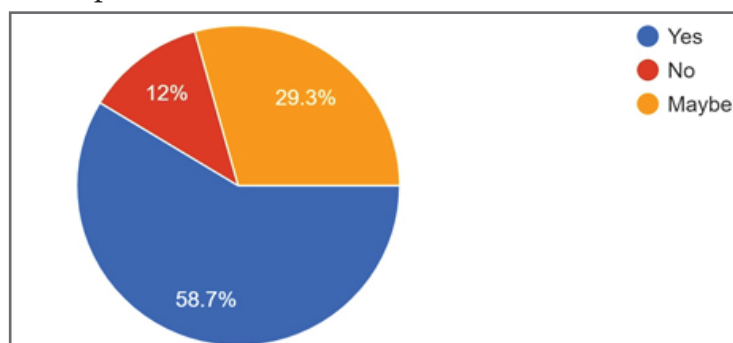


Figure 12: Overall, do you think that the POSH Act has been effective?



On whether the POSH Act has been effective, 44 (58.7%) respondents said ‘yes’, 9 (12%) said ‘no’ and 22 (29.3%) said ‘maybe’. The responses reveal that a fair number of respondents believe that the POSH Act has not been very effective.

17.4. Discussions and Conclusion

The above findings clearly indicate that a significant number of the respondents are yet not aware of the provisions of the POSH Act, 2013 and how the 2013 enactment may be made relevant in light of the emerging cases of sexual violence. Although a substantial number of respondents understands what acts amount to sexual harassment, many of them are seemingly not aware of the redressal mechanisms that operate under the aegis of the POSH Act.

While many of the respondents have not been victims of sexual harassment, they are, arguably, baffled about how to lodge a complaint pertaining to sexual harassment. In fact, a significant proportion of the respondents opined that they would not report a case of sexual harassment because of reasons such as (i) the harasser is in a powerful situation and might influence the authorities (ii) authorities would not take their complaint(s) (c) fear of retaliation by the harasser, etc.

Many of the respondents also believe that time is ripe that constitutional courts provide a broader interpretation of the POSH Act, thereby including sexual harassment faced by male persons and by persons representing the third gender. In a nutshell, the responses received through the online opinionnaire survey strongly suggest that the POSH Act is still not effective enough to deal with sexual harassment cases.

However, the findings of the present study are only indicative and need to be corroborated with further empirical and normative findings circumscribing the POSH Act.



A CRITICAL ANALYSIS OF THE POSH ACT WITH SPECIAL REFERENCE TO THE EFFECTIVENESS OF THE ICCs AND LCCs

*Mr. Rajat Banerjee, * Ms. Nandini Singhal, ** Mr. Anuj Dhar*** and Ms. Tanya Agarwal*****

I. Introduction

“I can be changed by what happens to me, but I refuse to be reduced by it.” - Maya Angelou

Sexual harassment is a pervasive problem in India, affecting women across all socioeconomic classes, cultures, and industries. Despite a few policy initiatives, legislative measures, and case laws, it creates a significant challenge, requiring sustained and dedicated efforts. Sexual harassment refers to any unwelcome act or behavior such as lustful staring, passing offensive comments, stalking (online or physical), making sexually colored remarks, touching inappropriately, sending inappropriate messages, demanding/requesting for sexual favors, pinching, eve teasing, etc. Sexual harassment is undoubtedly a serious offence that has the power not only to damage but also to destroy; to destroy mental health, to destroy passion, to destroy careers, and to even destroy lives. Sexual harassment dehumanizes, diminishes, and in a way disempowers its targets, and tends to cause stress, both physical and emotional, and stress-related physical and mental illnesses, including, but not limited to, post-traumatic stress disorder (Burn, 2018). From a psychological standpoint, sexual harassment tends to cause pain and suffering, and victims generally perceive sexual harassment as offensive, humiliating, annoying, stressful, intimidating, embarrassing, upsetting, and frightening (Burn, 2018). In the context of a workplace, sexual harassment can have long-lasting consequences and damaging effects on the victim, the organization (where both the harasser and victim are employed) and the society as a whole. Globally, the issue of sexual harassment at workplace has gained critical importance; a study conducted in 23 countries indicated that about 15-30% of the women were victims of sexual harassment (Gupta, 2014).

The germane work of Catharine A. MacKinnon, a noted feminist scholar, provides the much-needed inflection point regarding what amounts to sexual harassment at workplace. MacKinnon construes sexual harassment as sex discrimination within the meaning of Title VII of the Civil Rights Act (United States), 1964 (Hersch, 2015), and considers sexual harassment as sex discrimination that significantly reduces the ability of women to achieve equality (Julianna, 1999). Sex discrimination, according to MacKinnon, happens because of male domination, male control, technology of sexism, etc., and may be discerned invoking the inequality doctrine and the disparate treatment doctrine (Julianna, 1999). While the inequality doctrine contemplates that women as a social group enjoys inferior social and economic status and therefore are more vulnerable to sexual harassment at workplace, the disparate treatment doctrine contemplates that the gullibility of women is because they receive unequal treatment.

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In the Indian sociolegal context, sexual harassment at workplace is rampant, and possibly on the rise. In 2018, the Indian Bar Association conducted a survey covering 6,047 working women across 21 states in India, aiming to understand the prevalence and nature of sexual harassment at workplace. According to the survey, over 70% of working women in India have faced some form of sexual harassment at the workplace, indicating further that a significant proportion of the working women have had to fight the fight when all they asked for was their right to work in a safe, secure and dignified workplace.

To address this issue, the Union Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, hereinafter referred to as the POSH Act. The POSH Act aims to provide women with a safe and dignified working environment by mandating the formation of various redressal forums such as the Internal Complaints Committee (ICC), the Local Complaints Committee (LCC), and the District Officer, to address and resolve complaints of sexual harassment. However, despite the formation of the forums, the number of cases of sexual harassment continues to rise and the forums seems to be quite not effective. Debatably, one of the primary reasons for the non-effectiveness of the forums is the lack of awareness among employees and employers about the provisions of the Act relating to the intended tasks and functions of such forums. Many organizations have not yet set up ICCs as mandated by the Act, and those that have done so often lack the necessary infrastructure and resources to make the ICCs function effectively.

The aim of the present study is to critically analyze the provisions of the POSH Act and to gain valuable insights regarding the functioning and procedures followed by the committees formed under the POSH Act, with a particular focus on the ICCs, LCCs, and District Officers. The study seeks to identify the reasons for the (in)effectiveness of the Act and the challenges faced by the committees in addressing and resolving complaints of sexual harassment. It delves into the complexities of the complaint filing process, examines the reasons that prevent women from filing complaints of sexual harassment, and investigates the causes of delays in resolving complaints. The study also examines the functioning of the ICCs, LCCs in light of the principles of natural justice, while highlighting the need for increased awareness and training among ICC members.

II. Reviewing the POSH Act with Special Reference to the ICCs and LCCs

The following section deals with (1) Complaints committee(s) (2) Complaint mechanism (3) Conciliation (4) Inquiry report (5) Interim reliefs (6) Punishment and compensation (7) Frivolous complaints (8) Confidentiality (9) Consequences for non-compliance.

1. Complaints committee(s) –
 - a. ICC – Employer needs to set up an ICC with 10 or more members to help people with the problems of sexual harassment. If any such committee is not set up by the employer, fine can be imposed. It is established under Section 4 of the Act. It is an obligation which has to be complied with by both public and private organizations.¹
 - b. Constitution of ICC – Members who constitute the complaints committee are nominated by the employer of the workplace. It shall be by an order in writing.
 - i. Presiding officer should be a woman of senior level who presides as Chairperson as well. If a senior female employee is not available, she can be nominated from other offices of workplace. The presiding officer can be nominated from any other workplace of the same employer if a

¹ <https://taxguru.in/corporate-law/sexual-harassment-women-workplace-prevention-prohibition-redressal-act-2013.html>



senior-level female employee is not also present at the other offices or administrative units of the workplace. If none of the aforementioned options are feasible, anyone may be nominated to serve as the Presiding officer from any other workplace.

- ii. At least 2 members must be among the employees and the desirable requirements are some legal knowledge or experience in the social sector or committed to women's cause.
 - iii. there should be an external member from an NGO or from organization that is committed to the cause of women.
 - iv. half of the members should be women; term of the members should be maximum of 3 years from the date of nomination and for the inquiry minimum 3 members including the presiding officer should be present.
 - v. Registration of ICC – In some states such as Telangana and Mumbai, registration of ICC is essential. In many other states, such registration is not mandatory.
- c. LCC – It is to be set up by the government (by the District Officer) at district level, for the unorganized sector where the ICC isn't constituted because the number of workers is less than 10. It especially deals with the harassment of domestic workers and where the harasser is the employer himself or it is a third party. It is established under section 6 of the Act.
- d. Constitution of LCC – A nodal officer also has to be appointed by the District Officer only in every block, tehsil, and taluka to receive complaints and forward it to the LCC and the same has to be done within seven days.
- i. Chairperson should be a women dedicated towards social work related to women.
 - ii. a local woman, who should be nominated and should be working in a block, a tehsil, taluka, or in a municipality.
 - iii. Two NGO members of which at least one should be a woman and nominated. One of the members should have a background in law and one should be from scheduled castes or scheduled tribes.
 - iv. The Ex officio member shall be dealing with social welfare or women and child development in the concerned district.
 - e. Powers of ICC/LCC – The ICC and LCC have some powers vested in civil court under the Code of Civil Procedure, 1908.
2. Complaint Mechanism – Following is the manner in which complaint(s) can be made.
- i. The woman needs to file a complaint with six copies, along with the documents and names and addresses of the witnesses to ICC/LCC.
 - ii. Within 3 months of the incident and it can be extended on reasonable ground.
 - iii. Complaints committee shall send one copy each to aggrieved women and to respondent within seven days of receipt of complaint.
 - iv. Respondent shall file a reply within 10 days from the date of receipt of documents.
 - v. Committee shall have the right to pass an *ex parte* decision if the complainant or respondent



fails to show up for three consecutive hearings without any sufficient cause but to pass such an order a notice has to be given in writing fifteen days in advance to the party concerned.

- vi. Relatives and friends also have the power to file a complaint or a coworker or a special educator or a qualified psychologist or psychiatrist or an officer for national or state commission for women in case the victim herself cannot file the complaint.
3. Conciliation – It is an informal method of settlement. The aggrieved woman can ask for conciliation before the formal inquiry begins. If they arrive at a settlement ICC/LCC records the settlement and gives one copy each to both the parties.
 4. Inquiry report – The ICC or LCC, as applicable, must submit a report of its conclusions to the employer or, as applicable, the District Officer within 10 days of the conclusion of investigation. This report must be made available to the concerned parties.
 - i. Where the allegations against the respondent have not been proved complaints, the committee shall recommend the employer or District Officer that no action is required.
 - ii. Where the allegations are proved it shall recommend employer to take action for sexual harassment as a misconduct in manner as prescribed and to deduct from salary or wages such sum as deemed appropriate to be paid to aggrieved woman or her legal heirs.
 - iii. Within sixty days action shall be taken by employer or District Officer.’²
 5. Interim reliefs – the aggrieved women can ask for a transfer, 3 months leave, restrain the respondent to write any report and other employee maybe assigned the work with the aggrieved women.
 6. Punishment and compensation – punishment as per the rules of organization, if there are no rules in the organization then a written apology, warning, reprimand, withholding the promotion, the increment.
 7. Frivolous complaints – If the ICC/LCC figures out that it was a false complaint, actions according to the rules of organization. If the organization does not have any such rules, then statute provides for disciplinary action.
 8. Confidentiality – No information related to the witnesses, respondent, complainant should be revealed. Information related to workplace sexual harassment is not subject to Right to Information Act, 2005. Failing to which a fine should be imposed. Section 16 of the act prohibits the same and Section 17 provides for the penalty of the above offence.
 9. Consequences for non-compliance – If an employer fails to set up ICC or does not comply with the requirements of POSH Act, then a fine can be imposed of up to INR 50,000. Repeated violations of provisions of the act can lead to cancellation of business license or can be liable to twice the punishment or higher if prescribed under law.

III. Viewing the prospective roles of ICCs/LCCs through the lens of natural justice

The primary goal of natural justice is to ensure equity in individual and societal endeavours. The

² <https://taxguru.in/corporate-law/sexual-harassment-women-workplace-prevention-prohibition-redressal-act-2013.html>



distinctions between right and wrong are established by the principles of natural justice. Further, the principles of natural justice tend to protect individual liberty from any arbitrary action. Furthermore, the principles strive to provide equal opportunity of being heard, the concept of fairness, fulfilling the gaps and loopholes of laws, and most importantly protecting fundamental rights. The three necessary guidelines for applying the concepts of natural justice are as follows:

- (a) No one should adjudicate their own case (*Nemo Judex in Causa Sua*)
- (b) Nobody can be condemned unheard (*Audi alteram partem*)
- (c) The party has a right to be informed of all considerations and decisions made by the authority (Reasoned decisions).

In the context of investigation and adjudication, the ICCs and LCCs need to adopt a neutral stand to rule out any form of bias such as pecuniary bias, personal bias, subject-matter bias, etc. They should be neutral and fair while dealing with a sexual harassment allegation. Further, the ICCs and LCCs must allow the accuser of sexual harassment a fair opportunity to be heard, cross-examine the complainant, present pertinent evidence in support of his/her defence, and be informed of the reasons behind the ICCs/LCCs decision. Furthermore, it is incumbent on the ICCs and LCCs to render reasoned decisions or speaking orders so that such quasi-judicial orders become judicially reviewable on merit.

Although the ICCs and LCCs need to abide by the principles of natural justice while investigating and determining sexual harassment matters, in reality, they are presumably not doing so. A recent study on the role of ICCs in the context of universities indicated that ICCs tend to violate the principles of natural justice and are prone to bias on the issue of nomination of ICC members (Biswas, 2021). The amount of discretion that is bestowed on quasi-judicial bodies such as the ICCs/LCCs is enormous. There is a strong presumption that even quasi-judicial bodies exercise certain judicial functions and are a part of the larger judicial process, and that such bodies would not violate the principles of fairness, both procedural and substantive. In addition, the POSH Act creates almost no accountability in the ICCs/LCCs, thereby leaving a lot of room for them to conduct quasi-judicial experiments, sometimes even overlooking the principles of natural justice.

IV. A Critique of the POSH Act

On a holistic basis, the POSH Act incorporates both international commitments regarding equality and dignity of women and national sentiments regarding equal opportunities for women, especially working women. The preamble of the Act makes it aptly clear that the legislative intent was to create a hassle-free ecosystem wherein women would work safely without any fear of violence or sexual harassment. The Act also recognizes that sexual harassment violates the fundamental right to equality, and the right to life and personal liberty. The interpretation section makes it apparent that the Act is not a gender-neutral one and the plaintiff may only be a woman (in the context of the POSH Act, an aggrieved woman). The definitions of 'sexual harassment' and 'workplace' are extensive enough; in fact, the definition of 'workplace' within the meaning of Section 2(o)(v) of the Act also incorporates the doctrine of notional extension, thereby fastening liability on employers to recompense any loss that is suffered during the course of employment. Sections 4 and 6 of the Act mandate the constitution of the ICC and the LCC, respectively, and specify their jurisdictions. Under Section 5 of the Act, the appropriate Government may notify a District Officer who shall constitute the LCC. Section 9 of the Act deals with the procedure of filing complaints either before the ICC or the LCC. Vide Section 10 of the Act, the ICC or the LCC may try and settle the matter through conciliation. Section 11 read with Sections 12 and 13 deal with the powers of



the ICCs and LCCs to hold inquiries and to submit inquiry reports accordingly. If any aggrieved woman makes any false or malicious complaint or tampers with the evidence, she may be punished under Section 14 of the Act. Section 19 of the Act lays down the duties of an employer to create working conditions and circumstances that are favorable to women. Vide Section 23 of the POSH Act, an obligation is bequeathed on the state/government to monitor the implementation of the POSH Act and to maintain data of sexual harassment cases that are filed and disposed of accordingly. Finally, Section 24 of the Act obligates the state/government to conduct training and awareness programmes.

However, the POSH Act seemingly has certain legislative gaps leading us to draw broader questions pertaining to legislative intent and competence. Arguably, one of the major pitfalls of the POSH Act is its inability to address sexual harassment from a gender-neutral perspective. Because of the wordings of the preamble of the POSH Act read with other provisions of the interpretation clause such as the definition of 'aggrieved women' under Section 2(a), 'domestic worker' under Section 2(e), etc., it is increasingly difficult for constitutional courts to widen the scope of definition of women to include men and other third genders. While it is supposedly true that incorporating other genders would dilute the spirit of the Act, it is equally true that even other genders are exposed to sexual harassment at workplace. Although conventional gender roles ascribe greater organizational and sociological power to men indicating that only women, especially vulnerable women, may be victims of sexual harassment, the changing workplace dynamics suggests that even males and third gender persons are exposed to sexual harassment (Burn, 2018). In addition, the Act does not tend to address same-sex harassment cases.

Another significant pitfall of the Act is its inability to regulate bodies such as the ICCs and LCCs. Despite sexual harassment at workplace being a prevalent issue, ICCs and LCCs are sometimes not even constituted, resulting in sexual harassment cases being grossly underreported, and victims being faced with several challenges in seeking justice and redress. Even when ICCs are formed, the procedure for filing complaints and the functioning of the ICCs have been subject to criticism. Arguably, the complaint filing process is often complicated, and the ICCs are not equipped to handle complaints in a sensitive and empathetic manner. The lack of training and sensitivity among the ICC members further compounds the problem. On a few occasions, the ICCs have also been found to violate the principles of natural justice while conducting investigations and hearings. Instances of bias towards the accused or the complainant, violations of the right to a fair hearing, and delays in completing investigations have been reported. The non-adherence to the rules of natural justice in the ICCs raises concerns about the efficacy of the Act in providing timely justice to victims of sexual harassment.

Yet another drawback of the POSH Act is its outreach. While Section 24 of the Act creates an obligation on the state/government to disseminate relevant information and to conduct training and awareness programmes, nothing much seems to have been done. Many of the institutions have not yet constituted ICCs and there is a conspicuous lack of awareness among employees and employers about the provisions of the Act and the responsibilities of the ICCs.

V. Conclusion

The main argument that resonates across the breadth and width of the paper is that whether the POSH Act has been effective enough, both structurally and functionally, in attending the cause of sexual harassment at workplace. Structurally, there are noticeable gaps in the POSH Act and some of the provisions require either a legislative or judicial intervention or both. Functionally, the dispute settlement mechanism that operates through the ICCs, LCCs and District Officers is seemingly ineffective. The state/government, however, is doing its bit. For example, to make it easier for women to report sexual harassment, the Ministry of Women and Child Development, Government of India launched the Sexual Harassment Electronic Box



(SHe-Box), which offers a single point of access to all women, regardless of their employment status, whether they are employed in the organised or unorganised, private or public sector. Through this portal, any woman experiencing sexual harassment at workplace may file a complaint. When a complaint is made through the “SHe- Box” it is immediately forwarded to the relevant authority, which is meant to investigate the situation. In sync with the mandates under Section 24 of the POSH Act, the state/government is also trying to raise awareness about the issue of sexual harassment, its impact on the workplace, and the need for effective measures to prevent and address it. However, the structural and functional infirmities in the POSH Act are far graver and require urgent attention.

The POSH Act was a step in the right direction, but its implementation has been weak and ineffective. Since this holistic study largely aims to identify the gaps and challenges of the POSH Act and to provide recommendations for making the Act more effective, it is hoped that the findings of this study will contribute to a safer and more dignified working environment for women in India. In order to make sure that the POSH Act operates in the right spirit, there is an impending need to align it to the provisions of the special ILO Convention (No. 190) 2019 On the Elimination of Violence and Harassment in the World of Work. The special ILO Convention, which India has not yet ratified, not only expands the definition of sexual harassment (Kirillova, 2020), but also recognizes everyone’s right to work in a workplace that is free from gender-based violence and harassment, including sexual harassment. Concludingly, it may be stated that the issue of sexual harassment at workplace is a grave concern and a major human rights issue requiring immediate redress.



30 FAQs

S. No.	Questions	References
1	Is accidental physical touch an element of sexual harassment?	(2.4.2)
2	Does silence amounts to acceptance?	(2.4.1)
3	Does romantic and indirect remarks with sexual connotations be considered as sexual harassment?	(2.4.6)
4	Do you believe women provoke sexual harassment?	(2.9)
5	Can a high ranking officer also be a victim of sexual harassment?	(3.2)
6	Does POSH Act cover unorganized sector?	(3.3.1)
7	My boss continuously calls me late at night for personal conversations, is it sexual harassment?	(3.3.2.1)
8	When can an act be actionable under POSH Act?	(4.2)
9	Can a student file a complaint under POSH Act?	(4.2)
10	Can a person other than the victim file a complaint under POSH Act?	(4.3)
11	Can a complaint be filed against a third party?	(4.9)
12	Can a sexual harassment complaint be filed against a women?	(4.12)
13	Can a senior male officer be appointed as a Presiding Officer/ Chairman of the IC?	(5.2.1)
14	Does the Act mandates Film Sets/TV Sets/Production Units or any such other platforms to constitute an IC?	(5.2.2)
15	Is it mandatory to constitute different IC for every branch/unit of an organisation?	(5.2.5)
16	Can the parties settle the matter through conciliation under the POSH Act?	(6.2)
17	Can an inquiry be initiated in case of non-compliance of the terms of settlement?	(6.2.7)
18	What action can be taken in case the alleged perpetrator fails to appear before the IC?	(6.3.4)
19	What possible reliefs can be provided to the victim during the pendency of an inquiry?	(7.2.2)



20	What if the employer fails to act upon the recommendations of the IC?	(7.3)
21	Can a person appeal against the recommendations of the IC?	(7.4)
22	Can an organisation have gender inclusive POSH Policy?	(8.3.1)
23	Can penalty be imposed upon the Employer for providing non-assistance to the aggrieved woman in filing the complaint?	(8.3.6)
24	What information is to be provided in the annual report?	(8.3.11)
25	Can an HR be authorized to take up the complaint of sexual harassment?	(9.2.1)
26	Can the Management be held liable for non-compliance of the provisions of the POSH Act?	(9.3)
27	Can a complaint be filed to National Commission for Women?	(9.4.1)
28	Can a complaint be filed by a man or third gender person?	(10.9)
29	Can a criminal complaint be filed against the perpetrator for committing sexual harassment?	(11.3)
30	What additional compliances have been incorporated in the Companies Act, 2013 regarding POSH?	(11.10)



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This book has been fuelled by passion by team members of S.S. Rana & Co and FICCI. We would like to acknowledge the contribution of Ms. Deepshikha Agarwal, Professor, University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University, Ms Sada, Ph.D. Scholar (Sociology), Guru Gobind Singh Indraprastha University, Professors of Amity Law College namely, Dr. Rajat Banerjee, Ms. Mini Shrivastava & Ms. Nidhi Kaushik, and Ms. Shivalaxmi Arumugham, Assistant Professor in Criminology at Rashtriya Raksha University, Gandhinagar. Most of us fear judgement and are hesitant to individually acknowledge our association with this law but collectively we have achieved the synchrony to create the symphony of what we may proudly call a handbook on POSH an acronym for Prevention of Sexual Harassment at Workplace.

We thankful to the team at S.S. Rana & Co. comprising Mr. Rupin Chopra, Ms. Rachita Thakur, Ms. Isha Sharma, Ms. Devika Mehra, Ms. Rima Majumdar, Ms. Ananyaa Banerjee, Ms. Shilpi Sharan, Ms. Apalka Bareja, Mr. Pranit Biswas. We would also like to thank & acknowledge the efforts and contribution of team at FICCI comprising Ms Himanshi Sharma, Ms. Aastha Gupta, Mr. Gaurav Gaur, and many others who contributed in various way in helping us in our humble endeavour to demystify some of the nuances of this very important law governing the workplace.



ABOUT S.S. RANA & CO

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Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies. A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry.

From influencing policy to encouraging debate, engaging with policy makers and civil society, FICCI articulates the views and concerns of industry. It serves its members from the Indian private and public corporate sectors and multinational companies, drawing its strength from diverse regional chambers of commerce and industry across states, reaching out to over 2,50,000 companies.

FICCI provides a platform for networking and consensus building within and across sectors and is the first port of call for Indian industry, policy makers and the international business community.

POSH Act has been instrumental in bringing a sense of security at workplace. It has empowered women and ensured their safety and dignity at work. The accountability has made more and more women feel safe, respected and valued.

Ms. Archana Maini
(General Counsel and Company Secretary, Campus Activewear Limited)

This handbook is like a ready reckoner for the POSH Act, sensitizing employers and employees to the importance of the POSH Act. It underscores the need for employers to put in place mechanisms that prevent incidents of sexual harassment and take steps to address and resolve such issues when they arise. Raising awareness among employees will ensure that their actions are respectful and that their workplace remains safe and inclusive.

What I love about it is the simplicity of use. There are many papers and research available, but the way Anuradha and her team at S.S. Rana & Co. have simplified the topic for the layperson is really commendable. It is easy and simple.

Ms. Achal Khanna
(CEO of SHRM India, APAC & MENA)

As a DE&I champion, I firmly believe that building inclusive cultures which value safety of all genders owe it to their employees. It's just bother human right to work freely. The organization should provide safety from shaming and other forms of retaliation that both the complainant and perpetrators could be subjected to post and during the proceedings.

-Dr. Sunita Chugh
(Founder, Centre for Empowerment and Employability Education, CEEE)

Women's safety in the workplace remains a major problem in India, despite various legislative and policy measures. According to a survey conducted by the International Labor Organisation (ILO). About 52% of women in India have experienced sexual harassment at work. Moreover, the majority of women do not report such incidents due to fear of retaliation, stigma, and lack of confidence in the legal system.

In addition to existing regulations such as the POSH Act, 2013 and gender-neutral organizational policies, it is important to adopt neoteric measures such as technology-enabled reporting and redress mechanisms, peer-to-peer support networks, engaging men as allies, considering informal work settings (such as domestic work, street vending, and small businesses), and using data analytics to identify patterns and trends in sexual harassment and proactively prevent it.

Ensuring women's safety in the workplace in India requires sustained efforts at multiple levels, including the legal and policy framework, organizational practices, technological support, and societal attitudes. This requires a comprehensive approach that addresses the root causes of gender based violence, promotes gender equality and creates a culture of respect and accountability in the workplace.

Ms. Sonam Sahni
(External Affairs Manager, HERE Technologies)

Congratulations to S.S. Rana Team for putting together such a useful handbook. Creating awareness and educating all stakeholders on the POSH law and its process is a solid step towards ensuring we are creating a safe, secure spaces for women. I wish the team good luck in their endeavor to make POSH a powerful tool for women's rights.

Ms. Pritha Dutt
(Director and Co-Founder of Empower Foundation)

It's always possible to have scope of improvement in whatever existing, may it be a law and we can opt to criticize or keep advising for the betterment but before that it's important to check have we been able to implement at least what exists.

All corporates and businesses are cognizant of the respond or reactive side post the mishappening, important and right time that we start thinking and be risk aversive and thus spend more energies and efforts on being preventive.

Key factors for Management:

Reputation at stake, moral and respect within the organisation and most importantly risk of creation of hostile work environment and thus ultimately effect on business

Ms. Rakhi Gupta
(Ethics & Compliance Head, Unilever)

Every leader in every organisation aspires to establish a safe and secure work environment for all employees and stakeholders. POSH is a comprehensive process holistically designed specifically to aid this aspiration. I would strongly recommend that every practitioner involved in shaping a responsible organisation, gains individual knowledge about POSH first and then personally ensures that there is a mechanism to cascade the "spirit and the letter" of POSH down to each and every employee subsequently.

Mr. Rohit Thakur
(CHRO, LEAD School)

(The reaction of management to a POSH policy and procedures can vary depending on the organisation's culture and leadership style. In general, however, management should take the implementation and enforcement of POSH policies seriously, as sexual harassment can have severe legal, financial and reputational consequences for the organisation.

Effective management should proactively communicate the POSH policy and procedures to all employees, ensure that appropriate training is provided, and establish a process for reporting and addressing incidents of sexual harassment. They should also foster a culture of zero-tolerance for sexual harassment and create an environment where employees feel safe and supported to report any incidents.

If Management shows a commitment to preventing sexual harassment, it can have a positive impact on the organization's reputation and employee morale. Conversely, if management does not take the issue seriously, it can lead to a toxic work environment and damage the organization's reputation. Ultimately, it is the best interest of the organisation to prioritize the prevention of sexual harassment and ensure that all employees are aware of and adhere to the POSH policy and procedures.

Ms. Asha Duggi
(CEO, E-flex Technologies-Orionsecure)

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