

POSH Act: All you need to know about Sexual Harassment at the Workplace law in India

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PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE ACT, 2013

Whilst the Indian Penal Code defines Rape and Sexual Abuse, there was a grey area with responding to sexual harassment especially at workplaces. The landmark Supreme Court judgement of *Vishaka v. State of Rajasthan* (1997) and judgements that followed ever since has fashioned the Prevention of Sexual Harassment at Workplace Act to what it is today. The Supreme Court, in this case, laid down the guidelines to prevent and redress sexual harassment at the workplace. The essence of the Act is to uphold the fundamental rights of working women of the freedom to practice any trade/business/profession and the right to life and dignity.

Defining Sexual Harassment:

For this purpose, Sexual Harassment is defined as:

- *Any physical contact and advances;*
- *Demand for sexual favours;*
- *Making sexual remarks;*
- *Showing pornographic content;*
- *Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

The guideline of the Supreme Court was broadly to shift the focus of liability on the employer to prevent sexual harassment at the workplace.

What is Considered a Workplace Under the Act:

Under the Act, a workplace includes:

- Any government office/company/organisation/co-operatives;
- Private sector organisations, NGOs, Societies, Trusts, enterprise, institution, establishment, service provider carrying on commerce, education, health, sale, supply or distribution;
- Hospitals and nursing homes;
- Sports Institute and facilities that could also be residential but not used for training, and other activities related to the institute;
- Places visited by the employee during the course of her work which also includes the travel undertaken.

Who does the Act apply to:

The Act applies to employees of all offices and establishments as mentioned above. However, for the purpose of constituting the Internal Complaints Committee as mandated under the Act, a company or an organisation is required to have at least 10 employees. Where this criterion cannot be filled, the Act also provides for the formation of Local Complaints Committee at a District level. This Local Complaints Committee takes complaints from the aggrieved person when her workplace could not constitute an Internal Complaints Committee or if the complaint is to be made against the employer. By default of both the Committees, all types of offices/organisations/establishments will come under the purview of the Act.

Who forms the Internal Complaints Committee/Local Complaints Committee?

The Act mandates, when a company has 10 or more employees then the employer must constitute an Internal Complaints Committee. The members of the committee will be:

- Presiding Officer, a woman who holds a position at a senior level in the company/organisation;
- At least 2 other employees who have experience in social work or legal knowledge; and
- An external member from an NGO or organisation working towards women's rights,

where at least one half of the committee should constitute women. The role of the Internal Complaints Committee is to take up complaints, investigate and recommend the right course of action through a Report made to the employer.

The Act also calls for the constitution of a Local Complaints Committee by the District Officer. Complaints to this Committee can be made when the Organisation/Institution does not have an Internal Complaints Committee due to having less than mandated ten employees to form a Committee (such could be the case of an unorganised sector) or if the complaint is made against the employer. The members of the committee will be:

- Chairperson an eminent woman in the field of social work and women's rights;
- A local woman, to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district.
- Two NGO members: out of which, at least one shall be a woman to be nominated from an NGO or an association committed to the cause of women or a person familiar with issues pertaining to sexual harassment. One of the members have a background in law and at least one of the members be a woman belonging to the Scheduled Castes or Scheduled Tribes.

Duties of Employer:

The Act entrusts certain duties on the employer of the organisation to fulfil to ensure systemic prevention of sexual harassment at the workplace. They are as:

- *Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;*
- *Displace at any conspicuous place in the workplace, the penal consequence of the sexual harassment, and the order constituting the Internal Complaints Committee;*
- *Organise workshops and awareness programmes at regular intervals for sensitising the employed with the provisions of the Act and orientation programmes for the members of the Internal Complaints Committee in the manner as may be prescribed;*
- *Provide necessary facilities to the Internal Complaints Committee or Local Committee as the case may be, for dealing with the complaints and conducting an inquiry;*
- *Assist in securing the attendance of the respondent and witnesses before the Internal Committee or Local Committee, as the case may be;*
- *Make available such information to the Internal Committee or the Local Committee as the case may be, as it may require to regard to the complaint made...;*
- *Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;*
- *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;*
- *Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;*
- *Monitor the timely submission of reports made by the Internal Committee.*

When can a complaint be filed to the Internal/Local Complaints Committee:

The circumstance amounting to sexual harassment as per the Act is mentioned below. When an employee is faced with either of the circumstances, they can formally write a complaint, to the Internal Complaints Committee when the complaint is made against an employee; and to a Local Complaints Committee when the complaint is made against an employer or when the organisation could not constitute an Internal Committee.

- *Implied or explicit promise of preferential treatment in employment;*
- *Implied or explicit threat of detrimental treatment in employment;*
- *Implied or explicit threat about the present or future employment status;*

- *Interference with work or creating an intimidating/offensive/hostile work environment;*
- *Humiliating treatment likely to affect health or safety.*

Filing a Complaint — When and Who:

Upon an incident of sexual harassment, a written complaint has to be made to the Committee within 90 days (3 months) from the date of the incident taking place. The complaint should contain all the material and relevant details concerning the alleged harassment including the name of the employee against whom the complaint is being made, their relationship, and the date and time of the incident. However, if the Committee can be satisfied with a reasonable explanation for the delay in the complaint being made, an extension of further not more than 3 months will be granted.

Where a complaint cannot be made by the aggrieved person due to mental or physical incapacity, their legal heir or such other close relative/friend/co-worker or an Officer of the National Commission for Women or State Women's Commission, or any person who has the knowledge of the incident with written consent of the aggrieved person can file a complaint with the Committee.

Conciliation:

Prior to investigating into the complaint, the Committee will make reasonable efforts to settle the issue between the parties, upon the approval of the aggrieved person. If a settlement is arrived at by both the parties, then the Committee will make a record of the same and close the case. However, if the aggrieved person does not wish to make conciliation efforts to settle or if the Respondent does not comply with the settlement, then the Committee shall make a formal inquiry and investigate.

Rights and Remedies of the Aggrieved Person:

Under the law, the survivors of sexual harassment have a two-course remedy: civil or criminal. Cases dealt with and by the Committee will be civil in nature, whereas, cases dealt with in court will be criminal in nature. However, when the complaints made by the person to the Committee is directly covered under the Indian Penal Code, then the Committee has to forward the complaint to the local police to lodge an FIR making the case civil as well as criminal in nature. The Police in such a case will aid the Committee to investigate.

During the pendency of inquiry, the employer, upon the advice of the Committee can:

- *Transfer the aggrieved person or the respondent (accused) to another workplace;*
- *Grant leave to the aggrieved person for a period of 3 months;*
- *Grant any other relief to the aggrieved person.*

Upon receiving the complaint, the Committee shall forward the same to the Respondent within 7 days and the Respondent is required to reply back within 10 days of receipt of the complaint. The Committee follows the Principle of Natural Justice wherein both the parties, the aggrieved person and the respondent will be given a right to share their story and for such purpose, a copy of the findings of the inquiry is shared with them to make representations. However, the law does not allow them to be represented by lawyers. The Committee can terminate the inquiry proceedings or give an *ex parte* decision if either party fails to present themselves for consecutive three hearings after being given 15 days' notice regarding the termination of inquiry.

The Committee, upon completion of the investigation, will submit its Report to the employer and the District Officer within 10 days after completing the inquiry. The same is shared with the concerned parties as well. In this Report, the Committee will detail out its findings, and provide justification for the same.

- If the Committee feels that the allegations against the Respondents are not proved, then the Report will recommend to the employer and District Officer that no actions are required.
- If the Committee feels that the allegations against the Respondents are proved and correct, the Report will recommend the employer and the District Officer to take action for sexual misconduct in accordance with their service rules. Where service rules do not clearly define the same, employer to deduct from their salary/ wage or direct the Respondent to pay a reasonable amount to be given to the aggrieved person or their heir. In addition to any such compensation, the Committee can direct the Employer to take actions against the Respondent that could include an apology letter to the Aggrieved Person, reprimand, withhold any promotion or payment or salary, terminating the employment, counselling session or community service.

The Employer is required to effect the recommendation of the Committee within sixty days of receipt of the Inquiry Report.

Compensation:

The Act determines how much sum is to be paid to the aggrieved person when the Committee has found the allegations against the Respondents true and correct. It directs that the following needs of the aggrieved woman must be taken into consideration before determining the amount of compensation:

- *The mental trauma, pain suffering, and emotional distress caused to the aggrieved woman;*
- *The loss in the career opportunity due to the incident of sexual harassment;*
- *Any medical expense incurred by the aggrieved person for physical or psychiatric treatment;*
- *The income and financial status of the Respondent;*
- *Feasibility of such payment in lump sum or in instalments.*

False Complaints:

The Act provides for punishment for False or Malicious Complaints and False Evidence. It states that when the Committee has a reasonable belief that the complaint filed is false and the aggrieved person knowingly filed the complaint, or, any false evidence is forged by any person, the Committee will direct the employer or the District Officer to take action. This does not warrant cases which could not be sufficiently supported with evidence or provide proof.

Appeal:

Any person who is not satisfied with the recommendations are given by the Committee can appeal to the court or tribunal, however, such an appeal comes with a period of limitation of 90 days from when the recommendation is given.

Penalty:

Where the employer fails to –

- Constitute an Internal Committee;
- Take action as recommended by the Committee;
- Contravenes or attempts to contravene the provisions of the Act,

will be punished with a fine up to Rupees fifty thousand. However, if the employer commits the offence the second time, the punishment will be double the amount; or cancel the license or non-renewal or cancellation of registration for carrying on business or activity.

(P.S.: For a detailed and broken down understanding of POSH Act and its applicable Rules refer to the Handbook prepared by the Ministry of Women and Child Development. Available at:

<https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

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