FICCI

WOMEN SAFETY AT WORKPLACE

2nd Edition

Prevention of
Sexual Harassment
at Workplace

#POSH



Knowledge Partner

S.S. RANA & CO. ADVOCATES
ESTD: 1989
ISO 9001 : 2015 & ISO 27001 : 2013
CELEBRATING 34 GLORIOUS YEARS 1989-2024

Copyright © 2024 Federation of Indian Chambers of Commerce and Industry and S.S. Rana & Co. All contents in this report are the property of Federation of Indian Chambers of Commerce & Industry and S.S. Rana & Co. and is protected by Indian and international copyright laws. Any other use, including the reproduction, modification, distribution, transmission, republication, display or performance, of the content in this report is strictly prohibited without written permission from either or both parties.

First Edition Published in May, 2023

Second Edition Published in March, 2024

Edited and researched by:

Mr. Vikrant Rana | Ms. Anuradha Gandhi

Managing Partner | Managing Associate

S.S. Rana & Co.

Ms. Aastha Gupta | Ms. Himanshi Sharma

Assistant Director | Research Associate

FICCI

Disclaimer

Though every possible effort has been made to ensure the accuracy of the information contained in this book and to acknowledge the sources taken to present accurate information, FICCI and S.S. Rana & Co. make no representation towards the completeness or accuracy of the information contained herein. This document is for information purposes only. This publication is not intended to be a substitute for professional, legal or technical advice and FICCI and S.S. Rana & Co. do not accept any liability whatsoever, for any direct or consequential loss arising from any use of this document or its contents.

ISBN No: 8043/ ISBN/2023/A

TABLE OF CONTENTS

CHAPTERS	TOPICS COVERED	PAGE NO.
	PREFACE	
Chapter-1	INTRODUCTION	4
Chapter-2	DEFINITON OF SEXUAL HARASSMENT	6
Chapter-3	SCOPE AND APPLICABILITY OF THE POSH ACT 2013	19
Chapter-4	COMPLAINT MECHANISM	30
Chapter-5	COMPLAINT COMMITTEE(S) UNDER THE POSH ACT	46
Chapter-6	HOW DOES THE INQUIRY FLOW	59
Chapter-7	PRINCIPLES OF NATURAL JUSTICE AND ITS APPLICATION IN POSH JURISPRUDENCE	70
Chapter-8	RELIEF AND COMPENSATION	80
Chapter-9	ARE YOU POSH COMPLIANT?	94
Chapter-10	ROLE OF VARIOUS DEPARTMENTS AND GOVERNMENT BODIES	123
Chapter-11	POSH AND GENDER NEUTRALITY	139
Chapter-12	THE REASONABLE WOMAN TEST	153
Chapter-13	INTERCONNECTION WITH OTHER APPLICABLE LAWS	162
Chapter- 14	POSH LAW IN OTHER COUNTRIES	181
Chapter- 15	POSH LAW AND OTHER SERVICE RULES	203
Chapter- 16	GUIDELINES ISSUED BY THE SUPREME COURT ON POSH	212
Chapter- 17	AMENDMENTS TO THE POSH ACT	223
Chapter- 18	TIMELINE	

PREFACE

The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), was enforced to create safe, equitable and diverse workplaces, the compliance of which has been mandated by the Government for all organizations. Over time organizations have understood the importance of the POSH Act in creating safe workspaces for their employees.

Workplace is defined as a place where **people** engage in specific tasks or responsibilities as required by their employer. Factors such as a skewed sex ratio, a tolerance of sexism and related behaviors are massive indicators of the problem that emanate from stereotypes associated with genders. Identifying the problematic areas and inculcating the ways to solve the issues that revolve around people at workplaces is an essential element of conforming to the POSH Act.

Sexual harassment has further been identified as a tool for maintaining and wielding power to assert and maintain dominance over women. What enables its permeation is the systemic embedment of gender inequality in the workplace which manifests in the form of unequal power distribution. Our team at S.S. Rana & co. want to lead the charge and institute change to the archaic systems of patriarchy that enable the pervasiveness of sexual harassment.

Through our second edition of 'Women Safety At Workplace' we explore new avenues of the POSH Act such as 'Reasonable Woman' which tackles concerns regarding the ambiguity and grey areas of the Act by utilizing a standard for eliciting sexually harassing scenarios and 'Principles of Natural Justice' as well as exploring recent developments in the space via the chapter on 'Amendments to the POSH Act'. Recognizing the interplay of the Act with industry standards we have provided a detailed analysis covering 'POSH and its Interconnection with other Laws and Service Rules'. Additionally, we have added a chapter on the 'Guidelines Issued by the Supreme Court on POSH' to address the leaky pipeline with regards to the implementation and enforcement of the POSH Act.

In writing this book, we have taken the approach of creating a compilation of landmark cases, compliances as well as practical tips and compliance aides. We intend to provide a resource to our readers that can be used for quick reference as well as a holistic understanding of the law. We hope that our readers will find this a fascinating and insightful read.

We would like to thank the entire team at FICCI (Federation of Indian Chambers of Commerce and Industry) as well as S.S. Rana & Co. for their unwavering support in making this possible. We are extremely grateful for all our readers and thank you for taking the time read this.

March 2024 -Authors

India

1. INTRODUCTION

Sexual Harassment, much like a cardiovascular disease, has certain behavioral risk factors such as a skewed gender ratio, sexist attitudes among co-workers, culture of stereotyping, promotion of strict adherence to gender roles, lack of women in leadership positions. The above-mentioned factors have all been identified as possible risk indicators. [1] Lack of intervention and dismissal of these indicators by the leadership can result in its progression to severe forms of sexual harassment such as sexual coercion (quid pro quo, hostile working environment) and unwanted sexual harassment (sexual assault etc.) Thus, organizations must pay heed and assess their organizational culture to mitigate the risk of employee attrition, reputation and investor exit. [2]

If we examine sexual harassment, at its core, we find power. Power is used to wield possession, control and authority over others. Misuse of power is central to understanding sexual harassment. Power imbalance and gender inequality are closely linked, wherein there is unequal distribution of resources, opportunities and power between the sexes primarily due to prevailing societal gender norms. Gender inequality in most workplaces manifests as men being the sole entities with decision-making power thereby signaling that women are of lower value and less worthy of respectful treatment. Additionally, a lack of decision-making power also indicates a lack of opportunities for women to act in the interest of female employees in preventing sexual harassment. Gender inequality is also theorized to be a means for men to maintain subordination and challenge any threat to dominance.

As per the guidelines under the Companies Act, 2013 and the Listing Obligations and Disclosure Requirement (LODR) 2015, companies are mandated to report the number of sexual harassment cases in their annual report. Organizations are tightening their disclosure, compliance and governance norms. This comes along with the new wave of stakeholders requiring transparency in business practices. ESG (Environmental, Governance and Social practices) disclosures hold organizations accountable by requiring high level of transparency

[1] https://humanrights.gov.au/sites/default/files/factsheet_-_causes_and_risk_factors_of_sex_discrimination_sexual_harassment_and_other_unlawful_behaviours_0_0_0.pdf

[2] https://unsceb.org/victim-centred-approach-sexual-harassment-united-nations



via reporting across their entire value chain. Sexual harassment comes under the social pillar of ESG as it affects employee wellbeing. Analysis of organizational annual reports for BSE100ESG Index companies for the financial year 2023 indicated an alarming 101 percent rise in sexual harassment cases among India's top companies. This could indicate procedural delays by the ICs of top organizations. [3] However, a 2021 CRB report indicated a 15.3% increase in crimes against women from 2021 to 2022. Further, the National Commission for Women (NCW) reported 31,000 complaints received in 2022, the highest since 2014. These alarming statistics clearly reveal that crimes against women in India are on the rise and warrant urgent action.

The Prevention of Sexual Harassment (Prevention, Prohibition, Redressal) Act,2013 (hereinafter referred to as the POSH Act), was brought into force to protect and promote safety of women in the workplace, indicating a momentous turning point in the ongoing struggle to achieve gender inequality. Indian organizations, despite their adherence to mandates, appear to have a reactionary response to regulations regarding the social pillar of ESG, and POSH compliance is no exception. However, organizations must realize that the trivialization of sexist jokes and tokenistic approaches to the inclusion of women will further perpetuate an organizational culture and climate of tolerance towards sexual harassment resulting in severe forms of sexual harassment cases. Thus, organizations leading by market capitalization must act as first movers by setting industry standards and norms to ensure implementation of policies and procedures that are more than performative in nature.

We at S.S. Rana & Co. set out with the mission to be industry leaders in the POSH space by working with all sorts of organizations from startups and MSMEs to large conglomerates to support them in the formulation and implementation of policies to protect the interests of women by equipping them with tools, knowledge and resources necessary to tackle sexual harassment which would, in turn, shape the organizational culture of these entities.

[3] https://www.forbesindia.com/article/take-one-big-story-of-the-day/india-inc-sees-alarmingly-high-unresolved-sexual-harassment-cases-at-workplace/89043/1

2. DEFINITION OF SEXUAL HARASSMENT UNDER THE POSH ACT

2.1. Sexual Harassment: Meaning

It is wrongly conceived by the majority that sexual harassment is solely related to sex. Ironically, it is not merely about sex, but about the power as well. Sexual harassment can be referred to as coercion of a sexual nature that includes any unwelcome acts or behavior. It stems from the patriarchal belief that men are believed to be powerful and thereby superior to women.

Coined in the year 1975 by American feminists, the concept of sexual harassment brought about a view in which women are not always flattered by sexual attention but aggravated by it instead.[4] Sexual harassment is perceived differently in different cultures and territories, reasons for which can be attributed to "cultural differences" and "national differences" that exist across countries and nations. Pertinently, no matter how varied it might be, sexual harassment, as a phenomenon, is all pervasive. The issue of sexual harassment is fascinating in the sense that it represents the cracks in the configurations of gender and sexuality.

Sexual harassment must be construed in a wider sense and not in a narrow sense (***M v. Union of India,)***[5] so as to include sexual advances or verbal or physical harassment of sexual nature. Further, it must be understood that the kinds of behavior that come under the ambit of sexual harassment may vary with the differences between cultures. In all likelihood, the degree of tolerance to any act that can be considered as sexual harassment and topics that are appropriate to be discussed in workplaces also differ with these cultural differences. Even though sexual harassment has an element of subjectivity attached to it, the term is defined as follows:

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."[6]

[4] What is Sexual Harassment? From Capitol Hill to the Sorbonne, Abigail C. Saguy, University of California Press
[5] 196 (2013) DLT 741
[6] Black's Law Dictionary

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).*[7]

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)]

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;*

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

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 act is an act 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) (UK)***[8], it was held that if a person, on receipt of a problematic comment or gesture is silent, it does not automatically mean that the comment is welcome.
- Encouraging some acts does not mean that all kinds of acts are welcome: In the case of ***Horman v. Distribution Group Ltd. t/as Repco Auto Parts (2002) (UK)***[9], the Federal Court held that even if the Complainant had initiated and encouraged some act, this does not prevent any other act from being unwelcome and constituting sexual harassment.

2.4.2. Physical Contact and Advances:

In ***S v. Union of India (2005),***[10] 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.

[8] (2005) VCAT 914
[9] (2002) FCA 219
[10] 125(2005) DLT 284.

- Sexual advances:

  In ***M v. Union of India (2013),***[11] the Hon'ble Delhi High Court held that sexual harassment cannot be construed in narrow sense and that it includes sexual advances within its ambit.

- Actual physical contact not necessarily to constitute sexual harassment:

  In ***P v. Union of India and Ors (2013)***[12]**,** the Hon'ble High Court of Tripura held that making 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***:***

  In ***S v. ABC & Ors (2017)***[13], 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 v. Bank (2003),[14] the Hon'ble Allahabad High Court held that objectionable advances with a sexual overtone was enough to constitute sexual harassment.

2.4.4. Making Sexually Coloured Remarks:

The most common types of behaviour reported by people alleging sexual harassment are sexually suggestive comments or offensive jokes, intrusive questions about personal matters and inappropriate staring or leering.[15]

---

[11] 186 (2013) DLT 741
[12] WP (C) 408 of 2013
[13] 2017 SCC OnLine Del 11327
[14] 2003 2 AWC 1117 All.
[15] Australian Human rights commission, Effectively Preventing and Responding to Sexual Harassment: A Quick guide, 2008 Edition.



- **Held as sexually coloured remarks*:***

  In the case of ***A v. AN (2004)***[16], 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 of sexual harassment and that the balance of convenience was in Complainant's favour.

- It was also noted by the Court that the remarks concerned and the conduct of the parties, would have to be seen in the cultural context of both the Respondent and the Complainant.

2.4.5. Showing Pornography*:*

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)**[17]**,** 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. v. the Union of India (UOI) (1971),*** [18] the court observed that the test for pornography should be that of an ordinary man of common sense and prudence and should not be of an "out of the ordinary or hypersensitive man."

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

[16] (2004) 2 CaLT 421 (HC)
[17] (2007) FMCA 58 at [198]
[18] AIR 1971 SC 481

In the case of ***D v. State of Bengal and Anr. (2016)***[19]**,** 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 A & co. v. the Labour Court Vellore and V (2012)***[20]**,** 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.
- **Inappropriate gestures may lead to sexual harassment**: In a recent ruling, the Gurgaon Metropolitan Magistrate's Court in Mumbai addressed a case involving G ***Police Station vs. A V Patil***[21]. The court deemed the act of using abusive language and showing the middle finger to a woman on the main road as an act of a sexual nature. This behaviour was found to constitute sexual harassment and was considered as an infringement on the fundamental right to dignity of the woman involved.

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 the element of it being consensual and welcome is taken away, such continued behaviour can be termed as sexual harassment.

[19] CRRs 1204, 1205, 1212 and 1213 of 2016
[20] (2012) 3 LLJ 237 Mad.:2012 LLR 422
[21] https://timesofindia.indiatimes.com/city/mumbai/road-rage-in-mumbai-6-month-jail-for-middle-finger-swearing/articleshow/88154538.cms

In a recent development, the Calcutta High Court [22]affirmed the conviction of an individual who, while intoxicated, addressed a woman constable as "darling". The court deemed such language to be sexually suggestive and hence, punishable under Section 354[23] and 509[24] of the Indian Penal Code.

"Addressing an unknown lady, whether a police constable or not, on the street by a man, drunken or not, with the word 'darling' is patently offensive, and the word used is essentially a sexually coloured remark," the bench noted.

This ruling pertinently flags the behaviour that is normalised to mean no harm and serves as a reminder of the legal consequences associated with making sexually coloured remarks.

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 (UK) (1995),***[25]the Employee Appeal Tribunal of the United Kingdom held that a single act can constitute sexual harassment.

2.7. Not all Actions constitute 'Sexual Harassment'

Meanwhile, it is essential to recognize that not all actions constitute sexual harassment. Case Reference: The ***Calcutta High Court's circuit bench at Port Blair***[26] overturned the decisions of the disciplinary authority, appellate authority, and Central

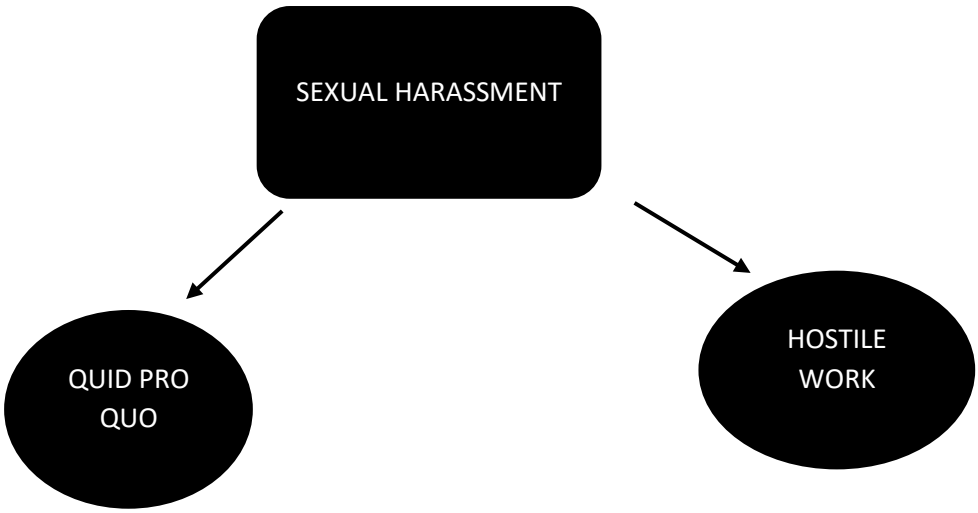
[22] https://www.indiatoday.in/law/story/calcutta-high-court-darling-offensive-sexual-harassment-indian-penal-code-man-convicted-woman-constable-2509825-2024-03-03
[23] Section 354 of the Indian Penal Code 1860 – Assault of criminal force to woman with intent to outrage her modesty
[24] Section 509 of the Indian Penal Code 1860 – word, gesture or act to insult the modesty of a woman
[25] (1995) IRLR 4.
[26] https://ssrana.in/articles/calcutta-high-court-no-sexual-flavor-touching-students-shoulder/

Administrative Tribunal (CAT) regarding the dismissal of a school teacher. The action was prompted by an allegation from a student claiming that the teacher had outraged her modesty by physically touching her back. However, the court determined that the teacher's actions, which involved touching the student's shoulders from behind, were solely aimed at preventing her from cheating during an examination and lacked any sexual/criminal intent.

2.8. 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.

Sexual Harassment can be classified as *Quid Pro Quo* or Hostile Working Environment or BOTH, or one can lead to the other.



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 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 (US) (1976),***[27] by the US District of Colombia.

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.

[27] 413 F. Supp 654 (DDC 1976)



In ***Meritor Savings Bank v. Vinson (US)***,[28] the Respondent being the former employee of the Petitioner Bank brought an action against the Bank and her supervisor at the Bank claiming that during her course of employment, she was subjected to sexual harassment by her supervisor. While the District court denied there being any element of sexual harassment given the consensual relationship between the Respondent and the Supervisor, the Court of Appeals reversed the decision and held that the situation inflicted harassment, which did not affect the economic benefits, created a hostile or offensive working environment.

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.

Harris vs. Forklift[29] is a pivotal labor law case in the United States, where the Hon'ble Supreme Court clarified the definition of a hostile or abusive work environment under Title VII of the Civil Rights Act of 1964. This Act prohibits employment discrimination based on race, color, religion, sex or national origin, encompassing various aspects of employment such as compensation, terms, conditions or privileges.

The case centered around Teresa Harris, a rental manager at Forklift Systems Inc., who accused the company's president, Charles Hardy, for creating a hostile work environment through his sexually explicit and offensive remarks and actions. Initially, the Federal District Court ruled that while Hardy's behavior was offensive, it did not reach the threshold of creating a hostile work environment. The court determined that Harris's psychological well-being was not

[28] 477 U.S. 57 (1986)
[29] https://www.britannica.com/topic/Harris-v-Forklift-Systems

significantly affected, ruling in favor of Forklift Systems. This decision was upheld by the Sixth Circuit Court of Appeals before being brought before the US Supreme Court.

In its landmark ruling the Supreme Court established a standard that balanced between conduct merely considered offensive and that which caused tangible psychological harm. The Court emphasized the necessity for both, an objective and subjective evaluation of the environment. Specifically, the conduct must be severe or pervasive enough to objectively create a hostile or abusive work environment, while the victim must subjectively perceive the environment as abusive. While acknowledging the absence of a precise test, the Court outlined various factors to consider when determining the hostile nature of an environment, including the frequency and severity of the conduct, whether it was physically threatening and its impact on the employee's work performance, Upon review the Supreme Court overturned the Sixth Circuit's decision, deeming it to have applied an incorrect legal standard, and remanded the case. Ultimately, the lawsuit was settled out of court, with the terms remaining undisclosed.

2.9. What does not constitute Sexual Harassment?

Some examples of workplace behaviors that may not constitute sexual harassment are as follows[30]:

- 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 favouritism
- Misunderstandings, Personal Feuds, etc. in the workplace
- Accidental or mere physical contact of non-sexual nature

[30]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**[31] wherein 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.

2.10. 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 second of all, it is unwelcome and has the effect of being offensive and insulting and 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.

[31] WP.Nos.10689, 24290 and 4339 of 2019

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

Myth 6: Women's dress will decide whether they provoke sexualized behavior or nor.

Fact: Dress is not an indicator of whether an act is welcome or unwelcome.

Myth 7: The entire office will get to know if the woman files a complaint of sexual harassment.

Fact: As per the POSH Act, confidentiality of the complaints of sexual harassment should be maintained all throughout the inquiry process.

Myth 8: Can a welcome act turn unwelcome to constitute sexual harassment.

Fact: Yes! A harmless compliment which is followed up by a sexual comment is an example of how the above can happen**.**

3. SCOPE AND APPLICABILITY OF POSH ACT

She was powerful, not because she wasn't scared but because she went on so strongly despite the fear. – Atticus[32]

This quote is the perfect embodiment of a woman highlighting the courage required to navigate the intricacies of POSH Law and the resilience needed to uphold its standards.

Many a times, perpetrators of sexual harassment veils their actions under the guise of ignorance or humor, dismissing the seriousness of their behavior and accusing the victim of lacking a "sense of humor". The stigmatized nature of sexual harassment amplifies the significance of a woman standing up for herself and vocalizing her experience.

By asserting herself, she not only defends her own dignity but also becomes a voice for other women who may be enduring similar treatment. This collective stand is crucial, as perpetrators of sexual harassment often persist, seldom confining their actions to a single victim.

In the following exploration, we delve into the multifaceted scope of POSH Law, examining its relevance in contemporary society, its application in various legal contexts and the enduring allure of its refined approach to law and social interaction.

3.1. **Introduction**

The Preamble of the Sexual Harassment of Women (Protection, Prevention and Redressal) Act, 2013 explicitly outlines its purpose:

"To provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto."

This legislation was enacted in India with the intention of providing protection and redressal mechanism for victims of sexual harassment, alongside related matters. The essence of the POSH

[32] https://quotefancy.com/quote/2950242/Atticus-Poetry-She-was-powerful-not-because-she-wasn-t-scared-but-because-she-went-on-so

Act transcend traditional workspaces, recognizing the diverse and changing landscape of today's modern workplace dynamics.

In recognition of the shifting dynamics of contemporary work arrangements, the scope and applicability of the POSH Act acknowledges that sexual harassment can occur irrespective of physical boundaries, emphasizing the importance of safeguarding individuals in all forms of employment relationships. This includes but not limited to, employees working from home, freelancers, contractors, and those engaged in virtual collaborations.

3.2. Who is an "Employer" under the POSH Act?

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.

Section 2(g) of the POSH Act defines Employer meaning:

(i) in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation: For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organization.

That is to say, in accordance with the provisions of the POSH Law, an "Employer" can be any of the following:

- ***For 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;
- ***For 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

3.3.Can the Employer be considered as an employee in certain cases?

J vs R.T.M.N University[33]**,** It was held that an employer can indeed be an employee in the event that she is sexually harassed. To explain this concept, the court gave the example of a president of a society or the secretary. The court stated that even though these positions are positions befitting the status of "employer", they are still answerable to other people above them and would not be considered as the top of the management. Therefore, in the event that such employers are sexually harassed by another "employer" under this act, the employer so harassed could be regarded as an "employee" in the face of such harassment.

3.4.What if the employer commits sexual harassment?

In general, the responsibility for investigating and adjudicating complaints of sexual harassment often falls within the purview of Internal Committee (IC) established by organizations as mandated by law. However, in cases when the accused party is the employer himself, there exists an inherent conflict of interest that undermines the impartiality and efficacy of such redressal mechanism internally.

Recognizing the need for a robust and independent approach to addressing complaints of sexual harassment against employers, legislation have conferred authority upon the Local Committee constituted in accordance with Chapter III of the POSH Act to take cognizance of such matters. This represents a significant step in ensuring that victims of workplace have access to a fair and impartial avenue for seeking redressal.

[33] Writ Petition No. 3449, 3450 & 3451 of 2013

In the case of Sri S. Srikanth Joshi, Chief Executive, ***A.V.S.S. Bank vs The Board of Management of A.V.S.S. Bank***[34], the power held by the employer was on full display as he did not take any of the inquiry proceedings seriously and scoffed at the fact that he would be liable for sexual harassment. This power that the employer would possess over the IC is the sole reason why the LCC is the appropriate body to take cognizance of instances of sexual harassment committed by the Employer himself.

3.5. Who is an "Employee" under the POSH Act?

Section 2 (f) of the POSH Act defines "Employee" meaning:

"A person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name".

The POSH Act aims to protect and safeguard employees, irrespective of their roles and regardless of their employment status. That is to say, the definition of "employee" may encompass part-time workers implying their inclusion under the POSH law to ensure a safe and inclusive working environment for all.

In the case ***N.K. vs Govt. of NCT of Delhi & Others, Central Administrative Tribunal, Principal Bench, New Delhi[35],*** the employee, who was a part time teacher, was terminated on the basis of allegations of sexual harassment levelled by the girl students without following any procedure which has got any semblance of natural justice. The Tribunal took due notice of the fact that sexual harassment of girl students by a teacher is a matter of serious concern and the teachers indulging in such harassment has to be dealt with sternly so that it becomes a deterrent for others. But at the same time, it remarked that such allegation cannot be used as a convenient ploy to wreak vengeance against a person. On examining the facts and circumstance of the case, the Tribunal observed that the impugned order of termination of the teacher was nothing but misuse of the powers of the competent authority to terminate an employee without holding a proper inquiry.

[34] 2007 (5) Kar LJ 484.
[35] 2012, LN IND 2012 Car ND 417

Therefore, the order of termination was quashed by the Tribunal and it was directed to hold a summary enquiry following the due procedures.

In the case of ***J.K. vs R.T.M.N University***[36]**,** the court held that the definition of employee is very wide and not "gender-specific" in the POSH Act. The only condition set forth by the court was that there must be an express or implied contract of employment and the defense taken by the employer in this case, wherein he stated that he was not made aware of the employment of the person concerned, cannot be a valid defense in the eyes of the law.

3.6.What Does the POSH Act say about Ex-Employees?

The Delhi High Court, in the case of ***Dr. S.M. vs Union Of India***[37], has stated that nothing prevents an ex-employee from filing a case against the Respondent in the event of sexual harassment with the IC, even if the employee was currently working in another office or even if the Respondent moved to another office. Therefore, we can conclude via this very clear interpretation of law by the High Court, alongside the purposive construction rule applied to the POSH law that ex-employees can indeed file cases of sexual harassment with the IC of the organization that had worked at.

In the case of ***JK v. RTMN University,*** [38] 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 organization, a high-ranking lady officer occupying managerial or supervisory post may also become a victim of sexual harassment.

3.7. What Places can be considered as "Workplace" under the POSH Act?

Section 2(o) of the POSH Act defines workplace, which includes:

i. *Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;*

[36] Writ petition Nos. 3449, 3450 & 3451 of 2013 in the HC of Bombay (Nagpur Bench)
[37] POSH book
[38] Writ Petition No. 3449, 3450 & 3451 of 2013

ii. *Any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;*

iii. *Hospitals or nursing homes;*

iv. *Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;*

v. *Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;*

vi. *A dwelling place or a house.*

3.7.1. Sexual Harassment in Universities:

A university, as per the UGC notification dated May 2 2016[39], will be a workplace and the POSH Act will be applicable as it would to other workplaces.

This notification by the UGC even defined terms such as a "university campus" and even makes a reference to the POSH Act of 2013. The definition of campus as per the UGC includes the libraries, lecture halls, laboratories and other such facilities that the university may have at its disposal.

This notification also defines Higher Education Institution and the chief executive authorities of the said institute or university. The notification aims to dispel any doubts with regards to the implementation of the POSH Act in universities and makes it clear that the universities would constitute an IC as per the POSH Act.

3.7.2.Sexual Harassment in Sports Federations:

Within sports federations, which serve as workplaces for athletes, coaches and staff, the responsibility to foster a safe and harassment-free environment is paramount. While athletes strive for excellence on the field, off-field challenges such as sexual harassment have cast a shadow over the integrity of the sporting community. In response to these issues, the applicability of the POSH

[39] extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ugc.gov.in/pdfnews/72036_UGC_regulations harassment.pdf

law within sports federations come under scrutiny, since in recent years, there has been a notable rise in the reports of sexual harassment within the sporting realm.

The latest wrestling election in India had stirred the controversy reigniting concerns about the potential continuation of issues pertaining to sexual harassment within the wrestling community[40].

3.7.3.Sexual Harassment in Entertainment Industry:

In the glitzy world of entertainment, where stars shine bright and accolades are plenty, there is also a darker side that often lurks beneath the surface. Traditionally, the POSH Act was primarily associated with corporate offices and formal workspaces. However, recognizing the prevalence of power dynamics and hierarchies in the entertainment industry, the applicability of the POSH Act has been extended to encompass film and television production sets, theatres, music studios, digital platforms and other space where individuals are employed or engaged in work-related activities. [41]

As the #MeToo movement gained momentum globally, it unearthed a wave of allegations and stories within the Indian entertainment sector, highlighting the urgent need for a robust framework to address such issues. High-profile cases involving prominent figures have garnered widespread attention, sparking conversations about the prevalence of sexual harassment within the entertainment industry in India. [42]

3.7.4. Is POSH Act applicable to an Unorganized Sector?

Section 2(p) of the POSH Act defined unorganized sector. It states:

"unorganized sector" in relation to a workplace 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.

[40] https://ssrana.in/articles/wfi-vs-sports-ministry-sexual-harassment-tussle-continues/
[41] https://ssrana.in/posh-law/articles/squid-game-star-faces-sexual-harassment-allegations/
[42] https://ssrana.in/articles/applicability-posh-act-entertainment-industry/

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

3.7.5. What is the Concept of Extended Workplace?

In the case of ***J K v. R.T.M.N University,***[43] 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.

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** directed[44] 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 programs 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.K.M. v. Comptroller and Auditor General of India and Anr,***[45] 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:

[43] Writ Petition No. 3449, 3450 & 3451 of 2013
[44] Available at: https://ssrana.in/articles/ncw-states-implementation-posh-act-coaching-educational-institutes/
[45] Civil Writ Petition No. 8649, Delhi High Court (2008)



- 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

3.7.5.1. 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.[46]

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,*** [47] 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 in a common workplace.

3.8. 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

[46] Refer to: https://thedailyguardian.com/scope-of-posh-act-in-the-era-of-virtual-reality-and-work-from-home-space/
[47] S.B. Civil Writ Petition No. 150/2021

risk of entering into the private lives of each other. Harassment over digital space in the garb of official communication raise some serious obligations, based on ethics and responsibility, on the employers.

As rightly quoted by Dr. Ranjana Kumari, "the misogyny works online as must as it works offline",[48]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 conceptualize 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 organizations should work towards evaluating the workplace ecology to prevent and effectively deal with cases of sexual harassment. It is important for the organizations to eradicate the conditions that arise from gender gaps and dynamics to make the workplace more inclusive and safe.

There are various instances of sexual harassment that occur in the same workplace, wherein the perpetrator of the said harassment secretly uses AI and/or deepfakes to generate pornographic images and/or videos of the victims concerned. Just recently, a streamer by the name of Atrioc was caught making deepfake videos of his female co-workers and employees. 'Atrioc' was a twitch streamer with a good following and in his apology video that was posted after he was caught engaging in these acts, he talked about how easy it is for AI to engage in these actions. He also talked of how he was "morbidly curios" about its effectiveness and about how this was the motivation behind him engaging in these acts[49].

There are also numerous other examples of women being sexually harassed as a result of the current AI and technology boom. Consider the growth of female streamers over the years and the

[48] Refer to: https://www.unwomen.org/sites/default/files/2021-11/Making-zero-tolerance-a-reality-en.pdf
[49] https://monica.im/features/youtube-summary-with-chatgpt-summarized/Atriocs-Deepfake-Controversy-Unveiled-AKPZcgzNm8A?source=list#:~:text=Popular%20Twitch%20streamer%2C%20Atrioc%2C%20apologizes,impact%20on%20relationships%20between%20streamers.

laws that govern them. Would they be considered as employees or as their own employers? The redressal mechanism to ensure that the same is reported is also not clearly known.

According to various reports, over 59% of female gamers hide their identity as a result of the gender induced discrimination that pervades popular multiplayer games. There have also been reports wherein 77% of women experienced gender specific harassment when playing these said games. Content creation and streaming alongside redressal mechanisms to combat the same must be clarified under the POSH Act to ensure the effective protection of women when they use the internet[50].

Sexual Harassment in Metaverse: Metaverse, a collective virtual space where users interact and engage in various activities, offers a diverse array of experiences from social gathering to immersive gaming environments. Unfortunately, the digital landscape is also not immune to the scourge of sexual harassment.

An act of sexual harassment in the Metaverse , though does not involve physical touch, it can still be as traumatic as it would have been in the physical world since the avatar (Representation of self in the form of in built characters in the Metaverse) is practically and technically the user in the physical world. Thereby, creating the same mental trauma and impact on the victim on whom such act of sexual harassment is performed making it even more difficult to ascertain and understand the sequence due to no redressal mechanism available to a virtual act either in the physical world or the virtual world. [51]

[50] https://www.indiatimes.com/technology/news/womens-day-gaming-and-women-595292.html
[51] https://ssrana.in/articles/exploring-sexual-harassment-in-metaverse/

4. COMPLAINT MECHANISMS

4.1. Introduction

According to the Cambridge dictionary, a complaint is defined as a statement that something is wrong or not good enough, the act of complaining, or the thing you are complaining about.

Meanwhile, Section 2(d) of the Code of Criminal Procedure, 1973 defines a complaint meaning any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. [52]

Explanation: A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the Complainant.

Sexual Harassment at Workplace is a pervasive issue faced all over the world which comprises of actions, behaviours 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.

Within the context of POSH Act, a complaint is a formal notification or expression of grievance regarding alleged misconduct or inappropriate behaviour of a sexual nature. This Chapter delves into what constitutes a complaint under sexual harassment, its significance and the process involved in addressing such complaints.

---

52 https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure%2C_1973.pdf



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. Complaints play a crucial role in addressing and preventing sexual harassment in workplaces. They provide victims with a formal mechanism to seek redress and hold perpetrators accountable for their actions. By taking complaints seriously, organizations can create a safer and more inclusive environments where all individuals can thrive free from harassment and discrimination.

What Kinds of complaints are tenable under the POSH Act?

Only complaints of those acts/instances/behaviors 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 Preamble of the Sexual Harassment of Women (Protection, Prevention and Redressal) Act, 2013 explicitly outline its purpose:

"To provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto."

This legislation was enacted in India with the intention of providing protection and redressal mechanism for victims of sexual harassment, alongside related matters.

Section 9 of the POSH Act deals with the Complaint of Sexual Harassment.

"Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident."

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 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;*[53]

Aggrieved Woman:

Visitor Customer Client Intern Trainee Volunteer Visitor Staff Assistant

Note: **A Student** may also file a POSH complaint.

[53] Refer to Section 2 (a) of the POSH Act, 2013

Reference to Case: **PKN vs. Union of India**[54] 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.

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. [55]

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 refrain 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.

Other reasons also include the lack of understanding of sexual harassment and the implications thereof as well as the vulnerability of these parties concerned. In recent years, the issue of sexual exploitation of children within educational institutions has come to the forefront of public consciousness in India.

The case of ***M. B. vs The Commissioner*** [56] serves as a stark reminder of the prevalence of sexual harassment within schools and universities. The Petitioner, entrusted with the responsibility of nurturing and educating young minds, abused his position of authority to prey on vulnerable students. By luring them into personal spaces and engaging in inappropriate conduct, he inflicted emotional trauma and instilled fear in victims. The psychological toll of such experiences becomes so profound, often leading to a reluctance to speak out and seek justice. Seeing their children's innocence being shattered and the impact of such acts upon

[54] Refer to https://muds.co.in/posh-for-school-implemented/
[55] Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013
[56] https://indiankanoon.org/doc/7252080/

them, the parents/mothers of the girl students lodged a complaint of sexual harassment against the Petitioner.

This disturbing pattern is not an isolated incident. Merely months ago, alarming news surfaced as a group of 500 female students from a University in Haryana levying accusations of sexual harassment against a professor. [57]

This disturbing revelation sheds light on the vulnerability of young students and the urgent need for comprehensive measures to address and prevent such atrocities.

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.

*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:* ✓ *Her relative or friend, or* ✓ *Her 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 the written consent of the aggrieved woman*	*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:* ✓ *Her relative or friend, or* ✓ *A special Educator, or* ✓ *A qualified psychiatrist or psychologist, or* ✓ *The guardian or authority under whose care she is receiving treatment or care* ✓ *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*	*In case the victim is unable to file a complaint **for any other reason**,* ✓ *Any person having the knowledge of the incident, subject to written consent.*

[57] https://ssrana.in/posh-law/articles/iim-calcutta-takes-decisive-action-in-response-to-posh-complaint/

	guardian or authority under whose care she is receiving treatment or care	

It is pertinent to mention herein 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.

4.4. Can an anonymous complaint be filed under POSH?

It must be noted that **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. This was stated in the case of ***D vs State Of Gujarat***[58], wherein the Petitioner was posted in Gandhinagar as an accounts officer in the office of the commissioner of rural development. However, after an anonymous complaint under POSH was levelled against him, he was forced to represent himself in an inquiry under the POSH Act of 2013 and the IC ruled against him. Having been frustrated by the decision of the IC, the Petitioner knocked on the doors of the Gujrat High Court and his primary contention was that the IC inquiry was bad in law as it was conducted on the basis of an anonymous complaint. Moreover the acceptance of anonymous complaints, 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.

[58] R/SPECIAL CIVIL APPLICATION NO. 2164 of 2023

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.

4.5 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.[59]

As per the Hindu Succession Act 1956, the legal heirs of a deceased woman include her husband and children. In case the woman is unmarried, then her legal heirs shall include her mother, father, brother and sister.

4.6 Where can you complain?

Internal Committee (IC)	Local Committee (LC)	First Information Report (FIR)
he complaint may be filed before the Internal Committee (IC), constituted by the employer as per ***Section 4 of the POSH Act***. [60]	In case your organization does not have IC due to less than 10 number of employees or in case you a domestic worker, you may lodge the complaint with the Local Committee (LC) established in your respective district.	You may also lodge an FIR in the nearest police station

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

[60] Section 4 of the POSH Act, 2013

Note: *Notwithstanding anything contained in the provisions of the POSH Act, an aggrieved woman may pursue to avail any other remedies 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 in various scenarios under the Act. She may choose to withdraw the police complaint at any given point of time or may proceed to pursue a legal end.

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

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

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.

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.[61] 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 our Chapter 10: Role of various departments and Government Bodies]

[61] 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 proceedings of the POSH Act.

4.7 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.[62]

The complaint filed must include the following details[63]:

- ✓ 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/behaviour 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.*

Points to be Noted while filing a complaint of sexual harassment:

1. ***Addressing the Complaint before the Internal Committee****: It is essential to direct the complaint to the IC Members rather than the employer or HR representative. The IC is the*

[62] Refer to Section 9 of the POSH Act, 2013

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

competent authority to handle cases of sexual harassment and is equipped to conduct impartial investigations.

2. ***Ensuring Concision and Clarity****: The complaint should be concise and written in simple language that is easily understandable.*

3. ***Specific Details of the Incident****: It is important to include specific details of the alleged incident such as the exact date, time and location where the alleged act of sexual harassment occurred. Providing this information helps the IC in understanding the context and severity of the allegations.*

4. ***Identifying Witnesses****: If there are any witness to the incident, it is important to include their details in the complaint. Witness testimony can corroborate the victim's account and strengthen the case during the investigation process.*

5. ***Details about the Respondent****: It is equally important to include details about the Respondent in the complaint, such as their name, designation and any reporting structure between the Complainant and the Respondent. This information helps the IC in identifying the accused individual and determining their role within the organization.*

6. ***Comprehensive Information on the Respondent****: The complaint must include detailed information about the Respondent, such as their name, designation, and reporting structure. Clearly specify the relationship between the Complainant and the Respondent, indicating whether the Respondent is a subordinate, colleague or superior. This helps in understanding the power dynamics and potential conflict of interest.*

7. ***Additional Information****: If applicable, attach any supporting documentation, such as emails, messages, or other evidence that may substantiate the complaint. This documentation can significantly strengthen the case and provide the IC with a more comprehensive understanding of the situation.*

4.8 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.[64]

4.9 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.[65]

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. [66]

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.

In the case of ***D vs S & Ors***[67], The Hon'ble Delhi High Court held that sexual harassment is an extremely traumatic experience for the victim and that the victim cannot be expected to approach the court as soon as she gets harassed as a result of the mental trauma that she may have suffered as a result of this heinous act. In light of this, the Delhi High Court stated that the Industrial Tribunal must condone a delay of 36 days as it is in the interest of justice.

Section 9 of the POSH Act stipulates a limitation period of three months for filing complaints, further extendable by three months, if the IC or the LC, as the case may be, deem fit. This existing limitation often prove to be inadequate, especially in cases involving sexual

---

[64] Refer to Section 9(1) of the POSH Act, 2013
[65] Refer to Section 9(1) of the POSH Act, 2013 with reference to Case Law: Tejinder Kaur vs. UOI, (2017 SCC Online DeL 12221)
[66] Refer to https://www.barandbench.com/columns/me-too-limitation-periods-for-filing-complaints-myths-and-realities
[67] CM(M) 705/2022 & CM APPL. 31978/2022



harassment as victims may be so traumatized as to render filing of complaint impossible until such time they have recouped their strength. Thus, acknowledging the multifaceted nature of incidents and complexity of today's modern workplace dynamics, a new bill (Bill No. I of 2024) has been introduced in the Rajya Sabha on February 02, 2024 proposing extension of time limit for filing POSH Complaints as outlined under Section 9 of the POSH Act. To know more about this bill, please refer to our chapter titled "Amendments in the POSH Act".

4.10 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 we call "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.

In the case of ***S.R. vs Central Board of Indirect Taxes***[68], It was held that sexual harassment could be addressed by the IC of an organization even if the victim never worked with the perpetrator concerned. In this case, a lady officer was sexually harassed by the Respondent and the IC's authority in taking up matters with regards to third parties was acknowledged by the

[68] W.M.P.No.17093 of 2022

Madras High Court, although the case was dismissed as the writ court could not determine whether the Respondent would be termed as an "employer" or not.

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, it shall be quite convenient for an aggrieved woman to seek assistance from her organization or the IC so formed at her organization. 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 intended to touch inappropriately to you during a business meeting or passes a sexual comment, the same shall amount to third party sexual harassment.

4.11 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.[69]

Further, in case the employer or the organization 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 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.

4.12 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***[70]**,** 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).[71] In such cases, the IC can record the reasons why the proceedings have been so delayed.

---

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

[70] 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/

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



4.13 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.[72]

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***,[73], 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.

[72] Section 2(m) of the POSH Act, 2013
[73] W.P.A. 9141 of 2020

4.14 Assistance offered by the Internal Committee/Organization for filing Complaints

Filing a complaint of sexual harassment can be a daunting and emotionally challenging process for women in the workplace. To address these challenges and ensure that individual's feel supported and empowered throughout the grievance procedure, the Internal Committee (IC) or the organization typically offers a range of assistance services. These services are designed to provide guidance, emotional support and practical assistance to individuals navigating the complaint process.

Below are some of the key types of assistance that the IC/organization can offer:

1. **Information and Guidance**: The IC/organization provides detailed information about the sexual harassment policy, procedures for filing a complaint and the rights and remedies available to individuals. This information helps individuals understand their options and make informed decisions about how to proceed with their complaint.

2. **Confidentiality and Privacy**: The IC/organization emphasizes the importance of confidentiality and privacy throughout the complaint process. Measures are put in place to protect the identity of the Complainant and ensure that sensitive information is handled discreetly and securely.

3. **Emotional Support**: Recognizing the emotional impact of experiencing sexual harassment, the IC/organization offers emotional support services to individuals filing complaints. This may include access to counselling, peer support groups, or other resources aimed at helping individuals cope with the psychological effects of harassment.

4. **Protection against Retaliation**: The IC/organization takes steps to protect individuals from retaliation for filing a complaint. This includes implementing anti-retaliation policies, monitoring the situation for signs of retaliation, and taking appropriate action to address any instances of retaliation that occur.

By offering comprehensive support services, the IC/organization plays a crucial role in empowering victims to come forward with complaints of sexual harassment, ensuring that their voices are heard, and facilitating a fair and effective resolution process.



5. COMPLAINT COMMITTEE(S) UNDER THE POSH ACT



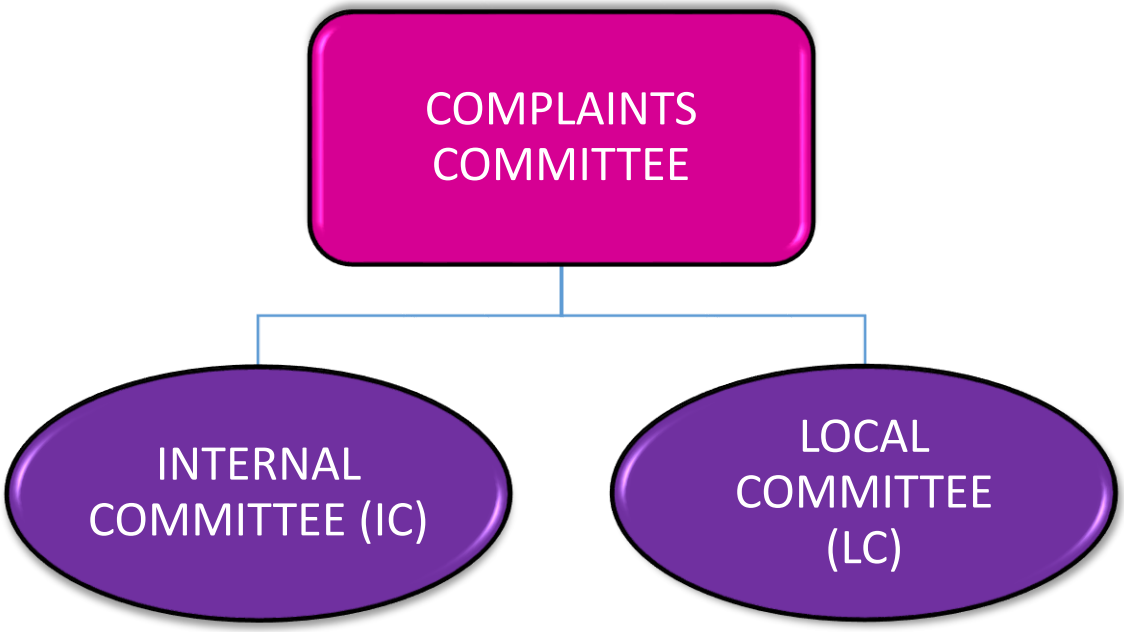
5.1.Introduction

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 by all workers in an organization or company.

Sexual harassment is an unfortunate reality that affects not only India but other major countries across the world. Sexual harassment not only inhibits the ability of a woman to actively participate in the workforce but also causes a great amount of mental agony upon the victims concerned. Sexual harassment has been on the rise in India and unfortunately, as per the latest reports, there has been a 101% increase in the number of sexual harassment cases in FY 2023. In addition to this, there were 147 pending cases out of a total of 772 complaints received in top Indian companies. The POSH Act was brought in to ensure the protection of women in the workplace and the IC serves as the backbone of this act. Their importance and their role in

ensuring the safety of women in the workplace is quite extensive and involves various technicalities.

The composition of the IC is given under the POSH Act and the act specifically states that the IC must consist of a female presiding officer who is a woman employed at a senior level in the organization. In addition to this, there must be two female employees who are committed to the cause of women and 1 external member. The role of the IC committee is to provide an effective redressal mechanism for any woman who has become a victim of sexual harassment. The employer, who appoints the IC committee must also ensure that the employees know of the IC committee and its functions. 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[74]. 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.



[74] Refer to Section 4 of the POSH Act, 2013

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.[75] To know more about this Amendment, kindly refer to our chapter titled "Amendments in the POSH Act"

The IC committee is to be constituted in every workplace wherein there exist over 10 employees. The definition of the workplace under the POSH Act is extensive in order to ensure the protection of women. Failure to constitute an IC under the POSH Act will be punishable as per section 26 of the POSH Act. In the case of ***Mrs. A.B & Ors. v. Local Complaints Committee, District Indore & Ors***[76], it was held that the Respondent did not constitute an IC and so, they were forced to pay a sum of INR 50,000 as a fine. The incorrect composition of an IC is also not allowed and would attract penalties, and the same was held in the case of ***R.K. v/s The Internal Complaints, Goa Institute of Management***[77].

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.

[75] Refer to Second Schedule of the Repealing and Amending Act, 2016 published in the Gazette of India on May 09, 2016
[76] W.P.No.22314/2017
[77] 2020 SCC Online BOM 139



5.2.1. Composition of the Internal Committee(IC):

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

Member(s)	Qualifications
Presiding Officer/ Chairperson	Women 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.[78]
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.[79]
External Member	From amongst an NGO/association committed to the cause of women or a person familiar with the issues pertaining to Sexual Harassment. [80] As per the Rules[81], 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.

[78] Refer to Section 4(2)(a) of the POSH Act, 2013
[79] Refer to Section 4(2)(b) of the POSH Act, 2013
[80] Refer to Section 4(2)(c) of the POSH Act, 2013
[81] Refer to Rule 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

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 Act[82], 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;

The minimum composition of the IC must be done in the manner that has been presented in the table above.

In the case of ***R.K. v/s The Internal Complaints, Goa Institute of Management***[83]**,** the Goa High Court invalidated the inquiry report produced by the internal committee and instructed the institute to adhere to the regulations by establishing a properly constituted internal committee in accordance with the law.

According to the UGC Regulations, the composition of the committee requires a female presiding officer, two faculty members, two non-teaching employees, three students and one external member. The court in the referred case noted discrepancies in the composition of the Internal Committee such as the absence of sufficient non-teaching staff, the non-participating of three students in the inquiry process and the appointment of a professor from the institute as an External Member. Consequently, the court concluded that the committee was improperly constituted, leading to the annulment of the inquiry report provided by such a committee.

[82] Refer to Section 4(4) of the POSH Act, 2013
[83] 2020 SCC Online BOM 139

5.2.2. Which complaints can be filed before an IC?

There exists no bar with regards to the complaints that can be filed before an IC by a woman. A woman may file a complaint alleging sexual harassment and it is up to the IC to determine the validity of the complaint via the merits of the case concerned. There have been many judgements wherein is has been stated that only comments and actions of a "sexual nature" are to be taken up by the IC. In the case of ***P vs The Central University of Kerala and ors***[84], it was stated that only comments of a sexual nature can be actionable under the POSH Act. Therefore, it is essential that there exist a sexual connotation behind the words or the action involved for the IC to take up the matter concerned. the context of the harassment concerned plays an essential role and the position of the woman and the manner in which she feels about the comment or action concerned is of paramount importance to determining whether there has been an instance of sexual harassment or not. Recently, in the case of ***SH vs State of West Bengal***,[85] The court noted that the term "Faltu meye" does not indeed come under sexual harassment as there exist multiple contexts to its use in the Bengali Language and that it cannot be definitely determined that it had a sexual connotation, given the context of the situation.

5.2.3. Is it mandatory to have an External Member on board?

As already referred above, it is mandatory for every organization to constitute an IC comprising one External Member, who possesses specialized expertise or experience in areas relevant to sexual harassment prevention and management. This could include knowledge of legal frameworks, human resources practices, or counselling and support services.

The inclusion of an external member enhances the credibility and transparency of the IC's proceedings. Having an external member on board helps mitigate conflicts of interest and safeguard against undue influence or bias. Their independence from the organization ensures that decisions are made objectively, without any internal pressure or allegiances.

The relevance of inclusion of an external member under POSH Act has also been reiterated by the Hon'ble Supreme Court of India in the case of ***Punjab and Sind Bank and Others vs. DK***

[84] WP(C).No.9219 OF 2020(B)
[85] W.P.A. No. 18829 of 2023

[86] wherein it held that ***"The purpose of having such a member is to ensure the presence of an independent person who can aid, advise and assist the Committee. It obviates an institutional bias."***[87] In the said case, the court also found a fundamental defect in the constitution of the IC as the external member was appearing on behalf of the employer bank as a panel lawyer and was therefore not an independent person**.**

Bombay High Court in the case of JK vs. N University[88], the importance of the presence of an external member was deliberated upon. In this case, the impartiality of the external member was reiterated alongside the need for the same and the duties of the employer with regards to the creation of the Internal Committee.

5.2.4. Powers of IC:

The IC is deemed to have the power of a civil court under section 11(3) of the POSH Act, when it is involved in an inquiry process, particularly when it comes to the following:

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents; and

(c) Any other matter which may be prescribed.

This power of the IC was reiterated in the case of NB vs State of Ap[89], wherein the powers of the IC were dealt with extensively. In this case, the Hon'ble High Court of Andhra Pradesh not only reiterated the fact that the IC has the powers of the Civil court when it comes to the issues mentioned above but also stated that if there exists a prima facie case that the IC has taken cognizance of, the strict procedure present under Section 11 of the POSH Act must be followed while conducting an enquiry, thereby ensuring that the powers of the IC are of paramount importance when it comes to ensuring justice in a particular case.

In addition to this, in the case of ***NB vs Union Of India & Ors[90],*** it was held that the Presiding Officer and IC members would be considered as "judges" as per Section 19 of the Civil Procedure Code of 1908. In addition to this, this judgement also reiterated section 11(3) of the

[86] Civil Appeal No. 1809 of 2020
[87] Refer to https://indiankanoon.org/doc/6672651/
[88] W.P.No.22314/2017
[89] WRIT PETITION NO.24885 OF 2020
[90] W.P.(C) 6712/2021

POSH Act wherein the IC has the same powers of the civil court when it comes to summoning of individuals and the discovery of documents.

5.2.5. 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.

When this was appealed in the Kerala High Court, the court made a few observations with regards to the same. They stated that it didn't matter if the members of the organization in question were volunteers or not. The court reiterated that the objective of the POSH Act is the protection of women primarily and that the wages paid and/or the type of employment concerned, were not factors that would allow an organization to not constitute an IC.

5.2.6. 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 benefit[91] of Rs.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.[92]

In the case of **Ms. F vs Delhi Woman Commission & Ors[93],** the organization constituted an IC days after the Petitioner reported an instance of sexual harassment. Even after constituting the IC, they did little to address the complaint in a proper manner and ended up terminating the

[91] Severance benefit refers to the compensation/ benefit payable to the employee by employer when the employment is over
[92] https://indiankanoon.org/doc/29530984/
[93] W.P.(C) 11749/2019

employment of the Petitioner primarily because of the fact that they did not know how to address the same. The Delhi High Court imposed a hefty fine on the organization for terminating the Petitioner and also imposed a penalty of 50,000 rupees on the Respondent organization as they had violated section 26 of the POSH Act, which specifically mandates the creation of an IC in any officer wherein the number of employees exceeds 10.

5.2.7. 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. An aggrieved woman may, as per the POSH Act in this specific case, approach the LC for the redressal of her complaint. The Local Committee or the LC, is a body that is usually constituted in every district to redress complaints of sexual harassment in the workplace.

5.2.8. 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."*[94]

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.

[94] Refer to Section 4(2) of the POSH Act, 2013



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



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.[95] To know more about this Amendment, kindly refer to our chapter titled "Amendments in the POSH Act"

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.

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

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.[96]

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.[97]
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.[98]
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[99]: • *At least one must be a woman;* • *At least one of the members must have a background of law or legal knowledge;* • *One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward*

[96] Refer to Section 6(2) of the POSH Act, 2013
[97] Refer to Section 7(1)(a) of the POSH Act, 2013
[98] Refer to Section 7(1)(b) of the POSH Act, 2013
[99] Refer to Section 7(1)(c) of the POSH Act, 2013

	classes or minority community notified by the Central Government.
Ex Officio Member	The concerned officer dealing with the social welfare or women and child development in the district.[100]
Tenure	Term of the members shall be for a maximum period of 3 years from the date of appointment by the District Officer.[101]

5.3.2. Which Complaints can be filed before the LC:

As stated before, a complaint can be made even if there exists an IC in the organization concerned, only if the complaint has to be made against the employer. The definition of employer, as stated above, varies with regards to the context but he is generally seen as the person who appoints the IC and/or is the head of the organization concerned. The scope of employer was recently discussed in the case of ***Ms. X vs Delhi Public School[102],*** Wherein it was held that an employer is the person who can appoint the IC or is the head of the department as opposed to the principal, who is just the academic head. Therefore, in matters wherein the employer is the perpetrator of sexual harassment. It is mandated that the aggrieved woman approach the LCC as opposed to the IC in the matter concerned.

5.3.3. Bias in the constitution and/or verdict of the IC:

The IC, in the view of the law concerned, must follow the principles of natural justice while also ensuring that they are not biased while ruling for or against a case of sexual harassment. While bias can be hard to determine in a particular ruling, the Madras High Court has recently stated the conditions, fulfilling which a case for bias exhibited by the IC or the biased constitution of the IC can be made. **In the case of S.R. vs Central Board Of Indirect Taxes[103],** the Petitioner alleged bias in the constitution of the IC as the committee consisted of a person whom the Petitioner alleged was involved in a scam and was trying to cover up for the same. However, the court held that unless and until the bias allegedly present, is proved as a matter

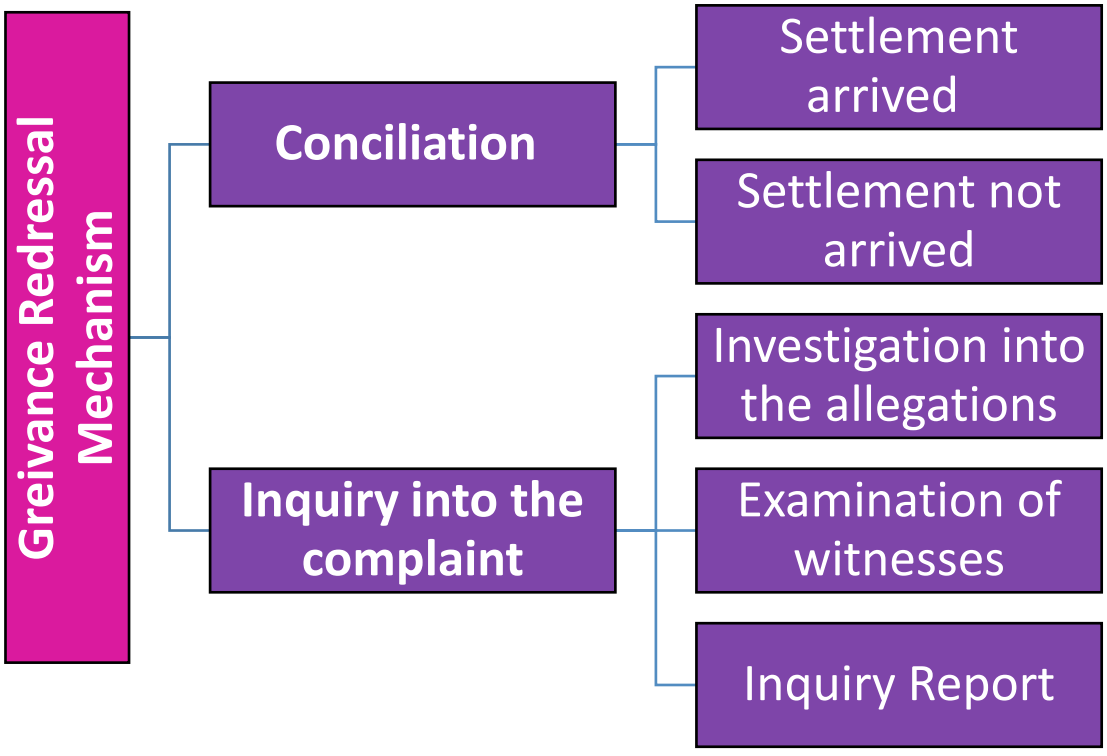
[100] Refer to Section 7(1)(d) of the POSH Act, 2013
[101] Refer to Section 7(2) of the POSH Act, 2013
[102] RCA DJ NO. 4/19
[103] Contempt Petition No.2800 of 2023

of an undisputed fact and that the bias so concerned is mala fide in nature, the same could not be used as a reason to set aside the decision of the IC. A mere allegation of bias based on a person in the committee having an unfavorable view of the perpetrator of sexual harassment cannot be used as a valid grounds to set aside the findings of the IC.

6. HOW DOES INQUIRY FLOW?

6.1.Introduction

Sexual harassment is on the rise in multiple countries across the world and India is no different. Sexual harassment is meted out in the form of quid pro quo actions or via the creation of a hostile work environment or the act in itself being sexual harassment as defined under section 2(n). In light of this, it is not only important to understand the nuances of sexual harassment cases but also understand the procedure to deal with the same. There exist procedures under both the POSH Act and other such acts to deal with acts of sexual harassment and under the POSH Act, a complaint is firstly filed under section 9 and actions is taken over this complaint. There could be variations to the same via different service rules, for example section 14 of the CCS (CCA) rules 1965, wherein a separate inquiry procedure is set forth. In light of this, the following chapter aims to delve into the intricacies of the technical procedures under the law for the POSH Act and hopes to clear any misunderstanding with regards to the procedures for the same.



Once the complaint is filed with the IC under POSH, 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.[104]

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.

***Case Reference: H.S vs. State of Maharashtra & Anr.*[105]**

[104]https://ghconline.gov.in/library/document/conference2728072018/II2Conciliation%20as%20an%20Effective%20Mode%20of%20Alternative%20Dispute.PDF

[105] 2017 SCC Online Bom 6292

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.[106]

Case Reference: SS vs state of MP[107].

In this case, the High Court of MP rejected the findings of the Gender Sensitization and Internal Complaint Committee (GSIC), primarily because of the fact that conciliation request that was made by the aggrieved woman was not given out of her own free will. The court held that any request for conciliation, when given by the aggrieved woman to the IC, must be given out of free will and that she cannot be forced to do the same. The relevant portion of the judgement is as follows:

"Keeping in view the aforesaid situation, it is clear that the conciliation application was not made with free mind, without any pressure and therefore, the same is not to be considered at this stage. The application, therefore, stands rejected."

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.

---

[106] https://indiankanoon.org/doc/188344391/

[107] AIRONLINE 2020 MP 1638

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.[108]

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.

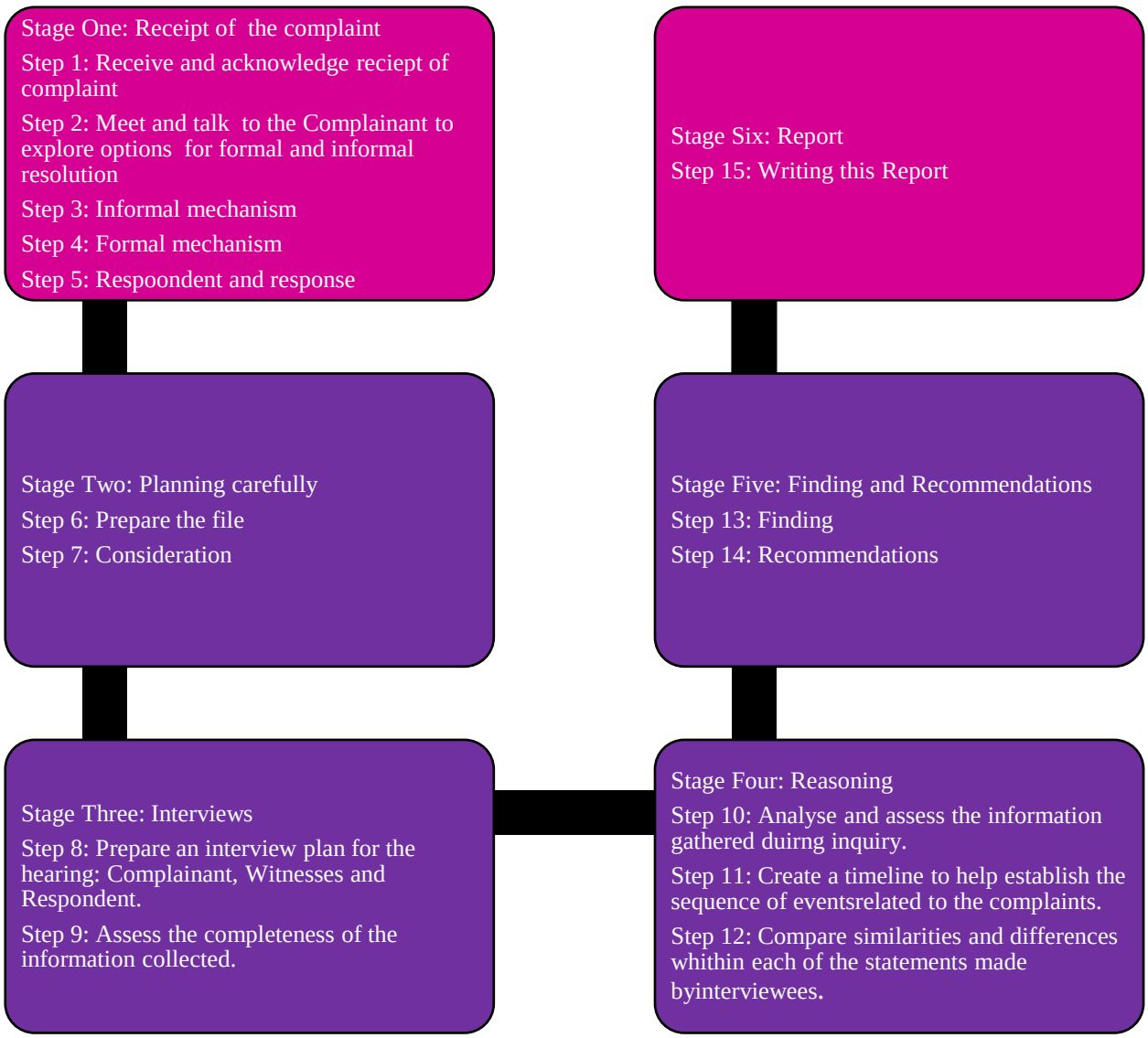
6.2.8. Future of conciliation under POSH in India:

Currently, there exists an amendment titled XCV of 2022 in the Rajya Shabha that was introduced as bill I of 2024 on February 2, 2024. This bill hopes to amend the POSH Act and ensue that there exists no option to engage in mediation and the same is something that is being discussed heavily in the Parliament. While there may be advantages and disadvantages to the same, the sole reason for this is the fact that the conciliation procedure may be used by the Respondents to achieve a coercive settlement that goes against the interests of the aggrieved woman. While many women would seek to settle a case of sexual harassment for fear of their professional prospects, this amendment made no reference with regards to the same. The

[108] Refer to Section 10 of the POSH Act, 2013



statement of objects and reasons primarily talks about how the Respondents could use their undue influence to coerce the woman into conceding with regards to the conciliation and while this may occur, it is also important to ensure that women who seek to settle a case of sexual harassment must be given some avenue of doing so. For more on this amendment, please refer to our chapter on POSH amendments.



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 days[109] 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]

6.3.2. Investigation of the Allegations[110]

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

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 complaint[111]
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 days[112]

[109] Refer to Section 11(4) of the POSH Act, 2013
[110] https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro new_delhi/documents/publication/wcms_630227.pdf
[111] 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
[112] Refer to Rule 7(3) of the Sexual Harassment of Women at Workplace Rules, 2013

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"

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. Does the Respondent have the right to cross-examination?

POSH law states that the IC must follow the principles of natural justice while giving out a verdict in the case of an alleged incident of sexual harassment. However, as sexual harassment is an extremely traumatic experience for the woman, many argue that the IC must not allow for cross examinations in the traditional sense as it definitely intimidates the female victim and causes her a great deal of emotional stress. While discussing the same, the Hon'ble Calcutta High Court, in the case of ***A vs B. Bank Limited & Ors***[113]***,*** it was held that the mere denial of cross examination would not be considered a violation of natural justice. The relevant paragraph has been reproduced hereunder:

"16. A plain reading of the procedure prescribed under Sections 11, 12 and 13 of the POSH Act, 2013 and the rules framed thereunder, namely, the POSH Rules of 2013 clearly indicate that the right of cross-examination is not specifically provided thereunder.

17. An enquiry under the IC constituted under the POSH Act, 2013 is a quasi-judicial proceeding. It need not follow the strict principles of evidence or the procedure of a regular trial civil or criminal. Mere denial of cross-examination by itself would not vitiate a process of enquiry of this nature. The Petitioner even otherwise did not formally pray for a right to cross-examine any of the witnesses or even the Complainant in course of enquiry. In the above circumstances, any further discussion on the subject would be academic if not an idle formality."

For more information with regards to the same, please turn to our chapter on the implementation of the principles of natural justice under POSH law

[113] WPA 3049 of 2023

6.3.5. 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"

While the IC can indeed pass an ex parte report, it must be a last resort after several representations have been made to the Complainant or Respondent. The IC must be properly constituted and must work without delay and defect to produce an ex-parte report that is enforceable in law. In the case of ***NP vs Union of India***[114], It was held that the IC, which was improperly constituted, hurried with the inquiry proceedings and did not ensure the protection of the Complainant and did not even have a properly constituted external member. In fact, the IC was constituted after 3 months from the reporting of harassment of the Complainant and her gripe with the IC fell on deaf ears, which led to her not being present for the inquiry procedure initiated by the IC. The court held that the IC was indeed constituted against the POSH Act and directed the government of India to pay a compensation of INR 1,00,000 or INR one hundred thousand (1 lakh) to the Complainant.

6.3.6. 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.[115]

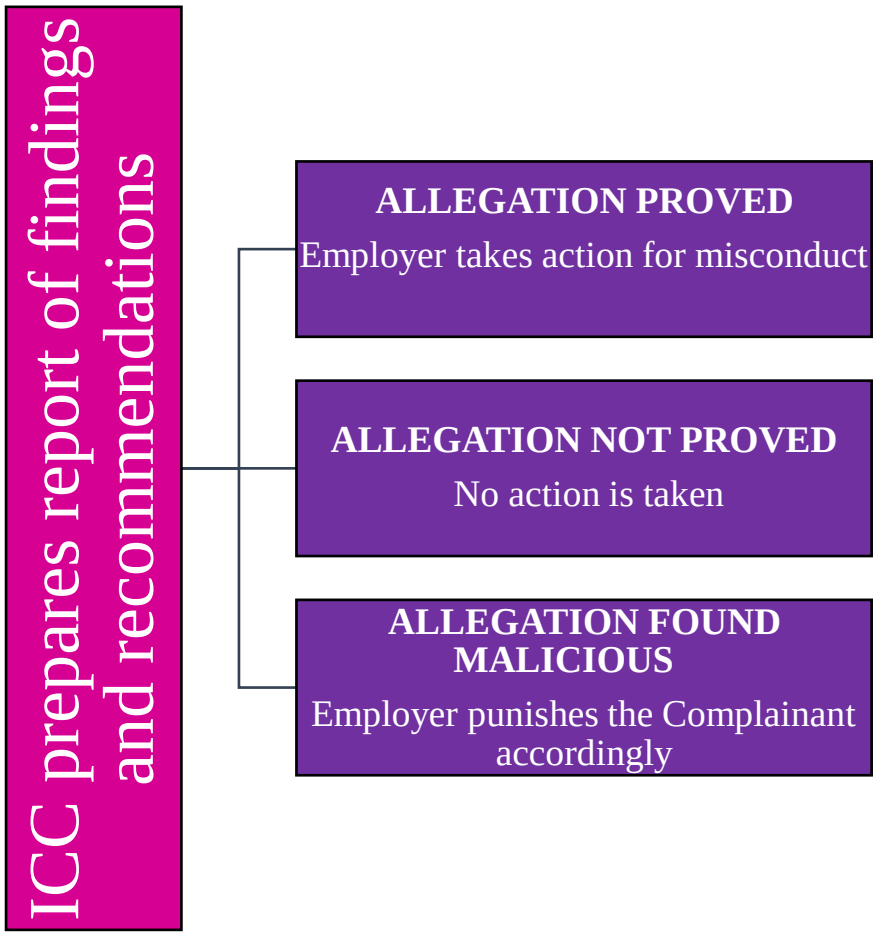
The report must present all the evidence that has been acquired during the inquiry proceedings. It shall build up an argument of the conclusion reached in the case and a rationale for the

[114] CIVIL APPEAL NO. 2365 OF 2020

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

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.



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 been occurred in the workplace, as defined under the Act
4.	Must determine whether the complaint has been filed within the timeframe 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

7. NATURAL JUSTICE AND ITS APPLICATION IN POSH LAW

7.1. Introduction

The principles of natural justice are some of the most widely used legal maxims around the world. These maxims govern multiple laws all across the world and have become the basis for legislations in India. There exist two principles of natural law. These principles are:

"Nemo judex in causa sua" which means that no person must be made a judge in his own case. This rule is to primarily ensure that no person judges upon his own case and ensures that the trial is fair.

"Audi alteram partem" which states that both sides must be heard before passing a decision. No side must be condemned unheard. This means that every side must be given the opportunity to present their case before being made subject to a judgement[116].

7.2. Application of these principles around the world

The principles of natural justice are an indispensable part of every legal system around the world. In common law countries such as the UK, India and Australia, the principles has become a defining part of the various precedents that have been given by the courts concerned. The right to be heard and the right to a fair trial has become the cornerstone of the law of these countries and is protected via a constitutional mandate and is also subjected to judicial review, to ensure that no law is made in contravention of these principles. In Australia, the principle of natural justice has to be observed in administrative decisions (judicial review) act and especially for the procedure that must be followed in administrative decision making[117].

The constitution of India as well as the charter of Canada guarantee a fair trial, thus showcasing the binding nature of these principles. Civil law countries like France and Germany also recognize these principles, albeit in a slightly different manner. In France for instance, an emphasis is laid down upon the equality of all citizens before the law and the need to recognize these principles as a part of said equality.

[116] https://www.legalserviceindia.com/legal/article-1549-concept-of-natural-justice.html
[117] https://articles.manupatra.com/article-details/Natural-Justice

In International law, the principle of natural justice is recognized as an extremely important principle when it comes to trying a person guilty of committing war crimes or crimes against humanity. Article 10 of the Universal Declaration of Human Rights guarantees the right to a fair and public hearing by an impartial Tribunal. Article 14 also states the same right and this was best displayed during the Nuremberg trials of 1947[118], wherein Nazi officials, despite the presence of indisputable proof of mammoth proportions, were given a fair trial as one of the principles of international law.

7.3. Application of the principles of Natural Justice in the POSH Act

The POSH Act was enacted to protect women in the workplace and its inception was a result of the lack of any legislation providing the same. In light of this, the principles of natural justice were indeed embedded into the very fabric of the act and there exist multiple judgements wherein the same was discussed in great detail. In light of this, we can now go over the instances wherein natural justice has been incorporated under the POSH Act and go over the same in great detail.

7.3.1. Complaint to LC in the event of a POSH complaint against the employer:

Under section 6 of the POSH Act, if there exists a complaint against an employer, the same is not to be taken up by the IC of the organization concerned. The primary idea behind forbidding the IC from taking up this matter is to ensure fairness and also ensure that the employer is not a judge in his own case. It is no secret that the employer holds a great deal of power in an organization and is in a position to influence the results of an inquiry procedure under the POSH Act. In light of this, the framers of the POSH Act knew of the disadvantage that a woman would face were she to complain against the employer for a sensitive matter such as sexual harassment. In light of this, the right to approach an LC in the event of sexual harassment meted out to the victim by the employer himself has been recognized as one of the main principles of natural justice, i.e. no person shall be a judge in his own case, that the POSH Act seems to incorporate. There have been a plethora of cases that talk of the same and some of them have been mentioned below:

[118] https://www.nationalww2museum.org/war/topics/nuremberg-trials

In the case of ***Punjab And Sind Bank vs DK***[119], the Hon'ble Supreme Court of India had reiterated the fact that the LCC's jurisdiction can only be present in the event that the complaint is against the employer. In this case, it is deemed that such a complaint, if taken up by the IC would indeed be a miscarriage of justice as it could be influenced by him. The relevant paragraph is as follows:

"23 The Respondent did not participate in the proceedings before the IC since, in the meantime, she had moved the LCC in terms of the provisions of Section 6 of the Act. Mr Sudhir Chandra, learned senior counsel urged that the LCC under Section 6 can be set up in a situation where the IC has not been constituted or if the complaint is made against the employer himself. It has been urged that in the present case there was no complaint against the employer himself and hence the LCC would have no jurisdiction under Section 6 of the Act."

Therefore, it is quite clear that the complaint needs to be against the employer for the LC to take cognizance of the same, despite the constitution of an IC.

In the case of ***L vs Union Of India & Anr***[120], the need to accommodate the principles of natural justice with the changing realities of sexual harassment and gender based discrimination in India was discussed in great detail. In this case, the IC was constituted by the employer and ruled against the victim in no time whatsoever. The bias of the committee members was indeed taken into consideration and the findings of the IC was quashed as a result of the fact that the perpetrator became the employer during the inquiry procedure.

The determination of the whether the Respondent is an employer or not, as per the requirements of the POSH Act is of great importance to ensure the protection of natural justice, as per the requirements of the POSH Act. The courts have interpreted the term employer to mean a person who has the power to appoint the IC and as the head of the organization. however, the definition of Employer can also include a definition that is given in the company documents in itself and the same was reiterated in the case of ***B vs Union Of India & Ors***[121], wherein company

[119] Civil Appeal No 1809 of 2020
[120] W.P.(CRL.) 1904/2013
[121] WPA 4176 OF 2019



documents were used to determine the employer and determine the scope and applicability of the investigation by the IC on the basis of the same. The relevant paragraph states as follows:

"17. The Board of Directors is responsible for formulation and administration of policies for an organization like HCL. The Chairman cum Managing Director is answerable to the Board of Directors. Therefore, this Court is of the considered view that the Board of Directors, being the ultimate authority, is the employer as defined under Section 2(g) of the 2013 Act. This Court further holds that Respondent no. 9 cannot be said to be employer for the purpose of this Act."

Therefore, in this case, it was determined that the managing director is the employer as per the company documents and that the alleged Respondent is an employee who can be subject to a trial by the IC.

One of the other primary reasons as to why the IC cannot take up a matter of the employer is because of the fact that the employer is the person who acts upon the recommendations of the IC, after the inquiry procedure under the POSH Act has been followed. This was reiterated in the case of ***AKS vs University Of Delhi And Ors***[122]**,** Wherein the power of the employer was clearly stated:

"…..Under sub-section (3) of Section 13, the report is then put up in accordance with the service rules before the employer to take action for sexual harassment as a misconduct in accordance with the service rules i.e on the IC arriving at a conclusion that the charges against the alleged guilty persons are proved, then, the employer takes action on the basis of the conclusions and findings of the IC which gives the Inquiry Report under Section 11 of the Act. Really therefore the Inquiry Report of the IC under Section 13(3) will be submitted to the disciplinary authority of the employer, and which disciplinary authority will take appropriate action under service rules, after following principles of natural justice, for deciding as to whether any punishment has to be imposed on the guilty person, and if so what punishment….."

[122] LPA 305/2017 & CM No.15732/2017



Therefore, it makes no sense for the employer to punish himself or to be a judge for his own case as this would be a clear violation of Natural justice, wherein the employer is being a judge in his own case.

The IC will submit a final report alongside its recommendations to the employer and the employer would act upon the same. In the event that the complaint of sexual harassment is against the employer, the aggrieved woman must approach the LC, which would in turn rule about whether there occurred an incident of sexual harassment. The IC cannot do the same against the employer as the employer is the person who appoints the IC and the other employees of the organization and having them judge as to whether an act of sexual harassment has occurred by the employer would be a violation of the principle of natural justice.

7.3.2. Rights of both the parties to be heard

Section 11 of the POSH Act specifically allows for both the parties to the inquiry to present their evidence and convince the committee of their positions. However, in the case of ***BP vs Governing Body, TM***[123], it was held that it would be a gross violation of the principles of natural justice if the IC does not see or hear the evidence that the Respondent has to present to the committee. By doing this, they are dooming the Respondent to be condemned unheard and the same is against the principles of natural justice.

7.3.3. Application of natural justice with regards to the external member appointed under the POSH Act:

As per the POSH Act, there must be one external member that is a part of the IC so constituted in the organization concerned. The rationale behind this external member is to ensure that a fair trial is indeed granted to the Respondent and the Petitioner and to also ensure that the IC functions as per the procedures established by law as this external member is usually from an NGO or a person who is well versed with the laws concerned.

In the landmark case of ***RS vs M/S. Air France India And Anr***[124], The integrity of the IC was doubted as a result of the fact that the external member of the IC, Michael Dias, was the

[123] 97(2004)CLT782
[124] AIRONLINE 2018 DEL 22

secretary of the employee association when he was appointed as an external member to Air France.

The Petitioner then challenged this appointment and the judgement reached by the IC for breach of the principles of natural justice, more specifically for the fact that the company was made a judge in its own case via the compromise in the integrity of the external member. The Hon'ble Delhi High Court observed the lack of integrity of the IC committee and ruled in the favor of the Petitioner despite the pleas of the Respondent that the external member has extensive experience working in NGOs. The relevant paragraph with regards to the same has been reproduced hereunder:

"6. The Appellant received an email from the IC on 06.11.2015, about the names of the members constituting the IC being Ms. Taruna Jain, Ms. Himanshu Sharma, Mr. Jeff Anthony and she was also informed about the nomination of Mr. Michael Dias, Secretary, the Employers' Association, Delhi as the external member on account of having the necessary qualifications prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act/Rules 2013.The Appellant sent several emails to the IC seeking clarifications with regard to the affiliation of Air France with the Employer's Association as she was not convinced of the independence of the external member appointed by the IC; they went unanswered.

…….One of the cardinal principles of natural justice is: "Nemo debet esse judex in propria causa" (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. The basic object of the Parliament is to provide security to the woman. It is imperative that a woman who is alleging sexual harassment feels safe during the course of the proceedings of the IC and has faith that the proceedings are unbiased and fair…..

30. Having regard to the conspectus of circumstances in the present case, apart from the issues discussed hereinabove, this Court also views with concern, the procedure adopted by the IC in the present case. In all, the Committee appears to have not conducted the proceedings according to principles of natural justice."



4) Must there be a strict adherence to the principles of natural justice in terms of the trial and cross examinations?

The strict adherence to the principles of natural justice has often been contested as it could definitely lead to the miscarriage of justice. Sexual harassment is an extremely traumatic experience for a woman and it cannot be humanly expected for the IC to follow the principles of natural justice to the letter when there is an instance of sexual harassment. Therefore, in light of the difficulties faced by women in standing up to the Respondent or in talking about such an incident in a society like ours wherein reporting on such incidents is highly stigmatized, it is for the benefit of the victims that the principles of natural justice must be tweaked in a manner that accommodates for its effective implementation. The principles of natural justice must not be used as a procedural barrier to the resolution of cases on the basis of the same.

In the case of ***RK v/s the Complainant***[125]**,** The court entertained a matter with regards to the sexual harassment of a research assistant by the director of TERI. In this case, the Respondent contended that he was not being given the opportunity to cross examine the witness and that this is a violation of natural justice. The Hon'ble industrial Tribunal however, examined the case thoroughly and came to the conclusion that even though the Respondent was not allowed to traditionally cross examine the witness, he was indeed allowed to ask her questions and receive replies to the same via writing. The Tribunal concluded that the procedures of "natural justice" must not become a burden upon the parties concerned and not lead to an obstruction of justice. The IC is flexible with regards to the principles of natural justice and the Tribunal further stated that:

"It is important to take into consideration that IC is a fact finding body which gives recommendations on allegations of Sexual harassment at work places. The very object of the statute states of providing a speedy and hassle free remedy to the victims which is devoid of procedural complexities and rigors of courts and Tribunals. The Act of 2013 states that the IC is not bound by technical procedures but is only to ensure natural justice to parties and thus IC is a free to devise its procedure depending on peculiar circumstances of the case before it while ensuring natural justice"

[125] CRIMINAL REVISION NO. 369/2018



Therefore, it can be concluded that the IC is a fact finding body that is designed to ensure speedy justice to the parties concerned. If this committee is to be bogged down by procedural technicalities, it would defeat the very purpose of the act, which was to provide an effective redressal mechanism that would protect women in the workplace.

This sentiment was reiterated by the Hon'ble Supreme Court in the case of ***Union of India & otrs v/s D***[126]**.** In this case, the Hon'ble Supreme Court emphasized upon the "test of prejudice" and the ability of the courts to specifically look into the substantive matters concerned without looking for procedural fallacies to strike down the contentions of the parties concerned. The Supreme Court laid down the importance of not letting the procedures involved in the POSH Act from overriding the gravity of the act of sexual harassment in itself.

In the case of ***A vs University of Delhi & Ors***[127], the Delhi High Court did indeed talk about the importance of ensuring natural justice. In this case, a professor of the University of Delhi was accused of indulging in sexual harassment. The Delhi HC, while deciding upon the matter, specifically stated that the principles of natural justice must be observed when an inquiry for sexual harassment. In addition to this, it was also stated that the complaints committee, appointed by the disciplinary authority under the CCS guidelines, will be deemed as the inquiring authority under this act to submit a report on sexual harassment for disciplinary action. Therefore, the principles of natural justice are to be followed but nothing in this judgement goes in contravention to the aforementioned judgements wherein special arrangements cannot be made to accommodate for women who would feel the need for the redressal of complaints of sexual harassment.

Finally, In the case of ***A vs Bandhan Bank Limited & Ors***[128]**,** The Calcutta High Court's position can be counted as the ***most recent*** position on this matter. In this case, it was held primarily that a writ court cannot take up a POSH matter from a private employer as the same will not be actionable against the "state" under article 12 of the constitution. In addition to this,

[126] CIVIL APPEAL NO. 6190 OF 2023
[127] LPA 94/2021 & CM APPL. 8892/2021
[128] WPA 3049 of 2023

it was also held that the denial of cross examination would not be counted as a violation of "natural justice". The relevant sections of the judgement are as attached below:

"16. A plain reading of the procedure prescribed under Sections 11, 12 and 13 of the POSH Act, 2013 and the rules framed thereunder, namely, the POSH Rules of 2013 clearly indicate that the right of cross-examination is not specifically provided thereunder.

17. An enquiry under the IC constituted under the POSH Act, 2013 is a quasi-judicial proceeding. It need not follow the strict principles of evidence or the procedure of a regular trial civil or criminal. Mere denial of cross-examination by itself would not vitiate a process of enquiry of this nature. The Petitioner even otherwise did not formally pray for a right to cross-examine any of the witnesses or even the Complainant in course of enquiry. In the above circumstances, any further discussion on the subject would be academic if not an idle formality."

Therefore, after a thorough analysis of these judgements, we can only conclude that the principles of natural justice must be followed during the inquiry procedure. However, if there is any trouble implementing these principles in light of the inconveniences faced by the aggrieved woman, modifications must be made to ensure that the trial accommodates for the position of the aggrieved woman while also protecting the right of the Respondent to engage in a fair trial. Therefore, there principles of natural justice must not be looked at as a set of firm rules that are not amenable to circumstances that pervade the cases concerned but rather as a set of guidelines that would ensure justice to the parties concerned.

Will the Bias in IC proceedings be a violation of natural justice?

The IC, in the view of the law concerned, must follow the principles of natural justice while also ensuring that they are not biased while ruling for or against a case of sexual harassment. While bias can be hard to determine in a particular ruling, the Madras High Court has recently stated the conditions, fulfilling which a case for bias exhibited by the IC or the biased constitution of the IC can be made. In the case of ***S. vs Central Board Of Indirect Taxes*** [129], the Petitioner alleged bias in the constitution of the IC as the committee consisted of a person whom the Petitioner alleged was involved in a scam and was trying to cover up for the same.

[129] W.P.No17798 of 2022

However, the court held that unless and until the bias allegedly present, is proved as a matter of an undisputed fact and that the bias so concerned is mala fide in nature, the same could not be used as a reason to set aside the decision of the IC. A mere allegation of bias based on a person in the committee having an unfavorable view of the perpetrator of sexual harassment cannot be used as a valid grounds to set aside the findings of the IC.

Would termination or letting someone go be against the principles of natural justice?

In the case of ***Aureliano Fernandes vs the state of Goa***[130], the Petitioner claimed that his rights to natural justice was violated as a result of the dismissal order from his university for sexual harassment as defined under the POSH Act. While appealing against this decision, the Hon'ble Supreme Court of India stated that this order for dismissal was indeed valid as it was a major penalty that could be imposed as per section 11 of the CCS(CCA) guidelines 1965.

[130] CIVIL APPEAL NO. 2482 of 2014

8. RELIEF AND COMPENSATION

8.1. Introduction

The idea of constitutional remedies that ensure the protection of rights is something that pervades our constitution and the various legislations that have spawned as a result of our independence. We must understand that any legislation, no matter how well it is drafted, is only as strong as the remedial options that it presents. To have no redressal mechanism is to doom a legislation to irrelevance the makers of the POSH Act knew this very well. In light of this, there are various remedies that are possible under the POSH Act and these remedies account for a variety of scenarios, the specifics of which are discussed in detail below.

8.2. Meaning

Relief as per the dictionary of law is assistance or support pecuniary or otherwise granted to indigent persons by the proper- administrators.[131] 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***[132] , 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.

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

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

[132] AIR 2013 SC 93: [2012] 9 SCR



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.

Many a times, a complaint is kept pending before the IC as a result of various reasons. In light of this, it makes no sense for the aggrieved woman to suffer the Complainant when justice is being delivered and in light of this, the framers of the POSH Act, while accounting for such a scenario, ensured that certain temporary reliefs could be granted to the aggrieved woman while the case is being inquired by the IC or LC. These temporary measures include the transfer of the aggrieved woman or the Respondent to other departments and other such remedies to ensure that the Complainant does not suffer while the inquiry procedure is taking place in the IC or the LC. 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;
- Behaviour of the perpetrator;
- 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.
- Chain & Hierarchy between Complainant and the perpetrator.

Interim reliefs possible under the POSH Act:

As per section 12 of the POSH Act. the IC or the LC may recommend that the employer take some interim measures during the pendency of an inquiry before the IC or the LC.

These measures include:

a) Transfer of the aggrieved woman or Respondent to another workplace;

b) Leave for up to 3 months for the aggrieved woman;

c) Grant of any other such relief as prescribed.

In the case of ***X vs Union of India***[133], the Petitioner specifically stated that she had reservations in working at Dadva, wherein she allegedly faced sexual harassment. The Respondents did not take kindly to this and approached the Hon'ble Central Administrative Tribunal, Ahmedabad. This Tribunal approved of the transfer and so, the Petitioner knocked at the doors of the Hon'ble Gujrat HC and the HC stated that the transfer could not be allowed as a means of a temporary relief under the POSH Act and later passed an order that barred the Petitioner from getting transferred to Dadva, thereby turning a temporary relief into a permanent one.

The Kerala High Court in a case[134] 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 whole granting the interim relief.

[133] R/SPECIAL CIVIL APPLICATION NO. 4583 of 2021
[134] Refer to https://indiankanoon.org/doc/121304718/

It is pertinent to mention here that the essence of providing interim/ temporary measures to the victim during the pendency of compliant has also been emphasized in the *Code of good practice on handling of sexual harassment cases* issued by the National Economic Development and Labour Council of South Africa under Section 203(1) of Labour Relations Act, 1955, wherein it is stated that:

"Care should be taken during any inquiry of a sexual harassment grievance that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be groundless".

8.3.1. Does the IC require the request of the aggrieved woman to transfer the Respondent?

The POSH Act makes no mention of the IC having a requirement for the request of the aggrieved woman to transfer the Respondent. The IC is empowered to exercise this right by virtue of the provisions of the POSH Act and the Hon'ble Delhi High Court, in the case of ***D C Mishra vs Dr. T. Mohapatra & Anr***[135], has reiterated the same.

In the above-referred case , the Respondent contended that he was transferred by the IC, not at the request of the aggrieved woman but rather as a decision they deemed fit as a preventive measure. The court, while reiterating the power of the IC to transfer the Respondent as an interim measure, also stated that there need not be a request by the aggrieved woman concerned for them to specifically act upon this matter and that the IC was free to transfer the Respondent if they were convinced of the fact that the continuance of the Respondent in the workplace concerned was prejudicial to the Petitioner, when specifically looking at it from the perspective of the POSH Act.

It was further remarked that "mere tendering of apology is no ground to drop the proceedings. The proceedings have to be taken to a logical conclusion and it shall be for the competent authority to examine the conduct of the Petitioner and recommend appropriate action in the matter."

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

[135] Refer to https://indiankanoon.org/doc/41577723/

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. [136]

In the case of ***Y vs National Institute of Rural Development and Panchayat Raj***[137]**,** The Respondents, after having sexually harassed a multitude of women, were recommended for a transfer from Hyderabad to Guwahati. The Respondents, after having failed to secure a cancellation of this transfer from the relevant authorities, pleaded their case before the court by stating that they did not want to get transferred as it would interfere with the comfort of their family and their well-being as well. The court ruled that the Respondents were in the wrong for committing sexual harassment and that they cannot escape the consequences of their actions. Therefore, the validity of the transfer order was upheld and the Respondent was transferred permanently.

8.3.3. 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.

  In the case of ***X vs Union of India***[138], the Petitioner specifically stated that she had reservations in working at Dadva, wherein she allegedly faced sexual harassment. The Respondents did not take kindly to this and approached the Hon'ble Central Administrative Tribunal, Ahmedabad. This Tribunal approved of the transfer and so, the Petitioner knocked at the doors of the Hon'ble Gujrat HC and the HC stated that the

[136] Refer to https://indiankanoon.org/doc/815758/
[137] WRIT PETITION Nos.35307 of 2015
[138] R/SPECIAL CIVIL APPLICATION NO. 4583 of 2021



transfer could not be allowed as a means of a temporary relief under the POSH Act and later passed an order that barred the Petitioner from getting transferred to Dadva, thereby turning a temporary relief into a permanent one.

Can the accused be terminated prior completion of the inquiry process?

In the realm of workplace harassment inquiries, the powers vested in the Internal Committee (IC) are essential for ensuring fair and just proceedings. However, it is imperative to understand that while the IC holds authority to pass interim measures during inquiry proceedings, it must always adhere to the principles of natural justice.

Central to the principles of natural justice is the concept of treating both parties involved in a dispute with equal dignity and respect. Regardless of the allegations made, it is crucial for the IC to maintain impartiality and provide a fair opportunity for all parties to present their case. The parties involved must be afforded due process and should not be subject to any premature judgment.

A recent case ***Mrs X vs. State of West Bengal and Others***[139], underscores the importance of upholding natural justice during the inquiry proceedings. In this case, the Petitioner faced termination following a sexual harassment complaint lodged against him, alleging that he had referred to the victim as "faltu meye". Upon careful examination of the facts and circumstances, the Calcutta High Court issued a directive granting relief to the Petitioner to continue pursuing his profession until a decision on the complaint is reached. However, the court also stipulated that the Petitioner must refrain from exerting any influence on the fresh adjudication process conducted by the Local Committee (LC) or the involved witnesses, and from tampering with any relevant documents. Additionally, the Petitioner was instructed not to engage with the victim or participate in any significant decisions involving the alleged victims during the adjudication period.

This case serves as a reminder of the delicate balance between protecting the rights of both the Complainant and the Respondent in cases of sexual harassment. While it is essential to take cognizance of complaints filed by victims seriously and provide support, it is equally crucial to ensure that Respondents are afforded a fair and impartial proceeding.

[139] https://ssrana.in/articles/calcutta-high-court-grants-interim-relief-to-school-secretary-under-posh-act/



Case Reference: ***R vs. Union of India (Delhi High Court)***[140]

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.

  Under the POSH Act, the leaves that would be granted under section 12(1)(b) will be in addition to the those leaves that the woman would be entitled to in her ordinary course of employment. This means that when a woman is given leaves as a temporary solution under the POSH Act, she will be entitled to all other such leaves, such as the sick leave, maternity leave, marriage leave, causal leave etc, as if no leave was taken. This means that the POSH Act creates a different category of leave for the aggrieved woman and is completely different to the any other category of leave and is applicable independently.

  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[141].

[140] W.P.(C) 6549/2016 and C.M.No.26858/2016
[141] W.P.(C) 4219/2018

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 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 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.

- ✓ **Can the aggrieved woman take a leave herself?**
  As per the POSH Act, the aggrieved woman may request the IC or LC to grant her leave as an interim relief. However, the POSH Act makes it clear that a woman cannot take a leave on her own, without the recommendation of the IC. In light of this, the aggrieved woman cannot take a leave on her own and her leave will only be allowed under the recommendation of the IC or LC for the same, being approved by the employer.

- ✓ 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 Complaints 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.[142]

8.4. 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:

1. **To take action for sexual harassment as a misconduct** in accordance with the provisions of the service rules applicable, meaning thereby in case of the allegation having found to be true, the recommendation would be made by the Internal Committee treating the sexual harassment as misconduct and thereafter the proceeding is to be initiated against the concerned employee under the Discipline and Appeal Rule applicable 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 so arises.

2. **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.

3. **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

[142] http://www.shebox.nic.in/assets/site/main/images/DoPT%20Notification%20regarding%20Special%20Leave%20during%20SH%20Inquiry.pdf

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.

- In accordance with the provision of Section 15 of the Act**, Compensation is to be paid to the victim** in consideration with the:[143]
  (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.

- 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***

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

- ***Undergoing a counselling session; or***
- ***Carrying out any community service***



4. 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.***

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

In the event that a judgement of the IC or the LC must be appealed by either the Complainant or the Respondent, they may do so before the Hon'ble Industrial Tribunal as per the location concerned. In addition to this, they may be mandated to follow the service rules concerned.

Section 11 of the POSH rules state that any person who has been aggrieve by the decision of the IC or LC may approach the Industrial Tribunal.

Key points:

1. **Appeal to be filed within a period of 90 days of recommendations**
2. **What is the time limit within which an appeal can be filed?**

   The time limit for filing and redressal of appeal has not be provided under the POSH Act.
3. **When will the courts be Appellate authority?**

   In the case of ***RT v. Union of India,***[144] the court laid down that the judicial review is not directed against a decision but is directed against the decision making process and the question of the choice and the quantum of the punishment is within the jurisdiction and discretion of the authority. That means punishment has to suit the offence and the offender, it should not be vindictive or unduly harsh or be so disproportionate so as to shock the conscience.
4. **Can an order of disciplinary authority be subject to appeal?**

   In ***AKS v. University***,[145] 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.
5. **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.

[144] (1987) 4 SCC 611
[145] WP (C) No. 7371/2016

6. What is the forum for filing an appeal under the service rules?

In ***PM v. Union of India***,[146] 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.

7. What happens in cases where service rules don't 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.

In the case of ***SB v. Regional Joint Labour Commissioner, Earnakulam and Ors,***[147] 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.

8. 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***,[148]In cases when 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.

9. 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.

---

[146] WP No. 2991 (W) of 2016
[147] WP (C) No. 35914 of 2016
[148] (2007) 4 MLJ 692.

10. Can you file an appeal before the proceedings are over?

The Supreme Court in ***SB v. SBM SS School,***[149] 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.

11. 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 ***B Ltd. v. S and Ors.(2005)***[150] 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 ***S. Devi v. Union of India (2005),***[151] 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 his fundamental right specially when the hen 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.

[149] 218 (2015) DLT 575
[150] (2005) III LLJ 738 SC
[151] 125 (2005) DLT 284



9. ARE YOU POSH COMPLIANT?

You're not a victim for sharing your story. You are a survivor setting the world on fire with your truth. And you never know who needs your light, your warmth, and raging courage. – Alex Elle[152]

Sexual harassment is a highly traumatic experience that shakes the very foundations of the victim. But, to stand back up again, she needs to ensure that her perpetrator is punished accordingly. In light of this, the POSH Act was formed. The Supreme Court, while laying out the guarantees given to women, in line with our constitutional values, noted the lack of legislations to protect women in the workplace and this in turn, led to the creation of the Vishaka guidelines and the POSH Act. The protection of women in the workplace must be ensured, not only because of the need to protect the women but also to ensure a greater participation of women in our workplace, which in turn would usher in a new age of prosperity for our country and the world beyond.

9.1. 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.

9.2. 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.

[152] https://www.geckoandfly.com/28043/quotes-sexual-harassment/#google_vignette

The definition of "Employer" as provided in Section 2(g) includes the following[153]:

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.[154]

For a more robust definition of the term employer, as understood under the POSH Act, kindly turn to chapter 4 of this book.

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.[155]

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 a being an employer is whether or not such person are 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)** [156]

9.3. <u>What constitutes compliance under POSH Act?</u>

[153] Refer to Section 2(g) of the POSH Act, 2013
[154] Refer to Section 2(o) of the POSH Act, 2013
[155] https://ssrana.in/articles/liability-online-aggregators-posh-act-2013/
[156] Refer to https://indiankanoon.org/doc/1950372/



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:

9.3.1. 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.

It is inevitable that 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 the case of ***Binu Tamta vs High Court of Delhi***[157], The purpose and scope of the POSH Act came into question. The Supreme Court of India, while considering the scope of the POSH Act and the need to protect members of the LGBTQ+ community from sexual harassment, did note that a writ of mandamus cannot be made to amend an enacted legislation. The court reiterated that the POSH Act was intended for the protection of women and that an amendment to the POSH Act is not the answer. They subsequently disposed of the case in this manner.

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.

[157] W.P.(C) No. 162/2013

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***

9.3.2. 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.

9.3.3. 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***. [158] 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:

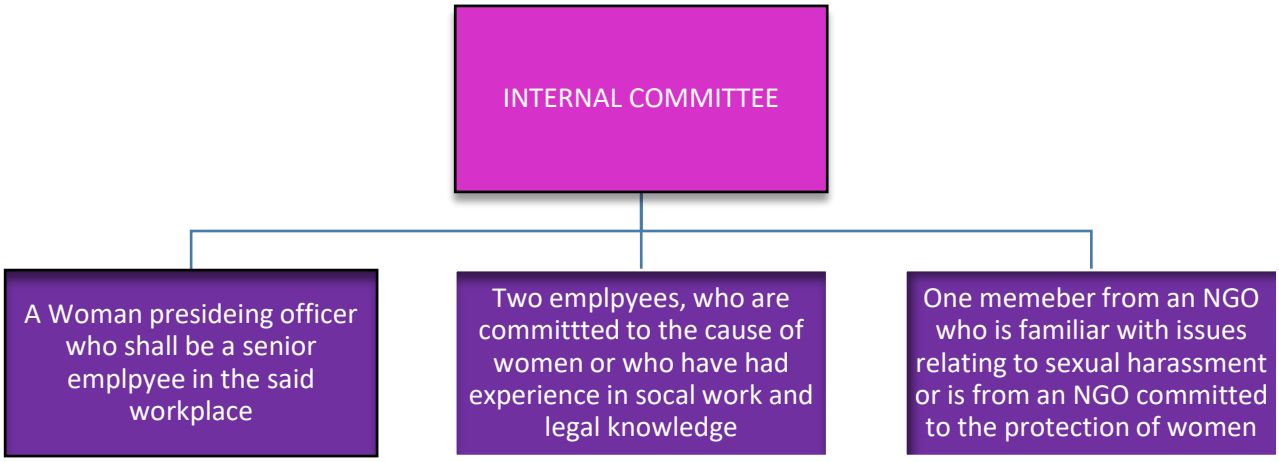
In the case of ***XYZ Pvt. Ltd. vs. Local Complaints Committee***[159], wherein the aggrieved woman who was an employee at a hospital and had received unwelcome sexual advances at her workplace, the Hon'ble Madhya Pradesh High Court had passed an order granting her compensation of Rs.25,00,000/- and imposed a cost of Rs.50,000/- on the employer due to non-existence of internal complaints committee at the relevant point of time.

[158] Refer to Section 26 of the POSH Act, 2013
[159] 2019 SCC Online MP 5453



A & Ors. Vs. Local Committee, District Indore *w*herein the Madhya Pradesh High Court imposed a penalty of INR 50,000/- on a Hospital for not constituting the POSH Committee.[160] In the case of R K vs the IC[161], Goa institute of management and otrs, the Bombay HC looked into whether the specific IC committee had been constituted as per the POSH law and found that the same was not true. Not only were the three female student members of the IC not a part of the inquiry procedure but also, the external member was an internal faculty with no experience of working in an NGO or any special legal knowledge with regards to the act whatsoever. In light of this, the Bombay HC overturned the ruling of the IC.

In addition to this, bias as a factor is also something that must be considered during the



formation of the IC. In the case of R vs Air France, the bias of the IC was analysed by the court and the court ruled that the IC so constituted to hear this case of sexual harassment was biased against her. The court concluded the same by noting that the external member, Mr Micheal Dias, was a close associate of air France and so, he would not be capable of impartial thought while conducting an inquiry.

[160] https://indiankanoon.org/doc/89246438/?type=print
[161] AIRONLINE 2018 DEL 22

This Internal Committee must consist of the following persons acting as its members:

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. D***[162], awarded Rs.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.

As stated in the case of R vs UOI[163], the employer must ensure compliance to the POSH Act while also ensuring that there is awareness with regards to the same. The employer must not be mechanical with regards to the implementation of the POSH Act, but instead be proactive and ensure its smooth and effective implementation.
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. [164]

The proper constitution of an IC is mandatory as per the POSH Act and the improper constitution of the IC is punishable with appropriate penalties. In the case of ***RK vs. The Internal Complaints, Goa Institute of Management***[165]**,** It was held that the improper constitution of the IC was enough of a reason to set aside the judgement of the IC. This was because of the fact that the integrity of the external members of the IC was compromised in this case.
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.

[162] (2020) 19 Supreme Court Cases 46
[163] W.P. (C) 3396/2019
[164] Refer to https://indiankanoon.org/doc/158080828/
[165] LAWS(BOM) -2020-1-214



9.3.4. 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.

Recently, a Public Interest Litigation (PIL) was filed by Biyat Pragya Tripathy, a social activist seeking strict adherence to Section 19(b) of the POSH Act. Having appreciated the submissions of the learned counsel for the parties, the two-judge bench of Hon'ble Chief Justice Shr. S. Talapatra and Justice Shrimati Savitri Ratho directed all the authorities under the Central Government and State Governments to comply with the direction of Section 19(b) of the POSH Act vide order dated September 15, 2023.

It was further stated that the authorities shall have to place a bill board showing the penal consequences of sexual harassment along with a toll free telephone number and committed phone number be provided so that whenever or wherever the woman perceives threat of sexual harassment or fear of violation of dignity in any manner, she can immediately report for taking action against the incalcitrants. This judicial pronouncement marks a significant milestone in fortifying the implementation of POSH regulations and ensuring a robust framework for addressing workplace sexual harassment. [166]

[166] https://ssrana.in/articles/section-19b-posh-act-orissa-high-court-cuttack/

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.

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.

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.

9.3.5 Organise Training and Sensitisation Programmes :

In the case of ***R vs Union Of India And Anr***[167], the Hon'ble Delhi High Court noted that the implementation of the POSH Act is not to be done in a mechanical nature. The High Court reiterated that employers are to take an active role in curing harassment and ensuring an effective redressal mechanism for the same. The relevant paragraphs have been given below:

"……..employers are to be ever vigilant in ensuring that effective policies are swiftly and impartially enforced to ensure justice and see that no one is subjected to unwelcome - and unacceptable behavior. Unlike stray cases of individual indiscipline, which are dealt with routinely, upon employers lie the primary obligation to ensure the effectuation of these laws and rules, aimed at securing a safe workplace to their women employees. A permissiveness or infraction in implementation in one case, implies the employer's lack of will, or inability to assure such safety and equality at its workplace."

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. Such programmes should cover a comprehensive range of topics related to sexual harassment prevention, including defining sexual harassment, understanding legal rights and responsibilities, reporting mechanisms, bystander intervention, and creating a respectful workplace culture. Organisations should utilize diverse delivery methods and modalities to enhance engagement and learning outcomes. This may include in-person workshops, online modules, interactive discussions, role-playing exercises, and case studies.

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?

[167] AIRONLINE 2020 DEL 1557

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 behavioral scenarios, different duties in an organization and different language requirements for both.

9.3.6 Organise Capacity Building Programmes :

Section 19(c) of the POSH Act makes it mandatory for every employer to organise orientation programmes for the members of the Internal Committee in the manner as may be prescribed. Such programmes aid the complaints committee to conduct POSH inquiries observing the tenets of law as well as principles of natural justice.

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 shocks the conscience of the court.

9.3.6. 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.[168]



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

[168] Refer to Section 9(1) of the POSH Act.

third party sexual harassment and the place where official meeting took place shall be construed as extended workplace as defined under the 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. Alongside they should assist Avantika in filing the complaint against the client under the POSH Act. If she desires, she may also file a police compliant in parallel with the POSH complaint. ***[Third party sexual harassment has also been discussed in our chapter titled: Complaint Mechanism]***

The Employer cannot 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.

9.3.7. 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. A***[169] 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.***

[169] Suit No. 142 OF 2021, Bombay High Court

- ***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 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.

9.3.8. 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

9.3.9. 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.[170]

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.

9.3.10. <u>Meetings</u>:

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

[170] Refer to https://indiankanoon.org/doc/121304718/

work. This includes, so far 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.

9.3.11. 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 Act[171]. 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.***

Failing to comply with this compliance can result in significant penalties. The penalties for non-submission of POSH Annual Report are not only financial but may also impact the goodwill of the organisation.

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.

[171] Refer to Section 22 of the POSH Act, 2013

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

Practical Queries	Answers
Is it mandatory for every Internal Committee to submit POSH Annual Report?	Yes, in accordance with the provision of Section 21 of the POSH Act, it is mandatory for every IC to prepare POSH Annual Report and submit the same to the Employer.
Who Should Sign the Annual Report?	The POSH Annual Report must be signed by the Presiding Officer of the Internal Committee. Moreover, as a best practice, the Report can also be signed by all the members of the IC.
How many copies of the POSH Annual Report does the IC need to make?	It is advisable for the IC to prepare three copies of the POSH Annual Report i.e., one for its own records and the other two for the Employer. The Employer shall retain one copy and forward the other to the concerned District Officer. However, with the evolution of the technology, the complaint can also be submitted electronically via email to the IC.
Who should submit the POSH Annual Report?	It is the responsibility of the Employer to submit the POSH Annual Report to the concerned District Officer. Section 19 of the POSH Act specifies that it is the duty of the Employer to monitor timely submission of reports by the Internal Committee.



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 organizational disclosure and non-filing shall amount to breach of the provisions of the Act.

9.3.12. 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.

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.

9.3.13. <u>Dealing with False/Frivolous Complaints and production of forged documents:</u>

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.[172] 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.

In the case of **A B vs State of J & K**[173], It was held that the case that was filed before the IC was indeed a frivolous complaint as the aggrieved woman did not even wait for the decision of the IC and instead, pursued all other remedies without exhausting any one remedy. She was punished for the same.

[172] Refer to Rule 10 of the POSH Rules

[173] CRMC No. 437/2016



Recently, in the case of ***A vs. XYZ***.[174], 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.

9.3.14. <u>Other Additional Obligations:</u>

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
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.

[174] Refer to 2019 SCC OnLine Del 9116



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."***

9.4. 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 Rs. 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***[175]., 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 Rs.50,000 as cost to the Petitioner in view of Section 26.

Further, in the case of ***G v. XYZ Ltd***[176]. , the Hon'ble Madras High Court awarded the Petitioner a compensation of Rs.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."***

[175] Refer to 2023 SCC OnLine Del 623
[176] Refer to 2014 SCC OnLine Mad 6568

9.5. 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 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.

9.6. 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:

A CAB AGGREGATOR: The troubles for the company began when the cab aggregator's former engineer Susan Fowler on February 29, 2017 published a blog-post[177], 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, former US Attorney General, Mr. Eric Holder, was hired to conduct an independent review on the cab aggregator working environment, 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 Travis Kalanick, the CEO of the cab aggregator.[178] As more and more women came out with their own similar encounters, and following the internal investigations, the cab aggregator fired around 20 employees, and Kalanick also resigned from his post following calls from investors that he quit.[179]

As the cab aggregator 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 cab aggregator permitted a culture of sexual harassment and retaliation against individuals who complained about such harassment". The cab aggregator 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.[180] In addition to this settlement with the EEOC, The cab aggregator 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.

---

[177] Susan Fowler, Reflecting On One Very, Very Strange Year, February 2017, Available at- https://www.susanjfowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber
[178] Refer to https://www.cnbc.com/2017/06/13/eric-holder-uber-report-full-text.html
[179] Refer to https://www.theguardian.com/technology/2017/jun/20/uber-ceo-travis-kalanick-resigns
[180] Refer to https://www.usatoday.com/story/tech/2019/12/18/uber-sexual-harassment-investigation-me-too/2694091001/



A MEDIA COMPANY: Even before the #MeTooMovement gained traction, the media company, which is one of the leading new 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.

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

Not only Ailes, other top executives of this media company, including Latino Francisco Cortes and Bill O'Reilly also came under the fire. In an investigation by Times, it was even found that O'Reilly and this media company 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 this media company Wendy Walsh, the claims against O'Reilly 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 into this media company, which was acted upon by the New York City Commission on Human Rights. The said investigation was eventually settled by the media company 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:[181]

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;

[181] Refer to https://www.cnbc.com/2021/06/29/fox-news-agrees-to-1m-fine-in-new-york-city-sexual-harassment-probe.html

c. Employ a multi-tiered system for reporting discrimination and harassment complaints for at least 2 years.

It is worth noting here that, after the scandal with the cab aggregator that is stated above, even they removed the mandatory arbitration clause from agreements with drivers, riders, and employees.[182]

CASE OF MAJOR TECH COMPANY: 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 Ms. R, a Bulgarian American national, made accusations against him for sexual harassment in 2002, and filed a lawsuit in consequence thereof in the Alameda Superior County Court, Oakland, USA. 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, 'Q' in 2003, which was then acquired by iGATE Global Solutions in August 2003 and he went on to head iGATE by 2008. 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 iGATE's 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.[183]

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.

[182] Refer to https://www.uber.com/us/en/safety/womens-safety/
[183] Refer to https://www.businesstoday.in/latest/corporate/story/igate-fires-ceo-phaneesh-murthy-on-sexual-harassment-charges-40616-2013-05-21

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/behavious 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

10. ROLE OF VARIOUS DEPARTMENTS AND GOVERNMENT BODIES

10.1. 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.

10.2. Human Resource (HR) Department

Ensuring employee well-being, fostering safe and respectful work environment is the foundation for creating a congenial work environment and the Human Resource becomes an architect in preventing sexual harassment at workplace. 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 a company's entire employee experience. It also ensures that the company complies with various rules and policies formed by the organization and the government.

- Bridging the gap: 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 spearheads in creating a systematically smooth mechanism for grievance Redressal.

- Foundational Framework: 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. It is the HR that sets the tone of the organizational policies and hence an HR should, while carving out the policies for organizational culture and should ensure that the POSH Policy entails the legal the stance of the POSH Law.

  a. 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.

  b. 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 of suitable candidates and promoting employees keeping in mind the wider goals of diversity and inclusion so as to promote mutually respectful behavioural practices based on gender diversity and equality.

  c. 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.

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

In the case of ***P vs. Union of India & Ors.,***[184] 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.

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. A high retention rate in an organisation demonstrates a

[184] P v. Union of India & Ors (W.P.(C) 14403/2022)

level of trust and confidence in employees which speaks volume about the work culture of the organisation;

- ***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 along with all other important definitions under the POSH Act, 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. Where service rules are applicable, outlining the disciplinary actions under the service rules and procedure for inquiry would add substance and clarity to the POSH Policy thereby making it discernable by the employees;
- Where the Complainant approaches the HR to seek Redressal in a complaint of sexual harassment, 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 and ensure that such channels are used for all official communications It must be kept in mind that even a slightest error or negligence in fulfilling their duties may result in injustice to the victim.
- Where the Complainant approaches the HR for guidance and support to file a complaint of sexual harassment, the HR should 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 any 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. There may be holding records which will be required for IC proceedings as well as 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.
- The HR assumes the role of proactive champions when it comes to promoting a culture of inclusion and diversity initiates, sensitization workshops and requisite communication and encouraging appropriate forms of behavior in the organisation.



For instance, there occurred a case 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 company. ***The HR prudently separated both the Complainant and the Respondent on two different floors so that the interaction between the two become minimal.***

10.2.2. 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 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.

10.3. Management

Management is the administrative body of an organization, whether they are a business, a non-profit organization, or a government body. Through Management is how businesses organize and direct workflow, operations, and employees to meet company 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.

Thus, it is the Management who sets the tone by effective leadership.

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.

10.3.1. 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 a company 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:

- ***Commitment:*** Visible commitment from the senior management, starting with the enforcement of the POSH Policy and actively promoting and participating in the trainings sends across a strong message of compliance with the law in letter and in spirit. One of the most effective way of ensuring awareness through compliance is by leading the way by example.
- ***No Discrimination***: All the complaints or concerns of alleged or possible sexual harassment shall be taken extremely seriously no matter how minor they are. Management should not demonstrate any kind of personal biases when it comes to the complaints of sexual harassment as to who is involved and shall deal with all matters fairly.
- . The Management in fact should avoid getting involved in the IC inquiry proceedings so as to allow transparent and proper investigation. ***No Retaliation Policy:***



Management should ensure that 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 is formed and is a proper functioning IC well-equipped with 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 Sensistization 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 irrespective of the level and rank of employment. 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. Furthermore, a Gender Neutral Policy builds a level of trust and creates a sense of inclusion amongst all employees irrespective of their sexual orientations.
- ***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.

- ***To create an atmosphere of transparency and accountability:*** The Management should ensure that investigations are conducted in a fair and transparent manner without undue interventions. An impartial IC has the ability to address the grievances of the Complainant and the Respondent in an efficient manner by taking appropriate action towards the alleged perpetrator regardless of their position/rank.

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.

10.4. Government Bodies

10.4.1. 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.[185]

[185] Refer to http://ncw.nic.in/commission/about-us

10.4.1.1. 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. [186]

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.

Measures taken by Delhi Government:
In a bid to enhance transparency and accountability, the Delhi Government introduced a new system for reporting sexual harassment complaints.

[186] Refer to http://ncw.nic.in/functions

"Any complaints of sexual harassment within the Delhi government will now have to be logged online, instead of on paper."[187]
This move is a significant step towards ensuring a safer and more accountable working environment for government employees. With continued training initiatives and oversight, the government aims to create a culture that prevents and promptly addresses such cases, thereby fostering a more inclusive and harmonious workplace for all.[188]

10.4.1.2. National Commission for Women App- Her Legal Guide

The National Commission of Women on November 09, 2023 has launched "Her Legal Guide NCW Mobile Application at Vigyan Bhawan, New Delhi. The Mobile Application that focuses on various rights and statutes pertaining to women in India. The App aims at empowering women by acting as a friend in difficult situations and will make them aware of their rights. The App contains details about various helpline numbers for women.

10.4.1.3. Programs conducted by the National Commission for Women

The National Commission for Women has taken following steps to resolve the complaints of women against harassment and violence. Some of them include:[189]

1. Gender Sensitisation Programmes and Capacity Building for Police personnel on the laws relating to women in associate with the Bureau of Police Research & Development.
2. During 2020-21, the NCW collaborated with Universities and colleges for a research project on "Cyber Security and threats in Cyber Space faced by Women" to spread awareness about the cyber-crimes against women;
3. Organized a Webinar on Misogyny Online and Social Responsibility of Social Media on 23rd June 2021, with the focus on internet etiquette, Gender equity policies and community guidelines of Social media platforms.

[187] https://indianexpress.com/article/cities/delhi/now-all-sexual-harassment-complaints-within-delhi-govt-have-to-go-online-8979065/
[188] https://ssrana.in/articles/delhi-government-all-sexual-harassment-complaints-now-online/
[189] https://pib.gov.in/Pressreleaseshare.aspx?PRID=1797705

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.

10.4.2. 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.

10.4.2.1. 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.

10.4.3. 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

We have reproduced relevant extracts from various Statutes herein below which prohibit night work for women in India:

- ***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.[190] (Madras High Court Declared it Unconstitutional as violative of Article 14 and 15.[191])
- ***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.

10.4.4. 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

[190] State Government vs Jiwa Bhai Nathabhai And Anr (1953 CriLJ 1030)

[191] Vasantha R. vs Union Of India (2001 IILLJ 843 Mad)

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

❖ **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. The Unit is now present across 15 districts of Delhi with a dedicated team working in furtherance of the cause of women.[192]

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.

10.4.5. Cyber Cell

[192] https://spuwac.in/

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.

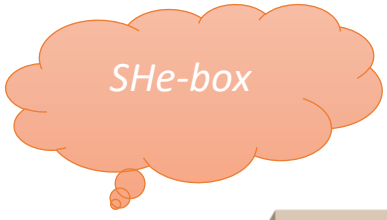
The National Crime Records Bureau or NCRB was established in 1986 as a repository of information on crime and criminals based on the recommendations of the Tandon Committee, the National Police Commission (1977–1981) and the Task Force of the Ministry of Home Affairs (1985). The NCRB compiles data and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

10.4.6. 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.

10.4.7. 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 Act[193]. 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.

[193] The amendment has been in effect since July 31, 2018.

11. POSH AND GENDER NEUTRALITY

11.1. 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 is desirable 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*. While sexual harassment is covered under company policies as misconduct under ethical codes of conduct, the specific cases of sexual harassment must be covered under the umbrella of the Act as well, which requires reworking. Hence, there is an industry demand for a gender-neutral law against sexual harassment at workplace.

11.2. 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***[194]***,*** 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.

Interview responses from LGBTQ+ (Lesbian, Gay, Transgender, Queer) members for a survey conducted by a nationwide LGBTQ advocacy group found that most organizations are in violation of the NALSA judgement in way of lacking gender change forms and restricting

[194] (2014) 5 SCC 438



access to washrooms based on chosen gender identity. The survey also revealed that 48% of employees surveyed are covered by Human Resources and Diversity, Equity and Inclusion policies, while only 4% have access to same-sex partner benefits and 87% lack access to ERGs within their organization. And 40% reported being subject to workplace harassment based on their gender identity. [195]

Further, in the case of ***N S Johar v. Union of India***[196], Section 377 of the Indian Penal Code that criminalized unnatural offences[197] 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.

In a recent 5 bench verdict in the case of S v. Union of India[198], the Supreme Court rejected the appeal to legalize same-sex marriages stating that it is not fundamental right and was beyond the jurisdiction of the court to amend the existing legislature . Despite this setback faced by the LGBTQ+ community, the court has agreed to look at subsequent review petitions based on this judgement recognizing the judgement as discriminatory and ignorant of the fundamental rights of the LGBTQ+ community.

11.3. 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 woman[199]. 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*

---

[195] (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://vartagensex.org/wp-content/uploads/2019/10/1559396942000-mingle-lgbt-wrkplc-climt-srvy-2016.pdf)
[196] AIR 2018 SC 4321
[197] Unnatural offence under Section 377 referred to carnal intercourse against the order of nature with any man, woman or animal.
[198] https://main.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Judgement_17-Oct-2023.pdf
[199] Vishaka & Ors vs State Of Rajasthan & Ors. AIR 1997 SC 3011

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 ***MB v. IC, VC and Ors.,***[200] 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.

In the case of BT v. Delhi High Court[201], the Supreme Court rejected the appeal to make the POSH Act gender neutral given the absence of appropriate regulatory bodies to handle complaints and further stated that 'gender neutrality' requires legislative changes which must be introduced via Parliament which is beyond the scope of their powers. [202]

Adhering to the Supreme Court verdict above, the Rajya Sabha introduced Bill 247 in 2022 to propose an Amendment to the POSH Act redefining the term 'aggrieved woman' to 'aggrieved person' with a redefined aim to protect individuals of all genders against sexual harassment, including men, women and other genders. [203]

---

[200] WPA 1198 of 2021

[201] 2308/2023 in W.P.(C) No. 162/2013

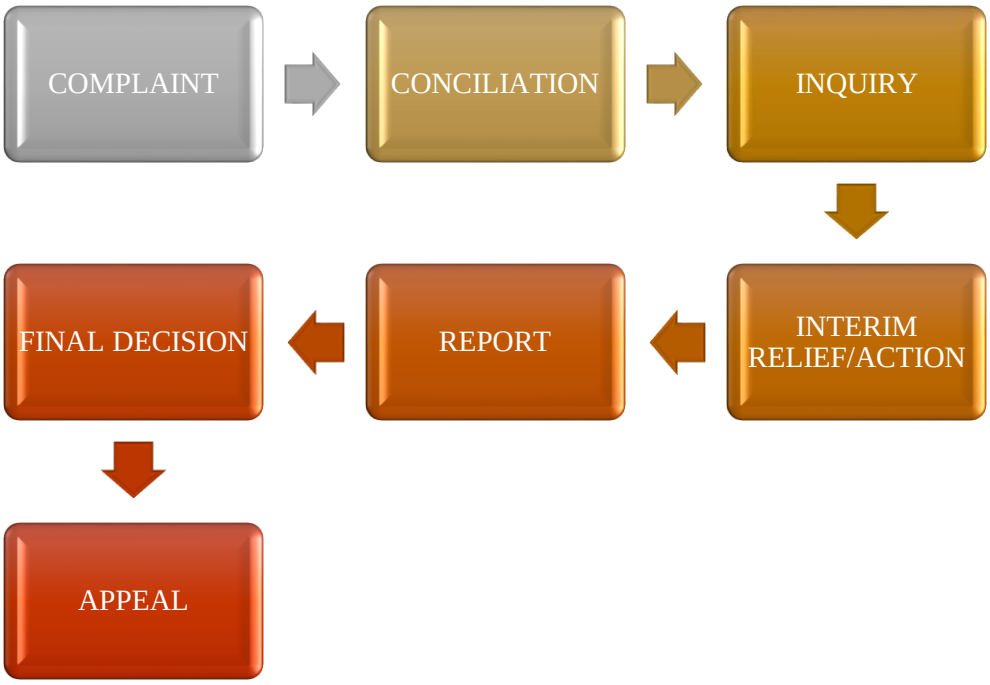
[202] https://indiankanoon.org/doc/27507654/f

[203]https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/247%20of%202022%20As%20introduced84202380400PM.pdf?source=legislation#:~:text=(1)%20This%20Act%20may%20be,Short%20title%2C%20extent%20and%20commencement.&text=(2)%20It%20extends%20to%20the,in%20the%20Official%20Gazette%2C%20appoint.)

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.

11.4. 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.

11.5. 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.

11.6. What is a Gender Inclusive Posh Policy?

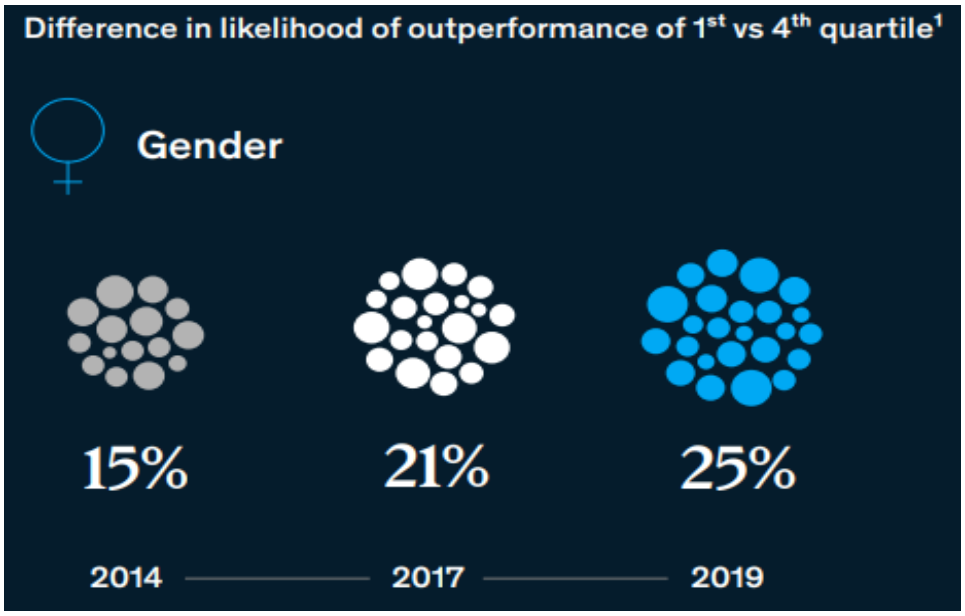
The aim of gender inclusive POSH policy is to protect:

- 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 2020[204], ***"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 Brunswick[205], 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's[206] 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 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

[204] https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters
[205] https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/about-deloitte/deloitte-uk-working-globally-open-for-business.pdf
[206] https://www.worldbank.org/content/dam/Worldbank/document/SAR/economic-costs-homophobia-lgbt-exlusion-india.pdf

revealed that more than 50% of the Indian LGBT could be fired for being LGBT. A study by NHRC (National Human Rights Commission) on the rights of Trans genders 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 favor of trans genders.

11.7. 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 can't 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 Post[207]. The Trans community is often the target of sexual harassment in all walks of life, including employment.

A cue can be taken from the first gender-neutral sexual harassment law in India, that is, the ***UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations 2015***.

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

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



- ✓ Updating personnel records and dress codes, providing gender-neutral facilities, etc.
- ✓ Setting up ERGs (Employee Resource Groups) or allyship groups to support LGBTQ career advancement and hear grievances
- ✓ Including sex reassignment surgeries as part of employee medical insurance and granting medical leave for the same
- ✓ Providing LGBTQ+ members same-sex partner benefits
- ✓ Ensuring confidentiality of employee personal data (eg: gender identity, sexual orientation etc.) in line the with the DPDP Act (Note: for further details please refer to Chapter 12)

11.8. How do we Integrate 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 census[208], 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 Persons[209] 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). [210]

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"*.

[208] https://www.census2011.co.in/transgender.php
[209] https://transgender.dosje.gov.in/
[210] https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/SocioCultural/NHRI/National_Human_Rights_CommissionIndia.pdf

- ***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"*.
- ***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.

The Ministry of Social Justice and Empowerment recently released an 'Equal Opportunities Policy for Transgender Persons' which serves as a guideline for workplaces to create an environment free from bias, discrimination with a detailed grievance redressal mechanism to protect the rights and interests of transgender persons. The policy outlines provisions in the following spheres to ensure the workplace is equitable to individuals who identify as marginalized gender identities:

1. Recruitment and Hiring processes are to be streamlined to ensure hiring is based solely on skills and qualifications
2. Access to Facilities: Workplaces are responsible for incorporating unisex toilets and certain amenities that may be needed by transgender individuals
3. Workplace Bullying and Harassment: The Ministry has laid down strict provisions to protect against any form of bullying or harassment which severe measures for corrective action to be instituted in the instance of the above

For further detail please refer to the following link:[211]

Many businesses have recognised the importance and benefits of diversity and inclusion in the workforce. A Prominent Hospitality Chain routinely creates opportunities for the Trans community, including scholarships and educational provisions for transgenders and employment for people with disabilities and the Trans people.

[211] https://socialjustice.gov.in/writereaddata/UploadFile/67311708075108.pdf

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. [212]

Similarly, in case of ***S Ponnusamy v. Ministry of Civil Aviation[213],*** a writ petition was filed in the Hon'ble Supreme Court by a transgender woman 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[214]***, 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".*

[212] https://timesofindia.indiatimes.com/india/form-policy-to-provide-job-opportunities-to-trans-people-sc/articleshow/94086235.cms
[213] 2022 SCC Online SC 1581
[214] (2014) 5 SCC 438

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

One pratical problem that can be faced in an organsation 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 grabbling 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 experinece. 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 proceedings commitees, 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 case to case as per the Employee Agreements.

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 pratical problems will only be solved when certain legislative changes are brought into place.

Till the time a gender inclusive legisltaive framwork is formed, all organisations are advised to treat complaints of workplace sexual harassment 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 aderquate options to choose what syncs well with the vision and mission of the organistaion.

11.10. Other Indian Laws

The POSH Act may follow the footsteps of the ***Indian Penal Code***, ***Protection of Children from Sexual Offences Act of 2012***, *The Bharatiya Nyaya Sahaita Bill, ,2023 expected to come into force in July of 2024 (*for further details please refer to chapter 12*)and* ***University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2016***, all 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.

11.11. 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: [215]

- 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.

[215] https://cms.rajyasabha.nic.in/UploadedFiles/ElectronicPublications/SEXUAL_HARASMENT.pdf

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***,[216] 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.

11.12. 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 14 of the Book, which provides about the POSH laws prevalent in other nations.)*

11.13. 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.

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 than only benefits

[216] https://indiankanoon.org/doc/1031794/



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.

12. REASONABLE WOMAN

"Where the mind is without fear and the head is held high. Where the clear stream of reason is not lost to the dreary desert sand of dead habit"- Rabindranath Tagore[217]

12.1. Introduction to the concept of Reasonable woman:

Reasonable is defined in the Cambridge dictionary[218] as "fair and showing good judgement", whereas in the oxford dictionary[219], it is deemed to be "fair, practicable and sensible". In light of these definitions, it is best prescribed that reasonable, when applied to a human context, does indeed mean a person who thinks rationally or is rational. This conundrum of a "reasonable woman" is discussed in length in this chapter and the same will be given in detail.

When people are made witnesses to an instance of sexual harassment, they react in different ways. In many places, there exists this concept of shaming the victims as responsible for the heinous act that was meted out to them whereas there are other places wherein an instance of sexual harassment is never treated as the fault of the victim, despite the actions or the conduct of the woman.

The law, in most countries, is clear about the fact that certain actions constitute sexual harassment and prevent the same. However, the problem arises in implementing these laws as against the range of sensitivities of the people that must be taken into consideration.

The POSH Act was enacted to specifically deal with sexual harassment in the workplace and the workplace is not an isolated chamber, it is a social space wherein many women and men, work, talk, eat, drink, enjoy, crack jokes etc. In light of this, to prevent sexual harassment, it becomes pertinent to make a law that covers any instance of sexual harassment and defines sexual harassment in an indisputable manner.

---

[217] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nios.ac.in/media/documents/srsec302new/302EL10.pdf

[218] https://dictionary.cambridge.org/dictionary/english/reasonable

[219] https://www.oxfordlearnersdictionaries.com/definition/american_english/reasonable#:~:text=%2F%CB%88riz%C9%99n%C9%99bl%2F,beforehand%20that%20this%20would%20happen.

However, the envelope for such a definition is beyond possible. Sexual harassment is not an act that is quantifiable by words in its entirety. Sexual harassment is something that can be felt by a woman, regardless of whether the perpetrator is aware of the fact that he is indulging in the same or not. There are multiple instances wherein a perpetrator may intimidate the woman by coming into her personal space, touching her and claiming that it was by "accident" etc. These kinds of actions are not exactly definable by a law and hence, the comfort and the safety of the women is taken as a standard to ensure their protection in the workplace. When these factors are considered, it now becomes pertinent to define as to whether a particular act is sexual harassment when passing it through the litmus of the aforementioned conditions. Hence was born, the concept of the "Reasonable Woman".

The concept, as was implied before, is a litmus as to whether an act can be classified as sexual harassment. The concept states that a particular act or conduct, can be classified as sexual harassment if a reasonable woman, feels that the same could be counted as sexual harassment.

This test of the "reasonable woman" is meant to ensure that the POSH law is not misused or molded by overly sensitive woman or finds itself privy to matters that are not in its scope and thereby fulfills the sole purpose that it was to achieve, i.e. to provide an effective platform to redress complaints of sexual harassment in the workplace

12.2 The concept of reasonable woman around the world:

There are multiple legislations wherein this concept of a reasonable woman is legitimized. In the country of Malta[220], for instance, the legislation in question requires that sexual conduct "could reasonably be regarded as…. Offensive, humiliating or intimidating". Section 26 of the equality act of the UK [221]even mentions that one of the main factors to consider an act as sexual harassment is whether it was reasonable for the conduct concerned to have that effect of "sexual harassment". Therefore, legislations across the world are hoping to define sexual harassment in line with a reasonable woman, which in turn, would be used to determine whether a particular act was an act of sexual harassment or not.

[220] P. shivangi, M. Attreyi, ***Handbook on the law of sexual harassment at the workplace second edition***, Thomson Reuters, accessed March 5, 2024.
[221] https://www.legislation.gov.uk/ukpga/2010/15/section/26

12.3 The definition of the "Reasonable woman test":

Since there exists no such definition of a reasonable woman, it is far better to dissect what the tem means and extrapolate the term from this context. The first mention of a reasonable woman standard or test came in the case of ***Dr. P.K.S vs Union Of India & Ors***[222]. However, this mention was inspired by a case from the US sessions court, titled ***Ellison v. Brady***[223]. The inspiration for the reasonable woman standard in India was taken from this case and we can go through this case and analyze its application in India.

12.3.1 Ellison vs Brady, the case that re-defined the "reasonable woman standard":

This case was with regards to a woman named Ellison who was employed in an office in San Mateo. She, alongside her superior Miller, were working in this office and on one day, their mutual colleague, Gary, had asked her out to lunch. She accepted and then, she found herself being frequented by Gary and he began to imagine that they were in some sort of relationship together. He even sent her letters stating that he had "dreamt" about her and that he would want to live with her and procreate with her. These messages were flagged as sexual harassment by her and her senior miller and Gary was subsequently transferred to a San Francisco office. However, the unions ruled for in his favor and he was reinstated back into the San Mateo office. Miller told him to not engage in any conversation with Ellison but to no avail. He once again harassed Ellison and she filed a complaint with the IRS with regards to how Gary had sexually harassed her.

While the unions and their representatives had stated that this could not be counted as sexual harassment, the court reiterated the following:

"In order to shield employers from having to accommodate the idiosyncratic concerns of the rare hyper-sensitive employee, we hold that a female Plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

[222] Dr. Punita K. Sodhi vs Union Of India & Ors, W.P. (C) 367/2009 & CMs 828, 11426/2009
[223] Ellison vs Brady, 924 F.2d 872



We adopt the perspective of a reasonable woman primarily because we believe that a sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women. The reasonable woman standard does not establish a higher level of protection for women than men.

We note that the reasonable victim standard we adopt today classifies conduct as unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile working environment. Well-intentioned compliments by co-workers or supervisors can form the basis of a sexual harassment cause of action if a reasonable victim of the same sex at the Plaintiff would consider the comments sufficiently severe or pervasive to alter a condition of employment and create an abusive working environment

We cannot say as a matter of law that Ellison's reaction was idiosyncratic or hyper-sensitive. We believe that a reasonable woman could have had a similar reaction. After receiving the first bizarre note from Gray, a person she barely knew, Ellison asked a co-worker to tell Gray to leave her alone. Despite her request, Gray sent her a long, passionate, disturbing letter. He told her he had been "watching" and "experiencing" her; he made repeated references to sex; he said he would write again. Ellison had no way of knowing what Gray would do next. A reasonable woman could consider Gray's conduct, as alleged by Ellison, sufficiently severe and pervasive to alter a condition of employment and create an abusive working environment."

This means that the court stated that the application of the reasonable woman standard, in this day and age, wherein a hostile working environment is being created in the workplace concerned by the action of the perpetrator. This means that the conduct of the employer and or the perpetrator of such sexual harassment must be so that the woman ***consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment***. This was deemed to be the threshold of a reasonable woman.

12.3.2 Application of this threshold in India:

The first major case to cite and acknowledge the test or reasonable woman standard was ***the Dr. Punita K. Sodhi vs Union Of India & Ors***. In this case, the court reaffirmed the reasonable woman standard given in the aforementioned judgement and stated the following:

"……Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

Therefore, after reading this judgement while simultaneously going over the American judgement that has inspired the test of the reasonable woman, it is safe to say that the Reasonable woman test entails that a particular act may be regarded as sexual harassment if:

a) The act is sexual harassment as clearly defined under section 2(n) of the POSH Act;

b) The said act is humiliating and could constitute a health or safety problem for the woman;

c) It is discriminatory so as to plant a doubt in the woman's mind that any retaliation by the woman to the said action could affect her promotions, employment or lead to the creation of a hostile work environment for her;

d) The aggrieved woman has never provided any consent whatsoever to the said act.

Therefore, we can conclude that if these conditions are met in the Indian context, from the aforementioned judgements, we can conclude that a particular act or omission thereof by the employer or any other person concerned, would constitute sexual harassment.

The implementation of the reasonable woman standard in the POSH Act is done via the provisions relating to the creation of a hostile working environment under the act as well as the commission of overt acts of sexual harassment defined under section 2(n) of the POSH Act.



As per section 3(2) of the POSH Act, the creation of an environment that is offensive or hostile to the woman concerned will also constitute sexual harassment. **This means that as stated in the aforementioned American case of sexual harassment, the reasonable woman test would mandate that any behavior by the perpetrator of sexual harassment, that is likely to interfere with her work or cause problems to her in her workplace by not allowing her to work, coupled with any conduct of a sexual nature would be deemed as sexual harassment as per this test.**

(OR)

Any act of a sexually colored nature would be called as sexual harassment under the POSH Act.

Therefore, in cases wherein it is obvious that the act is of a sexual color, it is already sexual harassment and in cases wherein the act is a quid pro quo act of sexual harassment, it is termed as sexual harassment if there was a sexual approach and the same was rejected and the perpetrator of said harassment creates a hostile work environment for the victim as a result of the same.

The reasonable woman test, as per the above mentioned judgements, just mandates whether the it was reasonable for the conduct to qualify as "sexual harassment" as per either the person's conduct being perceived as so via the threat posed to her or the uncomfortable nature of the same via the reasonable woman who asses such a situation, and if such assessment is done in line with the status of her employment.

12.3.3 The application of the Reasonable woman standard in India via the judgements of Indian courts:

In the case of ***K.P vs State Of Kerala***[224]**,** The Kerala High Court reinstated the position of a reasonable woman without specifying the same. They talked about the admission of a POSH complaint and the applicability of POSH in the cases concerned, as per the comments made by the Respondent. The relevant parts of the judgement is as follows:

[224]WP(C).No. 13811 of 2016 (B)

"9. As already noticed, there is no sexual harassment complained of and a solitary allegation of any or all of the acts enumerated under Section 3(2), cannot constitute an offense under the Act of 2013. Any such act should be connected with and in relation to any act or behaviour of sexual harassment. This Court also does not find any allegation of a promise, threat or an offensive or hostile work environment or a humiliating treatment against the 6th Respondent, from the complaint; which is in connection with an act or behaviour of sexual harassment. There is no allegation that the purported harassment was intended at sexual exploitation of the Complainant; which can only be if there is any allegation as such of a sexual offense.

….The complaint is that the allegation in the report was only to harass the Complainant which cannot constitute a sexual harassment merely because it was made against a female employee. If such complaints are allowed to be made under the Act of 2013, then, there could be no independent report made against any women employee in any organisation and no controlling authority would be able to properly supervise the work of a female employee."

This ratio was once again upheld in the case of ***P vs The Central University Of Kerala***[225]**,** Wherein the Kerala High Court once again reiterated the stance taken in the aforementioned case and upheld the ratio of the same. The High Court held the following:

"……It is pointed out that harassment can be meted out against an individual in different forms and only in instances where the harassment has an element of sexual advance in some form, it becomes a sexual harassment. A mere difference in sex between two individuals cannot give rise to a sexual harassment even though there might be harassment. To that extent, the learned Single Judge was not WP(C) Nos.9219 & 10370/2020 justified in taking a view different from what is held in Anil Rajagopal's case (supra). That apart, it is argued that the provisions of the 2013 Act have to be given a strict interpretation since any action pursuant to a complaint of sexual harassment will affect the reputation and integrity of the opposite sex and such acts may lead to penal consequence as well."

Therefore, for harassment to be construed as "sexual harassment", it must be reasonably clear that the harassment concerned is of a sexual nature or the harassment concerned, as a result of the rejection of a sexual advance, makes the woman uncomfortable and damages her health,

[225]WP(C).No.9219 OF 2020(B)

causes humiliation or reasonably affects her ability to work, or both. This is the reasonable standard that can be applied in the Indian context and the concept of the reasonable woman, as stated above, is applicable as per these specific outliers.

12.4 A sexual harassment case depends highly on the context involved:

In the case of ***S vs. State of west Bengal and others***[226]**,** The term Faltu Meye, when used by the alleged perpetrator of sexual harassment, that roughly translates to "useless woman" in Bengali, was deemed to not be an instance of sexual harassment. The Hon'ble Calcutta High Court held that:

"Insofar as the merits of the case are concerned, the LCC proceeded only on the basis of a particular comment allegedly made by the Petitioner, the context of which was not discussed at all by the LCC. The expression "faltu meye" can be used in various contexts. The backdrop of the usage would lend colour and texture to the comment, thus making it necessary for the adjudicatory authority to explore the antecedents and backdrop of such usage."

Therefore, the Calcutta High Court held that the context to a remark is also a reasonable measure that must be taken into consideration before concluding that there is a prima facie case of sexual harassment.

12.5 Conclusion:

From the cases presented above, it is clear that the reasonable woman standard clearly exists in India and is implemented in the POSH Act, as specified in this chapter. This chapter aimed to show the link between the concept of the "Reasonable Woman" and the POSH law and hopes to ensure that complaints under the POSH Act are taken as per the concept of the reasonableness of the same and upon whether there has been a sexual connotation to the particular action concerned. The POSH Act may permit the woman from filing complaints under the IC. However, baseless proceedings not only waste the time of the IC but also reduce its legitimacy in the eyes of the employees and this would in turn lead to an increase in the filing of sexual harassment complaints or a higher rate of false and frivolous sexual harassment

[226] w.p.a.no. 18829 of 2023



cases as well. In light of this, the reasonableness of a particular proceeding must be thoroughly examined by the IC and the same must be appreciated via the precedents that are known to us.

13. INTERCONNECTION WITH OTHER APPLICABLE LAWS IN INDIA

13.1. Introduction

The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) is an Act that does not operate in isolation but is to be read in harmony with other operative laws. The interplay of various laws that provide for safety and security of women in general as well as at workplace forms an integral step towards ensuring effective implementation of the POSH Act. This Chapter concurrently also enlists the provisions related to Women under the new Criminal Laws which shall come into force on July 01, 2024.

13.2. 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. ***Article 15*** of the constitution talks about substantive equality and has expressly mentioned that the state may make laws and/or special provisions for the protection of women. In addition to this, 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,[227](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***. The court also furthered that India, which was also a signatory to the Convention on the Elimination of All Forms of Discrimination against Women, needed to honor its international obligations under the said convention and called for the implementation of the same. It was in this case that the Apex Court outlined

[227] AIR 1997 SC 3011

the guidelines for prevention of sexual harassment of women at workplace which eventually were codified as the POSH Act in 2013.

In this case, the Supreme Court, further, emphasized on Article 42 of the Constitution which reads as follows:

"The State shall make provision for securing just and humane conditions of work and for maternity relief."

It must be noted that the Article confers upon the State the duty to observe care and compassion towards the underprivileged or disadvantaged.

[Refer to Chapter 16 on Guidelines by the Supreme Court of India for more details]

- ***Apparel Export Promotion Council v. A. K. Chopra,[228] (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[229] (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.

13.3. 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.

[228] AIR 1999 SC 625
[229] LL 2021 SC 705



❖ ***State of Punjab v. Major Singh,*** [230] ***(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.***[231] ***(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 RK v. State of Madhya Pradesh,***[232]***(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."

13.3.1. 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***[233]***).*** 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.

---

[230] 1967 AIR 63
[231] 1996 AIR 309
[232] Appeal (Criminal) 370 of 2007
[233] (2017) 6 SCC 1

In the case of ***State vs R***[234], the Delhi District court reiterated the fact that a zero FIR could be filed in any police station without taking into account the jurisdiction of that particular police station. It was noted that in this case, the accused was involved in the commission of certain crimes against women alongside rape in Delhi, but the victim complained about the same to a police station in civil lines, Gurgaon. The Hon'ble District court of Delhi allowed the same.

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.

A zero FIR can be filed against any person who commits a cognizable offence. In the case of ***N vs State & Ors***[235]**,** the victim claimed that there were multiple instances of sexual assault and one of those instances was on the GTB Enclave, Delhi. The police registered a zero FIR in this case while noting that they did not have jurisdiction to try the matter at hand as there were multiple instances of sexual assault in multiple locations. However, the Delhi High Court stated that one instance of sexual is enough to file an FIR and that the police station erred in filing a zero FIR when there was indeed an instance of sexual assault in the jurisdiction concerned.

❖ 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),***[236] 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

[234] Unique Case ID No.: 02406R002091214
[235] W.P.(CRL) 481/2020
[236] 1999 Supp (3) SCR 348

responsibility, the victim has the right to lodge an FIR at any police station under the provisions of **Zero FIR**.

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.

The use of criminal force is key to ensuring culpability of this section. "Criminal force" is defined under section 350 of the IPC as force applied against a person with the intention of committing an offence. In the case of ***C vs State Of Uttarakhand***[237]**,** perpetrator had not only tried to life the petticoat of the victim but had also tried to sit on her and rape her. When the daughter of the victim screamed as a result of witnessing this act, the villagers drove off the perpetrator, who was later brought before the sessions Judge, Chamoli. The Supreme Court, while reiterating the punishment given to the perpetrator by the sessions judge, Chamoli, stated that the very act of trying to pull down the clothing or attempting to do the same, would account for an offence under section 354 of the IPC.

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.

[237] AIR 2020 SUPREME COURT 219



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.

13.3.2. What does Bhartiya Nyaya Sanhita (BNS)

The BNS introduces a new chapter titled ***'Offences Against Women and Children'*** to deal with sexual offences.

Some of the key changes and alterations are listed below:

Section 69: Sexual Intercourse by employing Deceitful Means etc.

The Section prescribes punishment of imprisonment upto ten (10) years and with fine having sexual intercourse with a woman by employing deceitful means or on the pretext of promise to marry. Deceitful Means for the purpose of this Section includes inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

Section 70: Gang rape

The Section removes age based parameters and treats all cases of gang rape with equal severity, irrespective of the victim's age. The new provision takes a departure from the existing provisions relating to the offence of Gang Rape under the IPC. A comparative analysis of the existing and new provisions is pasted below for reference:

Existing Provisions under the IPC	Provisions under the BNS
376D. Gang Rape – Rigorous imprisonment for a term not less than twenty (20) years which may extend to life imprisonment and with fine.	Section 70 (1) - Rigorous imprisonment for a term not less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the



	remainder of that person's natural life, and with fine
376DA. Punishment for gang rape on woman under sixteen years of age – Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine	Section 70 (2). Punishment for gang rape on a woman under eighteen (18) years of age - imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death
376DB. Punishment for gang rape on woman under twelve years of age – Imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death	

Provisions that are equivalent to IPC

Section 74 of the BNS provides for the use of criminal force to outrage the modesty of a woman which is equivalent to ***Section 354*** of the IPC.

Section 75 is the reiteration of ***Section 354A of IPC*** which defines the term 'sexual harassment'

Section 77 of BNS defines the offence of ***Voyeurism***. The Section has been made gender-neutral and thus includes within its purview any person who indulges in the act of watching or captures an image of a woman engaged in a 'private act' when she does not expect to be observed by anyone then such person shall be held guilty of the offence of 'voyeurism' as per this Section.

Section 78 of BNS is a reproduction of ***Section 354 D (Stalking).***

Section 79 of BNS prescribes the punishment for indulging in an act that intends to insult the modesty of a woman.



13.3.3. 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,)***[238] 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,[239](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.

  The reason we have included POCSO case in a book on POSH is that 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.

[238] Criminal Appeal No. 1928 of 2022
[239] WP.CT 86 OF 2021



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

13.4.1. 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.

13.4.2. 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.

13.4.3. 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.

13.4.4. 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.

13.4.5. 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,*** [240]***(2021)*** held that there is absolute prohibition on publishing the names, addresses or other personally identifiable information of the parties in media.

13.4.6. 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.

---

[240] Suit No. 142 of 2021



13.4.7. 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.

13.4.8. 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.

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

13.4.10. 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.

Provisions in the Bharathiya Nagarik Suraksha Sanhita, 2023 (BNSS)

13.4.11. The BNSS seeks to replace the Code of Criminal Procedure (CrPC)

13.4.12. Most of the Provisions related to women in BNSS trace their way through the existing provisions of CrPC.

Clause 43(1) which prohibits arrest of a woman without a female officer and Clause 43(5) which states that women cannot be arrested before sunrise and sunset with certain exceptions as also listed under the CrPC.

Clause 173 of the BNSS, equivalent provision of Section 164 of CrPC is inspired by states that any statement with regards to rape and other such gendered sexual offences present under chapter V of the BNS, shall be recorded by a woman police officer only.

As per **Clause 176** of the BNSS, the recording of a rape victim's statement shall be conducted at the residence of the rape victim or a place of her choice, by a female police officer, in the presence of the parents, relatives or the local guardians of the woman concerned.

Clause 308 of the BNSS further states that in the event of a rape of a woman who is less than 18, the courts shall ensure that she shall not be directly cross examined by the accused or be in his direct presence while also ensuring the right of cross examination given to the accused.

13.5. 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 a 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,[241] (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.

Provisions under the Bhartiya Sakshya Sanhita (BSS)

[241] AIR 2005 SC 1248

Clause 120 follows ***Section 114A of the Evidence Act***, introduced by the criminal law (Amendment Act) 2013, is extremely important for the protection of women.

Clause 149 specifically states, in line with ***Section 53A of the Evidence Act***, which states that evidence as to the character of a woman cannot be used disprove the rape of such a woman.

Clauses 154 and 155 have been specifically added to ensure that scandalous questions and questions intending to annoy or humiliate women are not asked during cross examinations.

13.6. 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 10 lakh 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.

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

13.7.1. 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.

13.7.2. 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) (l) 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.[242]

13.7.3. 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.

13.7.4. 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.

13.7.5. 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.

13.7.6. 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

[242] https://www.mondaq.com/india/employee-rights-labour-relations/812846/karnataka-extends-exemption-from-standing-orders

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.[243]

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**.

13.7.7. 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.

In ***Union of India v. S,[244](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.

In ***AP v. the Gauhati High Court and Ors.[245](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.

13.7.8. 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,

[243] 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.
[244] W.P. (c) 453/2015
[245] WP(C)/1604/2020



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.

13.7.9. 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.

13.7.10. 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.

13.8. 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, [246]***(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 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. Kancherla 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://www.mondaq.com/india/discrimination-disability--sexual-harassment/1268688/right-to-be-forgotten--supreme-court-directs-registry-to-mask-name-of-parties-in-sexual-harassment-cases]

13.9. 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.

The organisations and companies should at all times ensure safety of records of the employee data collected and maintained at various levels including but not limited to onboarding. It must be noted that the records of employees in pursuance of a complaint of sexual harassment must

[246] Cic/rm/a/2014/000313-sa)

treated as sensitive personal information and regarded with utmost confidentiality within and outside the organisation.

The companies have to ensure compliance with the provisions of the existing landscape of Cyber Laws i.e. Information Technology Act and Rules thereunder which recognizes the evidentiary value of electronic records. Additionally, the enactment of the Digital Personal Data Protection Act, 2023 (DPDP Act) lays down the complete and robust mechanism for collection, processing, maintenance, erasure and retention of personal data collected by Data Fiduciaries vis-à-vis companies and employers.

Personal Data as defined under the DPDP Act means ***"any data about an individual who is identifiable by or in relation to such data"*** which includes name, email address, financial information, medical and healthcare records, biometric information, sexual orientation, race, ethnicity and like. While dealing with a case of sexual harassment, the IC gets access to a fair amount of information about the parties which can be classified as personal data as defines above. Thus, such information must be treated within the parameters of the Data Protection Laws and ensure that the following points are adhered to since the inception of the complaint:

1. Consent of both the parties are always recorded
2. Any information that is collected or requested from the parties involved or related to the case is only for the lawful purpose in connection with the matter in hand
3. Ensure that the members of the IC and parties are bound by the provisions of Non-Disclosure

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

India's legislative efforts to improve diversity can be traced to the Narendra Chandra Committee Report on Corporate Governance in 2002. The committee Report resulted in the Amendment Bill of 2003 which became for basis for the Ministry of Corporate Affairs to prescribe gender based quota in Indian Boards. This period saw a steady rise in the participation of women on boards, however, it continued to remain low. In a study of 166 companies during the period 1995–2007, found that there was an overall improvement in the participation of women in directorships—it increased from 29% in 1995 to 67% in 2007.[247]

[247] Building the Women Directorship Pipeline in India: An explanatory Study, Working Paper No. 47, Indian Institute of Management, Bangalore



With the efforts of the Standing Committee on Finance in 2011-2012, the re-introduction of one woman director mandates paved the way for Companies (Amendment) Bill, 2011 which later was translated the mandate to the Section 149 of the Companies Act, 2013. This led to a spike in the presence of women ion boards in 2014 and 2015. In 2015, 497 women directors were inducted in NSE-listed companies. [248]This further escalated India's position at global level where representation of women on boards became comparable to the world average of 16.9%.[249]

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

Section 134 of the Companies Act, 2013 was amended in 2018 order to ensure safe workplaces for women in the private sector. Resultantly, the Ministry of Corporate Affairs amended the Companies (Accounts) Rules, 2014 and notified the Companies (Accounts) Amendment Rules, 2018 to include the following statement in the board's report of every company:

"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".

In a very recent case, a company registered under the jurisdiction of the Registrar of Companies, Karnataka, was penalized by the Ministry of Corporate Affairs for violating Section 134(3) (q) of the Companies Act, 2013 by not including a required statement on the Constitution of the IC under the POSH Act in their Board Report. Section 134 (3) (q) of the Companies Act mandates that the Board of Directors' report to be attached to statements. MCA had imposed a penalty of INR 4.5 lakh for the said violation. [250]

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

[248] https://asiapacific.unwomen.org/sites/default/files/2023-01/in-WEA-Report-India-2022-s.pdf
[249] https://asiapacific.unwomen.org/sites/default/files/2023-01/in-WEA-Report-India-2022-s.pdf
[250] https://taxguru.in/company-law/mca-fines-4-5-lakh-omission-sexual-harassment-committee-statement-board-report.html



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).

Based on the recommendations of the Kotak Committee on Corporate Governance, Committee on Corporate Governance, 2017, the SEBI (LODR) mandated the presence of one woman independent director in 2018.[251]

In 2021, 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.]

[251] https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosure-requirement-amendment-regulations-2018_38898.html



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

14.1 Introduction

From the use of deepfakes to the groping, there seems to be no stone unturned by the perpetrators of sexual harassment from sexually harassing people. To combat this, many countries have countless legislations that protect men and women from sexual harassment at various places. As the POSH Act specifically talks about the workplace , we will look into the various legislations with regards to sexual harassment at workplaces and analyse the consequences of the same, alongside the statistics with regards to the same.

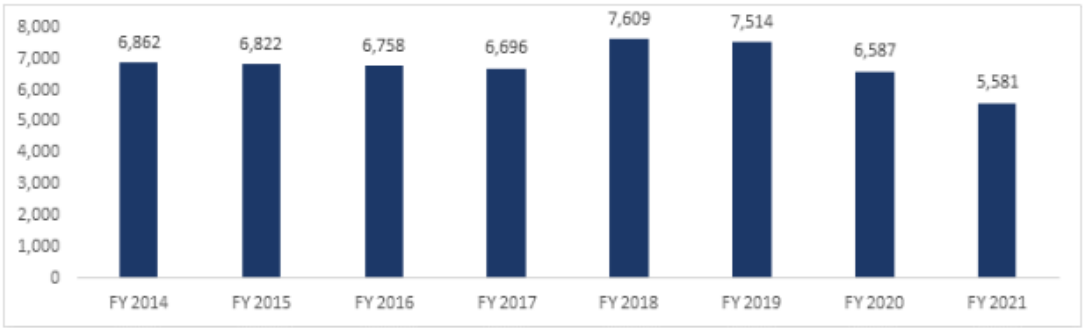
Herein, we have analysed sexual harassment laws prevailing in other nations and dissected the legal provisions pertaining to the scope of protection against sexual harassment, the applicability of legal provisions, employer's liability in cases of sexual harassment, complaint mechanism, and process of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

14.2 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 workplace[252]*. 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 same*[253]*.*

[252] https://www.redbookmag.com/life/money-career/a49220/sexual-harassment-in-the-workplace/
[253] The Charge Data in this graph represents all charges filed by individuals in the private sector and state and local government workplaces.





SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2014 – FY 2021.

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

The U.S. Equal Employment Opportunity Commission (EEOC)[254], 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.[255]

14.4 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 Sex*[256] in 1980 which stated "sexual harassment" to be a violation of Title VII of the Civil

[254]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.

[255] Code of Federal Regulations- Title 29- Labour (1604.11) on Sexual Harassment-

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

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 employment[257] *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.*

14.4.1 *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.

14.4.2 *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 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.

[257] This can include instances such as blocked promotion, frozen wages, outright dismissal from employment;

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.

14.4.3 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 the same sex.

14.4.4 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.

14.4.5 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 102[258] 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.

[258] https://www.eeoc.gov/statutes/civil-rights-act-1991#:~:text=%2D%20A%20complaining%20party%20may%20recover,with%20malice%20or%20with%20reckless



14.4.6 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.

14.4.7 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. Jones[259]*:* This can be safely earmarked as one of the landmark cases falling under the purview 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.

One of the major cases that defined sexual harassment in the US is the case of ***Ellsion vs Brady***[260]. In this case, the Plaintiff was sexually harassed by the Respondent and while she did not suffer any physical harassment, the question of whether she was actually harassed came to light. The court examined the standard to report sexual harassment in the workplace and the upheld the

[259] 520 U.S. 681 (1997)
[260] 924 F.2d 872

"reasonable woman" test to particularly know if any incident is an incident of sexual harassment. As per the reasonable woman test, sexual harassment in the workplace, in the absence of explicit sexual connotations, would be defined as sexual harassment only if the harassment so concerned is in relation to her work and is interfering with her ability to work. i.e.. creates a hostile work environment for the woman.

Verbal harassment of a sexual nature was also considered as sexual harassment in the case of ***E.E.O.C. v. Hacienda Hotel***[261]**.** In this case, the workers were repeatedly called dogs and prostitutes by the supervisors and it also recognized sexual harassment meted out to a woman by a woman as the supervisor was a woman who was insulting another woman in such a fashion.

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.

14.5 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. 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 period[262].

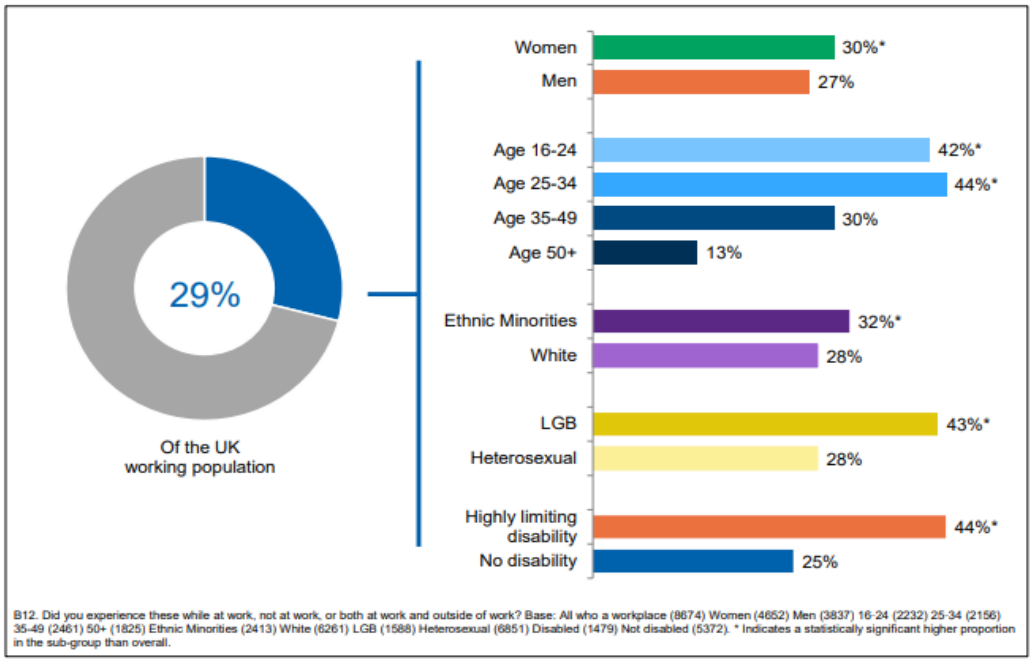
Some of the most common experiences of sexual harassment at workplace included, unwelcome sexual jokes and unwelcome staring harassment behaviours were experienced by at least one in twenty (5%) in the workplace in the last 12 months. The glaring numbers also show that men

[261] 881 F.2d 1504

[262] https://www.gov.uk/government/consultations/consultation-on-sexual-harassment-in-the-workplace/outcome/consultation-on-sexual-harassment-in-the-workplace-government-response



were almost as likely to experience workplace harassment as women. Below is a representation of sexual harassment experienced in the workplace by demographics[263].



Source: 2020 Sexual Harassment Survey by Government Equalities Office

14.5.1 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 dignity*[264]**.**

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.

263
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002873/2021-07-12_Sexual_Harassment_Report_FINAL.pdf
264 Section 26 of the Equality Act of 2010

14.5.2 Which authority manages sexual harassment complaints in the UK?

The Equal Opportunities Commission or the EOC[265] manages sexual harassment complaints in the UK. The EOC was established in the United Kingdom to tackle sex discrimination issue.

14.5.3 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*[266], 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.

14.5.4 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

[265] https://www.eoc.org.uk/
[266] [1990] IRLR 3



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.

14.5.5 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 environment i.e. in an office party or even on social media.

In *Chief Constable of Lincolnshire Police v. Stubbs*[267], 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.*

14.5.6 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.

14.5.7 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.

[267] [1999] ICR 547



14.5.8 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.

14.5.9 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 Council[268]- 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.

In the case of ***Driskell v Peninsula Business Services & others***[269]***,*** *A female employee was asked by the male employee to wear a see trough blouse and some explicit clothing. The same was pleaded before the court stated that the equality act cannot be applied to shield a*

[268] [1986] IRLR 134
[269] (2000), IRLR 151, EAT.



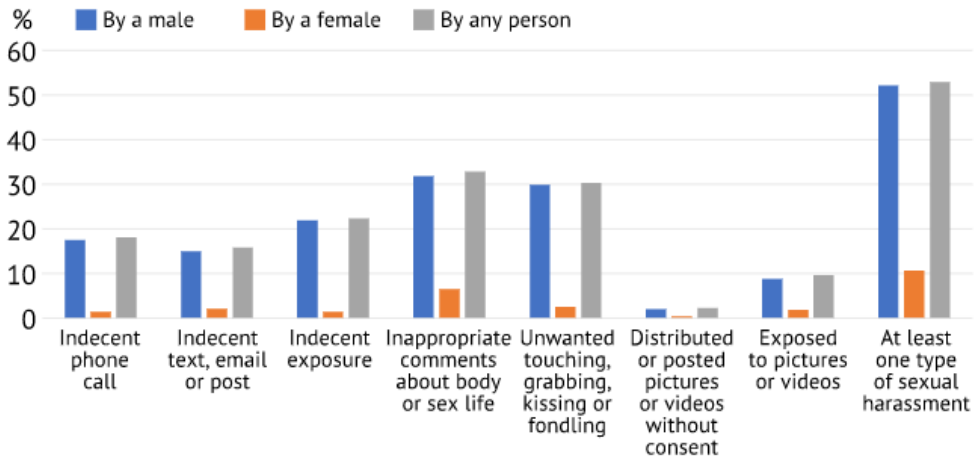
perpetrator of an alleged case of sexual harassment as certain statements, when made by a male to a female, would definitely lead to discomfort as opposed to them targeting males.

*In **Johnson vs gateway food markets Ltd**[270], The sexual harassment of a woman by another female supervisor was recognized as sexual harassment in the workplace.*

14.6 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 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.



14.6.1 *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*.

[270] (1990) IT

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.

14.6.2 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***[271], 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.

14.6.3 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.

14.6.4 What can be defined as Workplace?

In the case of ***Q v. Defelice***[272], 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.

[271] (1984) EOC 92-022
[272] (2000) EOC 93-501

14.6.5 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.

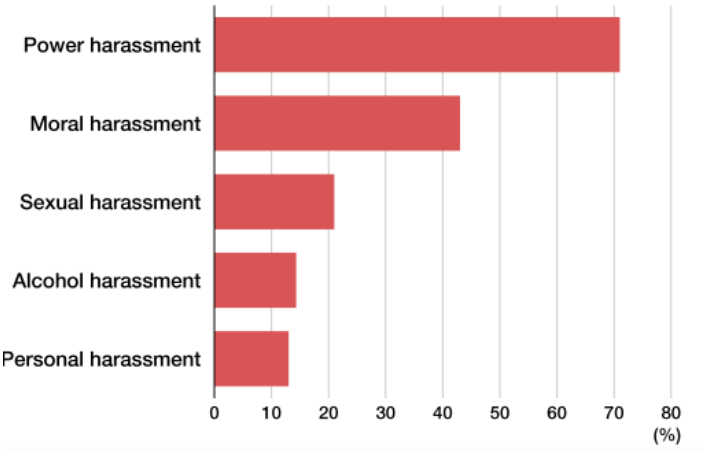
Aggrieved by aforesaid order, Mr. Hughes appealed to the Federal Court on the ground that the damages were "manifestly excessive". However, the Full Court of the Federal Court dismissed Mr. Hughes' appeal and denied that the award was excessive, saying that if the court had been asked to reconsider aggravated 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.

14.7 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 workplace[273]. 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:

[273] https://www.nippon.com/en/japan-data/h01513/



Source: This graph has been created by nippon.com based on data by Shikigaku

14.7.1 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.*

14.7.2 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).

14.8 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."*[274] 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.

14.8.1 *The #MeToo movement stirred the issue of workplace harassment in China, when in 2018, a college student accused her former thesis advisor of sexual assault*[275]*. Also a survey conducted in* 2016 found out that over 70 percent of recent University graduates reported that they were sexually harassed[276]. ***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).***

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

[274] https://www.nytimes.com/2019/07/16/world/asia/china-women-discrimination.html
[275] https://static1.squarespace.com/static/55d21ffee4b0d22e803fdca1/t/60d0edd0f10e7a0a8e77ea8d/1624305105382/Halegua%2C+Workplace+GBVH+in+China+-+FINAL+%282021.06.21%29.pdf
[276] https://www.reuters.com/article/us-china-harassment-insight/chinas-metoo-movement-in-colleges-initially-encouraged-by-authorities-then-frustrated-idUSKBN1FJ33W

to review and formulate corresponding policies and procedures to prevent sexual harassment at workplace.

14.8.2 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.

14.8.3 What acts can amount to sexual harassment in Japan?

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. USD 1456 to USD 7281.**

14.9 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 violence[277]. Switzerland's Federal Office for Gender Equality in it's 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.

14.9.1 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.

14.9.2 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.

14.9.3 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 inflict criminal charges against the employer.

[277] https://www.amnesty.org/en/latest/press-release/2019/05/switzerland-one-in-five-women-is-a-victim-of-sexual-violence/

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.

14.10 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.

14.10.1 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.

14.10.2 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.

14.11 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".



14.11.1 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.

14.11.2 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.

14.12 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.

14.13 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.



14.13.1 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.*

14.13.2 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.

14.13.3 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.

14.14 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.

14.14.1 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.

14.14.2 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.



15. SERVICE RULES

Section 11 (1) of the POSH Act provides that the IC shall proceed to make enquiry in accordance with the provisions of the service rules if the Respondent is the employee. Further, Section 28 of the POSH Act states that the POSH Act must not be read in derogation of any other law. In fact the provisions of the POSH Act are in addition to any provisions that have been made in any other law with regards to 'sexual harassment'. Therefore, the workplaces that do not have any law applicable to them with respect to prevention of sexual harassment at workplace, shall comply with the provisions of the POSH Act. Some of the laws applicable of workplaces that also contain provisions for prevention of sexual harassment include (Refer Chapter 13 for details):

1. Industrial Employment (Standing Orders) Act, 1946 applicable on Industrial Establishments
2. The Central Civil Services (Classification, Control and Appeal) Rules applicable to certain government servants
3. Supreme Court Regulations applicable within Supreme Court of India
4. Regulations of High Courts and District Court
5. Securities and Exchange Board applicable on SEBI Employees
6. University Grants Commission Act 1956 and University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015.

What are Service Rules?

1. Government Employees – The Central Civil Services (Classification, Control and Appeal) Rules, 1965
2. Private Employee – The Industrial Employment (Standing Orders) Act, 1947 and The Industrial Employment (Standing Orders) Central Rules, 1946

Service Rules means the Conduct, Discipline and Appeal rules in case of Management



employees and the applicable Standing Orders in case of employees other that the Management employees.

The Report of the Parliamentary Standing Committee on Human Resource Development" on Protection of Women against Sexual Harassment at Workplace Bill, 2010,[278](hereinafter referred to as the **"Report")** suggested that the inquiry report prepared by the Internal Committee would be deemed as inquiry report under the Service Rules of the organisation, thus removing the need for having any further inquiry and imposing the penalty as recommended. The Standing Committee was of the view that a specific provisions with regards to the inclusion of 'Sexual harassment' as a misconduct would:[279]

a. enable the employer to take the action as recommended under the service rules
b. An elaborate provision would act as an effective safeguard to the witnesses and all those involved in the inquiry proceedings from any victimization.

Para 7.5 of the Report mentioned that the what constitutes misconduct in the context of sexual harassment and what penalties it would attract should be provided in service rules so far as Government and Public Sector Undertakings are concerned. For the private sector employees, steps should be taken to include the express provision of sexual harassment and the prohibitions thereunder under the Industrial Employment (Standing Orders) Act, 1946.

The Committee in the Report further suggested that the sexual harassment should be clearly laid down as an offence in the service rules of all the government employees and in the contracts of all private employees in the private sector.

The Central Civil Services (Classification, Control and Appeal) Rules, 1965

The Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the "CCS Rules") apply to every Government servant, except for a few, namely:[280]

a. **(i)** A railway servant defined under Section 3 of the Indian Railways Act, 1890.

[278] The Report of the Parliamentary Standing Committee on Human Resource Development" on Protection of Women against Sexual Harassment at Workplace Bill, 2010 dated December 08, 2011.
[279] https://prsindia.org/files/bills_acts/bills_Parliament/2010/SCR_Protection_of_Women.pdf
[280] Order 1 (3) of the Central Civil Services (Conduct) Rules 1964

(ii) a person holding a post in the Railway Board and is subject to the Railway Services (Conduct) Rules;

(iii) Holding any post under the administrative control of the Railway Board or the Financial Commissioner of Railways

b. A member of All India Service;
c. A holder of any post in respect of which the President has, by a general or special order, directed that these rules shall not apply

As a result of the Supreme Court's decision in ***Medha Kotwal Lele v. Union of India***, stating that that IC shall be deemed to an inquiry committee for the purposes of CCS Rules and the report of the IC shall be deemed as inquiry report under the CCS Rules, the CCS Rules were amended for the first time in April 2004 to include an explicit provision for 'sexual harassment' in the said Rules which led to insertion of Rule 3C in the CCS Rules prohibiting 'sexual harassment of working women'.

Sexual Harassment to be treated as a service matter

The POSH Act specifically provides that the provisions of the Act are in addition to and not in derogation to the provisions of other law in force. In ***R P v. Union of India and Ors,***[281] wherein the Madhya Pradesh High Court held that the provisions of the POSH Act read with the Provisions of the CCS Rules make it clear that only one mechanism prescribed in both and that is that 'sexual harassment' be treated as misconduct and the report of the IC is to be treated by the employer as enquiry report and action needs to be taken as per Service Rules.

Procedure must be adhered to as provided

The Supreme Court in the case of ***P K v. Union of India and Ors,***[282] held that the Courts and Tribunal are expected to be sensitive in the cases of sexual harassment and hence when it comes to conducting inquiry as per service rules it is necessary that the inquiry is conducted 'as far as practicable' om accordance with the procedures laid down in the CCS Rules but not necessarily follow each and every technicality. The phrase 'as far as practicable' means practicable,

281

282 WP (C) 408 of 2013

feasible, possible, and performable and means not interfering with the ratio prescribed under any Rule which fulfils the interest of administration.

The Rule of substantial compliance and Test of Prejudice

Though the IC is allowed to forego the strict compliance with the technicalities in the procedure, it must ensure adherence to fundamental principles. In the case of ***Union of India and Ors. v. S.K. Das,***[283] the High Court of Delhi observed that neither any charge sheet was served upon the Respondent nor any list of witnesses was provided to him which is a requirement under Rule 14(3)[284] of the CCS Rules. It was held that though the IC need not follow the strict procedure as prescribed, it must adhere to fundamental principles i.e. the IC must ensure substantial compliance. That is to say that the charged official must not be put to prejudice because of the non-compliance with the CCS Rules.

In a recent case, ***Union of India v. D P,***[285] the Supreme Court's three Judge Bench led by the Chief Justice of India DY Chandrachud underscored the importance of courts not be swayed by minor discrepancies or excessively technical procedural matters holding that the cases of sexual harassment must be considered within the broader context of the case and should not be judged merely on the basis of procedural violation.

The brief facts of the case are as follows:

Allegations of sexual harassment were made against the Respondent, the Local Head of Office of the Service Selection Board in the State of Assam by a Lady Employer service as the Field Assistant in the same office. The Complainant claimed that alleged a series of incidents involving acts of sexual harassment by the Respondent in her first complaint dated August 30, 2011 to the Inspector General (IG) which was subsequently forwarded to several other authorities including the Chairperson of the National Women Rights Commission on which an on-the-spot inquiry took place. The Complainant further submitted a second complaint in 2012 through fax. Despite the two initial failed inquiries (a fact-finding inquiry and frontier Complaints Committee inquiry) the Central Complaints Committee (hereinafter referred to as

[283] WP (C) 453/2015
[284] Rules 14 (3) of the CCS Rules require a statement of imputation of misconduct in support of each article of charge containing the statement of all relevant facts and list of documents, list of witnesses to be served to the charged official.
[285] Civil Appeal No. 6190 of 2023



the "CCC"), formed by the Ministry of Home Affairs, found the Respondent guilty. In the meanwhile, the Respondent had approached the Central Administrative Tribunal (hereinafter referred to as the "CAT") requesting termination of the inquiry conducted by CCC but the CAT refrained from forming any opinion due to the ongoing disciplinary proceedings. Thereafter the Respondent filed a Writ Petition before the Guwahti High Court.

The High Court favoured the Respondent holding that the jurisdiction the CCC was limited to the first complaint and it should not have considered the allegations in to the second complaint and overturned the penalty imposed by the CCC to withhold 50% of the Respondent's pension indefinitely. This decision of the High Court led to the present appeal in the Supreme Court.

Observations of the Supreme Court[286]

1. The three judge bench observed that the sexual harassment must be viewed in a broader context of the case. In reviewing disciplinary matters pertaining to sexual harassment the courts should prioritise the overall case rather than minor details
2. On the CCC's jurisdiction to adjudicate on the second complaint the Supreme Court noted that the 2006 Standing Order permitted the submission of additional complaints subject to certain conditions and the High Court erred by holding otherwise.
3. The Supreme Court highlighted the High Court's limited jurisdiction in such matters by holding that the High Court erred in assuming Appellate role in scrutinizing the decision of the disciplinary authority.
4. The Supreme Court of India expanded the applicability of the "Test of Prejudice" by holding it a well settled canon of law that may be applied where any procedural impropriety or violation of *audi altrem partem* is alleged. The court referred to its judgment in ***S B P and Ors. v. S.K. S (1996),***[287] held that the test is to ascertain whether the violation of such procedure or process resulted in a prejudice being caused or loss of fair hearing.
5. The Court further observed that the judicial intervention should only occur if the decision of the Complaints Committee is disproportionate to the misconduct or shocks

[286] https://taxguru.in/corporate-law/union-india-v-dilip-paul-comprehensive-reforms-posh-workplace.html
[287] 3 SCC 364

the conscience. Otherwise the standard of proof in disciplinary proceedings is based on the preponderance of probabilities rather than beyond reasonable doubt.

Decision of the Supreme Court[288]

The Supreme Court overturned the Guwahati High Court's order and re-imposed the penalty withholding 50% pension.

The Disciplinary Authority under the CCS Rules is the employer

In the case of ***S B v. A C S and Ors.*** [289] it was held that the employer in the case of applicability of the CCS (CCA) Rules would be Disciplinary Authority.

The Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as the Standing Orders Act)

The Standing Orders Act is a Central enactment that requires an employer to define and publish uniform condition of employment. Standing Orders contain terms of employment including hours of work, wage rates, shifts of working, attendance, leaves and holidays and termination and suspension/dismissal of employees.

The key points that must be considered for applicability of the Standing Orders Act are as follows:

1. The Standing Orders Act prescribe Model Standing Orders to serve as guidelines for employers and organisations, considering which the employers and organisations have to draft duly certified Standing Orders for their organisations However, where the employers do not frame standing orders, the provisions of the Model Standing Orders will be applicable.
2. The Standing Orders Act is accompanied by the Industrial Employment (Standing Orders) Central Rules, 1996 (hereinafter referred to as the **"Standing Orders Rules"**) established thereunder. The Standing Orders Rules provides for 'sexual harassment' as a misconduct thereby defining 'sexual harassment' in lines with the Vishaka Guidelines by way of an amendment in year 1999 and prescribe the due procedure to be conducted

[288] https://taxguru.in/corporate-law/union-india-v-dilip-paul-comprehensive-reforms-posh-workplace.html
[289] W.P. (C) 4756/2014



by the Complaints Committee while initiating the inquiry under the Standing Order under Order 14(A). Order 14 (A) was inserted by way of another amendment in 2006 in the Standing Orders Rules.

3. It must be noted that wherever the Standing Orders apply to the Respondent, the complaint of sexual harassment is filed and accepted under the provision of Section 9 of the POSH Act, however, the inquiry is to be initiated in accordance with the provisions of the Standing Orders.

Whether a separate disciplinary proceedings are to be conducted as per the service rules for misconduct after the completion of inquiry under the POSH Act?

While the courts were being called upon for interpretation of the provisions of the POSH Act specifying application of service rules for matters of sexual harassment, one could find that there are divergent views with regard to the applicability of service rules vis-à-vis the POSH Act.

The Clash and conflicting opinions

While the POSH Act itself mentions that the inquiry must be conducted in accordance with the Service Rules wherever applicable, there exists ambiguity in the procedure to be adopted for inquiry proceedings under the POSH Act. The question that has been put forth for interpretation before Indian Court on several occasion is where the IC imposes a major punishment on establishment of the guilt of the perpetrator, should the employer conduct anther domestic inquiry as mandated under the CDA Rules?[290]

- ***Dr. A U v. The Registrar, MU and Ors,*** [291]

  The question before the Karnataka High Court in the present case was whether the proposed penalty of dismissal from the service in the second show cause notice as to why the dismissal of the Petitioner in a case of sexual harassment should not be imposed upon him. While referring to the case of ***Dr. V CPV v. Central University of Keral and Ors*** (referred below) the Court observed that the decision to place the Petitioner under suspension, being a major penalty under the service rules could not have been imposed without following the procedure stipulated under the service rules. Thereby holding that

[290] https://www.barandbench.com/columns/posh-act-the-legal-conundrum
[291] Writ Petition No. 15070 of 2020 (https://indiankanoon.org/doc/162910397/)

a regular inquiry as per the procedure laid down in the service rules would ought to be conducted. Finally holding that for cases under the POSH Act, departmental inquiry action as per the service rules is indispensable, the Court quashed the second show cause notice as the same was issued without an inquiry under the service rules.

The said decision was contrary to the observations of the Apex Court in the case of ***Medha Kotwal Lele v. Union of India*** where the Apex Court held that the report of the IC would be deemed to be an inquiry report in a disciplinary action under the service rules.

❖ ***Dr. V CPV v. Central University of Kerala and Ors.*** [292]

Though the question of law involved in this case was whether the order of the IC terminating the Appellant simplicitor or ex-facie stigmatic, the Supreme Court emphasized on the fact that the allegations inquired by the IC under the POSH Act is a serious matter and thereby the IC should not be conferred the benefit by passing a simplicitor order of termination. But to deal with such complaints, it should be ensured that not only the departmental inquiry is initiated but also is followed by other actions as per law.

❖ ***P M v. MSTC Limited,*** [293]

The Kolkata High Court delved into the precedents and the various provisions of the POSH Act decided that the Conduct, Discipline and Appeal Rules (CDA Rules) do not provide for conducting two proceedings i.e. one under POSH Act and the other under the CDA Rules. Hence, the report of the IC shall be treated as the inquiry report and there is no necessity to initiate a further inquiry by the disciplinary authority under the CDA Rules. In such a scenario the role of the disciplinary authority would be limited in determining the quantum of punishment thereafter. The Court held, ***"the final recommendation cannot be tinkered with by the employer or its disciplinary authority or regular Appellate authority. The findings become binding and the only exercise that is to be undertaken by a***

[292] CIVIL APPEAL NO. 777 OF 2020
[293] W.P. 2991 (W) of 2016



disciplinary authority is to consider the quantum of punishment that is warranted in a given set of circumstances".

Conclusion

As reiterated by the courts at various instances and recently by the Supreme Court in the case of Union of India v. D P (Supra) the matters of sexual harassment ought to have been dealt with sensitivity and therefore, the IC while conducting the inquiry has been given the levy to follow its own procedure while also adhering to the fundamental principles. With that intention, the IC is deemed to be the inquiry authority and the report of the IC is deemed as the inquiry report. The fact that the disciplinary authority should conduct a second inquiry after the fact finding inquiry of the IC is not aligned with the intention with which the Legislation was formed. Thus, the inquiry conducted by the statutory IC stands at a higher pedestal than the inquiry conducted by the disciplinary authority.

16. SOME IMPORTANT GUIDELINES ISSUED BY THE HON'BLE SUPREME COURT

16.1.VISHAKA & ORS VS. STATE OF RAJASTHAN & ORS (August 13, 1997)

A writ petition was brought as a class action by certain social activists and NGOs with the aim of focusing attention towards this societal aberration, and assisting in finding suitable methods for realization of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

In view of the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, the court lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation in enacted for the purpose. This is done in exercise of the powers available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. **Duty of the Employer or other responsible persons in work places and other institutions:**

   It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. **Definition:**

   For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

   a. physical contact and advances;

   b. a demand or request for sexual favours;



c. sexually coloured remarks;

d. showing pornography;

e. any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. **Preventive Steps:**

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. **Criminal Proceedings:**
Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

5. **Disciplinary Action:**
Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. **Complaint Mechanism:**
   Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. **Complaints Committee:**
   The Complaint mechanism, referred to in (6) above should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.
   The Complaints Committee should be headed by a woman and not less than half of its member should be women.
   The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. **Workers' Initiative:**
   Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. **Awareness:**
   Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the ***Protection of Human Rights Act, 1993***.



I. MEDHA KOTWAL LELE & ORS VS. UNION OF INDIA (October 19, 2012)

While the Vishaka judgment was issued on August 13, 1997 it took 15 years for guidelines to be established for the prevention and redressal of sexual harassment. Despite this, many women continue to struggle to have their basic rights protected in the workplace. The absence of statutory law compounded the issue. It was observed that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of the Vishaka guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

In light of the same, in the case of Medha Kotwal[294], the Hon'ble Supreme Court issued specific directives, namely:

- ***"Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka's case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules***." This Court further directed in the order dated April 26, 2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

- The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today (i.e., from the date of passing this order) by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. ***The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent***.

- The States and Union Territories shall form adequate number of Complaints Committee so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire

[294] https://indiankanoon.org/doc/48293767/

State shall now form adequate number of Complaints Committee within two months from today (i.e., from the date of passing this order). ***Each of such Complaints Committee shall be headed by a woman and as far as possible in such Committees an independent member shall be associated***.

- The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the Complainant-victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the Complainants shall be met with severe disciplinary action.

- The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka.

Further, the Apex Court stated that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Courts of such State would be in better position to effectively consider the grievances raised in that regard.

II. SEEMA LEPCHA VS. STATE OF SIKKIM AND OTHERS

The Appellant, who became a victim of sexual harassment but could not succeed in getting the wrongdoer punished filed a Writ Petition No. 15 of 2020 under Article 226 of the Constitution for issue of a mandamus to the official Respondents to implement the guidelines framed by the Hon'ble Supreme Court in Vishaka vs. State of Rajasthan. By the impugned order, the Division Bench of the Sikkim High Court disposed of the writ petition by simply relying upon the statement made by the learned Additional Advocate General of Sikkim that the State Government is prepared to bring a proper legislation in terms of the guidelines framed in Vishaka case.

Having gone through the affidavits filed by the Chief Secretary of the State and Shri J.K. Rai, the Court was satisfied that the State Government had taken the steps necessary for

implementing the guidelines and norms laid down by this Court in Vishaka case and the directions given in Medha Kotwal case.

Therefore, the appeal was disposed of with the following directions:

- The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in Vishaka's case and the directions given in Medha Kotwal's case by getting the same published in the newspapers having maximum circulation in the State after every two months.

- Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.

- Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/instrumentalists but also for the private companies.

III. P VS. A & ORS. (September 24, 2021)

Section 16 of the POSH Act mandates confidentiality, with a penalty of 5000 for breaches. However, there's lingering anxiety reports of workplace harassment. The Hon'ble Bombay High Court recognized the risk to confidentiality in POSH Act litigation, emphasizing the need for guidelines to safeguard identities and prevent inadvertent disclosure of parties involved.[295]

The Court was of the view that ***"It is imperative, therefore, to protect the identities of the parties from disclosure, even accidental disclosure, in these proceedings. This is in the interest of both sides. There appear to be no established guidelines so far in such matters. This order, setting out a working protocol for future orders, hearings and case file management , is a first endeavor in that direction. These are only initial guidelines, and will necessarily be subject to revision or modification as needed. I would suggest that these guidelines are the minimum required.***"

The guidelines issued by the court is mentioned below:

- **<u>Anonymize the identities of the parties:</u>**
    - **a.** In the order sheets, the name of the parties will not be mentioned. The orders will read "A v B", "P v D" etc.

[295] https://www.livelaw.in/pdf_upload/posh-case-judgments-reporting-guidelines-bombay-high-court-401420.pdf

b. In the body of the order, the parties will not be referred to by their names but only as Plaintiff, Defendant No. 1, etc.

c. In the body of any order, there will be no mention of any personally identifiable information ("PII") such as email ids, mobile or telephone numbers, address etc. No witness's names will be mentioned, nor will their addresses be noted.

d. Orders/judgments on merits will not be uploaded.

e. All orders and judgments will be delivered in private, that is to say, not pronounced in open court but only in Chambers or in-camera.

- **Filing Protocols:**
  a. No PII document shall be retained by the Registry when any affidavit, application or pleading is being filed.
  b. For verification of identity, the Registry may ask for production of an identity document to establish the identity of the deponent, but no copy of any such document is to be retained on file.
  c. In the short titles of all further affidavits, parties must use the anonymized title as given at the head of this order.
  d. Under no circumstances will the registry enter the email id, mobile number, Aadhar number or any other PII of any of the parties or witnesses in the CIS.

- **Access:**
  a. The Registry will not permit anyone other than the Advocate-on-Record with a current and valid vakalatnama to take inspection or copies of any filing or order.
  b. The entire record is to be kept sealed and is not to be given to any person without an order of the Court.
  c. Fresh filings will also be sealed and kept with the main record.
  d. The record is not to be digitized by any third-party solution provider without an order of the court. If the record is to be digitized, directions will be sought from the Court for supervised digitization.
  e. Witness depositions will not be uploaded under any cirumstances.

- **Hearings:**
  a. All hearings will only be in Chambers or in-camera.
  b. There will be no online or hybrid facility for hearings. All hearings must be by physical attendance.
  c. Only the advocates and the litigants are permitted to attend hearings. Support staff (clerks, peons, etc) must leave the Court.
  d. Except the Court Master/Associate or Sheristedar and the stenographer or person providing secretarial assistance, other Court staff must also leave the court and not be present at the hearing.

- **Public Access:**
    a. If any order is to be released into the public domain, this will require a specific order of the Court.
    b. This will be on the condition that only the fully anonymized version of the order of judgment is let into the public domain for publication.

- **Breach:**
    a. The prohibition on publishing the names, address or other PII of the parties is absolute.
    b. It will continue to apply where that information about the parties has been obtained by using the contents of a judgment or order to discover information already in the public domain.
    c. All persons, including the media, are required to ensure strict compliance with these conditions of anonymity. Failure to do so will be a contempt of court.

- **Media Disclosure Forbidden:**
    a. Both sides and all parties and advocates, as also witnesses, are forbidden from disclosing the contents of any order, judgment or filing to the media or publishing any such material in any mode or fashion by any means, including social media, without specific leave of the court.
    b. Witnesses to the action, in addition to the usual oath, must sign a statement of non-disclosure and confidentiality.
    c. All concerned will be bound by these guidelines, and failure to abide by these conditions will also be a contempt of court.

- **Recording Prohibited:**
    a. Any form of recording of any part of the proceedings is strictly forbidden.
    b. Any attempt to record or transcribe any part of the proceedings will be a contempt of court.

The Plaintiff has a pending appeal before the Industrial/Labour Court. That Court will strictly adopt and follow these and any future guidelines. Under no circumstances will that Court deviate from these Guidelines.

These guidelines, meticulously crafted, serve as a functional protocol for the courts to uphold confidentiality of POSH hearings effectively.

IV. AURELIANO FERNANDES VS. STATE OF GOA (May 12, 2023)

'Just as we celebrate a decade of the POSH Act being legislated, it is time to look back and take stock of the manner in which the mandate of the Act has been given effect to', as rightly said by Bench of Hon'ble Justice Mr. AS Bopanna and Hon'ble Justice Ms. Hima Kohli.

While hearing an appeal in the case of Aureliano Fernandes vs. State of Goa[296], the Hon'ble Supreme Court not only deliberated on the merits of the case but also addressed significant lapses in the enforcement of the POSH Act as highlighted by a National daily newspaper's survey of 30 national sports federations in India. The survey revealed that 16 out of them have not constituted an IC till date. Even where the IC have been found to be in place, they lacked the mandated number of members or an external member as outlined under the law.

The court's observations shed light on the sorry state of affairs regarding the implementation of this crucial legislation and reflected glaring lack of awareness on the importance and working of the POSH Act.

This sorry state of affairs prompted the court to emphasize the imperative need to make the victims aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the IC/LC/IC is expected to function under the statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a Complainant if dissatisfied with the Report of the IC/LC/IC, as the case may be.

Directions Issued:

To fulfill the promise that the POSH Act holds out to working women all over the country, the court found it appropriate to issue the following directions:

i. The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the POSH Act.

ii. It shall be ensured that necessary information regarding the constitution and composition of the ICs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on

[296] https://main.sci.gov.in/supremecourt/2012/21189/21189_2012_17_1501_44461_Judgement_12-May-2023.pdf

the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

iii. A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

iv. Immediate and effective steps shall be taken by the authorities/managements/employers to familiarize members of the ICs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

v. The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

vi. The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

vii. The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

viii. A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organizations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

ix. The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.



x. Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

xi. The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.

The Apex court directed the Union of India and all States/UTs to file their affidavits within eight weeks for reporting compliances. [297]

[297] https://ssrana.in/articles/supreme-court-guidelines-bridge-lacuna-posh-implementation/



17. AMENDMENTS IN THE POSH ACT

THE REPEALING AND AMENDMENTS ACT, 2016 (NO. 23 of 2016)

The Repealing and Amendments act, 2016 (No. 23 of 2016), as published in the official gazette, on May 06, 2016 introduced certain amendments to the POSH Act.

The amendments were as follows (as specified in the Second Schedule):

In Section 6, 7 and 24-

(i) For the words ***"Local Complaints Committee"***, wherever they occur, the words ***"Local Committee"*** shall be substituted;

(ii) For the words ***"Internal Complaints Committee"***, wherever they occur, the words ***"Internal Committee"*** shall be substituted.[298]

While these change may appear as mere omission of the word 'Complaints', but they carry profound implications within the framework of the POSH Act. This amendment underscores a fundamental shift in the role and function of the internal committee established under the Act. Rather than solely addressing and resolving instances of sexual harassment complaints in the workplace, the enhanced terminology signifies a broader mandate.

I. THE SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2022 (Bill No. 247 of 2022)

This Bill was introduced in the Lok Sabha on August 04, 2023. This bill proposes to amend this comprehensive legislation to make it more inclusive in nature by not limiting the scope of this legislation only to women, and to validate that the possibility of such sexual harassment incidents occurs even amongst other genders who are not included within the ambit of the POSH Act and ensure to provide due protection and safeguard their fundamental rights guaranteed under the Constitution of India.

The amendments proposed in the said bill are given below[299]:

- For the words ***"aggrieved woman"***, wherever they occur in the principal Act, the words ***"aggrieved person"*** shall be substituted meaning in relation to a workplace, a person, of any age whether employed or not which includes employees and customer, client,

[298] https://www.indiacode.nic.in/bitstream/123456789/12141/1/a2016____23.pdf
[299] https://sansad.in/rs/legislation/bills

visitor, patient or any such person, who allege to have been subjected to any act of sexual harassment by the Respondent;

- The definition of ***"Respondent"***, was included in the bill. This bill defines ***"Respondent"*** under section 2(n) as a person against whom the aggrieved person has made a complaint under section 9;

- Section 5 of the principle Act mentions the power of the ***appropriate government*** to notify a ***District Magistrate or an 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. The amendment proposes the addition of a list of ***District Officers*** on the ***portal of the Labor Department*** of each State. The relevant section from the amendment is as follows:

  "5 (2) The appropriate Government shall publish the notified list of District Officers on the portal of the Labour Department of each State."

- Section 6 of the principle Act specifically talks about the constitution and jurisdiction of the ***Local Committee.*** This committee is tasked with receiving complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having ***less than ten workers*** or if the complaint is against the ***employer*** himself.

- The amendment has made an addition to the principal Act wherein the ***District Officer*** is ***mandated*** to publish the details of the ***nodal officer*** on the ***portal of the labor department of each state.*** This amendment has been mentioned below:

  (4) The District Officer shall publish the details of the nodal officer on the portal of the Labour Department of each State

- ***Section 9(3) of the Amendment bill*** makes an addition to the principle Act stating that the ***IC or the LCC, with the consent of the aggrieved person***, can initiate proceedings under the Indian Penal code (45 of 1860) or any other law that is in force at that time being. Provided that the Respondent is not an employee in the workplace at which the incident of sexual harassment took place.

II. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE AMENDMENT ACT, 2022 (BILL NO. CXI OF 2022)

The said Bill was introduced in the Rajya Sabha on December 08, 2023 proposing amendments to the POSH Act with an intent to nullify the roles and powers of the Local Complaint Committee by mandating constitution of the Employment Tribunal. The Bill further seeks to extend the time period where aggrieved woman can file or report the complaint of sexual harassment.

The amendments proposed in the said bill is mentioned below:[300]

- For the words ***"District Officer"***, wherever they occur in the principal Act, the words ***"District Judge"***, shall be substituted;

- For the words ***"Local Complaints Committee"*** or ***"Local Committee"***, wherever they occur in the principal Act, the words ***"Employment Tribunal"*** shall be substituted.

- For Section 6 of the principal Act which deals with Constitution of Local Complaints Committee, the following new section pertaining to ***Constitution and jurisdiction of the Employment Tribunal*** shall be substituted:

  6. (1) Every District Judge shall constitute in the district concerned, Tribunal to be known as the "Employment Tribunal" to receive complaints of sexual harassment from establishments where Internal Committee has not been constituted or the Internal Committee or aggrieved person directly and such complaints would be considered as legal trials.

  (***2) Every District Judge shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area to receive complaints and forward the same to the concerned Employment Tribunal within a period of seven days.***

  (3) The jurisdiction of the Employment Tribunal shall extend to the areas of the district where it is constituted."

- For Section 7 of the principal Act, a new section shall be substituted with regard to the ***Composition, tenure and other terms and conditions of the Employment Tribunal***.

[300] Rajya Sabha amendment 8th Dec 2023.pdf

"7.(1) The Employment Tribunal shall consist of the following members to be nominated by the collegium of the concerned District Court in a manner as may be prescribed, namely:-

(a) a Chairperson to be nominated from amongst the retired female judges of the District Court;

(b) One retired judge to be nominated from amongst the retired judges of the District Court;

(c) One member to be nominated from amongst the eminent social activists in the field of gender-based discrimination;

(d) One member to be nominated from amongst the women working in block, taluka or tehsil in the district;

(e) two members of whom at least one shall be a woman to be nominated from amongst eminent sociologists;

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall belong to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or any minority community notified by the Central Government, from time to time;

(f) One member to be nominated from amongst the female advocates of the District Court.

(2) The Chairperson and every Member of the Employment Tribunal shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Judge.

(3) Where the Chairperson or any Member of the Employment Tribunal-

(a) contravenes the provisions of Section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d)has so abused his position as to render his continuance in office prejudicial to the public interest;

Such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson or Members of the Employment Tribunal other than the Members nominated under clauses (c) and (d) of sub-section (1) shall be entitled to



such fees or allowances for holding the proceedings of the Employment Tribunal as may be prescribed."

- For Section 9 of the principal Act, the following sub-section shall be substituted namely:

  "(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Employment Tribunal, within a reasonable period of time with regard to the facts and circumstances surrounding the making of such a complaint and the personal circumstances of the Complainant, to be determined by the Tribunal:

  Provided further that the Internal Committee or the Employment Tribunal as the case may be, may, for the reasons to be recorded in writing, extend the time limit based on the discretion of the Employment Tribunal, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period."

- For Section 13 of the principal Act, the following sub-section shall be instituted namely: ***"(4)The employer or the District Judge shall act upon the directions of the Employment Tribunal within sixty days of its receipt."***

- In Section 14 of the principal Act, in sub-sections (1) and (2), for the words ***"recommend to"***, the word ***"direct"*** shall be substituted. This amendment seeks to make the recommendations of the IC binding upon the employer and not mere recommendatory.

  Though the Bill proposed to address the need for many organisations or workplaces to make grievance redressal systems more effective in order to create a safer workplace environment for women, but it still needs to undergo legal scrutiny before it can be enacted into a law.

III. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE AMENDMENT ACT, 2022 (BILL NO.I OF 2024)

-A Bill to further amend the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

As we all are aware that the POSH Act aims to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

In a progressive move towards enhancing workplace safety and addressing the evolving needs of the modern workforce, a new bill has been introduced in the Rajya Sabha on February 02, 2024 proposing amendments in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The proposed amendments stressed upon the two critical issues, emphasizing the need for a more inclusive and supportive legal framework, recognizing the lived experiences of the women workforce and the realities of the today's workplace dynamics.

The amendments proposed in the said bill is mentioned below:[301]

- Amendment of ***Section 9*** of the principal Act:

  (a)in sub-section (1), for the words ***"within a period of three months from the date of incident"*** and within a period of three months from the date of last incident, the words ***"within a period of one year from the date of last incident"*** respectively, shall be substituted; and

  (b) in the second proviso to sub-section (1), the words ***"not exceeding three months"*** shall be omitted.

- Omission of ***Section 10*** of the principal Act

Statement of Object and Reasons:

Section 9 of the principal Act stipulates a limitation period of three months for filing complaints, further extendable by three months, provided that the Internal Committee or Local Committee (as the case may be) is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. This limitation period is inappropriate since in cases involving sexual harassment, women may be so traumatized as to render filing of the complaint impossible until such time they have recouped their strength. Placing a maximum limit of six months on such complaints does great injustice to the aggrieved woman.

Section 10 provides the aggrieved woman with the option of settling the complaint through conciliation. This provision is highly problematic since it fails to take into account the possibility of influencing, coercing, pressuring or intimidating the Complainant to arrive at a settlement. While there are certain areas (such as contractual matters) where conciliation may be fruitful, an attempt to reach a compromise in matters of sexual harassment of women greatly undermines the dignity of women.

This Bill intends to remedy these problems by amending the POSH Act, 2013. It provides that the basic limitation period for filing complaints shall be fixed at one year, which shall be further extendable, without any upper limit, by the Internal Committee or Local Committee (as the case may be), upon satisfaction that the circumstances prevented the woman from filing the complaint within the limitation period. Additionally, it proposes the deletion of the provision for conciliation in its entirety.

The Bill seeks to achieve the above objectives.

TIMELINE

01

RUPEN DEOL BAJAJ VS. KPS GILL (1988):

Popularly known as 'butt slapping case' It was held that act of slapping the posterior of a woman amounted to outraging of modesty.

02

BHANWARI DEVI CASE (1992):

This case led to the recognition of sexual harassment as a violation of women's rights in the workplace.

03

VISHAKA JUDGMENT (1997):

The Hon'ble Supreme Court laid down guidelines for the protection of women against sexual harassment in the workplace.

04

APPAREL EXPORT PROMOTION COUNCIL VS. A.K. CHOPRA (1999):

It was also observed that physical contact was not the sole determinant of sexual harassment.

05

S K M V. THE COMPTROLLER & AUDITOR GENERAL OF INDIA (2008):

The term "workplace" could not be rigidly structured to mean merely an "office" and include "virtual and extended workplaces".

06

MEDHA KOTWAL LELE VS UNION OF INDIA (2012):

It was directed by the court that in the event of non-compliance to the Vishaka guidelines, an aggrieved woman shall be entitled to approach the High Court for redressal.

07

NIRBHAYA CASE (2012):

A new section 354A was inserted in the IPC for the purpose of defining the sexual harassment and punishment for the same.

08

#METOO MOVEMENT (2018):

A movement where silenced women from all walks of life came forward with their stories of sexual harassment and assault majorly from perpetrators in senior positions.

09

N S J VS. UNION OF INDIA- REMOVAL OF SECTION 377 (2018):

The court upheld provisions in Section 377 that criminalize non-consensual acts or sexual acts performed on animals.

10

AURELIANO FERNANDES V. STATE OF GOA (2023):

The Supreme Court flagged the glaring defects and the procedural lapses in the inquiry proceedings pertaining to sexual harassment complaints.

11

HANDBOOK TO COMBAT GENDER STEREOTYPES (2023):

The Chief Justice of India announced the release of a comprehensive handbook introduced by the Hon'ble Apex Court aimed at addressing gender stereotypes within the judicial system.

ABOUT FICCI

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. FICI 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.

ABOUT S.S. RANA & CO.

Established in 1989, SS Rana & Co is a full-service law firm, with its expertise spanning diverse practices, including but not limited to IPR, corporate and commercial practices, dispute resolution, etc., on a panIndian basis. The firm has been globally recognised for its outstanding legal and advisory services by several national and international platforms. The firm is registered as an advocate-on-record with the Supreme Court and is equipped to represent clients' rights from the lower courts to the apex court of the country. For almost three and a half decades, the firm has been facilitating its substantial set of clients in protecting and enforcing their legal rights, which includes serving various Fortune 500 companies, in a diverse array of contentious and non-contentious matters.

Service areas

The firm has expertise and in-depth knowledge in all areas of IP and corporate laws and commercial practices, including a robust litigation practice which spans over both IP and non-IP matters. The firm has been consistently recognised for its solution-oriented and client-centric approach by several distinguished international and national legal journals.

S.S. Rana & Co.

Vikrant Rana, Managing Partner

Anuradha Gandhi, Managing Associate

S. S. Rana & Co

81/2, II nd Floor, Aurobindo Marg,

Adhchini New Delhi – 110016

T : +91-11-40123000

E : info@ssrana.com

W : www.ssrana.in

FICCI

Sumeet Gupta, Assistant Secretary General

Aastha Gupta, Assistant Director

FICCI

Federation House, Tansen Marg,

New Delhi - 110 001

T : +91-11-23487515

E : sumeet.gupta@ficci.com, aastha.gupta@ficci.com

W : www.ficci.in