



## **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”)**

Sexual harassment of a woman in workplace is a serious concern, especially with more and more women joining the mainstream workforce in India. Workplace sexual harassment violates a woman’s fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India. These Articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. Sexual harassment constitutes a gross violation of women's right to equality and dignity.

### Need for enactment of POSH Act

Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and hence India’s first legislation specifically addressing this issue, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) read with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, was enacted by the Ministry of Women and Child Development, India in 2013.

The Government formulated the POSH Act for safeguarding women's right to equality of status and opportunity at the workplace and to prevent an insecure and unfriendly work environment, which discourages women's participation in work, which in turn adversely affects their social and economic empowerment. POSH Act is in force since 2013, however, the awareness regarding consequences of sexual harassment and its redressal against the same is limited. Even

though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

The effective implementation of the Act requires creating an environment where women can speak up about their grievances without fear and get justice. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. Hence, the Act lays down certain duties of the employer and District Officer such as creating awareness on sexual harassment at workplace, sensitize the employees, assist the complaints committee in conducting the inquiry, monitor timely submissions of reports of the committee etc. The non-compliance of the provisions of the Act by the employer may result in fine and can also lead to cancellation of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be.

### Key Provisions of POSH Act

#### **A. Applicability:**

- The Act extends to the whole of India.
- The Act is not gender-neutral and provides protection to only women.

#### **B. Important Definitions:**

- "aggrieved woman" means a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent, in a workplace or a dwelling place or house.
- "employee" means 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.
- "employer" means the **head of the department, organisation, 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, any person responsible for the management, supervision and control of the workplace, any person discharging contractual obligations with respect to his or her employees or a person or a household who employs or benefits from the employment of domestic worker.

- “respondent” means a person against whom the aggrieved woman has made a complaint.
- “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:
  - (i) physical contact and advances; or
  - (ii) a demand or request for sexual favours; or
  - (iii) making sexually coloured remarks; or
  - (iv) showing pornography; or
  - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature

The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- a) implied or explicit promise of preferential treatment in employment;
- b) implied or explicit threat of detrimental treatment in employment;
- c) implied or explicit threat about present or future employment status;
- d) interference with work or creating an intimidating or offensive or hostile work environment; or
- e) humiliating treatment likely to affect the lady employee’s health or safety

## **C. Constitution of Complaints Committee**

### **1. Internal Complaints Committee (ICC)**

- The Act requires an employer to set up an ICC **at each office or branch**, of an organization **employing 10 or more employees**, to hear and redress grievances pertaining to sexual harassment.
- The ICC shall consist of a Presiding Officer who shall be a woman employed at a senior level at workplace, not less than 2 Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and 1 member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.
- At least one-half of the total Members nominated shall be women.

- Every Member of the ICC shall **hold office for such period, not exceeding 3 years**, from the date of their nomination.
- The Member appointed from amongst the non-governmental organisations or associations shall be paid Rs. 200 per day as fees or allowances for holding the proceedings of the ICC, by the employer and reimbursement of travel cost as incurred.

## 2. Local Complaints Committee (LCC)

- The Government will set up a LCC to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.
- The jurisdiction of the LCC shall extend to the areas of the district where it is constituted.
- LCC shall consist of a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women, 1 Member nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district, 2 Members, of whom at least one shall be a woman, nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.
- Every Member of the LCC shall hold office for such period, not exceeding 3 years, form the date of their appointment.

### **D. Penalty for non-compliance**

- Where the employer fails to
  - (a) constitute an Internal Committee;
  - (b) take action in respect of Inquiry Report, punishment for false or malicious complaint and false evidence and information to be included in annual report; and
  - (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to Rs. 50,000.

- If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-
  - (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

- (ii) cancellation of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

**Process of filing and redressal of complaints under POSH Act**

- An aggrieved woman is required to **submit 6 copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC/LCC** within a period of 3 months from the date of incident and in case of a series of incidents, within a period of 3 months from the date of last incident. The ICC/LCC, if satisfied, may extend the time limit not exceeding 3 months.
- On receipt of the complaint, **ICC/LCC shall send 1 of the copies received from the aggrieved woman to the respondent within a period of 7 working days.**
- The respondent shall file his reply along with his list of documents and names and addresses of the witnesses within a period **not exceeding 10 working days** from the date of receipt of the copy of complaint.
- The ICC/LCC may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation. However, no monetary settlement shall be made as a basis of conciliation.
- In case settlement has been arrived through conciliation, the ICC/LCC, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- LCC shall, where the respondent is an employee, proceed to make inquiry into the complaint or in case of a domestic worker, the LCC shall forward the complaint to the police, within a period of 7 days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable.
- In case of a domestic worker, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent.
- On the completion of an inquiry, **the ICC/LCC shall provide a report of its findings to the employer or the District Officer within a period of 10 days from the date of completion of the inquiry** and such report be made available to the concerned parties.
- Where the ICC/LCC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be-
  - (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from the service or undergoing counseling session or carrying out community service;

- (ii) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine.
- Where the ICC/LCC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or the District Officer that no action is required to be taken in the matter.

### **Checklist for compliances under the Act**

In order to provide guidance to employers, HR professionals and consultants to check whether an organization is compliant with POSH Act, we are hereby providing a compliance checklist in brief for quick reference.

### **Part A: Points to be considered by Employers for complying with the requirements of POSH Act**

#### **I. Policies**

1. Has the employer prepared and implemented an internal Anti-Sexual Harassment of Women at Workplace Policy in his/her organization?

TIPS: The anti-sexual harassment policy should cover the basics such as:

- ICC Composition e.g. names, designation and contact details of the ICC members.
  - What constitutes as a sexual harassment act like verbal, physical, quid pro quo, etc.
  - Process for filing of complaint, resolution of complaint, settlement, prosecution, enquiry and trial procedure.
  - Confidentiality of the complainant and respondents, except if required by any authority(ies) as per the law.
  - Zero-tolerance: how the employer practices zero-tolerance towards sexual harassment at workplace
2. Is sexual harassment specified as a form of misconduct under the sexual harassment policy, employment contract, service rules, in the organization?
  3. Has the employer created an Internal Complaints Committee (ICC) for each branch or office as per the POSH Act?  
(Applicable for each branch or office with 10 or more staff)

4. Does the employer review the policy periodically & update information regarding ICC members etc. on a timely basis?

## II. Notices

1. Has the employer provided sufficient information about the members of the ICC or the Local Complaints Committee (LCC) in prominent places in Hindi as well as English and regional language?
2. Has the employer displayed sufficient notices informing employees about the organization's stance on sexual harassment and the consequences of indulging in such acts?

TIPS: a) A copy of the sexual harassment policy can be provided to new joiners as part of their induction programme.

b) Employers can regularly distribute and promote the policy at all levels of the organization.

c) It may be ensured that the policy is easily accessible, for example, the policy is posted on the website of the company, if any.

## III. Assistance by Employer

1. Does the employer provide necessary facilities to the ICC for dealing with sexual harassment proceedings?
2. Does the employer conduct periodic workshops or seminars to sensitize employees about the stance of the organization on sexual harassment and about the consequences of engaging in any conduct that amounts to sexual harassment?
3. Does the employer has any system or process to provide assistance to an employee who has been sexually harassed, in approaching the complaints committee and in dealing with psychological and other effects of sexual harassment?

TIPS: a) While handling sexual harassment complaint, an inquiry should be conducted on the principles of natural justice and not as a formality.

b) The ICC or LCC's inquiry into the accusation of sexual harassment should be concluded within 90 days, and the employer must assist them by providing documents, etc.

4. Does the organization provide assistance to the harassed employee to make criminal complaint in the police station?

5. Has the employer made efforts to make employees aware about their rights under the POSH Act?

#### IV. Obligations pertaining to ICC

1. Does the employer has required number of members in the ICC as per the conditions laid down in the POSH Act?

TIPS: a) The ICC shall have minimum 4 members out of which the head of the committee shall be a woman. Also, 50% of the members nominated for ICC must be women.

b) The Presiding Officer and every Member of the ICC shall hold office for such period, not exceeding 3 years, from the date of their nomination.

c) It is advised to have an odd number of members in ICC in order to arrive at a decision in case of a divided opinion.

d) The members of ICC should have good credibility and technical competency to handle the grievances.

e) The employer may provide the ICC a separate space for conducting their meetings and maintaining records of all the cases of sexual harassment.

2. Has the employer conducted an orientation programme for the members of the ICC?
3. Whether an external person is a member of the ICC to ensure the integrity and impartiality of the ICC?
4. Does the employer monitor functioning and performance of the ICC/LCC?
5. Does the employer conduct capacity and skill building workshops for the members of the ICC?
6. Has the employer followed the recommendations of the LCC/ICC regarding the interim measures?
7. Whether the ICC, at the request of the aggrieved woman, before initiating an inquiry, take steps to settle the matter between her and the respondent through conciliation?
8. Whether the employer has paid Rs. 200 per day as fees or allowances to the members of ICC/LCC appointed from amongst the non-governmental organisations or associations for holding the proceedings and any reimbursement of travel cost incurred by them?



## V. Reporting

1. Whether the ICC reports its findings to the employer/the District Officer within a period of 10 days from the date of completion of the inquiry?
2. Does the ICC/LCC forward an annual report containing necessary details of sexual harassment case proceedings to employer/ the District Officer?
3. Whether the Annual Report on sexual harassment proceedings include the following details as specified in the Rules?
  - Number of complaints of sexual harassment received in the year
  - Number of complaints disposed of during the year
  - Number of cases pending for more than ninety days
  - Number of workshops or awareness programme against sexual harassment carried out
  - Nature of action taken by the employer or District officer
4. Does the employer include information about pending and resolved sexual harassment cases in the annual report of your company?
5. Whether the ICC/LCC provided the copies of the settlement as recorded to the aggrieved woman and the respondent?

## **Part B: Points to be considered by Complainant while filing complaint under POSH Act**

1. The aggrieved woman will file 6 copies of the written complaint, along with supporting documents and names and addresses of the witnesses with ICC/LCC.
2. The complaint should be brief i.e. it should be written in simple language which can be understood easily by the members of ICC/LCC.
3. The complaint should include
  - the details of exact incident, date and time, witnesses
  - the circumstances preceding and following the incident,
  - details of the respondent including name, designation, reporting structure between complainant and respondent, if any
  - relief that is sought from the employer.

In the ever changing and growing times, the right to work in a hospitable environment without any fear of invasion of space and liberty, is everyone's right, more so of a woman. Thus, implementing and executing the sexual harassment policy in every workplace is very important and essential. In this regard, we hope that the checklist as provided above would be helpful and will provide the guidance for effective implementation of the policy.

If any further clarification is required, please feel free to contact us.