



RS & MP ASSOCIATES

PRACTISING COMPANY SECRETARIES

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION
PROHIBITION AND REDRESSAL) ACT, 2013

{ 'THE POSHACT' }

PREAMBLE TO THE ARTICLE

PREAMBLE

- To effectively counter and address the menace posed by Sexual Harassment at the workplace, the Indian Legislative authorities rolled out the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH Act'). Subsequently, the Government drafted rules under the POSH Act titled Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. Additionally, in the same year the government also brought forth the Criminal Law (Amendment) Act, 2013
- In a landmark judgement, Vishaka v State of Rajasthan the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the India Constitution as well as by the UN Convention on the Elimination of All forms of discrimination against Women.

REGULATION

BY MINISTRY OF WOMEN AND CHILD DEVELOPMENT

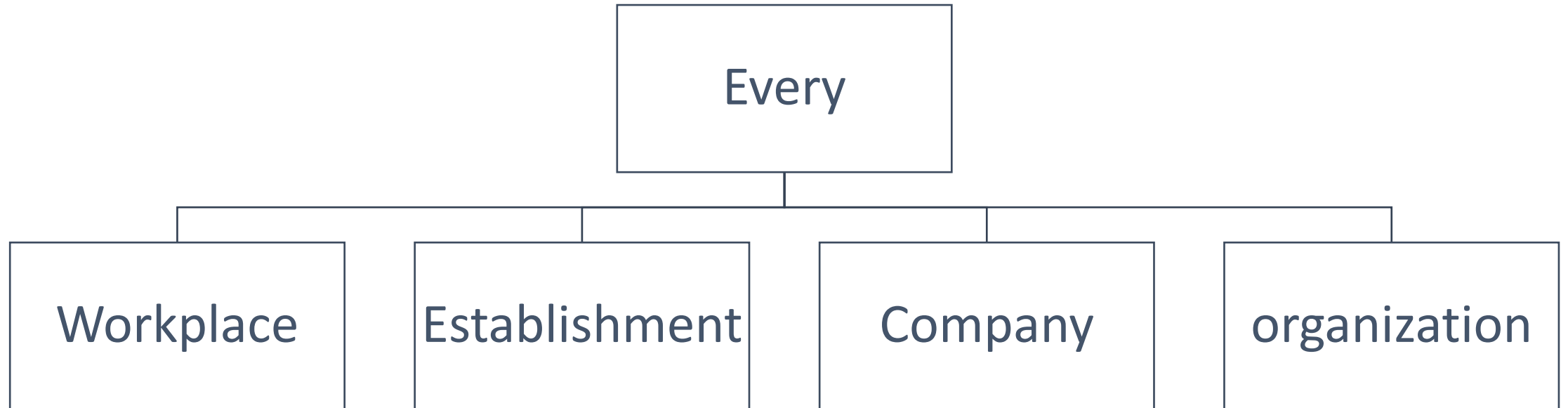


THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) RULES, 2013

LEGALLY BINDING GUIDELINES SPECIFIED IN THE SUPREME COURT IN A LANDMARK JUDGEMENT { VISHAKA V. STATE OF RAJASTHAN (AIR 1997 SUPREME COURT 3011) }

APPLICABILITY



MEANING OF SEXUAL HARASSMENT

SECTION 2(n)

It includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

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- physical contact and advances; or
- a demand or request for sexual favours; or
- making sexually coloured remarks; or
- showing pornography; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature

The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of

- implied or explicit promise of preferential treatment in her employment; or
- implied or explicit threat of detrimental treatment in her employment; or
- implied or explicit threat of detrimental treatment in her employment; or
- interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- humiliating treatment likely to affect her health or safety

However, the following are acceptable and not considered as instances of sexual harassment:

- Performance counselling
- Social interaction
- Showing concern
- Encouragement
- Polite compliment
- Friendly conversation

FORMULATION OF POLICY ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

CONTENT OF THE POLICY i.e.

- Policy Preamble
- Purpose
- Scope
- Definition of Sexual Harassment
- Responsibilities regarding Sexual Harassment
- Composition of Internal Committee
- Complaint Mechanism
- Documentation
- Disciplinary Action
- Confidentiality
- Protection against retaliation
- Dissemination of the Policy
- Other details if any

INTERNAL COMMITTEE ('IC')

SECTION 4

The POSH act mandates each organization with more than 10 employees must constitute Internal Committee which shall investigate matters pertaining to sexual harassment and shall consist of the following members to be nominated by the employer namely:-

- A presiding officer who shall be a women employed at a senior level at workplace from amongst the employees;
- Not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge
- One member from amongst NGO's or Associations committed to the cause of women or a person familiar with the issues relating to sexual harassment
- Provided that at least one half of the total members so nominated shall be women

LOCAL COMMITTEE ('LC') SECTION 5 &6

GOVERNMENT AT DISTRICT LEVEL

- Institute a “Local Committee” whose objective shall be to hear complaints pertaining to sexual harassment from the unorganised sector and from organization which don't have an Internal Committee

DUTIES OF EMPLOYER

SECTION 19

Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;



Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;



Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed.



Provide necessary facilities to the IC for dealing with the complaint and conducting an enquiry



Assist in securing the attendance of respondent and witnesses before the Internal Committee

DUTIES OF EMPLOYER SECTION 19

Make available such information to the IC as it may require having regard to the complaint made.



Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.



Cause to initiate action, under the Indian Penal Code, 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place



Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.



Monitor the timely submission of reports by the IC

REPORTING PROCEDURE

Any complaint/grievance should be reported to IC through any of the following:

- Reporting Manager
- Functional Head
- Business Head
- Business HR/Regional HR
- People Engagement Manager (PEM)

According to Rule 7 of the Rules, the Complaint needs to be filed, in writing (6 copies) along with supporting documents and the names and address of witnesses, preferably within three months from the date of occurrence of the alleged incident or the date of last incident (in case of a series of incidents).

The IC shall handover one copy of the Complaint to the accused person within a period of seven working days of receipt of the complaint and give him the time not exceeding ten days to respond. Before commencing enquiry, IC may and at the request of aggrieved women, take steps to settle the matter through conciliation. No monetary settlement shall be made as a basis of conciliation.

Where settlement has been arrived through conciliation, IC shall record the settlement so arrived at and forward the same to the Company to take appropriate actions and provide the copies of the same to the parties.

REPORTING PROCEDURE

After settlement, no further inquiries shall be conducted by IC. In case no settlement is agreed between the parties, IC shall proceed with the inquiry proceedings. IC shall complete the inquiry within a period of three months after registration of complaint. 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 IC. IC shall provide every reasonable opportunity to the complainant and accused for putting forward and defending their respective case.

According to Rule 7(5) of the Rules, the IC shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint if the complainant or accused fails without sufficient cause, to present herself or himself for three consecutive hearings. For conducting the inquiry, a minimum of three members of IC including the President/Chairperson are required. After completion of an inquiry, IC shall provide its report to the company and the parties within 10 days from completion of inquiry. In case allegation is not proved, no action is required to be taken in the matter.

In case the allegation is proved, IC shall recommend the company to:

- take action for sexual harassment as a misconduct in accordance with service rules or manner as may be prescribed;
- 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 having regard to the (a) mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) 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 respondent; and (e) feasibility of such payment in lump sum or in instalments. The company shall act upon the recommendations of IC within 60 days of receipt from IC

REPORTING PROCEDURE

The disciplinary action by the company may include a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments and termination of employment.

In case any such conduct amounts to specific offence under the Indian Penal Code or under any other law, the company may initiate appropriate action in accordance with the law by lodging a complaint with the appropriate authority.

In case of any malicious/false allegations or false evidence or where documents produced are found to be forged / misleading, the ICC may recommend to the company to take appropriate action against such person, in accordance with the service rules or in such manner as may be prescribed

PENALTY

Section 26

An employer can be subjected to a penalty of up to Rs.50,000/- if the employer

- Fails to constitute Internal Complaints Committee;
- Fails to act upon recommendations of the Complaints Committee; or
- Fails to file an annual report to the District Officer where required; or
- Contravenes or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, the employer shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence;
- Cancellation/Withdrawal/Non-renewal of registration/ license required for carrying on business or activities.

INDICATIVE COMPLIANCES

Sr.No	Particulars	Time limit	Actions required to ensure compliance
1	To formulate an Anti-Sexual Harassment Policy ("Policy") for the organization	Immediate	Policy to be formulated in compliance with the Act
2	Actions required to ensure compliance	Immediate	An 'Internal Complaints Committee' ("IC") to hear and redress grievances pertaining to sexual harassment. The constitution of IC is prescribed under the Act.
3	Annual Report sent by the IC to the employer and District Officer containing details of the sexual harassment proceedings	Annually (for each calendar year)	Annually (for each calendar year)

INDICATIVE COMPLIANCES

Sr.No	Particulars	Time limit	Actions required to ensure compliance
4	Disclosure in the Director's Report (in case of a company registered under the Companies Act, 1956 or Companies Act, 2013, as the case may be	Disclosure in the Director's Report (in case of a company registered under the Companies Act, 1956 or Companies Act, 2013, as the case may be	<ul style="list-style-type: none"> a. A statement to be included in Directors' Report that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Act; b. a. the number of complaints received, disposed of, pending more than ninety days, number of workshops or awareness programme against sexual harassment carried out during the year
5	Sexual harassment must be recognized as a form of misconduct in the organization	Immediate	Immediate

INDICATIVE COMPLIANCES

Sr.No	Particulars	Time limit	Actions required to ensure compliance
6	Issue certificate from the employees to evidence compliance	Periodic	The certificate should be in the form of a declaration which states that the employee has not experienced any incident of sexual harassment in the organization
7	Display of posters/ notices in prominent places in the premises of the organization informing employees about zero-tolerance towards sexual harassment	Immediate	Posters with graphics can be prepared. The posters must also contain the information of the members of the IC.
8	To conduct workshops and seminars to inform the employees about their rights	Periodic	The format in which the workshops/ seminars can be decided by the organization
9	Capacity-building programmes for the members of IC	Periodic	Training should be given to members of IC for conducting sexual harassment proceedings

INDICATIVE COMPLIANCES

Sr.No	Particulars	Time limit	Actions required to ensure compliance
10	Informing new joinees about the zero-tolerance policy towards sexual harassmen	Need based	The new joinees in the organization should be given sufficient training and information on what constitutes sexual harassment
11	Prohibition from using the information technology assets for indulging in sexual harassment	Immediate	In the changed circumstances due to the pandemic a lot of organizations are working from home. The trend might even continue in the longer run. Therefore, sufficient modifications/ additions should be made in the new and existing any Policy to incorporate situations to cover instances of sexual harassment via information technology

INDICATIVE COMPLIANCES

Sr.No	Particulars	Time limit	Actions required to ensure compliance
12	Monitoring the performance and functioning of the IC	Periodic	Necessary knowledge is to be imparted including information as to amendments and judgments on the law
13	Assistance to be given to the aggrieved employee to initiate criminal complaint in the police station	Need based	Guidance to be given to employee as to how to proceed with the filing of a FIR
14	Implementation of gender-neutral policies to afford adequate protection to male employees as well	Non-mandatory	Guides for male and transgender employees and formulation of gender-neutral versions of the sexual harassment policy
15	Policy to be made applicable to all the offices including the main branch of the organization	Immediate	Sufficient knowledge between branches of the organization should be ensured to guarantee compliance at all levels

CONCLUSION

The POSH act is enacted with the objective of making workplaces safer for women by preventing, prohibiting and redressing acts of sexual harassment against them in the workplace.

It would prove useful to all women employees working in an organization, particularly and be step forward in promoting their independence as well as right to work with dignity.