

# Guide to a safe and sexual harassment free **WORKPLACE**



WITH REFERENCE TO

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

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# What is Prevention of Sexual Harassment (POSH) Act?

In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, which we commonly refer to as the POSH (Prevention of Sexual Harassment) Act.

The POSH Act has been enacted with the objective of preventing & protecting women against workplace sexual harassment. The Act also ensures effective redressal of complaints of sexual harassment.



## Who is protected?

Under this Act, any woman, of any age, whether employed or not who alleges to have been subjected to any act of sexual harassment will get protection.

Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.



### Note :

*The foundation of the POSH Act was laid down in the case Vishakha v State of Rajasthan [1997], when a social worker named Bhanwari Devi was brutally gang raped for trying to stop a child marriage.*

# What amounts to Sexual Harassment?

Any unwelcome act or behaviour (whether directly or by implication) could lead to sexual harassment, such as:

- Physical contact or advances;
- A demand or request for sexual favours;
- Making sexually coloured remarks;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.



## Note :

*The keyword which determines whether an act is sexual harassment or not, is the term 'UNWELCOME'*



## Where can sexual harassment take place?

Sexual harassment under POSH Act can occur at 'Workplace' which includes the office premises, and also any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.

## Note :

*Sexual Harassment is a subjective experience and should be analysed from the perspective of the complainant.*

*[High Court of Delhi in Dr. Punita K Sodhi v Union of India, 2010]*



## Who is 'Employer'?

Any person who is responsible for the management, supervision and control of the workplace. It could also be the person discharging contractual obligations with respect to his/her employees.



## Main obligations of the employer:

- Formulation of Prevention of Sexual Harassment(POSH) Policy at workplace
- Constitution of Internal Committee (IC) at each location to help in redressal of complaints
- Create an effective complaints redressal mechanism/ procedure/protocol
- Organize sensitization programmes and training sessions to create awareness about the issue
- Take actions as per the recommendations of IC with respect to the sexual harassment cases reported at the workplace

## Failure to comply with POSH Act?

- Fine up to Rs.50,000
- For subsequent failures: fine up to Rs.1,00,000 or cancellation of License / Registration / Suspension to carry out business activity



### **Note :**

*In case there are less than 10 employees, complaints can be filed before Local Committee(LC) constituted by the District Officer.*

## What is 'IC'?

The POSH Act has made it mandatory for every employer to set up an Internal Committee (IC) to address all issues related to sexual harassment at the workplace.



## The key functions of this committee are:

- Effectively address workplace sexual harassment complaints
- Ensure timely redressal of matters related to sexual harassment at the workplace
- Maintain confidentiality and follow principles of natural justice

## Who can be a member of IC?

IC shall consist of minimum 4 members and at least 50% of the total members shall be women. The members shall include:

- One Presiding Officer: A Woman working at senior level as employee; if not available then nominated from other office/units/department/workplace of the same employer
- Two Members (minimum): From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
- One External Member: From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment



### **Note :**

*Where the office or administrative units of a workplace are located in different places, an IC has to be set up at every administrative unit and office.*

# Redressal procedure

Aggrieved woman files complaint within  
3 months of incident



## CONCILIATION (Informal resolution)

Successful

Not successful

IC recommends employer  
to take action <sup>1</sup>



## INQUIRY (Formal resolution)

IC investigates <sup>2</sup>  
(Interview of parties\* & witness,  
examining evidence)

⌚ 90 days

Inquiry completed by IC

⌚ 10 days

IC shares report of the case  
with employer & parties\*

⌚ 60 days

Employer takes  
necessary action as  
suggested by IC <sup>3</sup>

- <sup>1</sup> No monetary settlement provided in case of conciliation
- <sup>2</sup> Interim relief is available to the aggrieved person during pendency of inquiry
- <sup>3</sup> Parties\* may file an appeal to the Appellate Authority within 90 days from the date of IC recommendations, if they want to challenge the findings of IC.

\* Parties: Aggrieved woman and respondent

**Please note:** Legal practitioner shall not be allowed to represent the parties at any stage of the proceedings before the Internal Committee.

## Dos

- 👍 Set up an Internal Committee in all offices/branches of the organisation
- 👍 Align your organisation's POSH policy with the POSH law
- 👍 Organize awareness programmes and workshops at regular intervals for sensitizing employees on POSH
- 👍 Organize capacity and skill-building programmes for Internal Committee members
- 👍 Publish names and contact details of the members of the Internal Committee for easy access
- 👍 Display the penal consequences of indulging in acts of sexual harassment at conspicuous places in the workplace



## Don'ts

- 👎 Ignore and trivialise the complaint
- 👎 Threaten any of the parties with adverse consequences
- 👎 Terminate the complainant or respondent right away
- 👎 Leak confidential information / privacy of concerned parties
- 👎 Have pre-determined ideas and be biased towards either party
- 👎 Make unreasonable delay in redressing the complaint



# Challenges in POSH implementation



## Note :

*If anyone entrusted with confidential information discloses it, he/she shall be liable to pay penalty as per the POSH Act.*

# POSHsecure



A Lawubhava venture

**POSHsecure** is a comprehensive techno-legal product which encompasses training, consulting, and online complaint management system in the domain of workplace sexual harassment.

It is a dynamic, highly secured cloud platform, uniquely designed to help organisations & institutions across the globe to deal with compliance issues related to sexual harassment at workplace.

**POSHsecure** engages users on multiple levels through interactive training video, quizzes, and helpful information tips. It is accessible from multiple platforms like personal computers, smartphones and other electronic devices. One of the most prominent feature of the portal is that it acts as a repository of structured information. The advanced security feature ensures all data is encrypted, and regulates the amount of information available on any complaint and parties involved.

## POSHsecure follows a K-L-M-N approach



### KNOWLEDGE

Through our knowledge platform you can get the information related to workplace health and safety related compliances



### LEARNING

Through our engaging online training videos you can sensitize everyone at your workplace about Prevention of Sexual Harassment Laws.



### MANAGEMENT

Our unique technology platform and mobile application assists in holistic management of all issues related to workplace safety



### NETWORK

Through our platform, you can connect and network with leading lawyers, NGOs, workplace safety experts and other related external agencies

## Platform features



Simple and quick registration process



Set-up an Internal Committee



Customizable Prevention of Sexual Harassment Policy templates



End-to-end complaint management



Reporting and analytics



Secured by AES - 256 bit SSL encryption



24/7 Tech Support



Separate easy and accessible dashboard for Internal Committee



Easily accessible by employees, Internal Committee



Easily accessible from personal computers, laptops, smartphones etc.

## How will POSHsecure help?

### Online Training Features



Engaging online self paced training videos



Assessment & quizzes for better understanding



Separate training modules uniquely designed for Employees, Employer & Internal Committee



Training content regularly updated

### Offline Training Features



Face-to-face training conducted by POSH experts



Handbooks, brochure, guides & manuals on POSH for better understanding



Large network of multilingual experts



Lawcubator is a consulting firm in the area of workplace health & safety, gender equality, discrimination, disability & occupational safety related legal compliances defined under various employment laws globally.

Our objective is to provide techno-legal solutions for workplace related issues, such as sexual harassment, gender discrimination, health and safety of the employees at workplace. Our customisable SaaS based technology platform is uniquely designed in accordance with various national and international legislations to ensure holistic and efficient management of all issues related to workplace safety. The one-stop platform and mobile app caters to all the requirements defined under the act by providing policy drafts, training modules to understand the law, complaint and resolution management technology platform. The platform can easily be setup on the cloud or on-premise and is fully customisable.

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