

Decoding POSH Act, 2013 - Prevention Of Sexual Harassment In The Workplace
written by Smita Paliwal | October 11, 2022



You can tell the condition of a nation by looking at the status of its women.
- Pt. Jawaharlal Nehru

According to the Preamble of the Indian Constitution, "fairness of status and opportunity" must be guaranteed to every citizen; Article 14 of the constitution mandates that everyone is treated equally before the law [1]. The supreme court in the landmark judgement of *Vishaka vs. UOI* [2] had framed the guidelines and directed the government to enact legislation for women in the workplace in light of the provisions of the constitution and then the Parliament took a stance on this matter and enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013 (POSH Act) [3].

The POSH Law was enacted to safeguard women from sexual harassment and to promote empowering workplaces that acknowledge women's rights to equality of opportunity and status [4].

In India, deep-rooted beliefs of gender bias and discrimination confined women to the private domestic realm and allowed only men to earn livelihood for the family. But globalization has radically changed the scenario. However, with the rising number of women workforce, sexual harassment in the workplace has become more prevalent.

We can say that sexual harassment has become a pandemic that occurs daily and everywhere to which POSH Law is an antidote which was enacted to provide the much-needed legislative push to protect women from workplace sexual harassment.

Applicability Of POSH Act

Regardless of location, any workplace, establishment, corporation, or organisation (including NGO) that employs 10 or more people must comply with the POSH Law. The Act applies to all places that meet the criteria for a "workplace." [5]

Expanding the ambit of "workplace": The new legislation broadens the definition of "workplace" to include sports institutions, stadiums, employer-provided transportation, and any location an employee visits as part of or in connection with their employment. Thus, including those places that are directly or indirectly connected to employees' primary workplaces including work from home [6].

Steps To Create A Safe Workspace In Line With POSH Compliance

The maxim "prevention is better than cure" applies to the obligations of the employer as well. Several provisions under POSH Law that are mandatory are as follows:

- **POSH Policy:**

The policy must specifically state what constitutes harassment in the online context and must make this information available across all channels of communication [7]. Workplace etiquette instruction must be included in the required POSH training. While a robust organisational policy against harassment is required, it is also widely acknowledged that the policy has to be reviewed periodically to reflect modern trends [8].

- **Internal Committee (IC) [9]:**

Following the Act, every employer, having 10 or more employees is mandated to create an "Internal Committee". Each committee must have four members, including a senior female employee, two or more employees, and one External Member either from an NGO that promotes women's rights or committed to the cause of women or anyone aware of the issues related to sexual harassment (these people must be nominated by the organization).

- **Constitution of Local Committee (LC) [10]:**

The District Officer, who must be either a D.M, ADM, or Collector, is given the authority to establish a Local Committee (LCC) in each district.

Following Clause 6(2) of the POSH Act, a Nodal Officer must be appointed by the District Officer in each block, taluka, and tehsil in the rural and tribal areas, as well as every ward or municipality in the urban area, to receive complaints and forward them to the appropriate LC within a seven-day window.

- **Complaint of sexual harassment [11]:**

Within three months of the claimed incident, a sexual harassment complaint must be filed. The deadline may be extended with reasonable justification.

- **Conciliation [12]:**

The aggrieved woman may ask the IC or LC to mediate the conflict with the respondent, depending on the circumstances. It further emphasises that no monetary settlement will serve as the foundation for conciliation.

Elements Of POSH Policy Explained

- **Definition of sexual harassment:** The POSH Act defines sexual harassment as any of the offensive behaviours: the making of physical advances, demanding or requesting sexual favours, making statements with a sexual undertone, displaying pornography or engaging in any other offensive sexual behaviour, whether it be physical, verbal, or nonverbal. Any of the following behaviours directed towards a female employee constitutes sexual harassment as well: a promise of special treatment while applying for jobs, threats to treat poorly at work and other negative consequences, all in exchange for a sexual favour [13].
- **Scope and applicability of the policy:** Every woman who has entered a workplace is protected from sexual harassment under the POSH Act. This implies that a woman can report sexual harassment at her place of employment or another person's place of employment [14].
- **Committee:** Every organization with more than 10 employees must establish an Internal Committee (IC).
- **Redressal Policy:** Establishment of an internal POSH policy to address sexual harassment at work;

- **Training Programmes:** The organisation is also obliged to implement orientation and training programmes,
- **Annual Report:** Organizations must submit an annual report to the district collector detailing the number of sexual harassment complaints they received, the number of complaints they resolved, the number of cases they had open for more than 90 days, etc. Report filing is the last stage in POSH compliance after drafting the Annual Report.

Penalties For Failure Of POSH Compliance

Employers that violate POSH law in the following ways may be subject to a fine of INR 50,000:

- If an employer fails to establish an internal committee [15]
- Lack of action on the Internal Committee's recommendations [16]
- Failure to submit an annual report to the District Officer when required,
- Violation of the Act or Rules, attempt to violate them or facilitation of their violation [17]

If an employer violates the POSH Act more than once, they will face the following penalties:

- Double the fine, or a higher fine if specified under another law for the same offence
- Cancellation, withdrawal, or non-renewal of any registration or licence necessary for conducting business or engaging in activities [18]

Offences of the POSH Law are not only illegal but also harmful to the organisation:

- After being charged with a crime, the offending organization's reputation and goodwill are irreparably damaged
- Harms the organization's growth and reputation

Conclusion

The POSH Law envisages a serious need which emerges for women's rights to be upheld, safeguarded and fulfilled, particularly in the workplace. But laws can only give certain rights; thus, what matters more is how society, employers and employees come together to assert to safeguard and ensure a respectful and secure workplace for its women employees.

Right to work encompasses the right to work free from sexual harassment in the workplace. It necessitated a positive obligation on employers to ensure Sexual harassment-free employment for women employees.

Frequently Asked Questions

Is POSH Act mandatory in India?

The ACT mandates that all establishments, corporations, and organisations (public or private) that employ 10 or more people, regardless of gender, whether they are permanent, temporary, ad hoc, consultants, interns, or contract workers with more than 10 workers provide both employers and employees must have an Internal Committee in place.

It has been made required so that each employee and employer are aware of what constitutes workplace sexual harassment, how to report it, how to get the problem resolved, and what the repercussions and penalties are for non-compliance.

What is the POSH Act?

In 2013, Parliament enacted an Act for the protection, prevention and redressal of women from sexual harassment in the workplace. This Act along with its several rules is called the POSH (Prevention of Sexual Harassment of women in a workplace) Law. The Act was created to protect women against

sexual harassment in the workplace in any form, as well as to prevent and address sexual harassment complaints.

How do you handle a POSH Complaint?

An Internal Committee that can foster an atmosphere of trust and confidence throughout the investigation is the first step in establishing a fair, quick, and unbiased inquiry process. By virtue of the delicate nature of sexual harassment cases, confidentiality is at the heart of every POSH investigation since sexual harassment situations are so delicate.

The Right to Information Act of 2005 expressly states that it does not apply to anything pertaining to the investigation's processes, the identities of the persons involved, the specifics of the type of sexual harassment the respondent committed, or information pertaining to conciliation.

[1] Kanskar, Shivi, and Debarati Pal. "Reconceptualizing Sexual Harassment: Extending the POSH Act, 2013." *Jus Corpus LJ* 2 (2021): 467.

[2] *Vishaka v State of Rajasthan* ((1997) 6 SCC 241)

[3] Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) POSH Act, 2013, No 14, Acts of Parliament, 2013 (India)

[4] Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

[5] Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013, No 14, Acts of Parliament, 2013 (India), sec 2(0).

[6] *Silajit Guha vs. Sikkim University & Ors.* (MANU/SI/0082/2020)

[7] <https://indiaccsr.in/what-is-the-purpose-of-having-a-corporate-posh-policy/>

[8] By, Validated, et al. "Prevention of Sexual Harassment at Workplace (POSH) Policy & Process." *Policy* 3 (2021): 01.

[9] Section 4 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[10] Section 6 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[11] Section 9 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[12] Sec. 10 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[13] Section 3(2) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[14] By, Validated, et al. "Prevention of Sexual Harassment at Workplace (POSH) Policy & Process." *Policy* 3 (2021): 01.

[15] Section 4(1), Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

[16] Section 13, 14 and 22 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013.

[17] Section 26(1) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013.

[18] Section 26(2)(ii), Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013