

78TH MONTHLY MEETING



Topic: "POSH Act - Prevention of Sexual Harassment Act 2013"

What is the role of HR Professional in the obligations of an employer under the Act



07.00 PM - 8:30 PM
16 September 2023



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ADVOCATE**

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Sexual Harassment to Women at Work Place

POSH Act – 2013

Prevention, Prohibition and Redressal - Act 2013



1. What is sexual harassment?

Sec. 2(n)

“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;**
- iii. making sexually coloured remarks**
- iv. showing pornography; or**
- v. any other unwelcome physical, verbal or nonverbal contact of sexual nature.**

Prevention of sexual harassment.

- 1. No women shall be subjected to sexual harassment at any work place.**

- 2. The following circumstances, among other circumstances if it occurs are present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-**
 - i. implied on explicit promise or preferential treatment in her employment.**

 - ii. implied or explicit threat of detrimental (harmful or negative) treatment in her employment; or**

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- iii. Implied or explicit threat about her present or future employment status; or**
 - iv. interference with her work or creating intimidating or offensive or hostile work environment for her; or**
 - v. Humiliating treatment likely to affect her health or safety.**

3. Sexual harassment includes:

- a) Actual or attempted to rape or sexual assault.**
- b) Unwarranted deliberately touching, leaning, staff cornering or pinching.**
- c) Unwarranted sexual teasing, jokes, remarks on questions.**
- d) Blistering at somewhere**
- e) Kissing sounds, howling, smacking lips.**
- f) Touching an employee, clothing, hair or body.**
- g) Touching or raping oneself sexual around another person.**

Gridhar Madras

Vs

Indian Institute of Science

Bangalore 2020.Lab 7C. 1005 (Karn. H.C)

4. Visual Sexual Harassment:

- i. It includes showing pornography, nude poster, photograph and cartoon, sexually explicit picture.**
- ii. Calling every day for work and retain her for excessive hours and staring on her face, breast, neck, eye and other part of body, repeated unwanted invitation for dinner, drink and movies, proposal for physical intimacy beginning with subtle hints which may lead to covert request for dating, sexual favours, requiring to wear sexist and revealing or suggestive sari, frock, dress and to adopt suggestive hair style, lipstick etc.**
- iii. Offensive comments or jokes.**

iv. Serious or repeated offensive remarks such as teasing related to a person's appearance.

v. Inappropriate questions, suggestions or remarks about a person's sex life.

vi. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviors with sexual overtones.

vii. Unwelcome social invitations with sexual overtones commonly known as flirting.

viii. Invitations of personal space – getting too close for no reason, brushing against or cornering.

5. Back ground of POSH Act:

**Two important judgments of the
Honourable . Supreme Court**

Vishaka

Vs

State of Rajasthan

W.P. 666.70 of 1992

decided on 13.08.1997

Apparel Export Promotion Council.

Vs

A.K. Chopra

C.A. No.226-227 of 1999

decided on 20.01.1999

6. Sec 2(a)

Aggrieved Women

in relation to a work place a women of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassments by any male.

in relation to a dwelling place or house, a women of any age who is employed in such a dwelling place or house.

7. Sec-2 (o) Work Place – very wide definition covers not only factories, offices, even vehicle and other places etc.

8. Internal complaints committee (sec.4) – (ICC)

Every employer having more than 10 employees shall constitute the committee:

- a) Presiding Officer – Senior level woman employee.
- b) Not less than 2 members preferably committed to the cause of women or who have experience in social work or legal knowledge from the organisation.

c. One external member from amongst NGO, or women associations or person familiar with issues relating to sexual harassment.

Provided one half of the total members shall be women.
ICC shall have the powers of Civil Court.

9. Sec. 9 – Complaint of sexual harassment:

In writing by the aggrieved women to the ICC within 3 months from the incident or last incident. time limit extendable for another 3 months for reasons to be recorded by the ICC/ LCC.

Whether the aggrieved women is unable to make a complaint on account of her **physical incapacity** a complaint may be filed

1. her relative or friend or
2. her co-worker or an officer of the National Commission for Women or State Commission for Women.

3. Where the aggrieved person is unable to make a complaint on account of her **mental incapacity , the complaint can be filed by 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 knowledge of the incident jointly with a relative or friend or a special educator or guardian or under whose care she is receiving treatment or care.**

4. Where the aggrieved women for any other reason is unable to make a complaint, a complaint may be filed by another person who has knowledge of the incident with her written consent of the aggrieved women.

5. Where the aggrieved woman is dead a complaint may be filed by any person who has knowledge of the incident with the written consent of her legal heir.

False complaint.

If the complainant makes a false complaint she is liable for fine to be imposed by internal committee . Further action could include a written apology, caution, warning notice, withholding of promotion or increment or even termination of service.

10.Manner of Inquiry:

- 1. The complainant shall submit to the complaints committee six copies of the complaints along with the supporting documents and the names of witnesses.**
- 2. On receipt, one copy should be forwarded to the respondent within 7 days.**
- 3. The respondent shall file his reply along with the list of documents and address of the witnesses within 10 days.**

4. The complaints committee shall make enquiry as per principle of natural justice.

5. No legal practitioner is allowed in the inquiry.

6. Quorum of complaints committee

Minimum of three including the Chair Person and the external member.

7. Standard of proof. Preponderance of probability.

No strict proof as in the case of criminal justice system.

The currently adopted standard is that if a woman's testimony is of "sterling credibility" then it does not need to be corroborated.

11. Conciliation (sec.10)

Allowed

but no monetary settlement.

12. Interim Report (sec.12)

Transfer of the aggrieved woman or respondent to any other place.

Grant of leave to the aggrieved woman for a maximum of 3 months.

13. Inquiry report (sec.13)

enquiry should be completed within 90 days.
report should be submitted within 10 days thereafter.
employer to act upon the enquiry report within 60 days of receipt.

14. Appeal

Within 90 days, with the Appellate Authority under the certified standing orders and as per the service rules. (No Appellate Authority is provided under the POSH Act.

15. Obligations of an employer Under the Act Sec.19

- a) provide a safe working environment.
- b) display at any conspicuous place in the work place, the penal consequences of sexual harassments and details about the internal complains committee.
- c) organize workshops and awareness programmers at regular intervals for sensitizing (enlightening) the employees. (sec.19 read with rule 13)

d. orientation programmes for the members of the IC & LC
e. assist in securing the attendance of the respondent and witness before the IC.

f. provide assistance to the women if she chooses to file a criminal complaint under the IPC.

g. Management has no option except to comply with the recommendation of the internal committee.

(Madras HC in Christian Medical College & Hospital Vs SG Damodaran-2019 LLR.769)

h. Management has to act if service rules are existing as per service rules (D.Sengupta Vs Institute of Cost Accountants-Cal.HC.2019.LLR.1990)

i. Incorporate sexual harassment as misconduct under the service rules of the organization.

j. Submission of annual report with the District Officer – no prescribed format – but shall contain

- **Number of complaints of sexual harassments received in the year.**
- **Number of complaints disposed during the year.**
- **number of cases pending for more than 90 days.**
- **number of workshop or awareness programme against sexual harassment conducted.**
- **nature of action taken.**
(Section.21 read with Rule 14)

16. Penal provisions (Section 26)

If any employer fails to carry out any of his statutory obligations under the Act

- Fine up to Rs 50000/**
- For repeated offence – twice the fine already imposed**
- Cancellation of licence etc.**

For any further queries /clarification

Pls. contact

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