

POSH Act Policy

If we trace down the journey of POSH Act coming into effect, it can be traced back to a supreme court verdict in the case of Vishaka & Ors vs State of Rajasthan & Ors in the year 1995.

This case was filed by an NGO asking for landmark punishment for the rapists who were involved in a gang rape of a social worker, while she was at work.

While the Supreme Court of India pronounced its judgment stating that sexual harassment is a grave violation of the constitutional rights of women, a need for strict laws for the protection of women at the workplace came in the forefront.

POSH Act was brought into effect in 2013 after clearly both houses of the parliament.

Prevention of Sexual Harassment (POSH) is a law as the name suggests, was brought in to protect women from any harassment at work along with providing a safe, non-discriminatory environment within their workplaces.

Most of the organizations, implement this act & adhere to a zero-tolerance policy towards harassment of women.

What do you understand by harassment at the workplace?

The workplace ideally is considered to be a much safer place for employees, especially women.

However in recent times a sudden but alarming surge in harassment cases across length & breadth of the country can be seen, strict laws have come in picture to ensure the safety of women at the workplace.

What is workplace harassment?

Workplace harassment is defined as any misconduct in a form of any action or communication which may be directed towards the victim to demean, mock, discriminate on grounds of religion or race, threats, intimidation or sexual or physical assault at a workplace.

This may involve, colleagues, managers, support staff, clients, group of coworkers and so on.

Amidst the growing concerns about workplace harassment, the government came with a law to prevent such incidents at the workplace. This act was known as the POSH act.

What is considered to be harassment at the workplace?

Under POSH Act, section 2 provides details of actions which come under the domain of harassment, these are;

- Any unwanted physical contact or advances towards the victim which could be intimidating or sexual in nature.
- Any demands for sexual favors.
- Passing demeaning or sexual remarks over the color of the victim.
- Forcefully showing pornography to the victim.
- Unwanted abusive, sexual or physical conduct.

Furthermore, the act broadens its definitions of sexual harassment which indicates its usage in various situations at the workplace. Here are some of these acts;

- Any form of a promise to give preference towards any growth or hiring in victims' employment.
- Threat of any form to disrupt the victim's employment if sexual request or demand isn't met.
- Threat made towards altering or interfering in victims present or future employment status.
- Creation of hostile or offensive work environment for the victim.
- Any undesired treatment which can affect victims' health or safety.

POSH Training

While laws like these came up, assumptions & confusions also found its way. What can be treated as harassment & what does not fall in the same made rounds within the corporate workplaces.

Assumptions came into picture wherein people wondered if even asking people out for a mere lunch, could make them a offender.

Similarly countless myths or presumptions arose creating an unhealthy environment within an office.

It's noteworthy that POSH Act comes as a gender-specific Act & extends even beyond the walls of an office.

However its a responsibility of our organization to make sure that POSH Act is looked upon by both genders in the empowering manner.

Its also the responsibility of managers, Human resource managers, team leaders and so on to create awareness within employees about various facts involved in the domain of POSH.

Hence to counter any such assumptions or confusions, provisions to conduct POSH training is brought into effect.

Main objectives of POSH training is,

- To make employees familiar with various aspects, definitions & consequences of harassment within a workplace.
- To train internal committee members effectively to equip them with a better understanding of situations wherein POSH act is applicable & how to better deal with such issues.

- To provide apt information about POSH gender neutrality & how can it be used by men who face any kind of sexual harassment during work in the workplace.

Mandatory measures under POSH Act

For employers

Section 4 of this Act mentions the measures (which are declared mandatory) to be taken by employers to safeguard women at the workplace.

Here are the pointers which are important to comply with for every employer. These measures are termed mandatory for every firm which has more than 10 employees on its rolls.

Drafting an internal committee which should mandatorily comprise of a presiding officer (a woman) who shall be appointed by the senior management.

At least one external member who is from any external non-government organization, NGO.

Minimum of two employee from the same firm who shall represent the employees of an organization.

At least one half of the panel should be women. This is to make sure the balance of gender ratio & provide comfort level to the victim to speak freely.

For Employees

Employees should go through POSH training at least once mandatorily every year.

Every case that is reported, irrespective of assuming the intention or level of impact, it is mandatory for the committee to enquire in each case.

If the employer fails to comply with the act within the workplace, a hefty fine which may go up to 50,000 can be imposed. If the same is still not brought into effect, the fine amount can spring up to twice the fine for the first time noncompliance. Along with that, cancellation of license, withdrawal can also be levied by the government.

Pros & Cons of POSH Act

The POSH Act has provided a structured definition of sexual harassment within a workplace. This has broadened its concept & helped in safeguarding the safety of women within the corporates of modern India. However, it has some shortcomings too. Here are some pros & cons of the POSH Act.

Pros

The POSH act helped in highlighting sexual harassment at workplace more effectively & provided a platform for victims to get speedy solution.

POSH Act looks upon sexual harassment at workplace as a undebatable criminal offense & makes its definition much simple & understandable.

POSH Act also provides a detailed view of actions which can be physical or verbal in nature & can easily be placed under the POSH Act.

Mandatory compliance of POSH Act within organizations has provided a perfect platform for its better advertisement & better understanding.

Provisions under this act provide internal committees with guidelines to act quickly on any such complain & provide an effective solution for the same.

POSH Act has acted as a confidence booster for women to go out & pursue a career in various fields without having to worry about any form of harassment at work.

Cons

Implementation of the POSH Act on the ground is still not compiled by a lot of companies.

Application of this act in government offices is still vivid & clear understanding of the act in regards to government offices can still prove tricky.

Proving a sexual harassment case can prove to be a hard nut to crack for the victim, especially in proving any verbal or any offensive action.

POSH Act is quite effective and has proved its worth in corporates, however more POSH Training sessions on ground level wherein government employees are also involved is still a need of an hour.

However, the government & many NGOs constantly work to make sure POSH implementation becomes an integral part of every company's ethos.

In our country, sexual harassment on women has become an everyday thing, with news of rapes or assaults being a part of our daily newspaper headlines, we need to step up as citizens & make sure we do our part in protecting the dignity of our fellow women citizens.

Even at our workplaces, we should be safeguarding

Internal Complaints Committee (ICC)

SITS have an ICC through a written order. The ICC will be composed of the following members:

Sl No.	Member	Eligibility
1	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2	2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
3	Member	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

A Board Resolution regarding the ICC has constituted the Board members.

The complaints committee is responsible for receiving and investigating every complaint of sexual harassment, submitting findings and recommendation of the inquiry to the management of SITS and coordinating with SITS before implementing any kind of appropriate action. The committee is also responsible to maintain confidentiality throughout the process.

It is the duty of us to provide a safe working environment and conduct awareness programs regarding the prevention of sexual harassment and provide necessary assistance and facilities to the committee in dealing with the complaints.

Procedure for dealing with complaints:

The complaint is needed to be lodged within 3 months from the date of incident along with any documentary evidence or names of witnesses if available. The committee can also extend the timeline to another 3 months if it is satisfied with the reasons which prevented the lodging of a complaint within the first 3 months. The complaint shall be in any form wither through phone or email but every oral communication should be followed up with the written communication and in any case where a complaint cannot be made in writing then the presiding officer or any member of the committee shall assist the person for making the complaint in writing.

In case if an aggrieved person is unable to lodge the complaint then any person who is having knowledge of the incident or any family member/ relative/ friend or co-worker can lodge the complaint on behalf of his/her. It is the responsibility of the person who receives the complaint should inform the committee members.

ICC can try and make parties to settle but monetary compensation is not the basis for settlement. If the aggrieved person is not ready to settle then ICC will inquire into the complaint and both the parties will get a chance to be heard and complete the inquiry within 90 days. After the inquiry, if the person who committed such act is found guilty then Corrective action is taken by the appropriate authority. Corrective action includes

- # Formal apology

- # Transfer of the person to other department

- # Suspension or termination of services of the employee found guilty for such offence

- # Counselling

- # A written warning to the concerned employee and a copy of it are maintained in his record.

Reliefs to victims:

- # Monetary compensation

- # Grant leave for 3 months

- # Transfer the victim to any other department where he/she feels safe to work

Penalty:

If the employer does not comply with the law then fine of Rs.50,000/- can be imposed. On repeated non-compliance of the law employer can be penalized with twice the punishment. Non-compliance can also lead to cancellation of licence, withdrawal or non-renewal of registration for carrying on business, by the Government.

Introduction

This policy has been framed in accordance with the provisions of “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” and rules framed thereunder (hereinafter “the Act”). Accordingly, while the policy covers all the key aspects of the Act, for any further clarification reference shall always be made to the Act and the provisions of the Act shall prevail. Further, as stated in the “The SITS Business Principles” - Our success is based on our people. We treat each other with respect and dignity and expect everyone to promote a sense of personal responsibility. We recruit competent and motivated people who respect our values, provide equal opportunities for their development and advancement; protect their privacy and do not tolerate any form of harassment or discrimination. The ‘Policy on Prevention of Sexual Harassment of women at workplace: Guidelines for SITS intends to provide protection against sexual harassment of women at workplace and the prevention and redressal of complaints of sexual harassment and matters related to it.

Definitions:

- a) "Act" means "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" and any amendment thereto.
- b) "Aggrieved Woman" means any female Employee of SITS or any woman who alleges to have been subjected to any act of Sexual Harassment at the Workplace.
- c) "Internal Complaints Committee" means a committee by that name, constituted by the Board of SITS as per the provisions of the Act.
- d) "Respondent" means the person against whom the allegation of Sexual Harassment has been made by the Aggrieved Woman.
- e) "Sexual harassment" means and includes:-
1. "... such unwelcome behaviour of a male employee towards a female employee (whether directly or by implication) as:
 - Ø Physical contact and advances;
 - Ø a demand or request for sexual favours;
 - Ø sexually coloured remarks;
 - Ø showing pornography;
 - Ø any other unwelcome physical, verbal or non-verbal conduct of sexual nature."
 2. Implied or explicit promise of preferential treatment to a woman employee in her employment; or
 3. Implied or explicit threat of detrimental treatment to a woman employee in her employment; or
 4. Implied or explicit threat to a woman employee about her present or future employment status; or
 5. Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 6. Humiliating treatment likely to affect her health or safety.

Responsibilities of Individual:

It is the responsibility of all to respect the rights of others and to never encourage harassment. It can be done by:

- a. Refusing to participate in any activity which constitutes harassment
- b. Supporting the person to reject unwelcome behavior
- c. Acting as a witness if the person being harassed decides to lodge a complaint

All are encouraged to advise others of behavior that is unwelcome. Often, some behaviors are not intentional. While this does not make it acceptable, it does give the person behaving inappropriately, the opportunity to modify or stop their offensive behavior.

Responsibilities of Managers:

All managers at SITS Limited must ensure that nobody is subject to harassment and there is equal treatment. They must also ensure that all employees understand that harassment will not be tolerated; that complaints will be taken seriously; and that the complainant, respondent/s, or witnesses are not victimized in any way.

Redressal Mechanism – Formal Intervention

In compliance with the Act, if the complainant's warrants formal intervention, the complainant needs to lodge a written complaint, which shall be followed by a formal redressal mechanism as described in this Policy. In case of a verbal complaint, the complaint will be reduced in writing by the receiver of the complaint and signatures of the complainant will be obtained.

Internal Complaints Committee (Henceforth known as 'committee')

To prevent instances of sexual harassment and to receive and effectively deal with complaints pertaining to the same, an "Internal Complaints Committee" is constituted at each location.

The detail of the committee is notified to all covered persons at the location (workplace). The committee at each location comprises of:

- Presiding Officer: A woman employed at a senior level in the organization or workplace
- At least 2 members from amongst employees, committed to the cause of women and or having legal knowledge
- One external member, familiar with the issues relating to sexual harassment
- At least one half of the total members is women

The committee is responsible for:

- Receiving complaints of sexual harassment at the workplace
- Initiating and conducting inquiry as per the established procedure
- Submitting findings and recommendations of inquiries
- Coordinating with the employer in implementing appropriate action
- Maintaining strict confidentiality throughout the process as per established guidelines
- Submitting annual reports in the prescribed format Current nominated members of the committees are given in Annexure A.

Lodging a Complaint

The complainant needs to submit a detailed complaint, along with any documentary evidence available or names of witnesses, to any of the committee members at the workplace. The complaint must be lodged within 3 months from the date of incident/ last incident. The Committee can extend the timeline by another 3 months for reasons recorded in writing, if satisfied that these reasons prevented the lodging of the complaint. Provided that where such a complaint cannot be made in

writing, the Presiding Officer or any Member of the Internal Complaint Committee shall render all reasonable assistance to the women for making the complaint in writing. If the aggrieved woman is unable to lodge the complaint in account of her incapacity, the following may do so on her behalf, with her written consent.

- Legal heir, relative or friend
- Co-worker
- Any person having the knowledge of the incident

If the initial complaint is made to a person other than a committee member, upon receiving such a complaint, it will be the responsibility of the complaint receiver to report the same to the committee immediately

Wherever possible SITS ensures that all the complaints of harassment are dealt with speedily, discreetly and as close as possible to the point of origin.

Receiving a Complaint (guidelines)

Dealing with incidents of harassment is not like any other type of dispute. Complainants may be embarrassed and distressed and it requires tact and discretion while receiving the complaint. The following points are kept in mind by the receiver of the complaint:

- Complaint are listened to and the complainant informed that the Company takes the concerns seriously. Complainant is informed that these concerns will be reported to the appropriate committee and follow up will be done speedily
- Situation are not be pre-judged. Written notes are taken while listening to the person. Complainant is allowed to bring another person to the meeting if they wish. When taking accurate notes, complainants own words, where possible, is used. Clear description of the incident in simple and direct terms is prepared and details are confirmed with the complainant.
- All notes are kept strictly confidential. Complainant's agreement is taken to allow proceeding with the matter, which involves a formal investigation.
- The complainant is advised that although the process is confidential, the respondent needs to be informed and any witnesses and persons directly involved in the complaint process will also learn of the complainant's identity

Care is taken to prevent any disadvantage to or victimization of either the complainant or the respondent

Resolution procedure through conciliation

Once the complaint is received, before initiating the inquiry the committee may take steps to conciliate the complaint between the complainant and the respondent. This is only if requested by the aggrieved woman. It is made clear to all parties that conciliation in itself doesn't necessarily mean acceptance of complaint by the respondent. It is a practical mechanism through which issues are resolved or misunderstandings cleared. In case a settlement is arrived at, the committee records & reports the same to the employer for taking appropriate action. Resolution through conciliation

happens within 2 weeks of receipt of complaint. The committee provides copies of the settlement to complainant & respondent. Once the action is implemented, no further inquiry is conducted

Resolution procedure through formal inquiry

Conducting Inquiry The committee initiates inquiry in the following cases:

- No conciliation is requested by aggrieved woman
- Conciliation has not resulted in any settlement
- Complainant informs the committee that any term or condition of the settlement arrived through conciliation, has not been complied with by respondent.

The Committee proceeds to make an inquiry into the complaint within a period of 1 week of its receipt of the original complaint/closure of conciliation/repeat complaint.

Manner of inquiry into complaint:

- Complainant should submit the complaint along with supporting documents and the names of the witnesses
- Upon receipt of the complaint, the committee sends 1 copy of the complaint to respondent within 7 working days
- Respondent replies with all supporting documents within 10 working days of receiving the copy of the complaint
- No legal practitioner can represent any party at any stage of the inquiry procedure
- The Complaints Committee makes inquiry into the complaint in accordance with the principles of natural justice
- In conducting the inquiry, a minimum of three committee members including the Presiding Officer is present

Interim relief

During pendency of the inquiry, on a written request made by the complainant, the committee may recommend to the employer to –

- Transfer the complainant or the respondent to any other workplace
- Grant leave to the aggrieved woman of maximum 3 months, in addition to the leave she would be otherwise entitled
- Prevent the respondent from assessing complainant's work performance
- Grant such other relief as may be appropriate Once the recommendations of interim relief are implemented, the employer will inform the committee regarding the same

Termination of Inquiry

Committee at SITS may terminate the inquiry or give ex-parte decision, if complainant or respondent respectively is absent for 3 consecutive hearings, without reason. 15 day written notice to be given to the party, before termination or ex-parte order

Inquiry procedure

All proceedings of the inquiry is documented. The Committee interviews the respondent separately and impartially. Committee states exactly what the allegation is and who has made the allegation. The respondent is given full opportunity to respond and provide any evidence etc. Detailed notes of the meetings are prepared which may be shared with the respondent and complainant upon request. Any witnesses produced by the respondent are also interviewed & statements are taken.

If the complainant or respondent desires to cross examine any witnesses, the Committee facilitates the same and records the statements. In case complainant or respondent seeks to ask questions to the other party, they may give them to the Committee which asks them and records the statement of the other party. Any such inquiry is completed, including the submission of the Inquiry Report, within 90 days from the date on which the inquiry is commenced. The inquiry procedure ensures absolute fairness to all parties.

Considerations while preparing inquiry report

While preparing the findings/recommendations, following are considered:

- Whether the language used (written or spoken), visual material or physical behavior was of sexual or derogatory nature
- Whether the allegations or events follow logically and reasonably from the evidence
- Credibility of complainant, respondent, witnesses and evidence
- Other similar facts, evidence, for e.g. if there have been any previous accounts of harassment pertaining to the respondent
- Both parties have been given an opportunity of being heard
- A copy of the proceedings were made available to both parties enabling them to make representation against the findings A copy of the final findings is shared with the complainant and the respondent to give them an opportunity to make a representation on the findings to the committee

Action to be taken after inquiry

Post the inquiry the committee submits its report containing the findings and recommendations to the employer, within 10 days of completion of the inquiry. The findings and recommendations are reached from the facts established and is recorded accurately. If the situation so requires, or upon request of the complainant, respondent or witness, Management at SITS may decide to take interim measures such as transfer, changing of shift, grant of leave etc. to protect against victimization or distress during or subsequent to the course of inquiry, pending the final outcome.

Complaint unsubstantiated

Where the committee arrives at the conclusion that the allegation against the respondent has not been proved, it recommends to the employer that no action is required to be taken in this matter. Further, the committee ensures that both parties understand that the matter has been fully investigated, that the matter is now concluded and neither will be disadvantaged within the company.

Complaint substantiated

Where the committee arrives at the conclusion that the allegation against the respondent has been proved, it recommends to the employer to take necessary action for sexual harassment as misconduct, in accordance with the applicable service rules and policies, and this may include:

- i. Counseling
- ii. Censure or reprimand
- iii. Apology to be tendered by respondent
- iv. Written warning
- v. Withholding promotion and/or increments vi.
- vi. Suspension vii. Termination viii.
- vii. Or any other action that the Management may deem fit.

The employer at SITS acts upon the recommendations within 60 days and confirm to the committee

Post implementation of the actions, follow up with the complainant occurs to ascertain whether the behavior has in fact stopped, the solution is working satisfactorily and if no victimization of either party is occurring. This follow up is undertaken by the complainant's Line Manager supported by HR.

Malicious Allegations

Where the committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer to take action against the woman or the person making the complaint. The action recommended should be similar to the ones proposed for the respondent in case of substantiated complaints. While deciding malicious intent, the committee should consider that mere inability to substantiate a complaint need not mean malicious intent. Malicious intent must be clearly established through a separate inquiry.

Confidentiality

The identity of the complainant, respondent, witnesses, statements and other evidence obtained in the course of inquiry process, recommendations of the committees, action taken by the employer is considered as confidential materials, and not published or made known to public or media. Any person contravening the confidentiality clauses is subject to disciplinary action as prescribed in the act.

Appeal

Any party not satisfied or further aggrieved by the implementation or non-implementation of recommendations made, may appeal to the appellate authority in accordance with the Act and rules, within 90 days of the recommendations being communicated.

The Management Assurance:-

- a) Express prohibition of sexual harassment will be notified and circulated.
- b) Prohibition of sexual harassment is included in the Service and Conduct rules of the company
- c) As far as possible, care is taken to see that lady colleagues if sitting very late i.e. beyond 9.30 p.m. for official work, are escorted home or some arrangements are made for them to reach home safely.
- d) Complainants or witnesses will not be victimised or discriminated against while dealing with complaints.

Annexure A

Internal Complaints Committee at Head Office SITS

Presiding Officer - Ms. Agnes Minu

Member - Mr. Sujan Mathew

Member – Ms Blessy Hepzeba

Member – Mr Srinivas S

External Member - Ms. Smitha U K