

Prevention Sexual
Harassment at the
Workplace
(POSH)

December 2023

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Introduction

Long bygone are the days when men used to be the sole bread-winners of a family. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the main-stream workforce of India, sexual harassment at workplace has assumed greater dimensions.

Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental *right to equality and right to life*, guaranteed under Articles 14, 15 and 21 of the Constitution of India ("**Constitution**"). Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth¹ and puts them through physical and emotional suffering.

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("**POSH Rules**"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("**Criminal Law Amendment Act**") which has criminalized offences such as sexual harassment, stalking and voyeurism.

The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/safeguards available to the victim, procedure of investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed; which underpins the need for greater awareness and greater enforcement.

Any tool would be useless if the person operating it is unaware of the way it is to be used. Therefore, the objective of this booklet is to serve as a ready reckoner to all the stakeholders and re-educate them on the law relating to workplace sexual harassment.

This booklet focusses mainly on the POSH Act and other relevant laws in India pertaining to workplace sexual harassment. Further, the objective of this booklet is to create more awareness on the issue and simultaneously equip employers in providing women a safe and secure working environment. The booklet also discusses the importance of 'prevention' as the best tool for elimination of this menace in a multi-cultural society as ours.

1 Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Evolution of the Law on Workplace Sexual Harassment

The elimination of gender-based discrimination has been one of the fundamentals of the Constitutional edifice of India. The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India (“**Supreme Court**”) in its landmark judgment of *Vishaka v. State of Rajasthan*¹ (“**Vishaka Judgment**”), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. Nothing less of an irony, the POSH Act and the POSH Rules was enacted 16 years after the Vishaka Judgement.

In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment (“**Vishaka Guidelines**”) which were being followed by employers until the enactment of the POSH Act.

I. The Vishaka Judgement

In 1992, Bhanwari Devi, a *dalit* woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.² This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women’s rights activists and lawyers filed a public interest litigation in the Supreme Court under the banner of Vishaka.

The Supreme Court for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment, “*Sexual Harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:*

- a. *Physical contact and advances*
- b. *A demand or request for sexual favours;*
- c. *Sexually coloured remarks;*
- d. *Showing pornography;*
- e. *Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

¹ 1997 6 SCC 241; AIR 1997 SC 3011.

² Indira Jaising, Law Relating to Sexual Harassment at the Workplace (2014).

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto."

II. Post Vishaka – Some Other Judgments

A. Apparel Export Promotion Council v. A.K Chopra

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra*.³ In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that *"sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her."*

B. Medha Kotwal Lele & Ors. v. Union of India & Ors.

A letter written by Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing state governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. In its judgment, the Supreme Court observed that *"the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect."* Not being satisfied with the implementation of the Vishaka Guidelines, it directed states to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

3 (1999) 1 SCC 759.

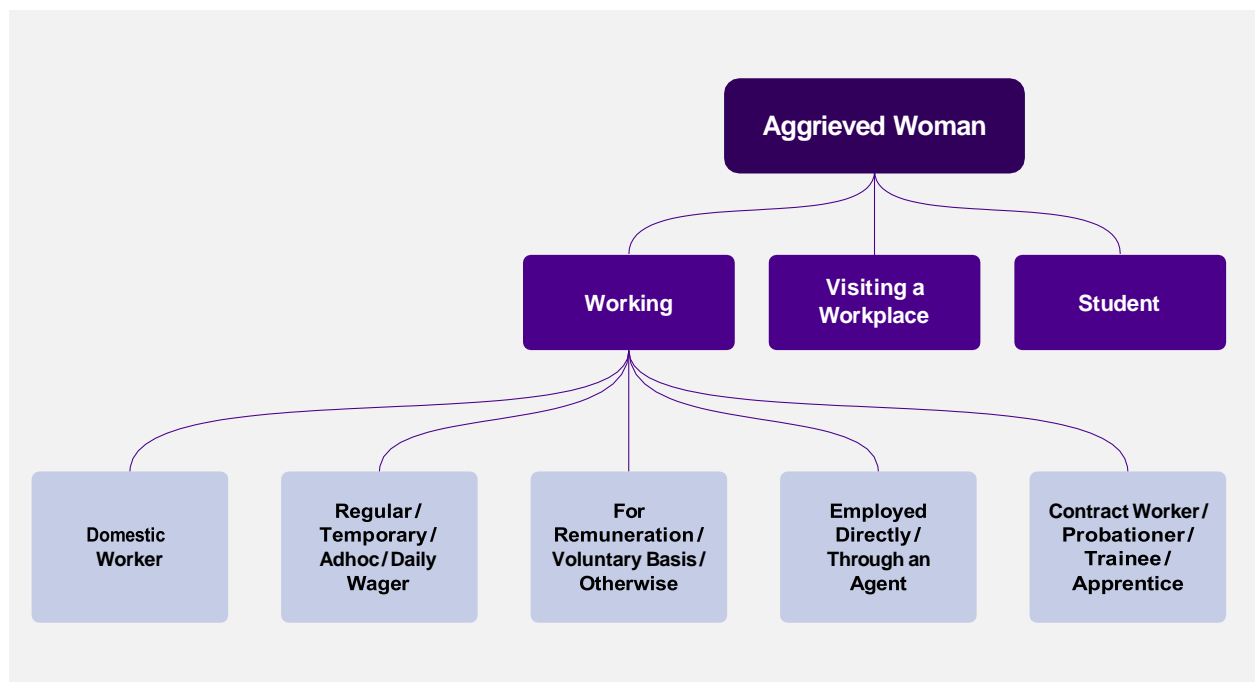
Legislative Timeline of Posh Act and Posh Rules

2007	Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 ("Bill") approved by the Union Cabinet.
2010	The Bill was introduced in the Lok Sabha.
2012	The Bill was amended and re-introduced in the Lok Sabha.
September 03, 2012	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Lok Sabha
February 26, 2013	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Rajya Sabha.
April 23, 2013	The POSH Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.
December 09, 2013	The Indian Ministry of Women and Child Development notified December 09, 2013 as the effective date of the POSH Act and the POSH Rules.

Key Provisions of the POSH Act

I. Applicability and Scope

- **Applicable Jurisdiction:** The POSH Act extends to the 'whole of India'.¹
- **Aggrieved Woman:** As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.² Given that the definition does not necessitate the woman to be an employee, even a customer/client who may be sexually harassed at a workplace can claim protection under the POSH Act.
- The POSH Act further stipulates that a woman shall not be subjected to sexual harassment at her workplace.³ Accordingly, it may be noted that in order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the 'workplace'.
- The POSH Act is not a gender-neutral legislation and protects only women. Therefore, the safeguards under the POSH Act are not applicable to 'men' victims although employers may choose to extend the protection through their policy.



- **Covered Bodies:** The POSH Act applies to both the organized and unorganized sectors⁴ in India. It *inter alia*, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.⁵

¹ Section 1 of the POSH Act.

² Section 2(a) of the Prevention of Workplace Sexual Harassment Act.

³ Section 3 of the Prevention of Workplace Sexual Harassment Act.

⁴ Having less than 10 workers.

⁵ Section 2(o) of the Prevention of Workplace Sexual Harassment Act.

II. What Amounts to Sexual Harassment?

The POSH Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishaka Judgment. As per the POSH Act, ‘sexual harassment’ includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.⁶

The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in employment;
- implied or explicit threat of detrimental treatment in employment;
- implied or explicit threat about present or future employment status;
- interference with work or creating an intimidating or offensive or hostile work environment; or
- humiliating treatment likely to affect the lady employee’s health or safety.⁷

As you would note from above, the definition of ‘sexual harassment’ under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. It includes quid pro quo sexual harassment, a form of sexual blackmail (which if translated in English, would mean ‘this for that’). In a typical situation of quid pro quo harassment, the respondent being a person in power, pressurizes the woman employee (usually a subordinate) for sexual favours in exchange for advancement in the workplace or threat of adverse employment action. The definition also includes reference to creating an ‘intimidate, offensive or hostile working environment’. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

While some forms of sexual harassment such as sexual assault are inherently offensive and egregious, and may need to occur only once for it to be treated as ‘sexual harassment’, some other forms may not be easily distinguishable. Since there is no fine line test in determining what would amount to a ‘hostile working environment’, the burden will lie on the internal committee to decide whether the harassment suffered by a victim is sufficiently severe to have created a hostile working environment or not. Further, determining what constitutes ‘sexual harassment’ depends upon the specific facts and the context in which the conduct has occurred.

In 2010, the High Court of Delhi⁸ endorsed the view that sexual harassment is a subjective experience and for that reason held “A complete understanding of the complainant’s view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

⁶ Section 2(n) of the Prevention of Workplace Sexual Harassment Act.

⁷ Section 3(2) of the Prevention of Workplace Sexual Harassment Act.

⁸ Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009.

Please refer to **Chapter 5** for examples of conduct that amounts to ‘sexual harassment’.

III. Employee

The definition of an ‘employee’ under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.⁹

IV. Workplace

While the Vishaka Guidelines were confined to the traditional office set-up, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an ‘extended workplace’. As per the POSH Act, ‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.¹⁰

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*,¹¹ the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no ‘favour’ could be extracted by the respondent from the complainant and thus the alleged act would not constitute ‘sexual harassment’. The Delhi Court while considering this matter held this as ‘clearly misconceived’.

The Delhi Court observed that “the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly.” Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression “office”. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of video-conferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at ‘workplace’ but at his ‘residence’ and get away with the same.

⁹ Section 2(f) of the Prevention of Workplace Sexual Harassment Act.

¹⁰ Section 2(o) of the Prevention of Workplace Sexual Harassment Act.

¹¹ Decided on May 9, 2008 [Citation not available].

Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

V. Complaints Committee

An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum.

A. Internal Committee¹²

The POSH Act requires an employer to set up an 'internal committee' ("IC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.¹³ Failure to constitute the IC has led to imposition of a fine under the POSH Act.¹⁴

B. Constitution of the IC

Presiding Officer	Woman employed at a senior level at the workplace from amongst the employees.
Members	Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
External member	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment. ¹⁵
Not less than half of the IC Members shall be women	
The term of the IC Members shall not exceed 3 years	
A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry.	

¹² As per Repealing and Amending Act, 2016, the nomenclature of Internal Complaints Committee was changed to Internal Committee.

¹³ Section 4 of the Prevention of Workplace Sexual Harassment Act.

¹⁴ Global Health Private Limited & Mr. Arvinder Bagga v. Local Complaints Committee, District Indore and Others (W.P.No.22314 and 22317 of 2017).

¹⁵ A person who has expertise on issues relating to sexual harassment and includes a social worker with atleast 5 years of experience in the field of social work towards empowerment of women and in particular in addressing workplace sexual harassment; or someone who is familiar with labour, service, civil or criminal law (as per Rule 4 of the POSH Rules).

C. Registration of the IC

The Department of Women and Child Development of Telangana and Maharashtra has issued a circular (on 01.07.2019 for Telangana) and an office order (on 23.03.2017 for Mumbai) mandating registration of the IC in Telangana & Mumbai.

While employers in Mumbai were required to register their ICs with the office of the District Women and Child Development Officer in the prescribed format, employers in the state of Telangana were required to register their ICs on the Sexual Harassment Electronic Box ("**T-she box**").

Some Practical Tips for HR / IC Constitution

- As far as possible, the IC should comprise of women members who have been trained on the POSH Act and POSH Rules and their roles and responsibilities;
- It is preferable to have an odd number of members in order for the IC to arrive at a decision based on majority in case of a divided opinion.
- The IC members should be selected based on evaluation of various factors including whether they are accessible, approachable, committed, sensitive and understanding.
- They should be sensitive to issues pertaining to gender-based violence and should have good credibility and technical competency to handle grievance procedures.
- The functioning of the IC should be made autonomous such that there is no scope of allegations of bias or favouritism.
- As far as possible, provide the IC separate space for conducting their meetings and maintaining records of cases of sexual harassment.
- Hold periodic discussions between the IC members and conduct regular trainings.

D. Local Committee¹⁶

At the district level, the government is required to set up a 'local committee' ("**LC**") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the IC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.¹⁷ The LC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

¹⁶ As per Repealing and Amending Act, 2016, the nomenclature of Local Complaints Committee was changed to Local Committee.

¹⁷ Section 5 of the Prevention of Workplace Sexual Harassment Act.

Constitution of the LC

Chairperson	An eminent woman in the field of social work and committed to the cause of women.
Local Woman	One of the members to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district.
NGO Members	<p>Two members, out of which, atleast one shall be a woman to be nominated from a NGO or an association committed to the cause of women or a person familiar with issues pertaining to sexual harassment</p> <ul style="list-style-type: none">▪ Atleast one of the members should have a background in law.▪ Atleast one of the members should be a woman belonging to the Scheduled Castes or Scheduled Tribes.

E. Powers of the IC/LC

The POSH Act stipulates that the IC and LC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed.¹⁸

VI. Complaint Mechanism

An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the IC or LC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. Infact the more prompt the complaint is, the more authentic can it be treated. In instances where sufficient cause is demonstrated by the complainant for the delay in filing the complaint, the IC/LC may extend the timeline for filing the complaint, for reasons to be recorded in-writing. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.¹⁹

¹⁸ Section 11(3) of the Prevention of Workplace Sexual Harassment Act.

¹⁹ Section 6 of the Prevention of Workplace Sexual Harassment Act.

Given that the POSH Act and the POSH Rules do not prescribe any format in which the complaint needs to be filed, the following tips may be kept in mind:

A Well Drafted Complaint

- The complaint should be addressed to the IC members and not the employer/HR representative.
- The complaint should be concise, i.e. it should be written in simple language which can be understood easily. Complaints that are well written and presented properly have greater credibility.
- Details of exact incident, date and time, witness etc. to be included.
- Circumstances preceding and following the incident to be recorded.
- Whether the complainant asked the respondent to desist from the unwelcome act(s).
- Append as many documents as possible in whatever format i.e. relevant e-mails, screenshots of SMS's/ whatsapp messages, call details, photographs, recordings etc.
- Details of the respondent including name, designation, reporting structure between complainant and respondent if any (whether subordinate, colleague or superior).
- Do not state any fact that is false or incorrect.
- The relief that is sought from the employer.

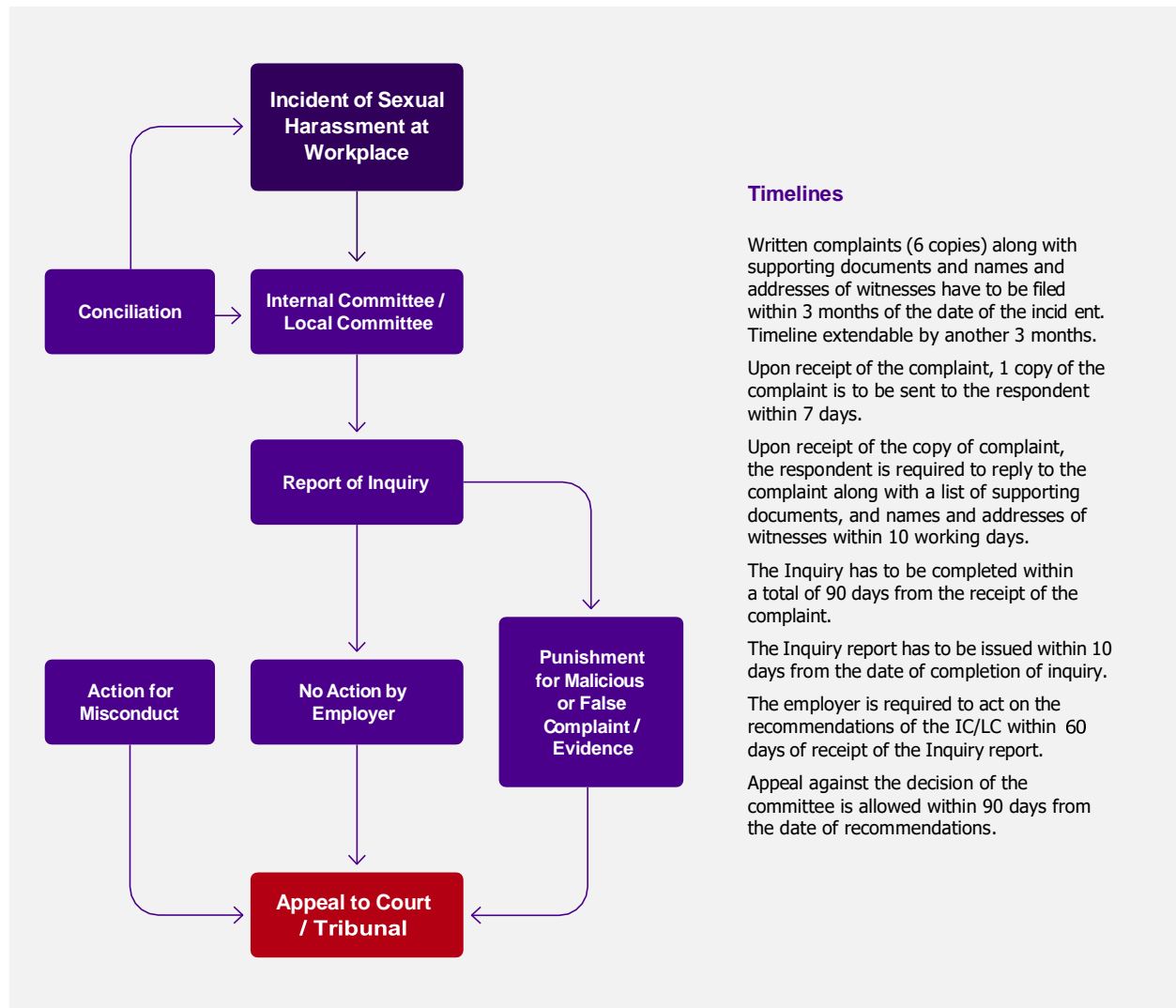
VII. Conciliation

Before initiating action on a complaint, the IC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement. Conciliation is basically an informal method of resolving complaints before the complaint escalates into a fully blown formal inquiry. Thus, after a complaint of sexual harassment has been lodged, the aggrieved woman may request the IC to resolve the matter by conciliating between the parties before commencement of the inquiry proceedings, although monetary settlement should not be made as a basis of conciliation.²⁰

Once the settlement has been arrived at, the IC or the LC (as the case maybe) shall record the settlement arrived at and thereafter provide copies of the settlement to the aggrieved woman as well as the respondent. Once a settlement has been arrived at, the IC shall not proceed with an inquiry under the POSH Act.

VIII. Redressal Process/Inquiry

Please refer to the flowchart below which provides an overview of the process to be followed by the aggrieved employee to make the complaint and by the IC/LC to inquire into the complaint.



IX. Interim Reliefs

At the request of the complainant, the IC or the LC (as the case maybe) may recommend to the employer to provide interim measures such as:

- transfer of the aggrieved woman or the respondent to any other workplace;
- granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/contractual leave entitlement;
- restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

X. Punishment and Compensation

The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;
- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.²¹

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in installments.²²

In the event that the respondent fails to pay the aforesaid sum, IC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

XI. Frivolous Complaints

In order to ensure that the protections envisaged under the POSH Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute. As per the POSH Act, if the IC/LC concludes that the allegation made by the complainant is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant.

Where the organisation does not have service rules, the statute provides that disciplinary action such as written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service may be taken. The POSH Act further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false or malicious.²³

²¹ Section 13 of the Prevention of Workplace Sexual Harassment Act.

²² Section 15 of the Prevention of Workplace Sexual Harassment Act.

²³ Section 14 of the Prevention of Workplace Sexual Harassment Act.

XII. Confidentiality

Recognising the sensitivity attached to matters pertaining to sexual harassment, the POSH Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The POSH Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.

The POSH Act further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent, witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the IC/LC and the action taken to the public, press and media in any manner. That said, the POSH Act allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses.²⁴ Disclosure of the justice secured could not only deter other individuals from engaging in acts of sexual harassment, but also instil in the minds of employees and public that the employer is serious about providing a safe work environment and harbours zero tolerance for any form of sexual harassment at the workplace.²⁵

Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000 (approx. US\$70).²⁶

XIII. Consequences of Non-Compliance

If an employer fails to constitute an IC or does not comply with the requirements prescribed under the POSH Act, a monetary penalty of up to INR 50,000 (approx. US\$ 700) may be imposed. A repetition of the same offence could result in the punishment being doubled and/or de-registration of the entity or revocation of any statutory business licenses. It is however unclear as to which business licenses are being referred to in this case.²⁷ It is also pertinent to note that all offences under POSH Act are non-cognizable.²⁸

²⁴ Section 16 of the Prevention of Workplace Sexual Harassment Act.

²⁵ Shivangi Prasad and Attreyi Mukherjee, Handbook on the law of Sexual Harassment at Workplace 179 (2015).

²⁶ Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules.

²⁷ Section 26 of the Prevention of Workplace Sexual Harassment Act.

²⁸ Section 27 of the Prevention of Workplace Sexual Harassment Act.

Employer's Duties and Obligations

'Prevention is Better than Cure'

In addition to requiring an employer to set up an IC and ensure redressal of grievances of workplace harassment in a time bound manner, the POSH Act casts certain other obligations upon an employer which includes:

- a. Promoting a gender sensitive workplace and removing the underlying factors that contribute towards creating a hostile working environment against women;
- b. provide a safe working environment;
- c. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace;
- d. display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the IC;
- e. declare the names and contact details of all members of the IC;
- f. organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the IC;
- g. provide necessary facilities to the IC for dealing with the complaint and conducting an inquiry;
- h. cause to initiate action, under the Indian Penal Code, 1860 ("IPC") or any other law 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;
- i. provide assistance to the aggrieved woman if she so chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force;
- j. treat sexual harassment as a misconduct under the service rules and initiate action for misconduct;
- k. prepare an annual report with details on the number of cases filed and their disposal and submit the same to the District Officer;
- l. monitor the timely submission of reports by the IC.

The Anti-Sexual Harassment Policy – Some Tips to Follow

- Clearly define 'sexual harassment' and outline the scope and applicability (gender neutral or not);
- Mention how the employer practices zero-tolerance towards sexual harassment at workplace;
- Extended concept of workplace;
- Complaint mechanism;
- Regularly distribute and promote the policy at all levels of the organization;
- Ensure that the policy is easily accessible;
- Provide a copy of the policy to new joiners as part of their induction;
- Review the policy periodically & update information regarding IC members etc. on a timely basis.

Examples of Conduct Amounting to Sexual Harassment

Whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances. The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestered for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favours;
4. Leering;
5. Making sexual gestures;
6. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
7. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;
8. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
9. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
10. Being forcibly kissed or hugged;
11. Having someone expose their private parts to you or repeatedly staring at a woman's body parts that makes her uncomfortable;
12. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
13. Eve-teasing;
14. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
15. Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape;
16. Gender based insults and/or sexist remarks;
17. Displaying pornographic or other sexually offensive or derogatory material;
18. Forcible invitations for dates;
19. Forcible physical touch or physical assault or molestation;
20. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion;
21. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;
22. Any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of such individual providing or refusing sexual favours;
23. Physical confinement against one's will and any other act likely to violate one's privacy.