

SHLC- Sexual Harassment Law Compliance Advisory

INTRODUCTION

Sexual Harassment at workplace has emerged as one of the biggest deterrents for a healthy work environment. Data indicates that as many as 1,971 cases of sexual harassment of women at workplace were registered in four years till December 12, 2017 in other words approximately almost one case every day.

The law on protection of woman from sexual harassment started from the landmark judgment of the Apex Court in *Vishakha and other v. State of Rajasthan* and has been crystallized and made binding on all organisations with more than 10 employees through *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (Hereinafter referred to as POSH Act).

CREATING AN EFFECTIVE COMPLAINTS MECHANISM

- i. Employers and employees must be clear about the complaints process. The goal should be (a) prevention of sexual harassment and (b) that instances of sexual harassment do not go unreported.
- ii. Those employees who have doubts about the complaints process, should be able to get them resolved through the ICC. There should be a functional system for this, which the employees are aware of and are using not just those which are on paper.
- iii. Complainant/Aggrieved person must feel reassured that action will be taken regarding their complaints.
- iv. Employees must not feel that the ICC is biased or unduly influenced by the employer. There should be no instances of nepotism, favoritism or other biases.
- v. Recommendations of the ICC must be effectively implemented.
- vi. The employees/aggrieved person/respondent must feel comfortable regarding their appearance before the ICC.

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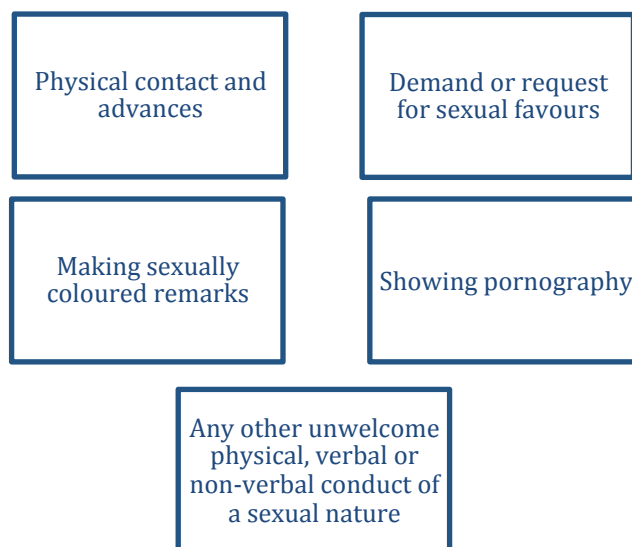
IMPORTANT DEFINITIONS OF THE ACT

WHAT IS 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 any unwelcome sexually tinted behavior, whether directly or by implication, such as:

UNDERSTANDING INSTANCES OF SEXUAL HARASSMENT:

- a) Derogatory comments of sexual nature or based on gender;
- b) Presence of sexual visual material or pornographic material such as posters, cartoons, drawings, calendars of sexual nature;
- c) Written material that is sexual in nature, such as notes or e-mail containing sexual comments;
- d) Comments about clothing, personal behavior, or a person's body;
- e) Patting, stroking grabbing or pinching one's body;
- f) Obscene phone calls;
- g) Telling lies or spreading rumors about a person's personal or sex life;



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The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behavior 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.

DEFINITION OF WORKPLACE

The POSH Act has provided for an extended definition of workplace:

It includes:

- i. any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society
- ii. any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- iii. hospitals or nursing homes;
- iv. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- v. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- vi. a dwelling place or a house;¹

¹ Section 2(o) of the Prevention of Sexual Harassment Act

² Under Section 10(1) of Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act,

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DEFINITION OF EMPLOYEE

The POSH Act defines “employee” as “a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;”

The definition of the employee in the POSH Act has been deliberately kept fairly wide so as to provide protection and cover to all **the working women whether 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.

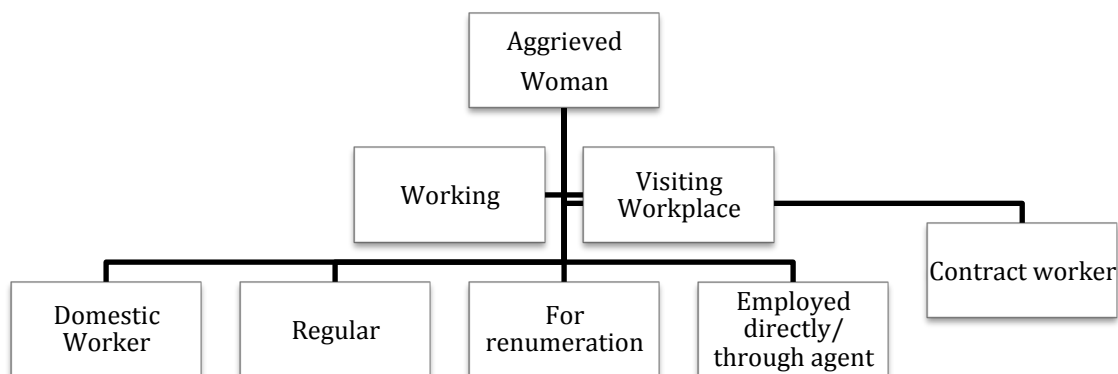
DEFINITION OF AGGRIEVED WOMAN

The act has provided an expansive definition of aggrieved woman. It gives the following category of women the right to file a complaint in cases of sexual harassment at workplace. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, ad hoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied.

Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The act also covers a woman, who is working in a dwelling place or house.

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DEFINITION OF EMPLOYER

The scope of the definition of the employer has also been kept as wide as possible by the legislature so as to cover all possible situations and to ensure a wide ambit of protection for the working women. From the heads of units or departments of Government and the heads of Multinational companies to the people running small industries or the individuals employing domestic helps, all are covered as employers under the act and are duty bound to ensure a safe work environment for the employees irrespective of the number of employees, the sector or the nature of the employment.

The POSH Act under Section 2(g) provides the definition of “employer” as:

- “i. In relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- ii. In any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.
- iii. In relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- iv. In relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;”

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TIMELINES ACCORDING TO THE ACT

The following timelines of the act have to be kept in mind.

ACTION	TIMELINE
Submission of Complaint	Within 3 months of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days
Submission of Report by ICC/LCC to employer/DO Within	10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days
Appeal Within 90 days of the recommendations	Within 90 days of the recommendation.

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CONCILIATION

The **Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act, 2013²** provides the aggrieved person with the option to seek conciliation in cases of Sexual Harassment.

The **Internal Complaints Committee** can initiate a conciliation path in resolving a sexual harassment complaint provided the **aggrieved woman requests** for such a relief.

-There shall be no monetary compensation in favor of the complainant in order to settle the matter as conciliation.

-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.

ANNUAL REPORT

Every employer needs to file an annual report in the calendar year to the Local Complaints Committee of that district.

The annual report needs to have the following details-

- (a) Number of complaints of sexual harassment received in the year;
- (b) Number of complaints disposed off during the year;
- (c) Number of cases pending for more than ninety days;
- (d) Number of workshops or awareness programmes against sexual harassment carried out;
- (e) Nature of action taken by the employer or District Officer.

For more details of annual report refer to the checklist.

² Under Section 10(1) of Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act, 2013

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COMPLIANCE UNDER THE COMPANIES (ACCOUNTS) RULES, 2014

As per Section 134 of the Companies Act, 2013 every company is required to prepare a report of Board of Directors for each financial year. The Board report should contain disclosures as per Section 134 read with rule 8.

The Ministry of Corporate Affairs (MCA) has amended the Companies (Accounts) Rules, 2014; vide a notification (attach as annexure) in July, 2018. The amendment makes it mandatory for all private companies to make a disclosure of compliance under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (“POSH Act”) through their Annual Board Report. As per the amended law, every company will now have to submit a statement in their Annual Board Report that the company has complied with the provisions relating to the constitution of Internal Complaints Committee under the POSH Act.

This reporting is in addition to the mandatory Annual Report, that companies have to file under the POSH Act to the District Officer and the Local Complaints Committee located in their area of operation every year.