

Composition and Duties of the Internal Complaints Committee

Introduction

In the past few decades, the role of the Indian women has undergone a definitive change; from traditionally being responsible for fostering and nourishing the family, they are now seen working in almost every field to generate income and support their family.

This empowerment of women led to a belief that they would become independent and confident to be able to safeguard themselves under all circumstances. But the harsh reality till today is that more than 50% of working women face workplace harassment in the form of sexual harassment, lewd remarks, unwelcome gestures or gender discrimination at least once in their career.

The majority of women workforce does not report sexual harassment either of being unaware of their rights or many times due to the fear of facing social stigma or losing their jobs.

Increasing incidents of sexual harassment of working women in all sectors in India created the necessity of the Government's intervention to help in creating a safe work environment for women.

The Supreme Court in the case of Vishaka and Others v. State of Rajasthan and Others (1997 (7) SCC 323), had laid down "Vishakha Guidelines" that had guidelines relating to sexual harassment of women till a historical piece of legislation was enacted by the government.

Thus, was born The Sexual Harassment of Women at Workplace Act (Prevention, Prohibition, and Redressal hereinafter referred to as "POSH Act") 2013.

POSH Act 2013 is India's first codified legislation specifically formulated to deal with three specific purposes:

- prevention,
- prohibition, and
- redressal

This women harassment Act came into force on December 9, 2013, and is legally binding on all employers and workplaces.

Foundation of the Act

This India Sexual Harassment Act is an extension of the Vishakha Guidelines issued by the Supreme Court in 1997 and its foundation lies in:

- 1) Constitution of India: Article 14, 15 & 21

2) UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), July 9, 1993

The POSH Act was the need of the hour as women faced rampant harassment at workplace.

Sexual harassment faced by women at the workplace has been recognized in this Act as a violation of their fundamental rights granted under the Indian Constitution.

Article 14 and 15 of the Constitution that guarantees Right to Equality, as well as Article 21(3) that ensures Right to live with dignity, are the rights of a woman that are greatly marginalized due to sexual harassment.

With the implementation of this Act, the responsibility to provide a safe & secure work environment to every female worker lies squarely on the employer.

Statutory Requirements under POSH Act

The POSH Act is binding on all and mandates that all Public and Private Sector Organizations in India comply with certain statutory requirements. The onus to ensure PoSH at work for women lies on the employers and managements and for this, they are directed to:

- Form an Internal Complaints Committee,
- Provide Periodic PoSH Training on Sexual Harassment law, and
- Develop an effective Complaint lodging and Redressal Policy.

Know All about the Internal Complaints Committee

Under Section 4 of the POSH Act at all workplaces with 10 or more employees, the employer must form an Internal Complaints Committee (ICC). This is an obligation that must be adhered to by public and private organizations.

This initial in-house body plays the most important role in ensuring the smooth functioning of the provisions of the POSH Law and also towards the fulfilment of its objectives.

An aggrieved woman has to approach the ICC to file a complaint relating to sexual harassment. After receiving the complaint from the aggrieved woman, the Committee inquires into the matter and accordingly makes recommendations.

The Internal Complaints Committee's major functions entail:

- forceful implementation of the policies relating to the prevention of sexual harassment,
- strive to resolve complaints by the aggrieved complainant, and
- henceforth, recommend actions to be taken by the employer.

Constitution of Internal Complaints Committee

#1. Notification: Sec 4 (1)

The formation of the Internal Complaints Committee must be officially notified by an employer through an order in writing and such notification should be validated by the CEO or Board too.

In case there are different offices of the same organization, then the Committee needs to be constituted at every office or unit.

#2. Composition: Sec 4(2)

The Committee must consist of the following members:

- A Presiding Officer: This must be a senior female employee of the organization.
- Two employee members: These employees must be aware and sensitive to gender issues and dedicated to the cause of women or possess some legal knowledge on related matters.
- One external member: This should be from an NGO or Association committed to the cause of women and issues related to sexual harassment.

The composition should be such that half of the total members must be women.

Qualifications to be a Member of the Committee

Section 4 of the POSH Act enumerates the qualifications for being a member of the Internal Complaints Committee:

- **Presiding Officer**

This post of Presiding Officer must be held by a senior-level female employee at the workplace as she will also preside as the Chairperson of the Internal Complaints Committee.

In case of unavailability of a senior female employee, then the Act mandates that:

- A senior female employee can be nominated from other offices or administrative units of a workplace.
- If a senior-level woman employee is not available at the other offices or administrative units of the workplace too, then the Presiding Officer can be nominated from any other workplace of the same employer.
- If the above is not possible then the Presiding Officer can be nominated from any other workplace.

The options have been provided keeping in mind the concerns of small workplaces where the availability of female employees at senior levels may be difficult.

- **Employee Members**

The internal complaints committee policy further specifies that the Internal Complaints Committee must also have two or more members from among its employees. The prerequisite for the selection of employees as members demands some legal knowledge or experience in the social sector or committed to the women's cause. These are desirable but not mandatory as it may not be always easy to find such employees.

- **External Member**

The POSH Act also specifies that the Sexual Harassment Committee must include an external member from a non-governmental organization or association that is committed to the cause of women. The person thus nominated must be familiar with issues relating to sexual harassment.

This provision has been carried forward from the **Vishakha Guidelines** wherein the Supreme Court had prescribed such requirements. The notion behind this clause is to bring about an outside perspective to the ICC and ensure transparency and authenticity to the entire process.

Tenure of the Members of the Committee

Section 4(3) of the POSH Act specifies the tenure of the members of the Internal Complaints Committee in the workplace. It specifies that the members along with the presiding officer, shall not occupy the office for a period of more than three years from the date of nomination.

When can a Member of the Committee be Disqualified?

Disqualification of the members of the Internal Complaints Committee is prescribed in the POSH Act in detail.

A member of ICC may be disqualified on the following grounds:

#1. Disclosure of Confidential Information: If a member reveals the details of matters which are required to be kept confidential under the POSH Act then he/she can be disqualified.

If the member discloses any one of these:

- About a complaint submitted to an ICC
- Identity of the complainant and/or the respondent or witnesses
- Details of inquiry proceedings
- Recommendations of the sexual harassment committee
- The action was taken by the employer

#2. Conviction or Inquiry: If a person is convicted, or an inquiry is pending against him/her regarding any offence under any law, then the member will be disqualified.

#3. Found Guilty: Similarly, if a member of the ICC is found guilty, or any disciplinary proceeding is pending against such a person, then also he/she will be liable to disqualification.

#4. Abuse of Position: If a member of the Internal Complaints Committee has abused his/her position, then their disqualification is recommended. The continued membership of such a member in the ICC will not only be deemed to be detrimental and harmful but also against the public interest.

Are the Members of the Committee Eligible for any Remuneration?

Section 4(4) of the POSH Act lays down that the external members for PoSH who are appointed from non-governmental organizations or associations are eligible for remuneration.

An External Member of ICC is entitled to receive a prescribed fee or allowance of Rs. 200 per day in lieu of carrying out his/her functions. This remuneration is to be paid by the employer.

Apart from this these members also qualify for the reimbursement of travel cost incurred in travelling by train in three-tier air-conditioned or air-conditioned bus and auto-rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

Moreover, the organizations are free to pay more than the minimum recommended fee to their external members.

What is the Procedure to File a Complaint with the Committee?

The POSH Act has kept a lot of flexibility when it comes to filing a complaint and does not prescribe any particular format for it.

Who can file a Complaint?

The complaint can be filed by the following persons:

1. a) The aggrieved woman herself.
2. b) In the case of Physical Incapacity: Complainant's Relative, Complainant's Friend, Co-Worker, Officer of NCW or SCW, or Any person who has knowledge of the incident with the written consent of the Complainant.
3. c) In case of Mental Incapacity: Complainant's Relative, Complainant's Friend, Special Educator, Qualified Psychiatrist/Psychologist, Guardian/ Authority under whose care the complainant is receiving treatment/care or Any person with the knowledge of the incident, jointly with any person mentioned above.
4. d) In Case of Complainant's Death: Any person having the knowledge of the incident with the written consent of the Legal heir.

5. e) In Case of Complainant is unable to file the Complaint about any other reason: By any person who has the knowledge of the incident with the written consent of the Complainant.

Specified Time Period

The POSH Act lays down specific guidelines about the timeline for a complaint of such sexual harassment cases and specifies that it can be filed within 3 months from the date of the incident. In case it is not a single but a series of incidents, then the complaint needs to be filed within 3 months from the date of the last incident.

The POSH Act further provides that the time period of 3 months may be extended by the Committee after recording the reasons for doing so.

Other Requirements

1. Six copies of the complaint are to be filed
2. Supporting documents and evidence, details of witnesses
3. Details of the incident
4. Details of respondent

The written complaint should contain a description of each incident(s) & must include:

- Relevant Date/s
- Timing/s & Location/s
- Name of Respondent/s
- The working relationship between the parties

Timeline of the Complaint

- 1) Submission of Complaint-Within 3 months of the last incident
- 2) Notice to the Respondent-Within 7 days of receiving a copy of the complaint
- 3) Completion of Inquiry-Within 90 days
- 4) Submission of Report-Within 10 days of completion of the inquiry
- 5) Implementation of Recommendations-Within 60 days
- 6) Appeal-Within 90 days of the recommendations

Powers of the Internal Complaints Committee

Sec 11(3) of the **POSH Act** enumerates the powers of the Internal Complaints Committee. The ICC is vested with the powers of a Civil Court under the Civil Procedure Code, 1908 in the following:

- 1) It is entitled to initiate an inquiry into the complaint of a sexual harassment incident at the workplace
- 2) It can summon witnesses and parties before the committee to give a statement
- 3) It can assert its powers and summon evidence to be examined if it is deemed necessary to do so by the Committee

Once the inquiry is completed and if the Internal Complaint Committee finds the person guilty, it is well within its right to prescribe the following actions:

1. a) Initiate action against the culprit in accordance with the service rules of the organization.
2. b) In the absence of service rules, it can take actions like a warning, community service, withholding promotion, termination, etc.
3. c) It can deduct from the salary of the respondent as compensation to be paid to aggrieved women.

The POSH Act also lays down the criteria based on which the Internal Complaints Committee shall calculate the amount of compensation payable. The factors are:

- 1) The extent of pain, suffering mental trauma, and emotional distress caused to the aggrieved woman.
- 2) Loss in a career opportunity for the victim resulting from the incident of sexual harassment.
- 3) Medical expenses incurred by the complainant towards the physical and/or psychiatric treatment due to this incident.
- 4) Last but not the least, the alleged perpetrator's Income and status.

All such payment can be awarded to the victim of sexual harassment as a lump sum or in instalments, as is considered judicious by the ICC.

In case the respondent fails to pay the amount of compensation, the ICC shall forward the case to the District Officer for the amount to be recovered as an arrear of land revenue.

Power of Internal Complaint Committee in case of Malicious Complaints

Every coin has two sides and same is with the cases regarding sexual harassment; while most of the complaints are genuine, yet there are some which are false and malicious.

The POSH Act has covered this fact and laid down effective guidelines for the Internal Complaints Committee to help protect innocent people in such situations.

A false or malicious complaint can easily be filed by a woman just to take revenge or malign the character of a male colleague or undermine his success in work, and at such times it is the duty of the ICC to protect the respondent from being unduly targeted.

Once the Internal Complaints Committee, after an inquiry, gets conclusive evidence that a complaint had been filed with malicious intent, and that an untrue and fallacious complaint has been filed by a complainant, then it shall recommend action against her.

The POSH Act safeguards the right of an aggrieved woman completely and therefore, specifies that mere inability to provide adequate evidence on the part of the complainant is not sufficient to declare the complaint as being malicious.

Moreover, a complaint is malicious or not and must be determined by the Internal Complaints Committee after conducting an inquiry into the complaint.

When can the Committee forward the Complaint to the Police?

The POSH Act has empowered the Internal Complaints Committee to forward the complaints to the police under two circumstances:

1. The police are duty-bound to registration a sexual harassment case forwarded by the ICC within a period of seven days under Section 509 of the Indian Penal Code (2) or other provisions of the criminal law.
2. The Committee may also forward the complaint to the police when a settlement is agreed upon between the parties but the respondent fails to comply with the condition(s) of the settlement.

What actions can be taken by the Committee during the pendency of an Inquiry?

The POSH Act also lays down specific guidelines regarding the pendency of a case.

The Internal Complaints Committee, upon receiving a written request, can recommend the following actions during the inquiry pending to the employer:

1. Transfer either the aggrieved or the respondent to any other workplace.
2. Grant leave to the aggrieved women up to three months.
3. Any other relief as may be prescribed.

After the ICC submits the report it is the onus lies on the employer to implement the recommendations of the Internal Complaints Committee.

Duties of the Internal Complaints Committee

The Internal Complaints Committee once constituted, plays a pivotal role in the effective implementation of the provisions at the workplace.

A general list of duties of the Committee is enumerated as follows:

- Implementation of the Anti–Sexual Harassment Policy at the workplace
- Submit an Annual Report (Including details like the number of case files at their disposal, etc.)
- Bring about awareness about what comprises ‘sexual harassment’ at the workplace by way of workshops, posters, documents, notices, seminars, etc.
- Publicize the policy framework effectively
- Provide the victims with a safe and accessible mechanism of complaint
- Initiation of inquiry at the earliest
- Redress the complaints in a judicious manner
- Provide interim relief to the complainant
- Provide an opportunity for conciliation wherever possible
- Stick to the principles of natural justice at all stages of the proceedings
- Whenever required, forward the complaint to the police
- Submit the inquiry report along with recommendations
- Maintain confidentiality in regard to the proceedings taking place before the Committee

Know when an Appeal can be Filed Against the Recommendations of the ICC

The complainant, as well as the respondent, has the right to file an appeal before the Court or Tribunal against the recommendations of the Internal Complaints Committee within a period of 90 days.

They can take this step in the following circumstances: –

- Recommendations made by the Committee under Section 13(2) i.e. when the allegations have not been proved and no action is to be taken.
- Recommendations made under Section 13(3) i.e. when the allegation has been proved and action is to be taken.
- Recommendations made under Section 14 i.e. when a malicious complaint or false evidence has been found and action is to be taken against it.
- Recommendations made under Section 17 i.e. when the penalty has been imposed for publishing confidential information.

Consequences of Non-compliance with the Provisions under the POSH Act

As the POSH Act is legally binding on all organizations, not abiding with the provisions leads to far-reaching consequences.

The employer is bound by certain mandatory obligations and one of them is constituting an Internal Complaints Committee. In case of failure to do so, the Act imposes a penalty of 50,000 rupees.

If in case there is a repetition of the same offence it would attract double penalty that is, 100,000 rupees and at times may even lead to deregistration or revocation of the license of the concerned organization.


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