

# LEX FAVIOS

## ADVOCATES & SOLICITORS



# SEXUAL HARRASMENT AT WORKPLACE IN INDIA



# The Prevention of Sexual Harassment of Women at Workplace Act, 2013 (POSH)

# Some Major Definitions under the Act

- ▶ **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.

- ▶ **“Employee”**

means 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.

► **“Employer”** means –

(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. Explanation. —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation; (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

- ▶ **“sexual harassment”** – includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :–

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

# Workplace defined under the POSH Act, 2013

It includes (i) any department, organisation, 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 organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, 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 by the employer for undertaking such journey; (vi) a dwelling place or a house;

# Prevention of Sexual Harassment

- ▶ 1) No woman shall be subjected to sexual harassment at any workplace.
- ▶ (2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—
  - ▶ (i) implied or explicit promise of preferential treatment in her employment; or
  - ▶ (ii) implied or explicit threat of detrimental treatment in her employment ; or
  - ▶ (iii) implied or explicit threat about her present or future employment status; or
  - ▶ (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - ▶ (v) humiliating treatment likely to affect her health or safety.



# Complaints Committee under POSH Act 2013

- ▶ One of the most important features of the POSH Act that it envisages the setting up of a grievance redressal forum in the form of committees.
- ▶ The 2 (two) types of committees under the Act are :
  - i. **Internal Complaints Committee**  
Section 4 of the POSH Act
  - ii. **Local Committees**  
Section 6 of the POSH Act.

# Internal Complaints Committee

- ▶ Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the *“Internal Complaints Committee”* :
- ▶ Any establishment employing ten or more employees is required to constitute an ICC by an order in writing by the employer. However, this numerical threshold has not been explicitly stated amongst clauses of the POSH Act pertaining to the formation and working of the ICC.
- ▶ Rather, this has to be inferred from a harmonious reading of the statute, namely provisions directing the government to form a Local Complaints Committee at each district, which committee is tasked with discharging functions similar to an ICC in relation to organizations with less than ten employees, or otherwise where a complaint has been filed against an employer.

# COMPOSITION OF THE ICC

- ▶ The Internal Committees shall consist of the following members to be nominated by the employer, namely: —
  - ▶ (a) A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:
  - ▶ Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):
  - ▶ Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

# COMPOSITION OF THE ICC

## Continued....

- ▶ (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- ▶ (c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:
- ▶ Provided that at least one-half of the total Members so nominated shall be women.

# Local Committee

- ▶ 1) Every District Officer shall constitute in the district concerned, a committee to be known as the Local Committee, to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.
- ▶ (2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Committee within a period of seven days.
- ▶ (3) The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

# COMPLAINTS UNDER POSH ACT, 2013

## **Complaint of sexual harassment ;**

- ▶ Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:
- ▶ Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:
- ▶ Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months , if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

# COMPLAINTS UNDER POSH ACT, 2

## CONITNUED.....

- ▶ Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

## ACTION DURING PENDENCY OF INQUIRY

- ▶ As per **sub-section (1) of section 12** of the Act, during the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—
  - a. transfer the aggrieved woman or the respondent to any other workplace; or
  - b. grant leave to the aggrieved woman up to a period of three months (As per sub-section 12 of the Act, this leave shall be in addition to the leave that she would be otherwise entitled) ; or
  - c. grant such other relief to the aggrieved woman as may be prescribed.



# CONCILIATION


- ▶ Conciliation.—(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:
- ▶ Provided that no monetary settlement shall be made as a basis of conciliation.
- ▶ (2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- ▶ (3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.
- ▶ (4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

# APPEAL UNDER POSH ACT, 2013


## ► Appeal (Section 18)

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. (2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

# FALSE COMPLAINT UNDER THE POSH ACT, 2013

- ▶ If false complaint made or any forged documents being produced the committee may recommend to take action as per the service rules or as otherwise prescribed.
  - ▶ But if the complainant is unable to provide adequate proof then no action is to be taken.
  - ▶ The malicious intent shall be established after an enquiry in accordance has been made with the prescribed procedure.
  - ▶ Committee arrives at an conclusion that during inquiry false evidence has been produced then it may recommend action against the witness as per service rule or as prescribed.
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# DETERMINING SUMS TO BE PAID

- ▶ Committee shall need to have regard to:
    - The mental trauma, pain suffering and emotional distress caused to the aggrieved.
    - The loss in the career opportunity.
    - Medical expenses incurred post the incident.
    - Income & Financial status of the respondent.
    - Feasibility of such payment in instalment or in lump sum.
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# DUTIES OF AN EMPLOYER

- ▶ Every employer shall—
  - (a) provide a safe working environment at the workplace with shall include safety from the
- ▶ persons coming into contact at the workplace;
  - (b) display at any conspicuous place in the workplace, the penal consequences of sexual
- ▶ harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;
- ▶ (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- ▶ (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- ▶ (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

# DUTIES OF AN EMPLOYER

## CONTINUED...

- ▶ (f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- ▶ (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- ▶ (h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being 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) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- ▶ (j) monitor the timely submission of reports by the Internal Committee.

# HOW TO MAKE EMPLOYEES AWARE OF POSH

- ▶ Organize workshops
- ▶ Awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment
- ▶ Organizing orientation programmes for members of the IC

# EXAMPLES OF SEXUAL HARRASMENT AT WORKPLACE

- ▶ Unwanted sexual advances or propositions;
- ▶ Pestering for dates or receiving unwelcome sexual suggestions or invitations;
- ▶ Offering employment benefits in exchange for sexual favors;
- ▶ Leering;
- ▶ Making sexual gestures;
- ▶ Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
- ▶ Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;
- ▶ Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
- ▶ Physical conduct such as unwanted touching, assault, impeding or blocking movements;
- ▶ Being forcibly kissed or hugged;
- ▶ Having someone expose their private parts to you or repeatedly staring at a woman's body parts that makes her uncomfortable;



- ▶ Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
- ▶ Eve-teasing;
- ▶ Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
- ▶ Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape;
- ▶ Gender based insults and/or sexist remarks;
- ▶ Displaying pornographic or other sexually offensive or derogatory material;
- ▶ Forcible invitations for dates;
- ▶ Forcible physical touch or physical assault or molestation;
- ▶ 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;
- ▶ Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;

- ▶ Last but not the least ;

*“A Tool is useless until Man can’t use it.”*

The POSH Act has been made to address all grievances of Sexual Harassment at workplace for women.

No mans shall ever be put to a state of discomfort due to unwelcoming acts of someone. Organizations shall also take the initiative to draft stringent policies on Sexual Harassment.

Thank you for your Attention