

PROVISIONS AND POWERS OF INTERNAL COMPLAINT COMMITTEE constituted as per PoSH (Prevention of Sexual Harassment) Act 2013

Overview of sexual harassment

Meaning

The issues of sexual harassment are still taboo in our society, and such issues are likely to make the working environment of the organization hostile and unfit for work. The act of sexual harassment can be defined as when an individual is sexually degraded or humiliated by another person. In the workplace, sexual harassment can be defined as a systematized form of violence against any gender. It is unfortunate that such uncanny practices are prevalent in our country, where gender equality is on the agenda.

Though the exact definition of this term has not been defined anywhere but was defined under the leading case of Vishakha v. the State of Rajasthan (1997), it is defined as follows:

“Sexual harassment includes such unwelcome sexually determined behaviour (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.”

In Apparel Export v. A.K. Chopra (1999), the Supreme Court again reaffirmed the definition of sexual harassment by stating that it means any action or gesture intended to outrage the modesty of a female employee, directly or indirectly.

The ILO (International Labor Organization) promotes social justice and international recognition of human and labour rights. The International Labor Organization is a United Nations agency that aims to bring together government representatives, employers, and workers and comprises 187 member countries. Among its responsibilities are establishing labour standards, developing policies, and promoting programs to ensure decent working conditions for both men and women. According to this definition, sexual harassment is any unwanted sexual conduct that creates an intimidating, hostile, or offensive work environment in the reasonable opinion of the recipient. Such behaviour is particularly serious when perpetrated by any official with the power to influence the conditions of the recipient's career (including recruitment, assignment, contract renewal, performance appraisal, or promotion). In developing and developed countries, as well as in less developed countries, there is a problem of sexual harassment amongst employees. However, these countries tend to deal with this issue individually at the whim of women affected by it.

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Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

A definition of sexual harassment has been provided by the 1981 UN Convention on the Elimination of All Forms of Discrimination against Women as follows:

“Such unwelcome sexually determined behaviour as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates hostile working environment”

Sexual harassment at workplace

Article 14 of the Indian Constitution guarantees the equality of every citizen under the law, as enshrined in the Preamble to the Constitution. Women are therefore legally entitled to a safe workplace. As a matter of fact, the Indian Constitution contains Articles 14, 15 and 21 that address equality and liberty. As a result of these articles, everyone is guaranteed equal treatment under the law, the right to be free from discrimination on any ground, and the right to live a free and independent life. Workplace sexual harassment is a serious form of sex discrimination in the workplace that causes serious harm. This violates a woman's fundamental rights under Article 19(1)(g) of the Constitution of India, as well as her dignity, physical and mental well-being. Consequently, productivity is low and lives and livelihoods are negatively impacted. The situation is further compounded by deep-rooted socio-cultural patterns, in which victims are placed under a gender hierarchy, which is likely to increase inequality at work and in society as a whole.

Even though sexual harassment has become a serious issue, women do not report such incidents to the appropriate authorities in most case, for fear of losing their livelihood or personal and professional status. It is increasingly acknowledged that workplace sexual harassment violates the rights of women and is a form of violence against them. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed to create safe and supportive working environments that respect women's right to equality of opportunity and status at work. As a result of the Act's effective implementation, more women will be able to claim their equal rights to gender equality, life and liberty, and equal working conditions around the world. In order to achieve inclusive growth, women need to feel secure at work, which will enhance their participation in the workplace. The extent of the problem is unknown because it is difficult to document the experiences of those who have been harassed at work.

The official statistics indicate that women are represented in the workforce at around 25.3% in rural areas and 14.7% in urban areas. However, estimates indicate that there is a large workforce of women, so their workplaces and rights must be protected. Because 93% of female workers work in the informal sector, they remain unprotected by the law.



Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

Overview of the PoSH Act

In order to address the urgency of the issue in terms of hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures..., the Supreme Court set out guidelines that highlight the rights of women in international covenants. Various international covenants, such as the Beijing Declaration at the Fourth World Conference on Women, and the Covenant on Elimination of Discrimination against Women, led the Court to come up with a definite recognition when it comes to sexual harassment in the workplace. Historically, sexual harassment was viewed as a part of employee misconduct or as a criminal offence if the conduct triggered the provisions of various laws in effect. The legal scenario, however, changed after this case, with the issue becoming an offence.

By establishing the Vishaka Guidelines, the Supreme Court established that workplaces, institutions, and people in a position of responsibility must uphold the fundamental right to equality and dignity that working women enjoy. Institutions were required to meet three key obligations:

Prohibition....Prevention....Redress

The POSH Act was then notified by the government in 2013. Through compliance with the above-mentioned three elements, the Act seeks to ensure women's equal access to the workplace, free from sexual harassment, as stipulated in the Vishaka judgment. Furthermore, the Act provides women with a civil remedy in addition to other laws currently in effect. As a result, a woman who reports instances of sexual harassment at work has the right to pursue civil as well as criminal remedies.

Preamble to the PoSH Act

Parliament enacted the Act in the 64th year of its Republic, thereby extending its scope throughout the country. This Act came into effect on December 9, 2015, following the enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (POSH Rules). A law generally becomes effective as soon as it is notified, however, in this case, the Act was published by the Ministry of Law and Justice (Legislative Department) for general information. It stated specifically that the Act would come into force after the rules were published in the Gazette, which took almost 8 months to complete.

A statute's preamble describes the legislative intent and the persons it intends to benefit. In its preamble, the present Act clearly states that its purpose is to protect women from sexual harassment at work, prevent and redress complaints of sexual harassment, and provide for matters connected with or incidental to such harassment.


Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

Key definitions under the PoSH Act

Sexual Harassment

Similar to what was stated in the Vishaka Judgment of the Supreme Court, the POSH Act defines sexual harassment under Section 2(n) of the Act. The POSH Act states that 'sexual harassment' is any unwelcome sexual behaviour, whether directly expressed or implied, and includes the cases of physical contact and advances, or a sexual favour demanded or requested, or making remarks with sexual overtones, or showing pornography or other offensive material, or acting in an unwelcome sexual manner through physical, verbal, or non-verbal means.

There are a number of circumstances that may constitute sexual harassment, including those listed below if they occur or are present during an act or behaviour of sexual harassment:

- A promise of preferential treatment at work;
- A threat of adverse treatment in the workplace that is implied or explicit;
- An implied or explicit threat regarding a person's employment status, present or future;
- 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.

The POSH Act defines sexual harassment as either direct or implied conduct, regardless of whether it is physical, verbal, or written. The distinctive feature of this type of behaviour is that it is undesirable and unwelcome. Among the forms of sexual harassment is quid pro quo sexual harassment, which is a form of sexual blackmail. A typical scenario of quid pro quo harassment involves a person in power pressuring an employee for sexual favours in exchange for advancement or the threat of adverse employment action.

In addition to creating an intimidating working environment, the definition also refers to creating a hostile working environment. For example, a work environment in which a woman employee feels embarrassed because she gets unwelcome comments about her body type. The burden of determining whether the harassment suffered by the victim amounts to a hostile work environment rests on the internal committee because there is no fine line test specified under the Act. Additionally, what constitutes sexual harassment varies from case to case depending on the facts and the context.

Employee

The POSH Act, under Section 2(f), defines employees broadly to include regular, temporary, and ad hoc employees. In accordance with the section, an employee is an individual who is engaged in a daily wage position, either directly or through an agent, a co-worker, a probationer, a trainee, and an apprentice, whether remunerated or not, whether on a voluntary basis or otherwise, and whether or not the terms of employment are express or implied.

Workplace

Although the Vishaka Guidelines only applied to traditional office settings, the POSH Act introduces the concept of an extended workplace, recognizing that harassment may not necessarily occur in the workplace itself. In accordance with Section 2(o) of the Act, a 'workplace' refers to any place visited by an employee as part of his or her



Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

employment, including any transportation provided by the employer for traveling to and from work.

Important provisions of the PoSH Act

Complaints Committee under the PoSH Act

Internal Complaints Committee:

In accordance with Section 4 of the PoSH Act, every office or branch of an organization employing ten or more employees must have an internal committee dedicated to hearing and resolving sexual harassment complaints. It is important to note that as a result of the Repealing and Amending Act, 2016, the Internal Complaints Committee was renamed the Internal Committee.

In the case of Global Health Private Limited & Mr. Arvinder Bagga v. Local Complaints Committee, District Indore and Others (2017), the Court held that there should be a fine imposed under the PoSH Act for failing to constitute the IC. Therefore, it is essential to comply with the composition of the committee, which is mentioned as follows:

- **There shall be a female Presiding Officer who is an employee at a senior level at work:**
- There should be at least two members among the employees. These members shall be ideally committed to women's causes or have social work experience or legal knowledge.
- An external member is required, who should be from NGOs or associations that support the cause of women or have experience in sexual harassment issues. As per Rule 4 of the POSH Rules, the external member shall be an individual with expertise in workplace sexual harassment issues, such as a social worker with at least five years of experience or somebody familiar with labour, service, civil, or criminal law.
- At least one-half of IC's total must comprise female members.
- IC members have a maximum term of three years.
- An inquiry must be conducted by at least three members of the IC, including the Presiding Officer.

POWERS OF THE COMMITTEES

In order to investigate complaints of workplace sexual harassment, the Internal Committee and Local Committee have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when they try a suit concerning:

Summoning and requiring the attendance of any person and interrogating him under oath;

A requirement to discover and produce documents;

Other matters as prescribed.

Procedure of complaint

Sexual harassment complaints at work can be lodged either with the Internal Committee or Local Committee in accordance with Section 9 of the POSH Act. The following is the procedure:

An aggrieved woman may file a complaint of sexual harassment at work within three months of the date of the incident and, in the case of repeated incidents, within three months of the most recent incident.



Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

The Internal Complaints Committee / Local Complaints Committee may extend the time limit if the aggrieved woman is not able to submit a complaint within the stipulated period of three months. The committee must be satisfied that the circumstances prevented the woman from forwarding a complaint within the specified time period. An extension of time must be justified in writing by the committee.

Furthermore, if the woman cannot make a complaint in writing, the Presiding Officer, any member of the Internal Complaints Committee, or the chairperson, or any member of the Local Committee will provide her with all reasonable assistance to file a complaint in writing.

Moreover, as per Rule 6(i) of the POSH Rules, it is provided that if an aggrieved woman is physically or mentally incapable or dies, or otherwise is unable to lodge a complaint, her legal heir or her relative or friend, or her co-worker, or an officer of the National Commission for Women or State Women's Commission, or any person who has knowledge of the incident, with the written consent of the aggrieved woman, may do so.

Conciliation

According to Section 10 of the POSH Act, an Internal Committee/Local Committee can attempt to resolve a complaint between the parties, at the request of the aggrieved woman, through conciliation by reaching an amicable settlement. A conciliation process is basically an informal way of resolving complaints before they escalate to a formal investigation. It may, therefore, be possible for the IC to resolve sexual harassment complaints by conciliation between the parties before beginning the inquiry proceedings, although monetary settlements should not be used as a basis for conciliation. A settlement should be recorded by the Internal Committee or Local Committee, and copies should be provided to the aggrieved woman and respondent after the settlement is reached. The IC may not conduct an investigation under the POSH Act after a settlement has been reached.

Interim relief

In response to a complaint, the Local Committee or Internal Committee may recommend interim measures to the employer, including the following:

Relocation of the aggrieved woman or the respondent;

Additional statutory/contractual leave of 3 months allowed to the aggrieved woman; Refraining the respondent from reporting on the performance (work performance) of the aggrieved woman or writing her confidential report, which can then be delegated to another employee.

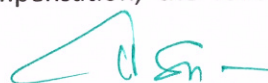
Punishments and compensation

An employer may punish an employee in the following ways for engaging in sexual harassment in accordance with the POSH Act:

The punishment prescribed under the organization's service rules;

In the absence of service rules in the organization, disciplinary action may include a written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increment, terminating the respondent from service, undergoing a counseling session, or performing community service; and Reduction of the respondent's wages to pay compensation to the aggrieved woman (Section 13 of the PoSH Act).

The PoSH Act, in accordance with Section 15, also provides for compensation for aggrieved women. In determining compensation, the following factors must be taken into account:



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- Affected employee's mental trauma, pain, suffering, and emotional distress;
- The loss of career opportunities caused by sexual harassment;
- Physical and mental health treatment expenses incurred by the victim;
- Whether the alleged perpetrator has a high income or a high status; and
- Whether lump sum or instalment payments are feasible.
- A failure by the respondent to pay the aforesaid sum will result in the IC forwarding the order of recovery to the District Officer concerned.
- False or malicious complaints and false evidence

It is envisioned in the PoSH Act, under Section 14, that actions will be taken against complainants who "falsely or maliciously" use the protections. According to the PoSH Act, disciplinary action can be taken in accordance with the service rules of the organisation against a complainant whose allegations have been found to be false, malicious or made with knowledge that they are untrue. The statute provides for disciplinary actions when no service rules exist, including written apologies, warnings, reprimands, censure, withholding of promotion, withholding of raises and increments, terminating employment, attending counseling, and performing community service. It is further clarified in the PoSH Act that a complaint need not be false or malicious just because there is insufficient proof to support it. It is true that Section 14 appears to be a saving clause, but the language of the section is regarded as a deterrent in nature. It is possible to conclude from different perspectives that the provisions incorporated in Section 14 to punish false and malicious complaints or false evidence may deter frivolous complaints, but they may also deter genuine witnesses or complainants who may not collect sufficient evidence to prove their allegations.

Confidentiality provisions

The PoSH Act, in accordance with Section 16, recognizes the sensitivity associated with sexual harassment and places a high priority on maintaining confidentiality throughout the process. It is specifically stated in the PoSH Act that workplace sexual harassment information shall not be subject to the Right to Information Act, 2005. Additionally, the PoSH Act prohibits the dissemination of the contents of the complaint, as well as the names and addresses of the complainant, respondent, witnesses, conciliation and inquiry proceedings, recommendations of the above-mentioned committees, and the consequences of the same to the public, press, and media in any manner whatsoever.

It is important to note, however, that the PoSH Act allows the dissemination of information concerning the justice directed to victims of sexual harassment without disclosing any of the victim's names, addresses, identities, or any other particulars that could identify them. In By disclosing the results of the investigation, the employer could not only prevent similar acts of sexual harassment in the future but also convey to employees and the public that the company is serious about providing a safe and harassment-free work environment.

Section 17 provides that if a person breaches the confidentiality obligations by handling a complaint or conducting an inquiry, or making recommendations or taking action under the statute, he/she shall be punishable under the organisations' service rules applicable to that person or, in the absence of such rules, with a fine of Rs 5,000.

The PoSH Act imposes a monetary penalty of up to Rs 50,000, under Section 26, if an employer fails to constitute an IC. Upon repeating the same offence, the punishment


Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)

may be doubled and/or the entity may be de-registered or have any statutory licenses revoked. However, it is not clear which business licenses are being referred to in this instance. Moreover, under the PoSH Act, all offences are non-cognizable (Section 27).

Provisions related to the employer

Vicarious liability of the employer

The Vishaka guidelines allow employees to hold employers accountable for breaches of their duties. Ultimately, the Delhi High Court, in *U.S. Verma, Principal Delhi Public School Society v. National Commission for Women* (2009), held that employers have a personal responsibility to protect others from harm, and are not permitted to abdicate this responsibility by delegating it. The Vishaka guidelines create a fair, secure, comfortable, and safe work environment with no chances of discrimination.

In *State Bank of India v. Shyama Devi* (1978), the Supreme Court ruled that, before the master is liable, it must be established that the damage was caused by the wrongful acts of the servant or agent. An employer is responsible for acts of sexual harassment by its employees or supervisors at work if these acts were performed in the "course of employment", whether or not for the employer's benefit. Whether or not an act was committed during the course of employment is a matter of fact in each case. As Sections 13(3)(ii) and 15 of the Act only entitle sexually harassed employees to monetary compensation, not their employers, a woman who has been sexually harassed at the workplace will have no other option than to seek compensation in civil court. The employer is vicariously liable for sexual harassment in the same way as for any other tortious act committed in the course of employment.

Duties and obligations of the employer

Section 19 of the PoSH Act mandates not only the establishment of an IC and the timely redress of workplace harassment grievances but also certain other responsibilities on employers, such as:

- Creating a gender-sensitive workplace and eliminating the underlying causes of a hostile working atmosphere for women;
- Maintain a safe work environment;
- Develop and widely disseminate policies, charters, resolutions, and declarations prohibiting, preventing, and redressing sexual harassment at work;
- Prominently display the consequences of acting in a manner that constitutes sexual harassment along with the composition of the IC;
- Provide a list of all members of the IC, as well as their contact information;
- Conduct regular workshops and awareness programs to inform employees and IC members on workplace sexual harassment issues and implications;
- Provide the IC with the necessary facilities for handling complaints and conducting inquiries;
- To initiate legal action, either under the Indian Penal Code, 1860 (IPC, hereinafter) or under any other law, against the perpetrator, or if the aggrieved woman so desires, against the perpetrator, where the perpetrator is not an employee, at the workplace where the incident of sexual harassment occurred;
- Providing assistance to aggrieved women in filing a complaint under the IPC or any other applicable law;
- Implement a policy to treat sexual harassment as a misconduct in accordance with service rules, and take appropriate action when it occurs;



Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solani)

- Provide a report to the District Officer each year detailing the number of cases filed and their disposition;
- Ensure that IC reports are submitted on time.

LIMITATION OF ACT

There is no specific protection under the Act for other employees who may be victims of work-related sexual harassment. A woman aggrieved by sexual harassment is defined in Section 2(a) of the Act as someone who alleges that she was subjected to such an act. In Section 3, it is prohibited to harass a woman at her workplace. This Act, therefore, excludes the possibility of redress for complaints raised by men or LGBTQ+ members by limiting the scope to women only.

HOW TO FILE COMPLAINT

The victim may report the members of committee in case of any incident threatening their modesty or case may be, in person and in writing. Confidentiality will be maintained throughout the redressal process.

(INTERNAL COMPLAINT COMMITTEE) (PoSH)

An **INTERNAL COMPLAINT COMMITTEE** of Maharishi Markandeshwar Medical College & Hospital, for the Prevention of Sexual Harassment (PoSH), has been constituted on 01.08.2023. The details of the members are as under:

| S. NO. | NAME | DEPARTMENT & DESIGNATION | CONTACT NO. | EMAIL ADDRESS |
|---------------|-----------------------|---|--------------------|--|
| 1. | Dr. Neelam Grover | Prof & Head, Paed. (Chairperson) | 9418456484 | dr.ngrover@rediffmail.com |
| 2. | Dr. Ravi Chand Sharma | Principal (Internal Member) | 9418028446 | principal.mmmch@mmusolan.org |
| 3. | Mr. Ajay Singal | Registrar, MMU, Solan (Internal Member) | 8894724505 | registrarmmusolan@gmail.com |
| 4. | Dr. Santosh Minhas | Prof. & Head, OBG (Internal Member) | 9418022048 | dr.santoshminhas@gmail.com |
| 5. | Dr Neelam Gupta | Prof & Head, Pathology (Internal Member) | 9418482666 | neelamgupta353@gmail.com |
| 6. | Dr. Simran Sekhon | Prof. & Head, Physiology (Internal Member) | 9805561130 | drsimran3@hotmail.com |
| 7. | Dr. Manisha Behl | Prof, Obst. & Gynae (Internal Member) | 9311984948 | manishabehl30@gmail.com |
| 8. | Dr. Vishavdeep Kaur | Prof, Dept. of Physiology (Internal Member) | 7888366379 | drvishavdeepurv@gmail.com |
| 9. | Mrs Meenakshi Sah | Nursing Suptd. (Internal Member) | 7496027337 | nsofficemmusolan@gmail.com |
| 10. | Ms. Reena Sharma | Bureau Reporter in Divya Himachal (External Member) | 7018884293 | reenasharma@divyahimachal.com |


Principal
Maharishi Markandeshwar
Medical College & Hospital
Kumarhatti (Solan)