

# POSH Clarity: True Equality

## Prevention Of Sexual Harrasment Act 2013



ICC to the rescue



POSH for Work from Home!



POSH training is essential

Wednesday Wisdom  
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## **Applicability of POSH in India [1]:**

The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (“POSH Act”) was enacted to safeguard women from all forms of sexual harassment at the workplace. This legislation can be traced to the international commitment of the Indian government under convention on the Elimination of All Forms of Discrimination against Women and actually came after the Supreme Court issued a detailed guidelines to prevent sexual harassment at workplace in the landmark Vishakha case [2]. The key concepts of the POSH Act were addressed in our previous article [3].

In this article, we focus on addressing common queries regarding the applicability of the POSH Act, the mandatory compliance requirements under the law and the possibility of implementing a gender-neutral POSH policy within an organization.

### **1. Which organizations are covered under the POSH Act?**

The POSH Act applies to all companies, workplaces, establishments, and organizations in India, including small businesses. Further, organizations with more than 10 employees must establish an Internal Committee. It is important to note that this count of 10 applies to employees of all genders, not just women employees.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Vishakha & others. vs. State of Rajasthan AIR 1997 SUPREME COURT 3011

[3] [https://www.linkedin.com/posts/ashvini-kandalgaonkar-b03b525b\\_beyond-the-compliance-aspect-posh-act-a-activity-7079859435069743104--vwm?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/ashvini-kandalgaonkar-b03b525b_beyond-the-compliance-aspect-posh-act-a-activity-7079859435069743104--vwm?utm_source=share&utm_medium=member_desktop)

## 2. What is Internal Committee and Local Committee?

Internal committee [4] is a special committee to be constituted mandatorily by the employer of companies, workspaces, establishments, and organizations in India that employ 10 or more employees, irrespective of the industry to address and resolve sexual harassment complaints.

Local Committee (“LC”) is established by district officer of each concerned district under POSH Act to address sexual harassment complaints filed by aggrieved women working in establishment having less than 10 employees.

## 3. How is Internal Committee constituted?

The Internal Committee must consist of the following members to be nominated by the employer:

- a. Presiding officer: a women employee working in senior level in the organisation; however, in case women in senior level is not available then the Presiding officer can be nominated from another workplace or department of same organisation;
- b. Not less than two members amongst employees preferably committed towards the cause of women or having legal knowledge or experience in social work;
- c. One external member committed to the cause of women or a person familiar with issues relating to sexual harassment.

Provided that at least one half of the members so nominated shall be women. While the POSH Act provides for minimum 4 members of IC, Organizations may appoint 5 or more members as per the organization size and availability of personnel. The number of employees nominated from the Company may be increased accordingly.

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

#### 4. What compliances are required by the company under the POSH Act?

The POSH Act outlines the legal requirements for organizations to create a safe and respectful work environment. Following are the key steps for organizations to ensure compliance:

- **POSH Policy:** Establish a clear and comprehensive POSH policy on preventing sexual harassment. This policy should define sexual harassment, outline the complaint process, and specify the consequences of violating the policy.
- **Internal Committee (IC):** Set up an Internal Committee to address sexual harassment complaints within the organization. As per the amended Rule 8 of the Companies (Accounts) Rules, 2014 [5], it is mandatory that companies include a statement in their directors' report confirming compliance with the provisions related to the constitution of internal complaints committees under the POSH Act. Failure to disclose this information can lead to penalties under the Companies Act, 2013.

Though registration of IC is not mandatory in all states but states like Maharashtra and Telangana require registration of IC. In Telangana, a circular was issued on July 1, 2019, mandating the registration of ICs on the Sexual Harassment Electronic Box (T-she Box). In Mumbai, an office order was issued on March 23, 2017 [6], requiring employers to register their ICs with the District Women and Child Development Officer using the prescribed format.

[5] Chrome

extension://efaidnbmnnnibpcajpcgltclfindmkaj/https://upload.indiacode.nic.in/showfile?actid=AC\_CEN\_13\_14\_00009\_201314\_1517807327213&type=rule&filename=companisaccountsrules\_31072018.pdf

[6] <https://poshatwork.com/registration-of-ic-in-mumbai-district/>





- **Annual Report:** Submit an annual report to the District Officer by January 31st of each year. This report should provide the following details:
  - a. Total number of sexual harassment complaints received.
  - b. Total number of sexual harassment complaints actioned and completed.
  - c. Total number of sexual harassment complaints under investigation for more than 90 days.
  - d. Total number of employees in the organization and the number of employees trained on POSH awareness.
  - e. Nature of the action taken by the Organization or District Officer.
- **POSH Awareness:** Organisations are required to:
  - a. Regularly conduct workshops and awareness programs to educate employees about their rights and obligations under the POSH Act.
  - b. Organize orientation programs for Internal Committee members to ensure they understand their roles and responsibilities.
  - c. Display information about the consequences of sexual harassment and the Internal Committee's contact details in prominent locations throughout the workplace.

## **5. Does the POSH Act only protect women at workplace?**

The Posh Act explicitly states that a complaint can be filed by any “Aggrieved women”.

## **6. Can Transgender file a complaint to IC under POSH policy as per the POSH Act?**

Under Section 2(a) of the POSH Act, the complaint can only to be filed by an “aggrieved woman”, thereby excluding transgender persons being subject of sexual harassment at workplace. Therefore, transgenders cannot file complaint to IC as per the current provisions directly. However, this issue may need further examination in light of Transgender Persons (Protection of Rights) Act, 2019, and the NALSA judgment [7]. Recently, Delhi High Court in Anamika vs. Union of India [8], held that a cognizable offense under Section 354A of the Indian Penal Code, 1860 (IPC), particularly sub-clauses (i), (ii), and (iv), should be registered upon a complaint by a transgender person identifying as a woman.

## **7. Many multinational companies having their parent company outside India intend to implement gender neutral POSH policy in India. Can company in India have a gender-neutral POSH policy?**

While the POSH Act provides protection from sexual harassment specifically for women, it does not prevent organizations from implementing a "gender-neutral" sexual harassment policy or guidelines. However, adopting a gender-neutral policy in India can present complexities as the POSH Act provides specific rights, compliance obligations of reporting and grievance redressal mechanism for women.

[7] National Legal Services Authority v. Union of India [(2014) 5 SCC 438] (NALSA).

[8] WP. (CRL) 2537/2018

Organizations may consider establishing separate gender-neutral POSH guidelines as part of their broader code of conduct, and specifically cover procedures and compliance formalities for handling sexual harassment complaints by women under a different POSH POLICY as per the Act.

## **8. Does the POSH Act extend to employee working from home?**

Yes, the POSH Act provides a broad definition of the term 'workplace' under Section 2(o). Under Section 2(o)(vi) Workplace definition includes a 'dwelling place or a house'. Though this provision is often associated with domestic workers and household helpers employed in a residence but the rise of 'work from home' arrangements and the overall intent of the legislation suggest that incidents of sexual harassment that occur in the course of working from home are also covered by POSH Act.

In **Saurabh Kumar Mallick v. Comptroller & Auditor General of India** [9] the Delhi High Court observed that "a person can interact or conduct a business conference with someone in another country via video conferencing. It is also becoming common for CEOs to run their offices from their residences. While the public may not have access to such places, personal staff, such as a private secretary, would be present. In such cases, if an officer engages in sexual harassment with an employee, it is not acceptable for the officer to claim that the incident did not occur in the 'workplace' but at their 'residence' in order to avoid responsibility."

[9] (MANU/DE/0956/2008)

## 9. What are the penalties for non-compliance of POSH Act?

In case the organizations/ establishments fail to comply with the provisions of POSH Act to constitute IC, then it shall be punishable with fine which may extend to Rs. 50,000/-

## 10. Does the POSH Act deal with frivolous complaints filed by the complainant?

Yes, Section 14 of the POSH Act addresses false or frivolous complaints to ensure that the protections under the Act are not misused. According to the Act, if the IC or LC determines that a complaint is false, malicious, or made with knowledge of its falsity, or if misleading or forged information is provided during the inquiry, disciplinary action may be taken against the complainant in accordance with the organization's employment policy. Determining that a complaint is false or frivolous will need a clear examination and it is specifically provided that just because the complaint cannot be substantiated or proven meticulously, would not automatically imply that the complaint is false or malicious. POSH Act provides for disciplinary measures such as issuing a written apology, issuing a warning, reprimanding, censuring, withholding promotions or pay rises, terminating employment, requiring counselling sessions, or assigning community service.





## 11. What steps can be taken by Organization to prevent sexual harassment of employees of both genders at workplace?

Following key steps can be taken by organizations to prevent sexual harassment of all gender at workplace:

**a. Effective POSH Policy:** Organizations must implement a proper policy that protects employees against sexual harassment. This policy should clearly state that sexual harassment will not be tolerated in any form.

- **Applicability:** It must clearly specify who all are covered and protected under the policy (e.g., all employees, contractors, interns).
- **Definition of Sexual Harassment:** Clearly define what constitutes sexual harassment, including but not limited to Physical contact (unwanted touching, assault), Verbal harassment (lewd comments, sexual jokes, threats), Non-verbal harassment (inappropriate gestures, staring) and Cyberbullying (sharing inappropriate images, online harassment)
- **Complaint Handling Process:** Establish a clear and confidential process for reporting and investigating complaints. The complaint handling procedures ought to be clearly defined as per the POSH Act for all women.
- **Remedies:** Detailed remedies should be listed in the POSH policy.

**b. Comprehensive Training:** While it may be assumed that employees can readily identify sexual harassment at the workplace, but the reality is often more complex. It is generally easier to recognize obvious forms, such as physical or verbal harassment.

However, harassment in subtle forms which includes inappropriate gestures and online harassment can often go unnoticed. If these behaviours/actions are left unchecked, these subtle behaviours can create a hostile work environment, damaging company culture and eroding professional relationships. It's crucial to recognize that even seemingly minor instances of inappropriate behaviour can have a significant impact on individuals and the overall workplace dynamic.



Therefore, it is important that Organization educate employees through regular training, which should include the following key elements:

- Organizations must conduct ongoing training for all employees, including management, to raise awareness about sexual harassment prevention.
- The training should address common misconceptions about sexual harassment, emphasizing that it extends beyond physical contact to include a range of behaviours.
- The training should empower employees to recognize and report instances of sexual harassment.

**c. Strong and independent IC:** The IC should be given complete independence in handling the sexual harassment complaint without any influence of the management. Recently, a public interest litigation was filed before the Supreme Court, seeking security of tenure and protection from retaliation for members of Internal Complaints [10]. It was urged that unlike their public sector counterparts, private sector ICC members can be terminated on the whim of employer. A strong IC goes a long way to implement the POSH policy effectively.



By implementing these measures, organizations can foster a safe and inclusive work environment where all individuals feel respected and valued. Even if we shout at the top of our voice about women equality and respect, unless we implement such policies in letter and spirit the same cannot be achieved. Hence, strict adherence to POSH Act is very crucial to make our economy a stronger, safer and flourishing one.

[10] JANAKI CHAUDHRY & ANR. Petitioner(s) VERSUS MINISTRY OF WOMEN AND CHILD DEVELOPMENT & ORS. Respondent(s): Writ Petition(s)(Civil) No(s).796/2024 : Supreme Court of India

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