

POSH Act

**Sexual Harassment
of Women
at Workplace Act**



Know Your Rights: Legal Safeguards Against Workplace Sexual Harassment

Law officer: Ms. Debashmita Chakraborty
Tripura Commission for Women. Agaratala

Introduction

Vishaka v. State of Rajasthan (“Vishaka Guidelines”), decided by the Supreme Court on 13th August 1997 [AIR 1997 SC 3011].

Facts in Brief :

A Rajasthan Government female employee was brutally gang raped at her workplace.

A writ petition seeking redressal for sexual harassment at the workplace was filed in the Supreme Court of India.

The Supreme Court used the opportunity to address the lacunae in law which left women workers in the country without any remedy when sexually harassed at the workplace.

The Vishaka Guidelines

The Court acknowledged that sexual harassment at the workplace violates the fundamental right of women to choose any trade, profession, or business of their choice. It laid down “Vishaka Guidelines” for the prohibition, prevention, and redressal of sexual harassment of women in the workplace.

The Vishaka Guidelines

- Provides for the constitution of the complaints committee.
- Provides for mechanism for filing the complaint.
- Provides for duties of an employer and other related persons. And other related persons and other related aspects of sexual harassment.
- These guidelines were replaced by The Sexual Harassment of Women in Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH ACT”).
- The POSH Act, 2013 has incorporated the same definition of sexual harassment and the procedure as laid down in the Vishaka Guidelines.

Understanding the law

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”)

POSH Act

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is also known as POSH Act.
- Notified w.e.f November 9, 2013
- The POSH Act protects only women and is not a gender-neutral legislation. Therefore, the safeguards under the posh Act are not applicable to 'men victim'.

What amount to Sexual Harassment

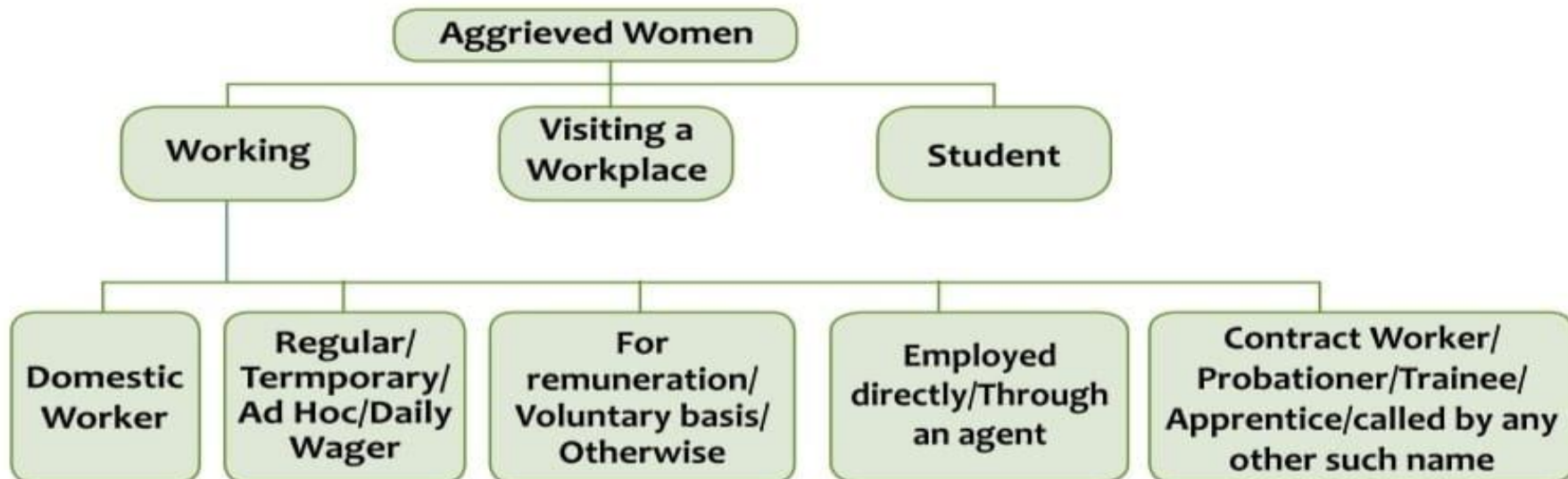
- 'Sexual harassment includes unwelcome sexually tinted behaviour, whether directly or by implication, such as
- (i) Physical contact and advances,
- (ii) demand or request for sexual favours,
- (iii) making sexually coloured remarks
- (iv) Showing pornography or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

2.1 WHO IS AN AGGRIEVED WOMAN?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, 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.



Workplace

- Any Government, semi-govt, PSUs, Corporations, institute;
- Any private sector organization, foreign company having office in India.
- Hospitals or Nursing homes;
- Any Sport institute/complex or stadium
- Any place visited by employee arising out of/ during employment;
- A dwelling place or house

Complaint

Who can file: The aggrieved woman may make the complaint in writing to the concerned committee within the period of three months.

In case the aggrieved woman is not able to make the complaint herself due to **physical incapacity**, any of following may file a complaint:

- Her relative or friend;
- Her co-worker;
- An office of the National Commission for Women or State Women's Commissions;
- Any person who has knowledge of the incident, with the written consent of the aggrieved woman;

Complaint

In case the aggrieved woman is not able to make the complaint herself due to **mental incapacity**, any of following may file a complaint:

- Her relative or friend;
- A special educator;
- A qualified psychiatrist or psychologist;
- The guardian or authority under whose care she is receiving treatment or care;
- Any person who has knowledge of the incident jointly with any of the above.

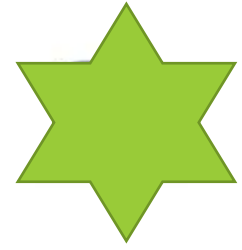
In case the aggrieved woman is not able to make the complaint herself due to **any other reasons**, a complaint may be filed by any person who has knowledge of the incident, with her written consent.



Internal Committee

- Every Employer is required to set up an 'Internal Committee' at **each office or branch**, of an organization which are employing 10 or more employees.
- The presiding officer shall be a woman employed at a senior level at the workplace, while a minimum of 3 members including the presiding officer are to be present for conducting the inquiry.
- Not less than two members- committed to cause of women, involved in social work and have legal knowledge.
- One member- from NGO or committed to cause of women or familiar with the sexual harassment issues.

Power of IC



- ▶ The POSH Act stipulates that the IC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:
 - i. summoning and enforcing the attendance of any person and examining him on oath;
 - ii. requiring the discovery and production of documents; and
 - iii. any other matter which may be prescribed

Local complaints committee

The POSH Act

This is where the Local Complaints Committee comes into picture. The POSH Act is very comprehensive and has ensured that every women employee is covered. **The Local Complaints Committee is formed to ensure protection against sexual harassment for women employees working in organizations that have less than 10 employees.**



What are the remedies?



- ✦ Any aggrieved woman employee may file a complaint with ICC for Redressal of her grievances.
- ✦ It is the responsibility of ICC to send notice to Respondents (against whom a complaint of sexual harassment has been made) within 7 (seven) working days.
- ✦ The Respondent shall file his reply to the complaint along with supporting documents.

Punishments

Punishment for Sexual Harassment

- ✦ To take action for sexual harassment as an act of misconduct in accordance with the rules/regulations of the Company governing 'conduct and discipline' as applicable to the Respondent; **and/or**
- ✦ To deduct such amounts from the salary or wages of the Respondent as may be considered appropriate to be paid to the Complainant as per the Policy of the Company.
- ✦ Section 354, 354 A, 354B, 354 C, 354 D and 509 of Indian Penal Code, 1860 provides for punishment for offences of outraging the modesty of woman, sexual harassment, disrobe, voyeurism, stalking and insulting the modesty of woman respectively and the punishment ranges between rigorous imprisonment from 1 to 3 years AND fine or both.

Punishment for Malicious Compliant or False Evidence

If an Employee is found to have raised a malicious or false Complaint or given any false evidence, such complainant or such person making evidence may also be subject to :-

- ✦ Appropriate disciplinary action, which may include termination of employment, engagement or relationship with the Company, as the case may be.

Prevention

How to prevent?

Following are the responsibilities of the employer under the Act:-

- ✦ Constitution of Internal Complaint Committee (ICC) to handle the complaints of sexual harassment;
- ✦ Display on the notice board of the premises giving full details of members of ICC;
- ✦ Display at conspicuous places at workplace, penalties & consequences of sexual harassment ;
- ✦ Providing training to sensitize the employees on the issues and implications of sexual harassment at workplace and organizing orientation programme(s) for members of ICC.