



LAW RELATING TO PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA

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**THE OBJECTIVE OF THIS STUDY IS TO SERVE AS A READY RECKONER ON THE
LAW RELATING TO SEXUAL HARASSMENT OF WOMEN AT WORKPLACE**

This study mainly focusses on



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

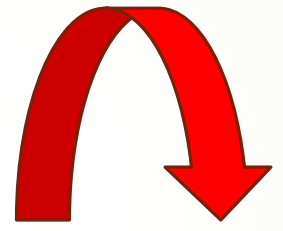
**Vishaka Vs. State of
Rajasthan (Air 1997 SC 3011)**

**Other relevant laws in
India pertaining to sexual
harassment at workplace.**



WORKPLACE

#MeToo



SEXUAL HARASSMENT

Sexual harassment at workplace is not new to the World. However with the larger of women workforce, sexual harassment at workplace has considerably increased.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IS A VIOLATION OF THEIR FUNDAMENTAL RIGHTS GRANTED UNDER THE CONSTITUTION OF INDIA

Our Constitution provides fundamental rights of 'Gender Equality' and 'Right of Life and Liberty' to women.

Sexual harassment at Workplace is a clear violation of above rights provided under Art. 14, 15 and 21 of the Constitution. Sexual Harassment at Workplace is a form of gender discrimination which violates these rights. Right to life means life with dignity.

Sexual Harassment at Workplace to women is the violation of their fundamental right granted under Article 19 (1)(g) to practice and carry on any profession , occupation, trade or business.

This right necessarily requires availability of a "safe" working environment.

For a long time, working women in India did not practically receive the protections granted under the Constitution by any specific national or state legislation.

VISHAKA VS. STATE OF RAJASTHAN (AIR 1997 SC 3011)

Vishaka v. State of Rajasthan

- ❑ The principle of gender equality is enshrined in the Constitution, However, Sexual Harassment of women at Workplace in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka Vs. State of Rajasthan, wherein the Supreme Court was of the view that Sexual Harassment is a violation of human rights as well as fundamental rights granted by Constitution of India. The Supreme Court, in this case, framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating Sexual Harassment at workplace.
- ❑ The Vishaka Guidelines talk about certain procedures to be followed in cases of Sexual Harassment at Workplace. This case was brought to the Supreme Court because of the sheer inability of the High Court of Rajasthan to provide justice to Bhanwari Devi who was part of Women's Development Program of the Rajasthan Government. She was brutally gang raped for stopping a child marriage being conducted. This was a part of her duties as a member of the Development Program to stop any illegal activity conducted against children and women. The incident reveals the hazards to which a working woman may be exposed and the urgency for safeguards by an alternative mechanism in the absence of legislative measures.

VISHAKA VS. STATE OF RAJASTHAN (AIR 1997 SC 3011)

Vishaka v. State of Rajasthan

Bhanwari's cause was taken up by Vishaka, a women's welfare group that led public interest litigation, ultimately resulting in the Guidelines.

The Supreme Court had made it mandatory that these Guidelines had to be followed by all organizations until a legislative framework on the subject has been put in place.

However, the legislative void continued and the Supreme Court in **Apparel Export Promotion Council v. A.K Chopra ((1999) 1 SCC 759)** reiterated the law laid down in the Vishaka Judgment.

Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of Sexual Harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishakha Guidelines across the country.

SUPREME COURT'S GUIDELINES IN VISHAKA'S CASE

TO BE OBSERVED BY EMPLOYERS, OTHER RESPONSIBLE PERSONS OR INSTITUTIONS

- ❑ To prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
- ❑ To take appropriate steps to prevent sexual harassment BY-
 - Notifying, publishing and circulating in appropriate ways the law of prohibition of sexual harassment at workplace.
 - INCLUDING rules/regulations of prohibition of sexual harassment in the Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline.
 - INCLUDING the prohibition in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, in case of private employers.
 - PROVIDING appropriate work conditions to ensure that there is no hostile environment towards women at work places.

SUPREME COURT'S GUIDELINES IN VISHAKA'S CASE

- To initiate appropriate action in accordance with law, where such conduct amounts to a specific offence under the Indian Penal Code or under any other law.**
- To initiate appropriate disciplinary action where such conduct amounts to misconduct in employment defined by the relevant service rules.**
- To create an appropriate complaint mechanism in the organization for redressal of complaint made by the victim, by providing a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.**
- To allow the employees to raise issues of sexual harassment at workers meeting/ other appropriate forums.**
- To notify the guidelines to create awareness of the rights of female employees.**
- To take all necessary steps and to assist the affected person in case of sexual harassment by any third party or outsider.**

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

It took a decade after Vishaka's case for the legislature to initiate the drafting of a definitive law on sexual harassment at workplace.

The Vishaka Guidelines were superseded by:



The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

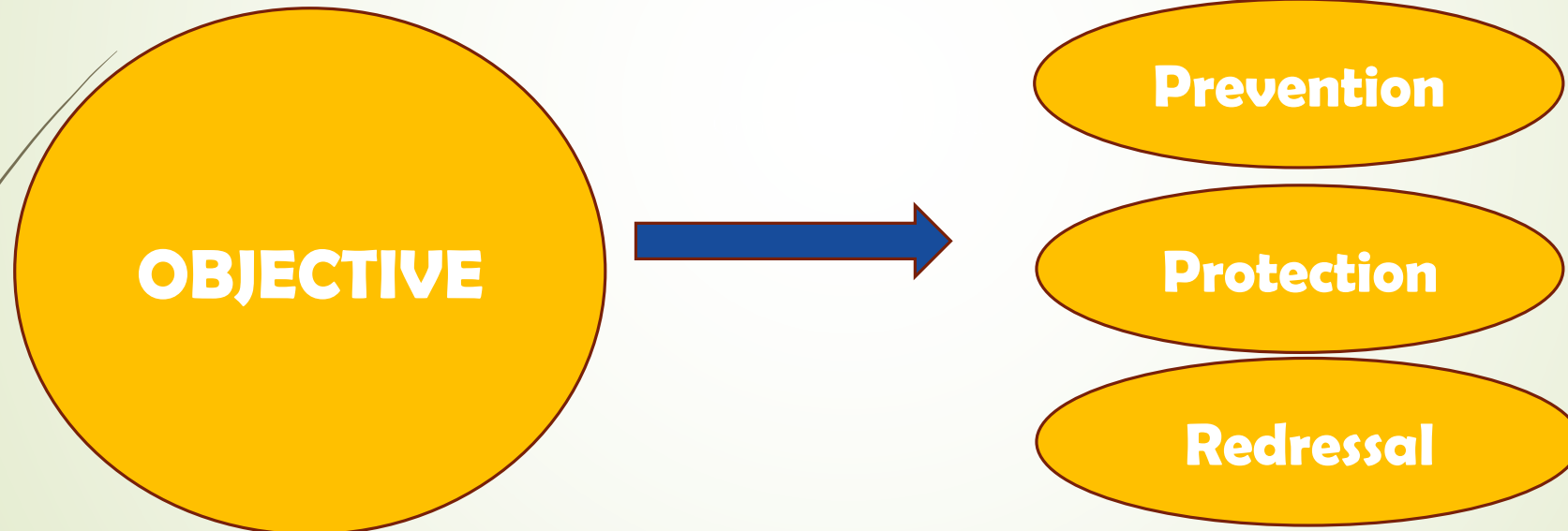
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Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

India's first codified legislation specifically dealing with prevention, prohibition, and redressal of sexual harassment of women at workplace, with Rules as

**OBJECTIVE OF
THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013 (POSH ACT)**

The POSH Act has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and to ensure effective redressal of complaints of sexual harassment.



THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

APPLICABLE JURISDICTION

The POSH Act extends to the 'whole of India'.

ORGANISATIONS COVERED

Both organized and unorganized sectors.

- applies to government bodies.
- applies to private and public sector organizations.
- applies to non-governmental organizations.
- applies to - organizations carrying on commercial, vocational, educational, entertainment, industrial, financial –activities, hospitals & nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)



THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

AGGRIEVED WOMAN

IN RELATION TO A WORKPLACE

IN RELATION TO DWELLING PLACE OR HOUSE

A WOMAN OF ANY AGE

WHETHER EMPLOYED OR NOT

A WOMAN OF ANY AGE

EMPLOYED IN SUCH A DWELLING PLACE OR HOUSE

WORKING

VISITING A WORKPLACE

CUSTOMER

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

The POSH Act covers:

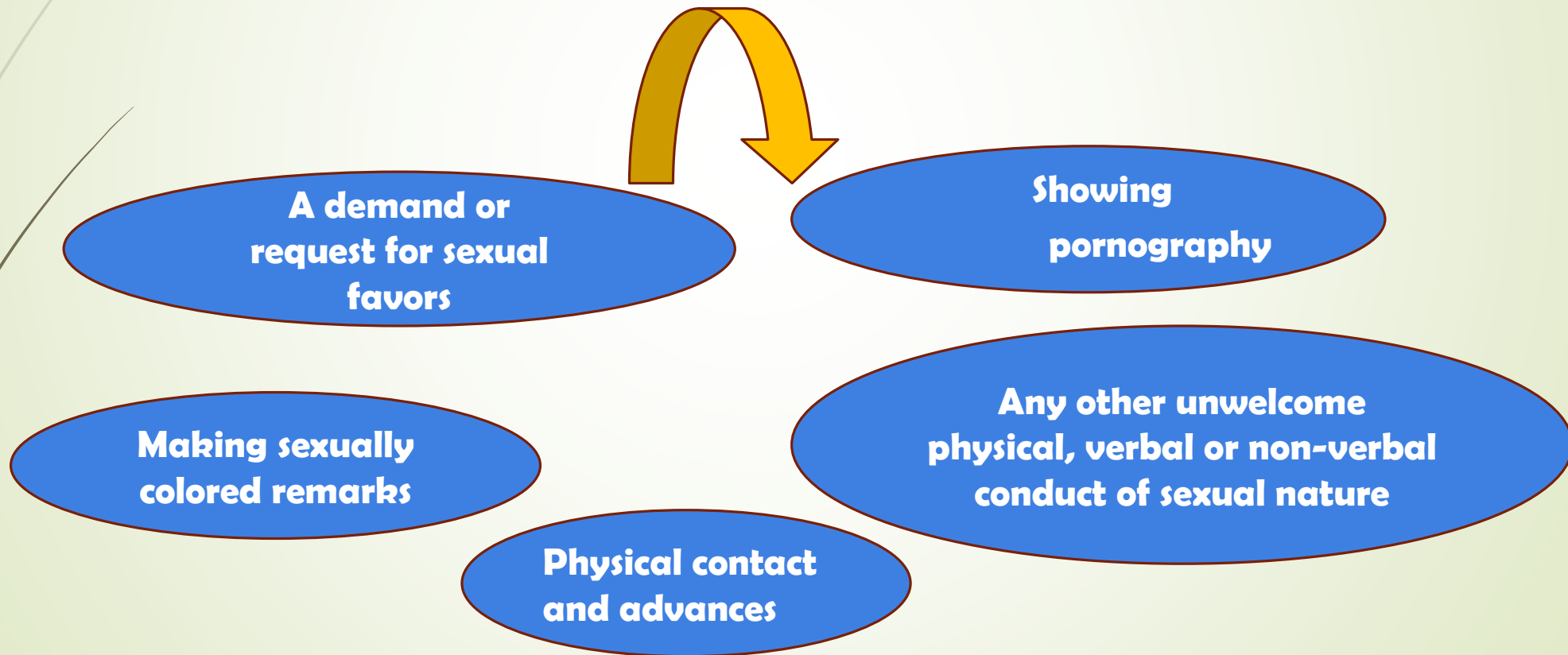
- Regular, Temporary, ad-hoc employees, daily wagers
- either directly or through an agent,
- contract labourers,
- co-workers, probationers, trainees, and apprentices,
- with or without the knowledge of the principal employer,
- whether for remuneration or not,
- working on a voluntary basis or otherwise,
- whether the terms of employment are express or implied.



THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

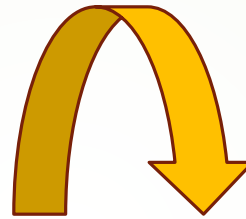
SEXUAL HARASSMENT

Includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) :



THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

THE FOLLOWING CIRCUMSTANCES (WHETHER IMPLIED OR EXPLICIT), **ALSO MAY CONSTITUTE SEXUAL HARASSMENT**



Implied/explicit promise of preferential treatment in employment

Implied/explicit threat of detrimental treatment in employment

Implied/explicit threat about present or future employment status

Interference with work or creating an intimidating/hostile environment

Humiliating treatment, likely to affect health or safety

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

INTERNAL COMMITTEE (IC) AND ITS CONSTITUTION

- Employer to set up an 'Internal Committee' ("IC") at each office or branch of his organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.**
- Internal Committee to prepare and submit an annual report to the Employer/ the District Officer.**
- At least one-half of the total Members of IC shall be women.**
- PRESIDING OFFICER: A Woman, employed at a senior level at the workplace from amongst the employees.**
- MEMBERS: Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.**
- EXTERNAL MEMBER : From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.**
- TERM: The term of the Presiding Officer /Members of Internal Committee shall not exceed 3 years.**
- A minimum of 3 Members of the Internal Committee including the Presiding Officer are to be present for conducting the inquiry.**

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

LOCAL COMMITTEE (LC) AND ITS CONSTITUTION

- At each District Level:** , the Govt. to set up a 'LOCAL COMMITTEE' ("LC") to
 - investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the IC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.**
- The LC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.**
- CHAIRPERSON :** An eminent woman in the field of social work and committed to the cause of women.
- LOCAL WOMAN:** One of the members to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district.
- NGO MEMBERS:** Two members, out of which, at least one shall be a woman to be nominated from a NGO or an association committed to the cause of women or a person familiar with issues pertaining to sexual harassment.
- At least one of the members should have a background in law.**
- At least one of the members should be a woman belonging to the Scheduled Castes or Scheduled Tribes.**

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

POWERS OF INTERNAL COMMITTEE AND LOCAL COMMITTEE

The POSH Act stipulates that the IC and LC shall, while inquiring into a complaint of sexual harassment at workplace, have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of :

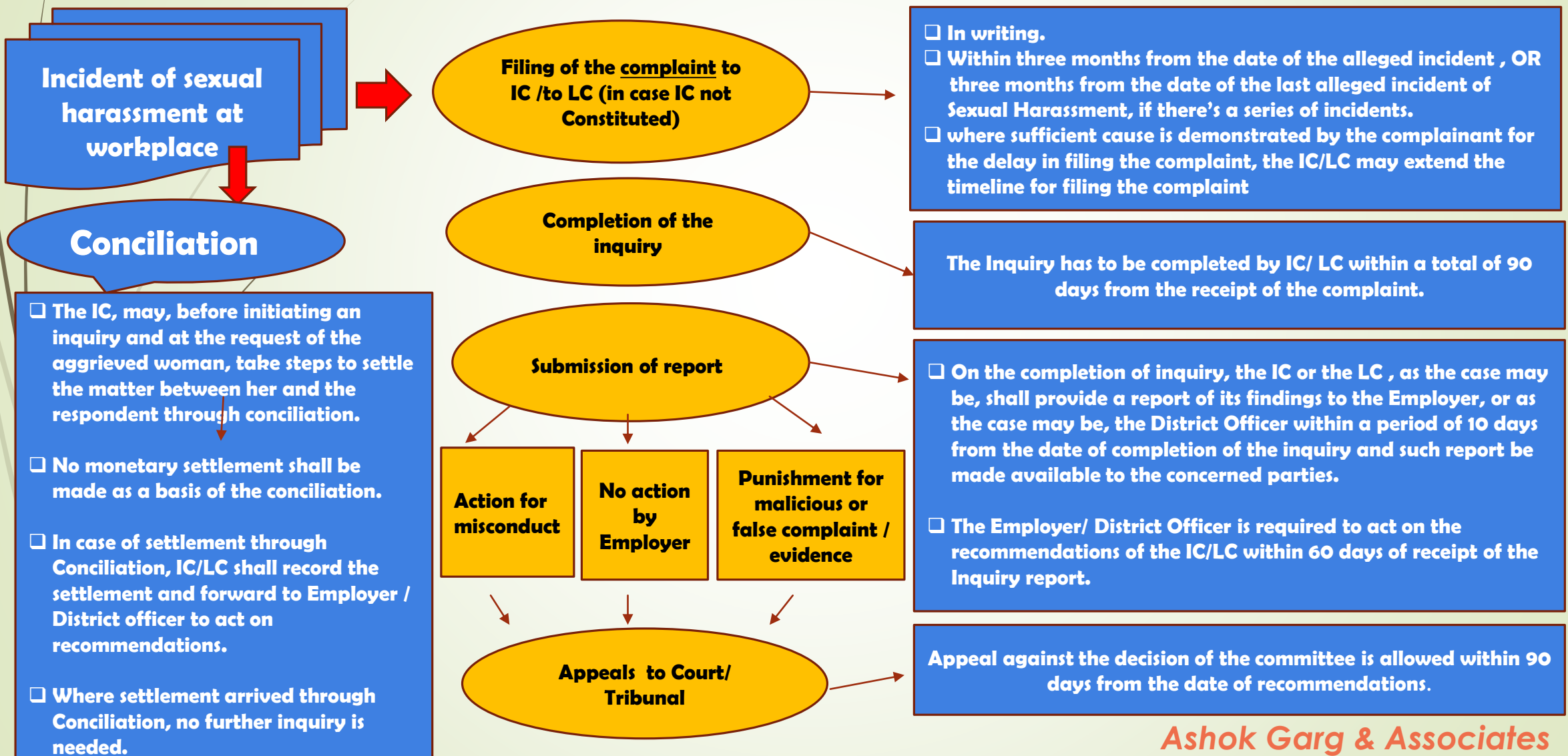
Summoning and enforcing the attendance of any person and examining him on oath

Requiring the discovery and production of documents

Any other matter which may be prescribed

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

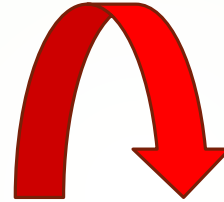
PROCEDURE FOR RESOLVING THE COMPLAINT



THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

INTERIM RELIEFS

At the request of the complainant, the IC or the LC (as the case maybe) may recommend to the Employer to provide interim measures such as:



Transfer of the Aggrieved Woman or the respondent to any other Workplace;

Granting leave to the Aggrieved Woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement

Restrain the Respondent from reporting on the work performance of the Aggrieved Woman or writing her confidential report, which duties may be transferred to other employees

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

PUNISHMENT

Action for Sexual Harassment as a misconduct

Deduction of compensation to be given to Aggrieved woman from salary/wages of Respondent

Punishment prescribed under the 'Service Rules' of the organization

If the organization does not have Service Rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

PAYMENT OF COMPENSATION TO THE AGGRIEVED WOMAN



The compensation payable shall be determined on following:

The mental trauma, pain, suffering and emotional distress caused to the Aggrieved Woman

The loss in the career opportunity due to the incident of Sexual Harassment

Medical expenses incurred by the victim for physical or psychiatric treatment

The income and financial status of the Respondent

Feasibility of such payment in lump sum or in instalments

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

Risk of having business licenses and registrations cancelled/ or non-renewal for continuing non-compliance

A monetary penalty of up to INR 50,000 may be imposed

CONSEQUENCES OF NON-COMPLIANCE WITH THE PROVISIONS OF ACT BY THE EMPLOYER

All offences under POSH Act are non-cognizable

A repetition of the same offence could result in the punishment being doubled

If there is a higher punishment under another legislation (in force at the time) for such offense, the court can take due cognizance of such higher punishment while awarding the punishment

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

DUTIES OF EMPLOYER

Under the POSH Act the Employer is duty-bound to



- Provide a safe working environment at Workplace.
- Display conspicuously at the Workplace, the penal consequences of indulging in acts that may constitute Sexual Harassment and the composition of the IC.
- Publish the POSH Law related policies over the company intranet and/or services rules, which shall include the contact details and names of the IC members
- Organize workshops and awareness programs at regular intervals for sensitizing Employees on the issues and implications of Sexual Harassment at workplace and organizing orientation programs for members of the IC.
- Provide necessary facilities to the IC for dealing with the complaint and conducting an inquiry.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH ACT)

DUTIES OF EMPLOYER

- Assist in securing the attendance of Respondent and witnesses before the Internal Committee or the Local Committee.
- Monitor the timely submission of the reports by the Internal Committee.
- Provide assistance to the Aggrieved Woman if she so chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force.
- Use modules published by the State Governments to generate awareness amongst Employees and may involve collaborations with urban local bodies to promote dialogue on Sexual Harassment, including its prevention, prohibition, and redressal.
- Treat Sexual Harassment as a misconduct under the Service Rules and initiate action for misconduct.
- Prepare an annual report with details on the number of cases filed and their disposal and submit the same to the District Officer.

Amendment to the Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013

THE REPEALING AND AMENDING ACT, 2016 NO. 23 OF 2016 made following CHANGES



- ❑ Amended Sections 6, 7 and 24 of **Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013.**
- ❑ The nomenclature was changed from '**Internal Complaints Committee**' to '**Internal Committee**'; and '**Local Complaints Committee**' to '**Local Committee**'.
- ❑ **EFFECT** : Enlarged role **Committee** . No more restricted to complaint resolution, but to include prevention of harassment and many other steps.

MANDATORY DISCLOSURE OF COMPLIANCE

- ❑ **On 31st July 2018, the Ministry of Corporate Affairs notified Amendment in the Companies (Accounts) Rules, 2018, thereby amending the Companies (Accounts) Rules, 2014.**

NOW :

(A) Rule 82 (x) of above Rules requires every Company to report compliance with the provisions of POSHA.

(B) The non-compliance of above may result in imposition of a fine on the defaulting Company under section 134 of the Act, which shall not be less than INR 50,000/- but which may extend to INR 25,00,000/- and imprisonment for every officer of the Company who is in default for a term which may extend to 3 years or with fine in the range of INR 50,000/- to INR 5,00,000/-.

- ❑ **With this amendment the company/employer will be under a statutory compulsion to be remain compliant with the provisions of the Act.**

SHe-Box -GOVERNMENT PORTAL FOR COMPLAINTS OF SEXUAL HARASSMENT AT WORK

What is SHe-Box

The **S**exual **H**arassment electronic **B**ox (**SHe-Box**) is an initiative by the Government of India to provide a single window access to every woman, irrespective of her work status, whether working in organized , unorganized, private or public sector, to facilitate the registration of complaint related to sexual harassment.

Any woman facing Sexual Harassment at workplace can register a complaint through this portal. '**SHe-box**', can be accessed at www.shebox.nic.in.

It aims at ensuring effective implementation of POSHA and providing speedy redressal of sexual harassment complaints.

Complaints received on **SHe-Box** shall be directed by the government to the Employer's IC or LC.

Progress of the investigation can be monitored by both the complainant and the Ministry of Women and Child Development.

OTHER LAWS PERTAINING TO SEXUAL HARASSMENT AT WORKPLACE

INDIAN PENAL CODE, 1860

SECTION 354: OUTRAGING THE MODESTY OF A WOMAN –

Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.

PUNISHMENT:

Simple / rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine.

SECTION 354-A: SEXUAL HARASSMENT BY A MAN-

- i. Physical contact and advances involving unwelcome and explicit sexual overtures;
- ii. Demand or request for sexual favours;
- iii. Showing pornography against the will of a woman; or
- iv. making sexually coloured remarks.

PUNISHMENT:

Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.

OTHER LAWS PERTAINING TO SEXUAL HARASSMENT AT WORKPLACE

❑ SECTION 354 B: ASSAULT OR USE OF CRIMINAL FORCE TO WOMAN WITH INTENT TO DISROBE-

Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.

PUNISHMENT:

Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.

❑ SECTION 354 C-: VOYEURISM-

Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.

PUNISHMENT:

First Conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine.

Second Or Subsequent Conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.

OTHER LAWS PERTAINING TO SEXUAL HARASSMENT AT WORKPLACE

❑ **SECTION 354-D : STALKING**

Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

Monitoring the use by a woman of the internet, email or any other form of electronic communication.

PUNISHMENT:

First Conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine;

Second or Subsequent Conviction: Simple/ Rigorous imprisonment for a term which may extend to five years and fine.

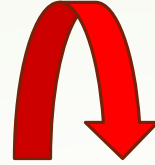
❑ **SECTION 509 : INSULTING THE MODESTY OF A WOMAN**

Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.

PUNISHMENT:

Simple imprisonment for a term which may extend to three years, and fine.

OTHER LAWS PERTAINING TO SEXUAL HARASSMENT AT WORKPLACE



INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Model Standing Orders prescribed under the **Industrial Employment (Standing Orders) Central Rules, 1996 (“Standing Orders Rules”)** prescribe a list of acts constituting ‘misconduct’ and specifically includes Sexual Harassment. The Model Standing Orders not only defines ‘Sexual Harassment’ in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment.

OUR ANALYSIS

The POSH Act came as harbinger of hope for curbing Sexual Harassment of women at Workplace. Sadly, despite the POSH Act being in place for 7 years now, the incidences of Sexual Harassment have not gone down and the Act definitely has not fully able to curb the incidences of Sexual Harassment at Workplace. The findings for ineffectiveness of the Law are as follows:

- ❑ The main flaw arises from the perspective of implementation and compliance of the provisions of POSH Act.**
 - It has not been practically complied by the Workplaces to the expected extent.**
 - Many organizations (especially non-corporates) still do not have an IC in place.**
 - The awareness regarding consequences of Sexual Harassment and its redressal against the same is limited. Even the awareness among Aggrieved Women that they can file a complaint under the POSH Act is not as desired.**

OUR ANALYSIS

- ❑ The provisions for penalizing the complainant for false complaint are being used maliciously against the aggrieved woman. Such provision deter a woman to come forward and complain.
- ❑ The law requires a third-party- an NGO to be involved, which could make a woman less comfortable in reporting grievances, due to confidentiality concerns.
- ❑ This law is not gender neutral, does not protect men, it "is based on the premise that only female employees needed to be safeguarded".

The POSH Act is an important tool in the hands of women and hence it is essential that it should be implemented in best ways. The crux of law lies in its implementation once it is enacted.