



## POSH (PREVENTION OF SEXUAL HARASSMENT)

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### INTRODUCTION

The POSH Act stands for” the Prevention of Sexual Harassment of Women at Workplace (Protection, Prohibition and Redressal) Act. It is a Legislation enacted by the Indian government to protect women in the workplace and create a safe work environment in India. This Act was passed by the Indian Parliament in September 2013. The Government of India implemented the POSCO Act in 2013 to tackle the problem of sexual harassment experienced by women in the workplace. This legislation created an Act to protect women. It also requires employers to set up an Internal Complaints Committee (ICC) in their organization. Employers should give notice in the organization to protect female employees against harassment. Employers must provide necessary support to the complaints and need to make arrangements for her work in case she needs to be transferred. It should be ensured that the complaints and respondents are present during inquiries. Assist the client if she wishes to file a complaint with the police. Employers are required to conduct regular awareness. The Act includes provisions to protect the identity of the person who has experienced harassment, the respondent, and the witness.

The Act includes measures to protect the victim from harassment and can safely work in the workplace. The Act includes penalties for employees who fail to comply with the provisions of the POSH Act. India's first legislation created safety for women and made women comfortable in the workplace and gave a better environment. The Act includes measures to prevent the victim from facing retaliation due to their complaint. To ensure that the Act allows for a transfer of a victim to another workplace and grand leave for up to three months. The Act includes penalties for the victim and has to give a fine of 50,000. It also includes penalties for false accusations. This POSH (Prevention of Sexual Harassment) Act finds its origin in the landmark Supreme Court case of *Vishaka vs State of Rajasthan, 1997*, where the court in

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response said that the brutal gang rape of a social worker named Bhanwari Devi, issued guidelines that it knows as” Vishaka Guidelines” to address sexual harassment at the workplace.

Mahatma Gandhi once said,” The day women can work freely on the road at night, that day we can say India got Independence.“So, did India get Independence? I guess not. It has been a decade since Gandhi said these words, and they still make sense when compared to the present state. Women are sexual harassment, rape, gender discrimination, domestic abuse and on in our country. It is a fact that India has been ranked ninth among the world’s most dangerous countries for women in the year 2024. Even today, women do not have any freedom, and they are not at all safe in their workplace.

According to the background of the POSH Act 2013, the important provisions of this Act are,

1. Section (2) of this Act defines the term Sexual Harassment. It includes an unwelcome Act or behavior like physical contact and advances, a demand or request for sexual favours, making sexual colour remarks, showing pornography, or any other physical, verbal, or non-verbal activities.
2. Section 3(2) of the Act mentions the circumstance with leads to sexual harassment, implied or explicit promise of preferential treatment in her employment, and implied or explicit threat of treatment in her employment. Humiliating treatment is likely to affect her in society.
3. Sections 4 &6 of the legislation provide for the constitution of the internal complaints committee and local complaints, respectively.
4. Section 9 of the Act provides the process of the complaint of sexual harassment, whereas Section 11 deals with the injury of sexual harassment.
5. According to Section 10, the committee can inquire about the culprit under Section 11, and at the request of the women, they can take steps, and the respondent can conciliate.
6. Section 14 addresses the imposition of penalties for offenses related to false representation and the presentation of false evidence.
7. According to Section 26, any sort of non-compliance with the proviance of the Act is punishable with a fine of up to Rs. 50,000, and repeated violations may lead to higher penalties and cancellation of the license.

## **WHAT ARE THE DUTIES UNDER POSH ACT, 2013**

The companies are expected to create a safe working environment and can safely work. The companies' employers need to provide workplaces free from sexual harassment and need to keep in mind to make a good company and good reputation. Employers need to maintain their brand image to keep their companies in a good name. The companies need to know all the guidelines about the POSH Act, 2013. The guidelines need to be written on the page and stuck on the hoverboard. Since the companies have made the decision and are collecting information, a company may be adversely affected if there are allegations or findings of any discrimination, inaction, or violent practice. The Duties of Employers under the POSH Act also ensure that the brand value of the company does not suffer.

## **CONSTITUTION OF THE POSH ACT, 2013**

Under the POSH Act 2013, an employer must adhere to the POSH Act in the committee.

## **CASE STUDY: *VISHAKHA AND OTHERS V. STATE OF RAJASTHAN***

### **FACTS**

In the year 1992, a woman named Bhanwari Devi raised her voice against an illegal and immoral act that was about to happen at her workplace was mercilessly gang raped by five men. This barbaric incident made the women file a case, which is known as a landmark case on sexual harassment. While dealing with this above case, the Supreme Court dealt with the issue of sexual harassment in the workplace and formulated a set of guidelines to establish to take charge in such matters in public and private. This case is a victory for all the women in India.

### **BACKGROUND OF THE CASE**

Vishaka was a non-government organization (NGO) in the State of Rajasthan that worked for the welfare of women. A lady named Bhanwari Devi was working as a community worker to promote women's empowerment and their safety. It is a landmark judgment case on the history of sexual harassment, which was decided by the Supreme Court. In the year 1992, when she was stopping a child marriage that was happening in the family, she was brutally gang-raped by a group of men who belonged to the village of Rajasthan. The case went to the lower court, but due to the lack of proper evidence, the learned court acquitted the person. Aggrieved by the

judgment, a group of women led by Naina Kapur and Sakshi filed a Public Interest Litigation (PIL) under Article 32 of the Indian Constitution before the Hon'ble Supreme Court against the State of Rajasthan to seek a remedy. They said that the PIL was filed to put forward the unnoticed issue of sexual harassment that was being witnessed by women in the workplace.

## **JUDGMENTS**

The judgment of Vishaka's case was conveyed by Chief Justice J.S. Verma as a representative of Justice Sujata Manohar and Justice B.N. Kripal on account of the writ petition that was filed by Vishaka, the victim of the case. The court observed that the fundamental rights under Article 14[2],19[3], (1)g, and 21[4] of the constitution of India are that every profession, trade, or occupation should provide a safe working environment to the employees. It hampered the right to live and the right to live a dignified life. The basic requirement is to have a safe working environment at the workplace. The Supreme Court said that women have fundamental rights towards the freedom of sexual harassment in the workplace. The merits and demerits of judicial activism are always debated in legal circles. There are pros and cons to it, but the Vishaka judgment enforced the good side of the activism of judges. India lacked a law on sexual harassment even after five decades of independence and numerous instances of gender discrimination and sexual violence against women. An inherent right of every human being, and a single act of harassment creates a lifetime of sorrow. The Vishaka guidelines and the enactment of 2013 are welcome steps, but the eradication of cultural and sexual harassment in the workplace is still a long way away.

## **CONCLUSION**

The POSH Act protects women from sexual harassment in the workplace. This Act helps women to work safely in a good environment. Can the organization's policy be neutral? The answer is yes, Organization can still have a gender-neutral policy, that allows any gender-neutral policy that allows any gender to file a complaint against sexual harassment. It is to be noted that when the complaint is made by any male or third gender, the power granted to the internal committee cannot be applied. When the internal committee handles cases filed by a man or a third gender, they can use the powers granted by the organization's redressal mechanism. Sexual Harassment in the workplace is a form of gender discrimination that violates a woman's fundamental right to equality, liberty, and right to life guaranteed under Articles 14,15 & 21 of the constitution of India. The Legislation introduced the Prevention of

Sexual Harassment Act (POSH) to protect women in the workplace. The workplace is harming society indirectly through sexual harassment. A nation cannot progress if the women are sexually harassed and mentally unstable to do the work. Women cannot focus on work and cannot contribute positively to the company's work growth if she is being harassed. It is a woman's human right to be protected from every harassment, whether it is mental or physical.

### **REFERENCES**

1. Wikipedia
2. IPleaders Blog
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### **BIBLIOGRAPHY**

I am grateful that I have collected these sources from these sites, and from all these sites, I have gained knowledge about what is POSH Act is and how this Act helps women to safeguard themselves from sexual harassment in the workplace.