

SHe BOX

Frequently Asked Questions

under

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

What constitute Sexual Harassment at Workplace?

- Physical contact & advances; or
- Demand or request of sexual favours; or
- Making sexually coloured remarks; or
- Showing Pornography; or
- Any other unwelcome, physical, verbal or non-verbal conduct of sexual nature; or
- Implied or explicit promise of preferential treatment in her employment; or
- Implied or explicit threat of detrimental treatment in her employment; or
- Implied or explicit threat about present and future employment status; or
- Hostile Work Environment; or
- Humiliating treatment likely to affect her health or safety [Section 2(n) & Section 3]

Who is-	
Aggrieved	A woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment in relation to a workplace.
Respondent	Any Person against whom the aggrieved woman has made a complaint
Employee	Whether regular, temporary, ad hoc or daily wage basis, hired directly or through an agent/ contractor, whether for remuneration or not, working on voluntary basis and includes co-worker, contractual staff, probationer, trainee, intern, visitor, student or a domestic worker
Employer	Head of Department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit in Government or local authority/ person responsible for management, supervision and control of workplace in private sector/ person or household who employs or benefits from the employment of domestic worker
What is-	
Workplace	<ul style="list-style-type: none">• Department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit in Government;• any private sector organization, institution, society, trust, NGO or service provider carrying any commercial, professional, vocational, educational, industrial, health services, financial including production, sale, supply, distribution or service;• hospitals or nursing homes/ sports institute or complex for training, sports or related activities;• any place visited by employee during the course of employment including transportation;• a house or a dwelling place
Unorganized sector	Enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind and where number of such workers is less than 10 .

Who can file a sexual harassment complaint?

1. Any aggrieved woman can file a sexual harassment complaint in writing to the IC at her workplace within 3 months from the date of incident or date of last incident. In case

complaint is filed beyond the given period, the complainant shall provide reasons for delay to the IC in writing. (Section 9(1))

2. In case any woman is not able to make a complaint due to her **physical incapacity**, complaint may be filed –
 - a) her relative or friend;
 - b) her co-worker;
 - c) an officer of National or State Commission for Women;
 - d) any person who has knowledge of the incident, with the written consent of the aggrieved woman
3. In case any woman is not able to make a complaint due to her **mental incapacity**, complaint may be filed –
 - a) her relative or friend;
 - b) a special educator;
 - c) a qualified psychiatrist or psychologist;
 - d) the guardian or authority under whose care she is receiving treatment;
 - e) any person who has knowledge of the incident jointly with any person mentioned above
4. where the aggrieved woman is dead, complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir. (Rule 6)

What are the key responsibilities of Internal Committee (IC) ?

1. **Receiving Complaints:** The IC is responsible for receiving complaints of sexual harassment from employees.
 2. **Conciliation report-** In case of settlement the IC shall record and forward the report to the employer. Also copies of the report shall be provided to both the parties (Section 10(2&3))
 3. **Inquiry Process:** Conducting a fair and timely (**within a period of 90 days**) inquiry into the complaints received. [Section 11(4)]
 4. **Recommendations:** Submitting findings and recommendations (including interim measures) of the inquiry to the employer for appropriate action. (Section 12)
 5. **Confidentiality:** Maintaining strict confidentiality throughout the process. (Section 16 & 17)
 6. **Annual Reports:** To prepare Annual reports in the manner as prescribed under Rule 14 and submit to the employer in each Calendar year. (Section 21)
- ❖ The committee plays a crucial role in creating awareness about the POSH Act and ensuring compliance within the organization

Who can be member of the Internal Committee (IC)

1. **Presiding Officer:** A woman employed at a senior level at the workplace from amongst the employees. [Section 4 (2) (a)]
 2. **Internal Members:** At least two members from amongst employees, preferably those committed to the cause of women or who have experience in social work or legal knowledge. [Section 4 (2) (b)]
 3. **External Member:** One member from a non-governmental organization (NGO) or an association committed to the cause of women, or a person familiar with issues relating to sexual harassment. . [Section 4 (2) (c)]
- ❖ **At least half** of the IC members **must be women**.

What are the key responsibilities of Employers to ensure a safe and respectful workplace?

1. **Formulate a POSH Policy:** Employers must create and implement a comprehensive policy against sexual harassment at the workplace.(Rule 13)
2. **Establish an Internal Committee (IC):** Any organization with more than ten employees must set up an IC to handle complaints of sexual harassment. [Section 4(1)]
3. **Separate Internal Committee** - Where the offices/ administrative units of the workplace are located in different locations, then a separate Internal Committee is to be constituted at each such location. [Proviso to Section 4(1)]
4. **Conduct Awareness Programs:** Employers are required to organize workshops and awareness programs to educate employees about the POSH Act and the consequences of sexual harassment, in manner as prescribed in Rule13. (Section 19)
5. **Training/orientation/capacity building of IC:** Mandatory for employer to carry out trainings/orientation/ capacity building of IC members. [Section 19(c)/ Rule 13]
6. **Display Information:** Information about the POSH policy, details of IC members and the consequences of sexual harassment must be displayed prominently in the workplace. [Section 19(b)/ Rule 13]
7. **Act on recommendation of IC/LC:** Employer to act upon the **recommendation of IC/LC** (including interim measures) within 60 days of receipt of inquiry report. [Section 13(4)]
8. **Penalty for making known contents of complaint and inquiry proceedings:** Employer to recover 5000 rupees from such person as penalty. (R.12)
9. **Annual report:** Employer to include no. of cases filed, their disposal and nature of action taken in the Annual Report before submission to District Officer. (Section 22/ Rule 14)

What is a Local Committee and when can an aggrieved approach LC ?

- Local Committee shall be constituted by the District Officer (usually, the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector) in the concerned district to received sexual harassment complaints (Section 5& 6)
- In the event where the employer engages less than ten workers and therefore, has not constituted an Internal Committee, or if the complaint of sexual harassment is against the employer, an aggrieved woman may approach the Local Committee (Section 6)
- The LC shall have the same roles and responsibilities that of IC and shall follow the same procedure for conducting inquiry into the complaint in accordance to the Act & Rules, 2013.

Can conciliation be considered under a sexual harassment complaint?

The IC/ LC before initiating an inquiry and at the request of the aggrieved woman, may attempt to resolve the matter through conciliation. No monetary settlement is allowed as a basis for conciliation. (Section 10)

What is the inquiry procedure that an IC/ LC requires to follow (process flow chart annexed)

The Internal Complaints or Local Committee requires to follow a structured procedure to handle complaints of sexual harassment under the POSH Act, 2013.

1. **Preliminary Inquiry:** The IC conducts a preliminary inquiry to determine if the complaint falls under the purview of sexual harassment as defined by the POSH Act. (Section 10)
2. **Conciliation:** Before initiating an inquiry, the IC may attempt to resolve the matter through conciliation, provided the aggrieved woman requests it. **Monetary settlement is not** allowed as a basis for conciliation. (Section 10)
3. **Formal Inquiry:** If conciliation is not possible or fails, the IC conducts a formal inquiry. This involves the following:
 - **Notice:** Issuing a notice to the respondent within seven days of receiving the complaint.
 - **Hearing:** Both parties are given an opportunity to present their case, along with any evidence or witnesses.
 - **Confidentiality:** Ensuring confidentiality throughout the process.
4. **Action that can be taken by IC/ LC:** If the Committee arrives at a conclusion that misconduct in the nature of sexual harassment at the workplace has been proved, **it recommends** to the employer/ District Officer that action may be taken against the respondent subject to the seriousness of the allegations including written apology, warning, reprimand or censure, withholding of promotion or pay rise or increments, terminating the respondent from service or undergo counselling or carry out community service. (Section 13)
6. **Interim Relief:** During the inquiry, the Committee can recommend interim measures such as transferring the complainant or the respondent, granting leave to the complainant, or restraining the respondent from reporting on the complainant's work performance or from supervising any academic activity, in case of educational institution. (Section 12/ Rule 8)
7. **Granting Compensation-** The IC/ LC may grant a sum to the aggrieved woman as compensation for the mental trauma, pain, suffering and emotional distress or any loss in the career opportunity caused to her or any medical expenses incurred to her, considering the income and financial status of the respondent and feasibility of such payment in lump sum/ instalments. (Section 15)
8. **Report and Recommendations:** The IC/ LC must complete the inquiry within 90 days and submit a report with its findings and recommendations to the employer within 10 days of completing the inquiry. (Section 13)
9. **Punishment for false/ malicious complaint or false evidence-** If complaint is found to be false or any forged or misleading document has been produced during the inquiry, IC/ LC may recommend the employer/ District officer to take action as prescribed under the Act against the complaint or person who filed the complaint. However, mere inability to substantiate a complaint or provide adequate proof need not attract action against the complaint. (Section 14)
If IC concludes that allegations against the respondent are not proven, no further action will be taken against the respondent and the matter would be considered closed.

What are the next steps after an inquiry is concluded by IC or LC?

Once the inquiry is complete, the IC must prepare an inquiry report and submit it to the complainant, respondent and management within 10 days from the completion of inquiry. The report must be based on facts, circumstances, documentary evidence presented and witness statements. It must include relevant dates, dates to show how the timeline was followed,

details of who attended the meetings, who were absent, list of witnesses, list of documents referred, important relevant excerpts from documents, witness statements, a copy of the complaint and reasons for conclusion. [Section 13 (1)]

Employer's Action: The employer/ District officer must act on the Committee's recommendations within 60 days of receiving the report. [Section 13 (4)]

Is there a provision of Appeal under the POSH Act, 2013

Both the complainant and the respondent have the right to appeal the Committee's decision **within 90 days** of the recommendations to the Court or the Tribunal, as per the service rules or rules prescribed. (Section 18/ Rule11)

Penalties for employers for Non-compliance with provisions of POSH Act, 2013

1. **Monetary Penalty:** Employers can be fined up to INR 50,000 for failing to comply with the provisions of the POSH Act, such as not constituting an Internal Committee (IC) or not acting on the recommendations of the IC.(Section 26)
2. **Repeat Offenses:** If an employer is found guilty of repeated non-compliance, the penalty can be doubled, and the license/ registration may be cancelled or non-renewed. (Section 26)

Under what situation an Ex-parte decision can be taken by the Committee ?

An **ex parte decision** can be taken by the Committee when either the complainant or the respondent fails to participate in the proceedings despite being summoned for three consecutive hearings without sufficient cause. [Rule 7(5)]

- i. **Notice and Opportunity:** The IC/LC must provide a written notice 15 days in advance before making an ex parte decision. This notice informs the party about the proceedings and the need to participate.
- ii. **Failure to Appear:** If the complainant or respondent does not attend the hearings or fails to present their case, the IC may proceed with an ex parte decision.
- iii. **Timelines:** The inquiry process must be completed within 90 days, including any ex parte proceedings.

Can a complaint can be forwarded to the police?

The ICC or the LCC can forward a complaint to the Police for registering the case under Section 509 of the IPC and any other relevant provisions of the IPC within 7 days. [Section11(1)]

In the event of non-compliance by the respondent of the terms and conditions of a settlement agreed upon and when the aggrieved woman informs the ICC or the LCC about it, the ICC or the LCC may make an inquiry or forward the complaint to the Police. [Section 11(1)]

FAQs for the Nodal Agencies (as per SHE- BOX)

Roles and responsibilities of State Nodal Officers

- To notify and appoint the District Officers (usually, the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector) as per Section 5 of the Act (ensure that every district, at all times has a notified District Officer; in case of vacancy caused by retirement, or any other reason, it must be duly remedied, to enable smooth transition between officers, and ensure that there is always someone incharge of this position);
- To ensure constitution of LCs in all the districts as per Section 6 & 7 of the Act;
- To appoint Nodal Officers as per Section 6 of the Act
- To ensure constitution of ICs as per Section 4 of the Act in all the workplaces defined in Section 2(o) of the Act
- Efforts to be undertaken to orient, train and sensitise the district officers and other concerned designated officers, with regards To the provisions of the Act and Rules, with an emphasis on their roles and obligations,
- To ensure reporting and collection of Annual Compliance Reports from all workplaces (all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes) by all the District Officers of respective States as per Section 21 and 22 of the Act to ensure that the Annual Compliance Reports collected by District Office[r]s, containing information on the number of cases filed and their disposal, are consolidated and the reports are published and put in public domain
- To give due publicity to the Acts and Rules in all the Districts – block, talukas, tehsil in rural or tribal area and ward or municipality in the urban area (Section 24)
- That the gist of important provisions shall be displayed at all working places in all the States/UT
- Responsibility at the last level, to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace. (Section 23)
- To call for information and inspection of records- wherein it may call upon an employer or District Officer to furnish in writing any information relating to sexual harassment it may require, or produce any record required by an officer authorised to carry out an inspection (Section 25)

What are Roles & responsibilities of a District Officer ?

- To constitute an LC in each district (Section 6)
- Designating a nodal officer in each block, taluka, and tehsil in rural or tribal area, and ward or municipality in the urban area, to receive complaints and forward the same to the concerned LC within 7 days [Section 6 (2)]
- To take timely action in a complaint as per the recommendation of the LC [Section 13 (4)]
- Collection of Annual reports from all the LCs/ ICs [Section 21(2)]
- Submits a brief report to the State Government [Section 21(2)]
- Payment of allowances to the Chairman and members of the LC, which it receives from the agency set up by the State Government (Section 8)
- Enforcement by the concerned District Officer, on the order for recovery of the sum as an arrear of land revenue forwarded by the IC/LC, if the respondent in any case fails to pay any sum so directed [Section 13 (3)]
- Take necessary measures for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women (Section 20)

Who is a Nodal Officer & his/ her roles & responsibilities?

A Nodal Officer in each block, taluka, tehsil in rural/ tribal area or municipality areas in urban areas shall be designated by the concerned District Officer-

1. To ensure the effective implementation of the Act, especially in areas where the Internal Committee (IC) is not constituted.
2. **Receiving Complaints:** The Nodal Officer is the first point of contact for receiving complaints of sexual harassment in their designated area(Section 6)
3. **Forwarding Complaints:** They are responsible for forwarding the received complaints to the Local Committee (LC) within **seven days**. [Section 6(2)]
4. **Coordination:** The Nodal Officer coordinates with the District Officer and the LC to ensure timely and effective handling of complaints.
5. **Awareness and Training:** Help in organizing awareness programs and training sessions about the POSH Act to educate employees and employers in their area.
6. **Monitoring and Reporting:** The Nodal Officer monitors the implementation of the POSH Act and reports any issues or non-compliance to the District Officer.

ANNEXURE

Flow Chart of The Process

