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Prevention of Sexual Harassment (POSH) at Workplace

Prevention, Protection & Redressal of Sexual Harassment (POSH) at Workplace

Articles 14, 15 and 21 of the Constitution of India, ensure every citizen the right to live a life free from discrimination and to the protection of life and personal liberty. India is also a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Thus, the Government of India is committed to eliminating all forms of violence against women.

In 1997, the Supreme Court of India issued the Vishakha Guidelines where it stated that sexual harassment at workplace is a human rights violation, shifting accountability from the individual to the institution and prioritized prevention and redressal mechanism.

In 2013 Government of India established the Sexual Harassment at Workplace (Prevention, Prohibition & Redressal) Act, mandating the provision of safe and secure working environment, free from sexual harassment for all women. All workplaces, whether from the formal sector or non formal, are mandated to implement the Act.

The POSH Act focuses on prevention, prohibition as well as redressal thereby ensuring that workplaces are safe for women, intolerant to sexual harassment and in the event of an incident, take corrective action. Awareness raising, gender sensitisation and implementation of an Internal Committee for redressal are important components of the Act. The responsibility of protection and safety of women at the workplace was now the responsibility of the workplace.

In accordance with the provision of the POSH Act, 2013, we at Modi Enterprises, are committed to provide an enabling work environment for women that promotes respectful and congenial relationships among people. There is zero tolerance for any form of sexual harassment.



Salient Features Of The Posh Act

Who is an aggrieved woman?

Any woman working or visiting any workplace is protected under the Act. She could be

- Regular, temporary, adhoc, daily wage employee
- Employed Directly/ through an agent/ contractor
- With or without remuneration/ voluntary
- Apprentice/ trainee/ probationer
- Domestic worker,
- Student /intern



What is a workplace?

A workplace is any place visited by the employee arising out of work or during the course of employment. Workplace includes

- NGOs, cooperative institutions
- Hospitals, nursing homes
- Private sector organizations
- Government organisations /controlled establishments
- Vocational/ educational institutions
- Sports, facilities, stadium , training institutions
- Farms
- House in case of domestic worker
- Extended workplace - Any place visited by the employee during the course of employment, including transportation provided by the employer .

What Constitutes Sexual Harassment?

“Sexual Harassment” includes any one or more of the following “unwelcome acts or behaviour”, which may include

- Physical contact or advances
- A demand or request for sexual favours
- Making sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or nonverbal conduct of sexual nature



How do we recognize Sexual Harassment?

Workplace Sexual Harassment is behavior that is:

- UNWELCOME
- SEXUAL in nature
- A SUBJECTIVE experience – harassment has to be viewed from the perspective of the complainant
- IMPACT not intent is what matters
- Often occurs in a matrix of POWER



What are the forms of Workplace Sexual Harassment?

There are two common forms of inappropriate behavior that can be referred as Workplace Sexual Harassment:

- **Quid Pro Quo** - This literally means 'this for that'. This form of sexual harassment is the most easily covered up. It is generally done by a person in a position of power or authority over another. It occurs when an employee's advancement with regards to promotion, employee benefits, salary or title is dependent on her submission to unwelcome sexual favours. An instance of Quid Pro Quo sexual harassment would be a supervisor demanding a sexual favour from an employee in lieu of granting her promotion or a salary hike.

There is an implied threat to the employee's present or future employment status.

- **Hostile Work Environment** - Hostile work environment includes creating a hostile, intimidating or an offensive work environment for the employee. It is repetitive and intended to create an uncomfortable and abusive working environment for employees.

For example, assuming an employee rejects the unwanted lewd gestures/ sexual favors made or demanded by a boss or an associate, she could become a victim to gossip, character assassination, ridicule or humiliation, which are all liable to affect her well-being, security and productivity at the workplace.



What Constitutes Unwelcome Sexual Acts/behaviour?

To enable prevention of sexual harassment at the workplace, it is critical to recognize unwelcome sexual behaviour. It is important to remember that harassment is sexual and unwelcome and the experience is subjective. It is not the intent, but it is the perception and impact which determines whether or not an act is sexual harassment.

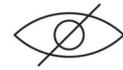
Examples of Unwelcome Acts or Behavior

1. Physical Contact and Sexual Advancement
 - Touching, caressing, kissing, fondling or pinching
 - Invasion of personal space - getting too close for no reason, brushing against or cornering someone
 - Flirtatious behavior
 - Stalking

2. Making Sexually Suggestive Remarks or Gestures
 - Sexist jokes or misogynistic humour
 - Serious or repeated offensive remarks, such as teasing related to a person's body or appearance
 - Language, comments or jokes that are sexual in nature
 - Inappropriate questions, suggestions or remarks about a person's personal/ sex life Singing songs that are sexual in nature, whistling
 - Gestures that are sexual in nature

3. Displaying Sexist Or Offensive Content

- Displaying, showing or sharing sexist or other offensive pictures, posters, MMS, SMS, WhatsApp, or e-mails.
- Showing pornography



Sensitive Content

This photo contains sensitive content which some people may find offensive or disturbing

4. Creating An Intimidating Work Environment

- A demand or request for sexual favours
- Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours
- Falsely accusing and undermining a person behind closed doors for sexual favours
- Controlling a person's reputation by rumour-mongering about her private life
- Intimidation, threats, blackmail around sexual favours
- Threats, intimidation or retaliation against an employee who speaks up against unwelcome behaviour with sexual overtones
- Implied or explicit threat of detrimental treatment in employment
- Implied or explicit threat about present or future employment status

5. Unwelcome Social Invitations

- Persistently asking someone out, despite being turned down

Examples of workplace behaviours that may not constitute sexual harassment:

- Following up on work absences
- Requiring performance to job standards
- The normal exercise of management rights
- Work related stress e.g., meeting deadlines or quality standards
- Conditions of work
- Constructive feedback about the work mistake and not the person

Duties of Employer

The POSH Act specifically enlists the following as the duties of employer:

- a) Provide a safe working environment at the workplace;
- b) Display at any conspicuous place in the workplace, the penal consequences of sexual harassments and the list of members of the Internal Committee with contact details;
- c) Organize workshops and awareness programmes at regular intervals to sensitize the employees and orientation programmes for the Internal Committee members;
- d) Provide necessary facilities for the Internal Committee to deal with the complaint and conduct an enquiry;
- e) Assist in securing the attendance of respondent and witnesses before the Internal Committee;
- f) Make such information available to the Internal Committee, as it may require with regard to the complaint made;
- g) Provide assistance to the complainant if she chooses to file a complaint under the Indian Penal Code or any other law being in force;
- h) Initiate action against the perpetrator, under the Indian Penal Code or where the perpetrator is not an employee, in the workplace where the incident took place;
- i) Treat sexual harassment as misconduct under the service rules and initiate action for the same;
- j) Monitor the timely submission of reports by the Internal Committee.





Redressal Process

REDRESSAL PROCESS

In the event of an incident of sexual harassment at the workplace the aggrieved woman (complainant) must immediately complain to the Internal Committee at her workplace against the harasser (respondent).

What should we do when sexually harassed?

When sexually harassed, please:

1. Deal with the harasser upfront:
 - Do not pretend it didn't happen
 - Immediately inform the alleged harasser that the behaviour is unwelcome or unacceptable
 - Demand that the harassment be stopped
 - Seek help of colleagues
2. If the verbal or informal efforts with the alleged harasser are unsuccessful in rectifying the situation or if such an approach is not viable, then the employee must immediately bring it to the notice of the Internal Committee.

What is the Internal Committee (IC)?

To prevent instances of sexual harassment and to receive and effectively deal with complaints, workplaces have constituted Internal (complaints) committee.

The committee is responsible for:

- Receiving complaints of sexual harassment at the workplace
- Initiating and conducting inquiry as per the established procedure
- Submitting findings and recommendations of inquiries
- Maintaining strict confidentiality about the identity of both the complainant and respondent
- Raising awareness on sexual misconduct in the workplace...

Who are the members of the Internal Committee (ICC)?

The Internal Committee is comprised of

1. Chairperson: A woman working at senior level as employee
2. 2 members (minimum): Employees committed to the cause of women's rights/social work
3. Member: An NGO representative, committed to the cause of women and familiar with the issue of sexual harassment
4. 50% of members must be women
5. The term of the members must not be for more than 3 years

What should the complaint contain?

The written complaint should contain a description of the incident. It should include relevant dates, timings and locations; name of the respondents and the working relationship between the parties.

In case of mental/ physical or any other incapacity, she can complain through a relative, friend, colleague, guardian etc. Also she can seek the help of the IC in writing her complaint.

What can an employee/worker expect?

Both the complainant and the respondent have a right to expect:

- A trained, empathetic and competent Complaints Committee
- A time bound process
- Information confidentiality
- Assurance of non retaliation
- Counseling or any other enabling support

What are the rights of the respondent?

- A patient hearing to hear his case in a non-biased manner
- A copy of the statement along with all the evidence submitted by complainant
- Keeping his identity confidential during the process

What is interim relief?

During the pendency of the enquiry, to ensure the safety and comfort of the aggrieved woman, the organization can

- Transfer the aggrieved woman or the respondent to any other workplace
- Restrain the respondent from any form of communication or interaction including reporting with the complainant
- Grant leave to the aggrieved woman up to a period of 3 months

Compensation and Punishment under the Act?

The IC can make the following recommendations, if the complaint is upheld.

- ◆ 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/pay rise/increment
 - Termination from services
 - Deduction of compensation payable to the aggrieved woman from the wages of the respondent

What happens if the complaint is false?

In case of false/malicious complaint by the complainant, action can be taken as per the service rules of the organization.

Inability to substantiate a complaint or provide adequate proof need not attract action against the complainant



Timelines for Complaint Redressal

1	Submission of complaint	Within 3 months of the last incident
2	Notice to the respondent	Within 7 days of receiving the complaint
3	Completion of inquiry	Within 90 days
4	Submission of report by IC/LCC to employer/District Officer	Within 10 days of the completion of inquiry
5	Implementation and recommendation	Within 60 days
6	Appeal	Within 90 days of recommendations



Common Myths
about
Sexual Harassment
at Workplace

Myth 1: The seriousness of sexual harassment (SH) has been exaggerated; it is rare and harmless.

Sexual harassment is damaging and causes considerable psychological, physical and economic harm including depression, helplessness and decreased work performance. It is abusive, offensive and often insulting and intimidating. Nearly 40% of women faced sexual harassment at workplace as per Indian National Bar Association. (get latest data)

Myth 2: Most so called sexual harassment is trivial and harmless flirtation.

Sexual harassment is never trivial; it is highly inappropriate and unacceptable. Any non consensual sexual behaviour amounts to sexual harassment and is humiliating and frightening for the victim. The victim has no control over the harasser's behaviour. And no victim enjoys such behaviour.

Myth 3 : Victims are to be blamed in some way for being sexually harassed in terms of their provocative dressing and behaviour or being under the influence of alcohol or drugs.

This is an attempt to shift the blame to the victim, which is neither acceptable nor accurate. Women don't ask for unwanted attention. No woman asks or deserves to be sexually harassed. Women dress to feel comfortable or attractive. Studies have shown that victims of sexual harassment vary in physical appearance, type of dress, age and behaviour and women who dress conservatively are as likely to be harassed.

The harasser is always responsible for having committed the harassment regardless of the victim's appearance or behaviour. The victim is not responsible for the harassment.

Myth 4: In sexual harassment, motive of the harasser is important.

The harasser's motives while indulging in inappropriate behaviour are immaterial. It is how the victim felt which is important. Impact of the action on the victim is what matters.

Myth 5 : Many victims make up and report stories of sexual harassment to get back at their colleagues/employers or others who have angered them. Therefore, sexual harassment charges are usually false in many instances.

Making untrue accusations of sexual harassment and filing false charges provides no real benefits for people. Filing sexual harassment charges can be a difficult process fraught with hostility. In fact what tends to happen more often than sexual harassment goes unreported because victims don't want to be subject to the difficulties and trauma of an investigation. Also it is not uncommon for victims to experience retaliation and backlash in the aftermath.

Research shows that less than 1% of the complaints are false. In fact survivors rarely file complaints even when they are justified in doing so.

Myth 6 : Women who make complaints are attention-seeking.

Actually the opposite is true. Women are so afraid of making an official complaint that it takes a lot of courage to actually speak up. Often they make an official complaint only when all subtle means have failed. Sexual harassment carries such a stigma that many women prefer not to report.

Myth7: If you fight your sexual harasser you are playing hard to get. If you don't fight back it means you wanted it. 'No' can sometimes mean 'yes' – women sometimes play 'hard to get'.

A 'no' means a no. There is no proper way to respond to sexual harassment, different victims respond differently. Most are in a state of shock to even respond to unwanted advances.

Myth 8: If a victim didn't scream or fight or has no injury it could not have been a sexual assault.

Some victims choose not to use physical force to protect themselves from an assault while some others know that if they attempt to resist they may be harmed even more. If a person doesn't physically or verbally resist, it doesn't mean they were giving consent. Despite what you might see on TV, most victims don't scream or fight. This is because they freeze. It is a common reaction of a victim to become paralyzed with fear.

Myth 9: All sexual harassers hold senior positions to their victims. Successful and respected men don't harass women.

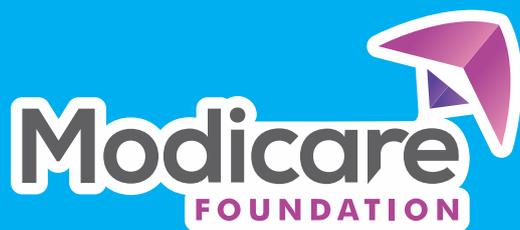
While sexual harassers are often in a position of power, cases of harassment by co-workers are very common. There are also instances of subordinates sexually harassing superiors as well as harassment by clients perpetrated during work related activities. Sexual Harassment often happens when there is a power disparity between two individuals involved. The harasser can be anybody – older/younger; single/married; senior/junior; or of the same or different ethnic background.

Myth 10: If it is not physical abuse, then it is not sexual harassment.

Touching, groping, brushing by are examples of sexual harassment. Comments of a vulgar sexual nature, staring suggestively, personal remarks, lewd comments, showing pornography, use of descriptive slang words, crude jokes and inappropriate questions can all amount to sexual harassment. The idea that sexually coloured jokes and 'banter' should be dismissed as not being sexual harassment has been repeatedly debunked by the Courts

Myth 11: If you ignore sexual harassment, it will go away.

It will not. Research has shown that simply ignoring the behaviour is ineffective; harassers will generally not stop on their own. Ignoring such behaviour may even be construed as agreement or encouragement, therefore reporting is necessary.



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