

POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

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POSH LIVE brings to you updates and information relating to matters of sexual harassment irrespective of the gender and age. This is an effort to create awareness about laws relating to sexual harassment and any form of discrimination.

Constitution of IC – Challenges and way forward!

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, this law provides that an organization that has 10 or more employees, must constitute an "Internal Committee" to receive and redress the complaints on sexual harassment at workplace.

Section 4 of the law states that, "Every employer of a workplace shall, by an order in writing constitute a Committee to be known as Internal Committee, provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices."

How to constitute Internal committee?

Every employer of the workplace should constitute Internal Committee by an order in writing. The term of Internal Committee is not more than 3 years.

An Internal Committee should comprise of minimum of 4 members which include of –

1. Presiding officer – A Woman employed at a senior level at the workplace
2. At least 2 members representing employees who are committed to the cause of women or have an experience in social work
3. External member – Appointed from NGO, social worker or a lawyer

Section 4 also states that "at least one-half of the total members so nominated shall be women"

Most commonly many offices face challenge to constitute an IC where at a particular location/office unit, there are more than 10 employees however there are very few or no women employees. We have come across where offices have a single women employee in a senior position eligible to be the Presiding officer. In such a case, they can renew the tenure of the person on completion of 3 years.

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Disclaimer

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GOOD TO KNOW!

Notice – Not to annex obscene photographs to the petitions

The Members, Advocates are requested to note following direction issued by Hon'ble Bench headed by Justice Revati Mohite- Dere.

It has been noticed by the Hon'ble Court that in number of petitions filed before the Hon'ble Court in connection with offences against ladies, the parties rely upon photographs, video clips, of such victims. The Hon'ble Court also noted that many of these photographs are indecent, obscene, and portraying the ladies in bad taste.

Such display is not only insulting, humiliating but also disclosing identity of victim. The Hon'ble Court has imposed cost on such parties.

Hence, the Advocates, members, filing clerks are advised to not to annex such photographs to petition. They may seek leave to produce such material before the Hon'ble Court, with the permission of the Court, at the time of hearing of the petition.

What if there are no women in senior position at a particular unit?

In such a scenario, there can be a Presiding officer appointed from a different location of the same organization

What if there are not enough women employees to form an IC at a particular location?

In such a scenario, female representatives from other locations can become a part of the IC. It would also be a good practice to maintain gender diversity to avoid such scenarios.

Can the organization have an Apex Committee?

Some organizations are constituting an Apex Committee which is located at corporate office and have single representation from each office/location/unit. The Law clearly states that "where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices."

Thus the law does not prescribe formation of an Apex Committee. Irrespective whether an organization forms an apex committee, there has to be an Internal Committee constituted at each unit/location/office.

The Apex committee may oversee the administrative functions of the ICs at each location to ensure compliance with the law such Review of Policy, planning of trainings, discussion and implementation of safety measures for women employees across all locations. However this Apex Committee does not have any jurisdiction and cannot conduct an inquiry into the complaint registered at any particular office. Such an inquiry must be conducted and completed by the IC of that particular location and that IC shall maintain full confidentiality. The Apex committee cannot have any access to the inquiry proceeds of a particular IC. The IC committees from every location are not subordinate to any Apex committee and has a separate legal existence as provided for in law. The Apex committee cannot oversee or interfere in the inquiry proceedings of IC nor overrule or interfere with any findings given by the IC

Can different entities have a common IC?

Each entity with 10 or more employees should constitute a separate IC. All entities are separate, and they must have their own Internal Committee.

Kerala High Court in the case Vineeth Shamil K. vs. Air India Charters Ltd. and Ors. Held that an inquiry into a complaint can be done only by the IC of the entity in which the respondent works.

Should the Internal Committee be registered with any government official/office?

There can be different requirements from each District Officer to demand registrations or notifications. In 2019, Pune District Officer had press released the notice to notify about the 'constitution of Internal Committee'. Similar notification was sent out for Mumbai as well in 2017.

It depends upon the district where the office/unit is located.

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Constitution of Internal Committee should be taken up seriously by organizations rather than treating it as a tick in check box. The objective behind making it mandatory to have an IC is to be able to provide an easy way to report complaints and their timely resolution.

There are some procedural shortcomings and will evolve with the times to come. However, the spirit must be preserved by making genuine efforts towards the objective of the Act i.e., Prevention, Prohibition and Redressal!

Reorienting POSH trainings

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 lays down certain duties on the employer. One such preventive measure that the employer should undertake is organize trainings and workshops on creating awareness amongst employees.

Such trainings are directed towards building a strong understanding about the sexual harassment and its impact at workplaces, helping employees identify between appropriate and inappropriate behaviour and making them understand that sexual harassment is a subjective experience and hence intent will not really matter.

Since the implementation of law has gained momentum and several organizations are arranging such workshops for their employees. In 2023, this Law will complete 10 years to have come into force. It is definitely a good time to reflect and analyse how far have we come and should we consciously make any upgradations for the better implementation. There has been a pattern of what goes into the typical POSH Awareness session and any employee who has attended it once will rarely have any takeaway if he/she is supposed to attend it again if at all in the same organization or even in a different workplace. To avoid these trainings from becoming a mundane, boring, and repetitive, we are sharing a few ways to make them more engaging and create high take away value.

1. Trainings focusing on building culture rather than imparting legal knowledge, going beyond legal compliance

Instead of making it a legal talk, trainers should talk about an equality driven culture and its impact on everyone. It is easy to expect one to say NO, but what takes efforts is to build a culture where a person can comfortably say NO or report the wrong, without fear and any inhibitions. The focus should be on building a more respectable culture than simply legal compliance. Building an open culture, helping people to understand each other's personal space can be the larger objective beyond legal compliance

2. Talk about Diversity and inclusion

Diversity and inclusion are well received when employees don't have to worry about their safety. Helping employees understand difference between equality and equity can make a difference. It will contribute to build a collaborative culture to work along with people with different backgrounds. An open dialogue on issues related to inclusion will cater to problems even before they turn into any kind of harassment.

3. Use case studies and examples

Sharing case studies will help employees understand the topic better. Employees can better relate to different examples shared and can have a wide perspective towards the topic being discussed.

4. Make the session interactive

Asking questions, giving a case study to speak on, discussing some topic, conducting games, are different ways in which the session can become interactive and can create high recall value

5. Micro learning sessions

Organisations can have micro learning sessions scheduled to ensure high recall value. This is in consideration of the less concentration span/ less time to depart for training due to project deadlines etc. These can be pre-recorded videos or online e learning modules as well.

6. Instil trust and not fear

Trainings as such should impart faith and trust on the redressal mechanism, policy at organization and that one would not face any retaliation. Such trust will help organizations develop a cohesive culture.

7. Conduct assessments/surveys

It is a good idea to conduct assessments/surveys to ensure the take aways from trainings. Apart from that yearly assessments help us understand the awareness quotient and suitable action can be planned to address the issues that arise through assessment.

POSH trainings have become one of the important ways to ensure that employees feel safe at workplace. A comprehensive training module on sexual harassment with an innovative approach in content and the way it is being delivered should be the way forward.

NEWS CORNER

UGC asks to conduct special drive creating awareness on Sexual Harassment of Women at Workplace

The University Grants Commission (UGC) has written to Vice – Chancellors of all universities and principals of colleges to conduct special drive to create awareness through workshops for their employees about the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This is as per the directive issued by Ministry of Education to ensure special drive to be conducted in all autonomous bodies/public sector undertakings and higher educational institutions. Similarly, Internal Committee has been asked to conduct special drive to review the pending cases and act.

ABOUT THE AUTHORS

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Advocate Vaishali Bhagwat is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services

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