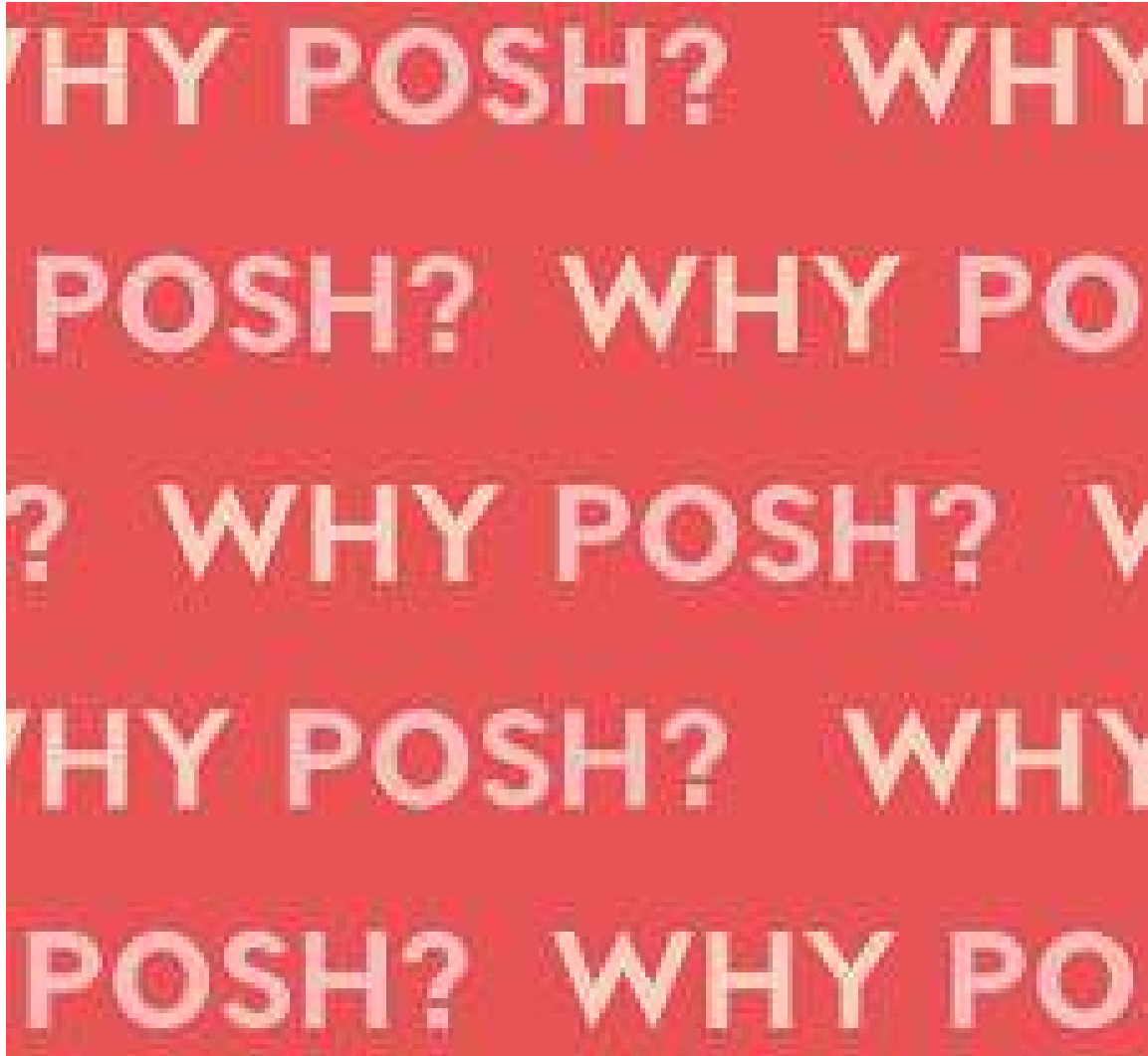




POSH

Stand Up, Speak Out

PREVENTION, PROHIBITION & REDRESSAL



What made
me pursue
POSH?

Contents

- Introduction (Brief of how POSH originated)
- Workplace Sexual Harassment – What is it?
- Prevention & Prohibition
- Redress
- Penalties

History

- Bhanwari Devi is an Indian Social Worker from Bhateri, Rajasthan.
- She was working towards Prevention of Child Marriages.
- The triggering incidence in 1992
- Vishakha vs State Of Rajasthan (1997)



Case Study -

<https://main.sci.gov.in/judgment/judis/13856.pdf>

Vishakha Guidelines

Legally Binding Guidelines by Supreme Court

Definition of Sexual Harassment

Shifting Accountability from individuals to institutions

Prioritizing Prevention

Prevention of an Innovative Redress Mechanism

The POSH ACT, 2013

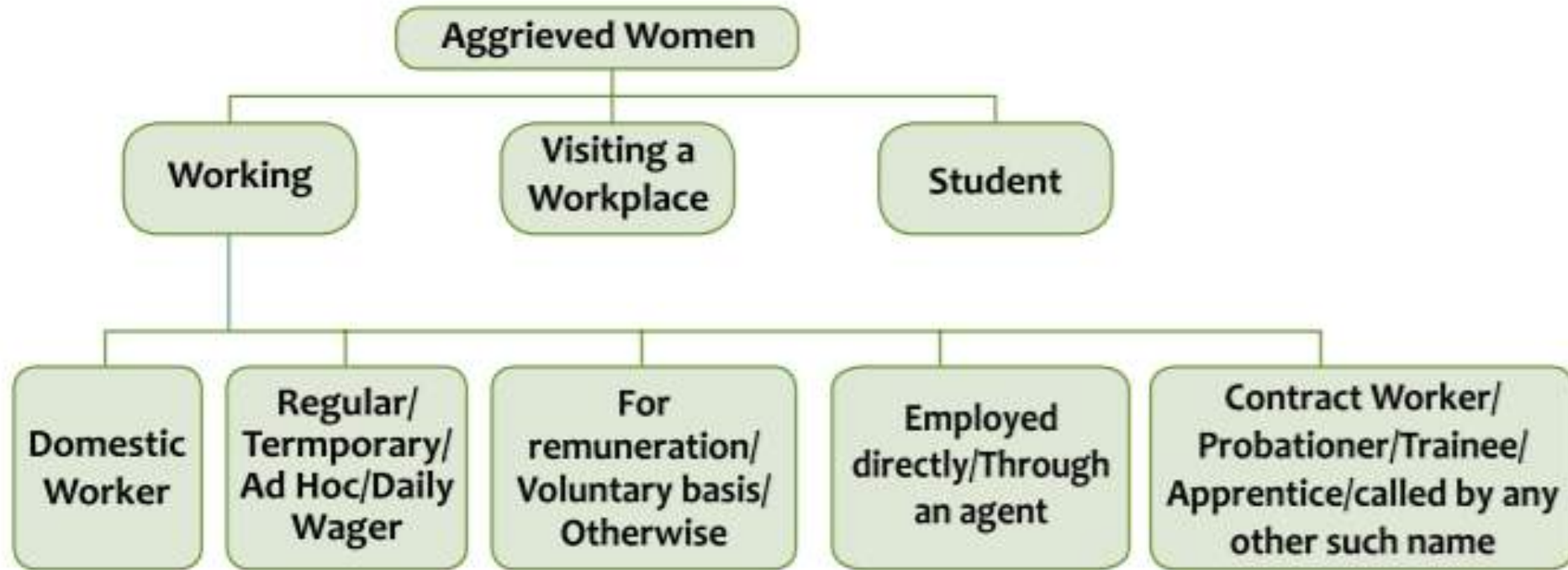
- Nirbhaya Gang Rape Case, 2012
- Introduction to The POSH Act, 2013
- Prohibition / Prevention / Redressal



POSH Act, 2013

“No Woman shall be subjected to Sexual Harassment at any Workplace”

Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013.



Workplace Sexual
Harassment

Aggrieved Woman



Workplace

A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organized and un-organized sectors.

Sexual Harassment at Workplace

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behavior (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favors;
3. Making sexually colored remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Sexual Harassment at Workplace

Following acts when in relation to behaviour of Sexual Harassment may amount to sexual harassment –

1. Implied or explicit promise of preferential treatment in her employment or
2. Implied or explicit threat of detrimental treatment in her employment or
3. Implied or explicit threat about her present or future employment status
4. Interference with her work or creating hostile or intimidating or offensive work environment for her to work or
5. Humiliating treatment likely to affect her health or safety.

Welcome & Unwelcome Acts

| UNWELCOME | WELCOME |
|-----------------------------|----------------------|
| Feels bad | Feels good |
| One-sided | Reciprocal |
| Feels powerless | In-control |
| Power-based | Equality |
| Unwanted | Wanted |
| Illegal | Legal |
| Invading | Open |
| Demeaning | Appreciative |
| Causes anger/sadness | Happy |
| Causes negative self-esteem | Positive self-esteem |



Activity

- Take 5 minutes to write a brief example of possible sexual harassment you have experienced or witnessed.
- Consider these questions-
 1. Was it a quid pro quo or hostile environment SH?
 2. Was it verbal, physical/non verbal?
 3. How do you feel about it?
 4. What was your reaction?
 5. What action did you take?
 6. Would you act differently going forward?

The First Step To Prevention is Recognition

- Unwelcoming
- Sexual in nature
- Subjective experience
- Impact not Intent is what matters
- Often occurs in a matrix of Power.

Check Your Understanding

1. If two colleagues have gone out in their personal capacity, for drinks/coffee, and something untoward happens, will it fall under POSH?
2. If one of the above colleague happens to be a boss and subordinate, what would it be?
3. A women candidate is called for an interview and she is harassed by the HR manager, can she raise a complaint?

Case Studies

Nagaram Balakrishna vs State of AP

<https://indiankanoon.org/doc/162304878/>

- Does instructions given while discharging duties amount to Sexual Harrasment?
- Can a person who has been against whom a complaint is filed to have committed Sexual Harassment be terminated/suspended from employment before if he/she is proved ti be guilty?

#MeToo Movement

<https://youtu.be/OSgvWbySQJ0>

Impact of Inappropriate Behaviour

| Professional | Personal |
|---|---|
| <ul style="list-style-type: none">• Decreased work performance• Increased absenteeism, loss of pay• Loss of promotional opportunities• Retaliation from the respondent, or colleagues/ friends of the respondent• Subjected to gossip and scrutiny at work• Being objectified• Becoming publicly sexualized• Defamation• Being ostracized• Having to relocate• Job and career consequences• Weakened support network | <ul style="list-style-type: none">• Depression• Anxiety, panic attacks• Traumatic stress• Sleeplessness• Shame, guilt, self-blame• Difficulty in concentrating• Headaches• Fatigue, loss of motivation• Personal Difficulties with time• Eating disorders (weight loss or gain)• Feeling betrayed and/or violated• Feeling angry or violent towards the respondent• Feeling powerless• Loss of confidence and self esteem• Over all loss of trust in people• Problems with intimacy• Withdrawal and isolation |

Internal Committee (IC)

The Law provides that any organisation that has 10 or more employees, must constitute an Internal Committee (IC) to receive and redress complaints on Sexual Harassment at workplace.

INTERNAL Committee



Who?

1. Presiding Officer.
2. Two other members from the employees.
3. External Member.



What?

Non-Constitution of
IC

Repeat Offenders

Court Approach

Local Complaints Committee (LCC)

- Who constitutes the LCC?
- Why is the LCC formed?
- For whom is the LCC formed?

Powers of IC

- Power of Civil Court under the Code of Civil Procedure –
 1. Summoning and Enforcing attendance.
 2. Examining on oath.
 3. Requiring the discovery and production of documents.
 4. To Terminate/ decide ex parte the proceedings if the complainant or respondent fail to appear for enquiry/proceedings.

IC - Roles & Responsibilities

Prevention,
Prohibition &
Redressal.

Receive
complaints.

Take/ recommend
intermediate
actions.

Investigate
objectively.

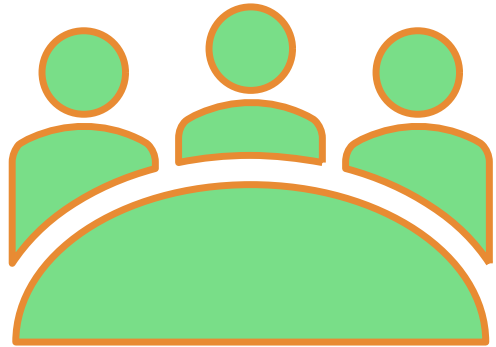
Document
findings.

Recommend
actions.

Facilitate
conciliation in
accordance to law.

Create awareness
amongst
employees.

Annual report to
district officer.



Term of IC

EACH MEMBER TO HOLD OFFICE FOR 3 YEARS
FROM NOMINATION.

SHe Box

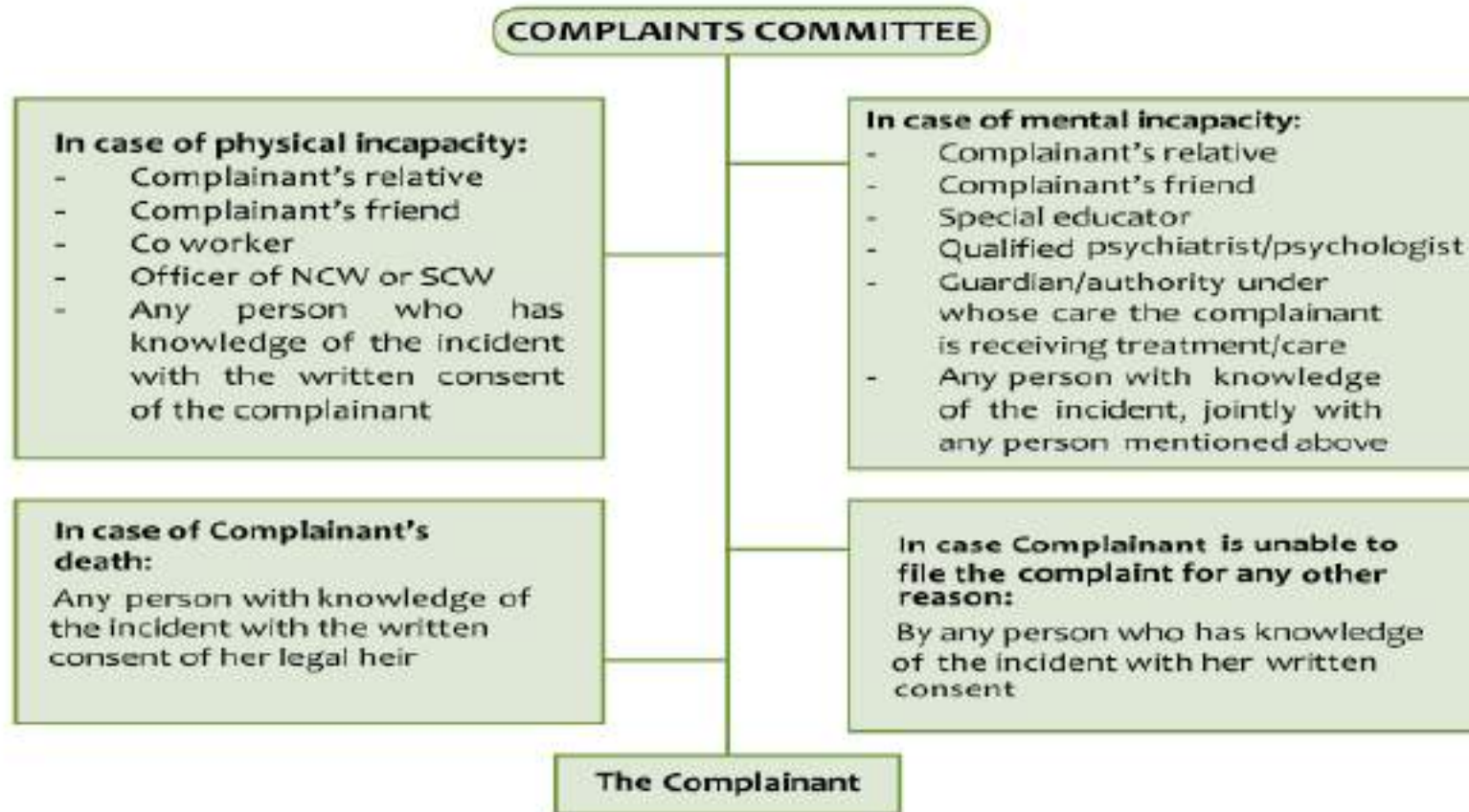
Initiative by Ministry of Women & Child Development.

An online complaint management system titled Sexual Harassment Electronic Box (SHe-Box)

Government, Private Sector and even Domestic Workers.



Who can file a Complaint?



Who can file a Complaint?

Any Aggrieved Employee or a Visitor or a member may register the complaint for himself or herself or on behalf of another Employee / Visitor under special circumstances as illustrated below :

1. In case of Physical incapacity of the complainant.
2. In case of Mental incapacity of the complainant.
3. For any other reason.

Only written complaints will be investigated by the IC.

Complaints should be made within 3 months from the date of the incidence or 3 months from the date of the last incidents in case of series of incidences.

Redressal Timeline

- The Complaints Committee must complete the enquiry within 90 days.
- A final report should be submitted to the employer or District Officer as the case may be within ten days thereafter.
- A copy of the report will also go to the concerned parties.
- The employer or the DO is obliged to act on the recommendations within 60 days of the receipt of the report.

Penalties

An employer can be subjected to a penalty upto INR 50,000 for –

- Failure to constitute IC
- Failure to act upon recommendations of the IC or
- Failure to file the Annual Report to the DO or
- Contravening or attempting to contravene or abetting contravention of the Act or rules.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities for repeated offences or
- Twice the punishment or higher punishment if prescribed under any other law for the same offence..

Thank You!!

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