

# AWARENESS ON POSH ACT

## PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

### HISTORY BEHIND POSH ACT, 2013

- Sexual Harassment Against Women In Workplace was a widely recognized social problem with no controlling rules.
- Before POSH Law came into existence there were no statutory remedy available which specifically dealt with the problems faced by working women of the country.
- Only remedy available was under Indian Penal Code, 1860
  - Section 354- Outraging The Modesty Of Woman,
  - Section 509- Insulting The Modesty Of A Women
- Aggrieved Woman who was sexually harassed at workplace had to approach police and file a complaint.

### VISHAKA VS. STATE OF RAJASTHAN

- In India protection from Sexual harassment at workplace act was laid down on the principle given in the judgement Vishaka v. State of Rajasthan(1997).
- In 1992, Bhanwari Devi a Dalit women who was a social worker employed with rural development programme of government of Rajasthan was gang raped.
- The whole nation was concerned about the dangers faced by working women, supreme court framed guidelines to protect women in workplace in the above case.
- These guidelines became the basis for the formation of POSH act, 2013.

### POSH ACT 2013 OBJECTIVES

- To provide approachable systems so that women feel confident to report the harassment faced by her.
- To provide a safe working environment and proper mechanism to conduct inquiry if a women complains about sexual harassment at workplace.
- To provide with actions to be taken in the case accused is found guilty.

## **SEXUAL HARASSMENT MEANS**

- Section 2(n) of the POSH ACT defines sexual harassment as unwelcome acts or behavior whether direct or by implication, namely:
  - Physical contact and advances.
  - A demand or request for sexual favors.
  - Making sexually coloured remarks.
  - Showing pornography.
  - Any other unwelcome physical, verbal or non- verbal conduct of sexual nature.

## **AGGRIEVED WOMAN**

- Section 2(a) of POSH ACT :Aggrieved woman:
- every women who have been subject to sexual harassment in organised/ unorganised sectors in public or private offices or domestic workers in household.
- Include regular/ temporary/ ad-hoc/ daily wage employees/ volunteers/contractual worker, probationer trainee, apprentice.

## **EMPLOYER**

- Section 2(g) of POSH ACT defines employer as a:
  - Head who formulates and administer policies of the workplace.
  - A person who discharges contractual obligations for his employees. A person responsible for management, supervision and control of workplace.
  - A person who gain benefits from the employment of a domestic worker.

## **WORKPLACE**

- Section 2(o) POSH ACT elucidate that following spaces are workplace:
  - Organizations, departments, institutions, office etc. including both organised and unorganised public/private sector. Some examples of workplace are hospitals, educational institutions, NGO's, trusts cooperative societies, a dwelling place or a house.
  - Any place that is visited by the employee during the course of employment (it also include transportation).

## COMPLAINT MECHANISM UNDER POSH ACT 2013

Internal  
complaints  
committee

-To be formed by  
employer at  
workplace

Local complaints  
committee

-To be formed by  
every district  
officer

### MEMBERS OF ICC

Section 4 of POSH Act states:

- At least one forth of the total members nominated should consist of women.
- One Presiding officer is nominated who is a woman at a senior level in the workplace.
- 2 employees preferably committed to cause of women or who have some experience in such issues.
- One member from NGO or person possessing legal knowledge and is committed to cause of women or have experience in such issues of women.

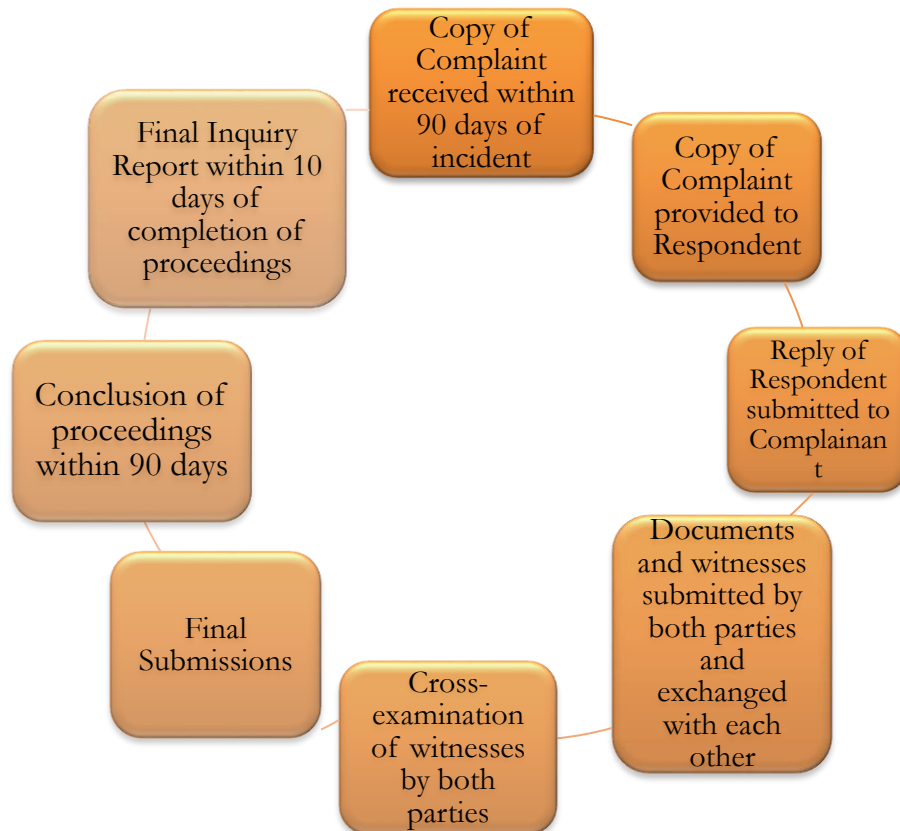
### DUTIES OF ICC

- To provide a space where female can approach authority easily.
- To follow the procedure and decide after analysing the evidence with principal of natural justice and without any biasness.
- To maintain confidentiality of information of the parties and their witnesses.

### HOW TO SUBMIT COMPLAINT

- Direct complaint by the aggrieved woman:

1. The complaint should be written.
  2. The details of the incidence should be clearly given in the complaint.
  3. The parties cannot be represented by any lawyer.
- Indirect complaint through friend, relative, colleague if the complainant is physically disabled, mentally disabled or is dead.



## HOW TO SUBMIT COMPLAINT

- Complaint must be made in writing
- The complaint should be made within 90 days from the date of incidence.
- 6 copies of complaint should be submitted with supporting documents and details of witnesses

## **COMPLETION OF INQUIRY**

- Once the inquiry proceedings are completed, the Committee must do deliberations so that consensus on the decision is achieved. If there is dissent, the same must be recorded.
- The Report of the Committee must be submitted to the Management who will thereafter take a decision based on the Organisation's Service Rules.

## **ACTION TO BE TAKEN**

If allegations are proved against respondent then ICC should take the following actions:

- Declare the Respondent to be guilty of sexual harassment and direct the management to take action in accordance with the applicable service rules.
- If the institution has not framed any rules for service then appropriate punishment will be recommended by ICC. It can be a written apology, a warning, withholding of promotion/pay rise, termination from the services.
- The employer has to act upon the recommendations within 60 days.

## **APPEAL**

Appeal as per the provisions of Section 18 to the court/tribunal or Appellate Authority is allowed within 90 days of the recommendations if not satisfied from the recommendations or there is non implementation of the recommendations.

## **MS. X VS. UNION OF INDIA, DELHI HIGH COURT**

- Report of the ICC was not provided to the Complainant
- She obtained the Report through RTI. In the Report, it was revealed that even though the incident as reported by the Complainant was partly proven, without corroborative evidence, the complaint does not stand fully proven. However, to ensure harmony and congenial environment of the office, both the parties were transferred.
- The Complainant filed a writ against the Report before the Single Judge of the HC seeking initiation of a disciplinary enquiry against the Respondent. The Single Judge dismissed her case and imposed a cost of Rs.50,000/- on her on the ground that her complaint was false.

- In appeal, the Division Bench of the High Court set aside the direction of cost of Rs.50,000/- and went on to hold that –
  - The standard of proof in a Sexual Harassment Inquiry is similar to that of a domestic enquiry as provided in the Service Rules. Just because the complaint could not be proved, does not automatically mean that it was a false complaint. It is a situation of “*Your word against mine*” and should be carefully dealt with.

*“The absence of eyewitnesses to the incident cannot detract from the credibility of the complainant as her statement is to be considered independently to determine whether it has a ring of truth or not.”*

*“The Internal Complaints Committee has so many members, including an out-sider, to enable a joint application of minds to evaluate the statement made by a complainant and assess its credibility. It is also a safeguard for men, as false complaints are very much possible (though not in this case) and for which the Act has also made clear provisions, including to punish such a complainant for false and malicious complaints and false evidence.”*

- Regular trainings and workshops are necessary to sensitize and make the employees aware of the ICC and its functions
- Cases of sexual harassment must be tackled sensitively and urgently.

