

## **GUIDELINES AGAINST SEXUAL HARASSMENT AY - 22-23**

### **VISHAKA GUIDELINES AGAINST SEXUAL HARASSMENT IN WORKPLACE**

The Vishaka Guidelines were a set of procedural guidelines for use in India in cases of sexual harassment. They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual Favours;
- c) sexually colored remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where the victim has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment.

Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto. Thus, sexual harassment need not involve physical contact. Any act that creates a hostile work environment - be it by virtue of cracking lewd jokes, verbal abuse, circulating lewd rumours etc. counts as sexual harassment.

#### **Employer's obligations**

Employer's obligations Note that the Vishaka Guidelines are not sufficient for legal compliance for employers as the same has been replaced by a full-fledged statute of the Parliament. Although the statute mostly retains the framework provided in the Guidelines, there are significant differences and it is the statute that the employers must follow.

For instance, the definition of sexual harassment has significantly changed. From this perspective, the Vishaka Guidelines is of only historical and academic importance now. It will also be relevant in cases that were brought up before 2013 enactment of the law.

**Definition of sexual harassment:** Providing a comprehensive definition of sexual harassment at the workplace, encompassing unwelcome sexually determined behaviour, whether directly or by implication.

**Employer's responsibilities:** Outlined the responsibilities of employers or persons in charge of workplaces to prevent and address incidents of sexual harassment. This included creating mechanisms to address complaints, organizing awareness programs, and establishing internal committees to handle complaints.

**Complaints mechanism:** The guidelines emphasized the establishment of a complaint redressal mechanism, often known as the Internal Complaints Committee (ICC), within every organization to receive and address complaints of sexual harassment.

**Protection for victims:** Ensured protection for victims against retaliation or victimization when complaints were made.

These guidelines were significant in highlighting the need for legal measures to combat sexual harassment at workplaces in India. Subsequently, the guidelines formed the basis for the formulation and enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, which provided a more comprehensive legal framework addressing these issues.

## POSH ACT 2013

The POSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace. The Act aims to create a safe and conducive work environment for women and provide protection against sexual harassment.

### INTRODUCTION

The POSH Act defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

These guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The SC also drew its strength from several provisions of the Constitution including Article 15 (against discrimination on grounds only of religion, race, caste, sex, and place of birth), also drawing from relevant International Conventions and norms such as the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993.

## POSH ACT 2013

Sexual Harassment of Women at Workplace  
(Prevention, Prohibition, and Redressal)  
Act was passed in 2013



## Key Provisions:

**Prevention and Prohibition:** The Act places a legal obligation on employers to prevent and prohibit sexual harassment in the workplace.

**Internal Complaints Committee (ICC):** Employers are required to constitute an ICC at each workplace with 10 or more employees to receive and address complaints of sexual harassment.

The Complaints Committees have the powers of civil courts for gathering evidence.



**Duties of Employers:** Employers must undertake awareness programs, provide a safe working environment, and display information about the POSH Act at the workplace.

**Complaint Mechanism:** The Act lays down a procedure for filing complaints, conducting inquiries, and providing a fair opportunity to the parties involved.

**Penalties:** Non-compliance with the Act's provisions can result in penalties, including fines and cancellation of business licenses.

Domestic workers should be included within the purview of the POSH Act.

It proposes a conciliation process where the complainant and the respondent are initially encouraged to resolve the issue through negotiation and agreement.



**SEXUAL HARASSMENT AT A WORKPLACE**

- Butt slapping, ogling, making sexual comments or sexual gestures
- Spreading sexual rumours about an employee
- Leaving sexual, romantic or unwanted gifts
- Repeating hugs or such unwanted touching
- Discussing an employee's sex life in front of another

**NON-SEXUAL HARASSMENT AT A WORKPLACE:**

- Making offensive gestures
- Negatively talking about someone's race, ethnicity or religion
- Wearing clothes that offend a particular ethnic group
- Ridiculing someone and sharing inappropriate jokes
- Passing comments on an employee's skin colour or ethnic traits.

Disclaimer: Non-sexual discrimination is another form of unlawful discrimination that falls under applicable employment laws.

The employer should pay compensation to the woman who has suffered sexual harassment.

Setting up of an Employment tribunal instead of an internal complaint committee (ICC) in the POSH Act

**Violations of fundamental rights** -Sexual harassment is also results in violation of women fundamental right guaranteed under the Indian constitution as under:

**Article 14: Right to Equality** - It ensures equality before the law and equal protection of the law within the territory of India.

**Article 19: Protection of certain rights** regarding freedom of speech, assembly, association, movement, residence, and profession.



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**Article 21: Right to Life and Personal Liberty** - This article states that no person shall be deprived of their life or personal liberty except according to procedures established by law.

**Article 32: Remedies for enforcement of rights** - It grants the right to move to the Supreme Court of India for the enforcement of fundamental rights.



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