

KCG COLLEGE OF TECHNOLOGY

Law on Prevention of Sexual Harassment at the Workplace

Guidelines of the POSH Act, 2013

(for internal circulation only)

1. Introduction:

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") was enacted by the Parliament in 2013. The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

The objective of these guidelines is to serve as a ready reckoner and re-educate on the law relating to the **POSH Act**. Further, the intention of these guidelines is to create more awareness on the issue and simultaneously equip the Institution in providing women a safe and secure working environment.

2. Important Provisions of the POSH Act:

a) *Applicability:* As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. Given that the definition does not necessitate the woman to be an employee, even a Student, Parent, Vendor, etc who may be sexually harassed at our institution can claim protection under the POSH Act.

It may be noted that in order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the workplace. As per the POSH Act, 'workplace' includes any place visited by the employee arising out of or during the course of employment, *including transportation provided by the Management of the Institution* for the purpose of commuting to and from the place of employment.

The POSH Act protects only women and is not a gender-neutral legislation and protects only women. *Therefore, the safeguards under the POSH Act are not Applicable to 'men victims'.*

b) What amounts to Sexual Harassment: As per the POSH Act, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication.

Examples of Conduct Amounting to Sexual Harassment

Whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances.

The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favours;
4. Leering;
5. Making sexual gestures;
6. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
7. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;
8. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
9. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
10. Being forcibly kissed or hugged;
11. Having someone expose their private parts to you or repeatedly staring at a woman's body parts that makes her uncomfortable;
12. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;

13. Eve-teasing;
14. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
15. Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape;
16. Gender based insults and/or sexist remarks;
17. Displaying pornographic or other sexually offensive or derogatory material;
18. Forcible invitations for dates;
19. Forcible physical touch or physical assault or molestation;
20. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion;
21. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;
22. Any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of such individual providing or refusing sexual favours;
23. Physical confinement against one's will and any other act likely to violate one's privacy.

c) Complaints Committee:

'Internal Complaints Committee' ("ICC") is formed based on the POSH Act requirements by the Management of the Institution to hear and redress grievances pertaining to sexual harassment.

Constitution of the *Internal Complaints Committee (ICC)* :

The *Internal Complaints Committee* consists of the following members:

S.No	Committee Members	Name
1	Chairperson	Dr Kavitha Balamurugan, Professor & HoD-ECE
2	Internal	Dr Linu Sam, Associate Professor-Physics-S&H
3		Ms M B Bindu, HoD-S&H
4		Ms D. Revathy, Student Counsellor
5		Dr R Chandra Mohan, GM - Industry Partnerships & Corporate Affairs
6		Ms M Dhivya, IT - Lab Instructor
7		Ms Glorial Francis, Girls' Hostel Warden
8		Mr K Jebamalai, Boys' Hostel Warden
9		Ms K Kaviya, Student, ECE - II year
10		Mr S Moulidharan, Aero - II year
11		Ms J Hephshiba Priya, Legal Officer
12		External

The functioning of the *Internal Complaints Committee* is autonomous and there is no scope of allegations of bias or favouritism.

d) Complaint Mechanism:

An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the *Internal Complaints Committee*, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death. **A WELL DRAFTED COMPLAINT LETTER SHOULD CONTAIN THE FOLLOWING;**

- The complaint should be addressed to the *Internal Complaints Committee* members and not the Management /HR representative.
- The complaint should be concise, i.e. it should be written in simple language which can be understood easily. Complaints that are well written and presented properly have greater credibility.
- Details of exact incident, date and time, witness etc. to be included.
- Circumstances preceding and following the incident to be recorded.
- Whether the complainant asked the respondent to desist from the unwelcome act(s).
- Append as many documents as possible in whatever format i.e. relevant e-mails, screenshots of SMS's/whatsapp messages, call details, photographs, recordings etc.
- Details of the respondent including name, designation, reporting structure between complainant and respondent if any (whether subordinate, colleague or superior).
- Do not state any fact that is false or incorrect.
- The relief that is sought from the Management of the Institution.

e) Conciliation:

Before initiating action on a complaint, the *Internal Complaints Committee* on the request of the aggrieved woman, will make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement. Conciliation is basically an informal method of resolving complaints before the complaint escalates into a fully blown formal inquiry.

Thus, after a complaint of sexual harassment has been lodged, the aggrieved woman may request the *Internal Complaints Committee* to resolve the matter by conciliating between the parties before commencement of the inquiry proceedings, although monetary settlement should not be made as a basis of conciliation. Once the settlement has been arrived at, the *Internal Complaints Committee* will record the settlement arrived at and thereafter provide copies of the settlement to the aggrieved woman as well as the respondent. Once a settlement has been arrived at, the *Internal Complaints Committee* will proceed with an inquiry under the POSH Act.

f) Redressal process / Inquiry:

Process & Timelines

- Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline extendable by another 3 months if the ICC is satisfied that the circumstances were such that prevented the woman from filing the complaint within the said period.
- Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.
- Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.
- The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.
- The Inquiry report has to be issued within 10 days from the date of completion of inquiry.
- The Management of the Institution is required to act on the recommendations of the *Internal Complaints Committee* within 60 days of receipt of the Inquiry report.
- Appeal against the decision of the committee is allowed within 90 days from the date of recommendations.

g) Interim Relief

At the request of the complainant, the *Internal Complaints Committee* may recommend to the Management to provide interim measures such as:

- i. Transfer of the aggrieved woman or the respondent to any other workplace;
- ii. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

h) Punishment and Compensation:

The POSH Act prescribes the following punishments that may be imposed by the Management of the Institution on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;

- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent
- iv. *The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:*
 - v. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
 - vi. the loss in career opportunity due to the incident of sexual harassment;
 - vii. medical expenses incurred by the victim for physical/ psychiatric treatment;
 - viii. the income and status of the alleged perpetrator; and
 - ix. feasibility of such payment in lump sum or in instalments
 - x. In the event that the respondent fails to pay the aforesaid sum, *Internal Complaints Committee* may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

j) Frivolous Complaints:

As per the POSH Act, if the *Internal Complaints Committee* concludes that the allegation made by the complainant is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant.

The POSH Act further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false or malicious.

j) Confidentiality:

Recognising the sensitivity attached to matters pertaining to sexual harassment, the POSH Act attaches significant importance to ensure that the complaint and connected information are kept confidential and any breach will be dealt severely.