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The PoSH Act and Internal Complaints Committees

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Why in News: An investigation published recently revealed that more than half — 16 — of India’s 30 national sports federations do not have an Internal Complaints Committee (ICC), a legal requirement under the Prevention of Sexual Harassment (PoSH) Act, 2013.

A brief about law against sexual harassment of women at the workplace

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, commonly known as the PoSH Act, was passed in 2013.

It defined sexual harassment, lay down the procedures for complaint and inquiry, and the action to be taken in cases of sexual harassment.

Rationale behind PoSH Act

The 2013 law broadened and gave legislative backing to what are known as the Vishaka Guidelines, which were laid down by the Supreme Court in a judgment passed in 1997.

The case in question was filed by women’s rights groups, including one called Vishaka, over the alleged gangrape of a social worker from Rajasthan named Bhanwari Devi. Bhanwari had fought against the marriage of a one-year-old baby girl in 1992, and had been allegedly gangraped as retribution.

The Vishaka Guidelines defined sexual harassment and imposed three key obligations on institutions — prohibition, prevention, redress.

The Supreme Court directed that they should establish a Complaints Committee, which would look into matters of sexual harassment of women at the workplace. The court made the guidelines legally binding.

Description of Sexual Harassment under PoSH Act

Under the 2013 law, sexual harassment includes “any one or more” of the following “unwelcome acts or behaviour” committed directly or by implication:

Physical contact and advances

A demand or request for sexual favours

Sexually coloured remarks

Showing pornography

Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

A ‘Handbook on Sexual Harassment of Women at Workplace’ published by the Ministry of Women & Child Development contains more detailed instances of behaviour that constitutes sexual harassment at the workplace.

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These circumstances include, broadly:

Sexually suggestive remarks or innuendo; serious or repeated offensive remarks; inappropriate questions or remarks about a person's sex life;

Display of sexist or offensive pictures, posters, MMS, SMS, WhatsApp, or emails;

Intimidation, threats, blackmail around sexual favours;

Threats, intimidation or retaliation against an employee who speaks up about these;

Unwelcome social invitations with sexual overtones, commonly seen as flirting; and

Unwelcome sexual advances.

The Handbook says "unwelcome behaviour" is experienced when the victim feels bad or powerless, and when it causes anger/ sadness or negative self-esteem. Unwelcome behaviour is "illegal, demeaning, invading, one-sided and power-based".

In addition, the PoSH Act mentions five circumstances that amount to sexual harassment:

Implied or explicit promise of preferential treatment in her employment;

Implied or explicit threat of detrimental treatment;

Implied or explicit threat about the complainant's present or future employment status;

Interference with the complainant's work or creating an offensive or hostile work environment;

Humiliating treatment of the complainant that is likely to affect her health or safety.

ICC under PoSH Act

The PoSH Act subsequently mandated that every employer must constitute an Internal Complaints Committee (ICC) at each office or branch that had 10 or more employees.

It defined various aspects of sexual harassment, and lay down procedures for action in case of a complaint.

The aggrieved victim under the Act can be a woman "of any age whether employed [at the workplace] or not", who "alleges to have been subjected to any act of sexual harassment".

In effect, the Act protects the rights of all women who are working or visiting any workplace, in any capacity.

Procedure for complaint under the Act

It is not compulsory for the aggrieved victim to file a complaint for the ICC to take action. The Act says that she "may" do so — and if she cannot, any member of the ICC "shall" render "all reasonable assistance" to her to complain in writing.

If the woman cannot complain because of "physical or mental incapacity or death or otherwise", her legal heir may do so.

Under the Act, the complaint must be made "within three months from the date of the incident". However, the ICC can "extend the time limit" if "it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period".

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The ICC “may”, before inquiry, and “at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation” — provided that “no monetary settlement shall be made as a basis of conciliation”.

The ICC may either forward the victim’s complaint to the police, or it can start an inquiry that has to be completed within 90 days. The ICC has powers similar to those of a civil court in respect of summoning and examining any person on oath, and requiring the discovery and production of documents.

When the inquiry is completed, the ICC must provide a report of its findings to the employer within 10 days. The report must also be made available to both parties.

The identity of the woman, respondent, witness, any information on the inquiry, recommendation and action taken, should not be made public.

What happens after the ICC has filed its report?

If the allegations of sexual harassment are proved, the ICC will recommend to the employer to take action “in accordance with the provisions of the service rules” of the company. These may vary from company to company.

The ICC may also recommend that the company deduct the salary of the person found guilty, “as it may consider appropriate”.

The compensation is determined based on five aspects: suffering and emotional distress caused to the woman; loss in career opportunity; her medical expenses; income and financial status of the respondent; and the feasibility of such payment.

If either the aggrieved woman or the respondent is not satisfied, they may appeal in court within 90 days

Protection against false complaint

Section 14 of the Act deals with punishment for false or malicious complaint and false evidence.

In such a case, the ICC “may recommend” to the employer that it take action against the woman, or the person who has made the complaint, in “accordance with the provisions of the service rules”.

The Act, however, makes it clear that action cannot be taken for “mere inability” to “substantiate the complaint or provide adequate proof”.