



POSH COMPLIANCE

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HISTORICAL CONTEXT OF SEXUAL HARASSMENT IN INDIA

- India being a patriarchal society, faces the dubious distinction of having a very deep-rooted history of sexual harassment in the society.
- In old times, the women were mostly confined to the four walls of their homes, not permitted to get educated or work. There were many instances of workplace harassment, yet, the women had to keep quiet and bear the brunt as coming out in the open would tarnish their image.
- The perpetrators of such acts were generally not persecuted, as there was no law to protect the sanctity of women.

BACKGROUND OF THE POSH ACT OR SEXUAL HARASSMENT LAW

- **Vishaka vs State of Rajasthan (1997)**
 - The framework of this women harassment act which was termed as POSH Act was laid down in the landmark judgement by the Supreme Court in ***Vishaka vs State of Rajasthan (1997)***. Another case was of ***Bhanwari Devi***.

WHAT IS POSH?

- PoSH stands for **Prevention of Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act 2013.**
- It refers to a set of guidelines, policies, and laws designed to prevent and address sexual harassment in the workplace.

DEFINITION OF THE TERM “SEXUAL HARASSMENT”

The POSH Act defines sexual harassment as:

Physical contact and advances.

01

02

Demand or request for sexual favors.

Making sexually colored remarks.

03

04

Showing pornography.

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

05

WHAT DOESN'T CONSTITUTE TO SEXUAL HARASSMENT

What Doesn't Constitute to Sexual Harassment:

Following-up on work absences



Requiring performance to job standards

Normal exercise of management rights



Constructive feedback

Working conditions



IMPORTANCE OF POSH COMPLIANCE

- It create a safe and comfortable work environment for everyone.
- This lead to higher job satisfaction, productivity, and a reduction in legal liability for employers.

RECENT INSTANCES OF POSH VIOLATION IN NEWS



WHAT IS POSH COMPLIANCE ?

- refers to ensuring that an organisation follows the guidelines, policies, and laws related to [preventing sexual harassment of women in the workplace](#).
- Compliance involves:
 - Implementing appropriate policies and procedures.
 - Providing training to employees and managers.
 - Taking appropriate action to address any instances of sexual harassment.

THE PREVENTION OF SEXUAL HARASSMENT (POSH) ACT AND ITS PROVISIONS :

- It is a law passed by the Indian government in 2013 to prevent and address sexual harassment of women in the workplace.
- The Act requires all organisations with more than ten employees to implement policies and procedures to prevent sexual harassment and to establish an internal complaints committee to investigate and address complaints of sexual harassment

WHO IS COVERED UNDER THE ACT ?

- Full time employees
- Temporary workers
- Contract workers
- Daily wage employees
- Trainees
- Interns
- Contractual workers
- Housekeeping
- Security
- Client representatives
- Vendor representatives
- Volunteers with/without remuneration

Behaviour

| 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 |

What is

the Workplace?

Any place visited by the employee in the course of employment including transportation is construed as the workplace.

This includes:

- Company guest houses
- Hotel stay during official travel
- Client place, etc.



DEFINITION OF AN “EMPLOYEE”

- In terms of the definition of an “employee” the women harassment act once again encompasses a wide range and covers regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract workers, co-workers, probationers, trainees, and apprentices.

DEFINITION OF AN “EMPLOYER”

- The women’s harassment act defines an employer to be any person who is responsible for the management, supervision and control of the workplace and management. It also includes a person or board or committee in an organization which is responsible for formulation and administration of policies.

DUTIES OF EMPLOYERS

The POSH Act prescribes certain duties of the employer to provide a safe working environment for persons in the workspace. Set out below are some of the duties which are required to be performed by the employers:

- Provide a safe working environment
- Display at any conspicuous place at the workplace the penal consequences of workplace sexual harassment and the order constituting the IC
- Conduct PoSH training programs from time to time to create awareness and sensitize employees at all levels
- Conduct orientation programs for the members of the ICC
- Provide necessary facilities to the members of the ICC
- Assist the aggrieved woman to secure justice under the IPC
- Monitor the timely submission of the reports by the IC

RESPONSIBILITIES OF EMPLOYERS UNDER POSH ACT


- employers are responsible for implementing policies and procedures to prevent sexual harassment
- providing training to employees and managers, and
- establishing an internal complaints committee to investigate and address complaints of sexual harassment.
- Employers are also required to display information about the Act and the complaint procedure in a prominent location in the workplace.
- If an employer fails to comply with the provisions of the Act, they can be penalised with fines, and the guilty person may face imprisonment or both.
- Therefore, employers must take POSH compliance seriously and take appropriate measures to prevent and address sexual harassment in the workplace.

STEPS to achieve POSH compliance :

Create a POSH Policy: Developing a comprehensive POSH policy is the first step in achieving compliance. The policy should clearly define sexual harassment, provide examples of prohibited conduct, and outline the complaint process.

Conduct Training: Training employees and managers is critical to ensuring that everyone knows the organisation's POSH policies and procedures. The training should cover what constitutes sexual harassment, how to recognise and report it, and the consequences of engaging in such behaviour.

Establish a Complaint Mechanism: Businesses should create a mechanism for employees to report sexual harassment. The mechanism should be easy to access and protect the complainant's confidentiality.



Investigate Complaints: When a complaint is received, it should be promptly investigated by an impartial internal complaints committee. The committee should include members who are trained in handling complaints of sexual harassment and are

Take Appropriate Action: If the investigation finds that sexual harassment has occurred, the company should take appropriate action, including disciplinary action or termination of the harasser's employment.

BEST PRACTICES FOR POSH COMPLIANCE

- Regularly review and update policies: Organisations should review and update their POSH policies to ensure they remain up-to-date and effective
- Conduct regular training: Businesses should conduct regular training sessions on POSH policies and procedures for all employees, including managers
- Foster open communication: Encourage open communication between employees and management to ensure everyone is aware of the POSH policies and procedures
- Take complaints seriously: Promptly investigate all complaints of sexual harassment and take appropriate action. This includes supporting the complainant and ensuring that the investigation is fair and impartial.
- Encourage reporting: Make it easy and safe for employees to report sexual harassment. This can include anonymous reporting mechanisms and protections against retaliation.

Is this Sexual Harassment or Not?



1

Aravind and Suguna are part of a team at an organisation.

Suguna reports to Aravind.

Aravind constantly tells Suguna that they should go out somewhere after work hours, perhaps for a late night movie or dinner.

Suguna is uncomfortable but smiles and says she is busy most often! One day, Aravind tells Suguna that if she turns down his request again, her ratings will go down in her monthly review.

IS THIS SEXUAL HARASSMENT OR NOT?

2

Neha is part of team that reports to Neeraj who is her college Senior. Neha is very good at her work and is assigned the most prestigious project in the company instead of Nirav who is the senior in the team and has a lot more work experience than Neha.

Nirav is very upset and believes that Neha has been assigned the coveted project because they must be having a relationship. He jokes about this with other team members and slowly this spreads around in the company.

IS THIS SEXUAL HARASSMENT OR NOT?

ACTION AGAINST HARASSMENT

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CASE STUDIES



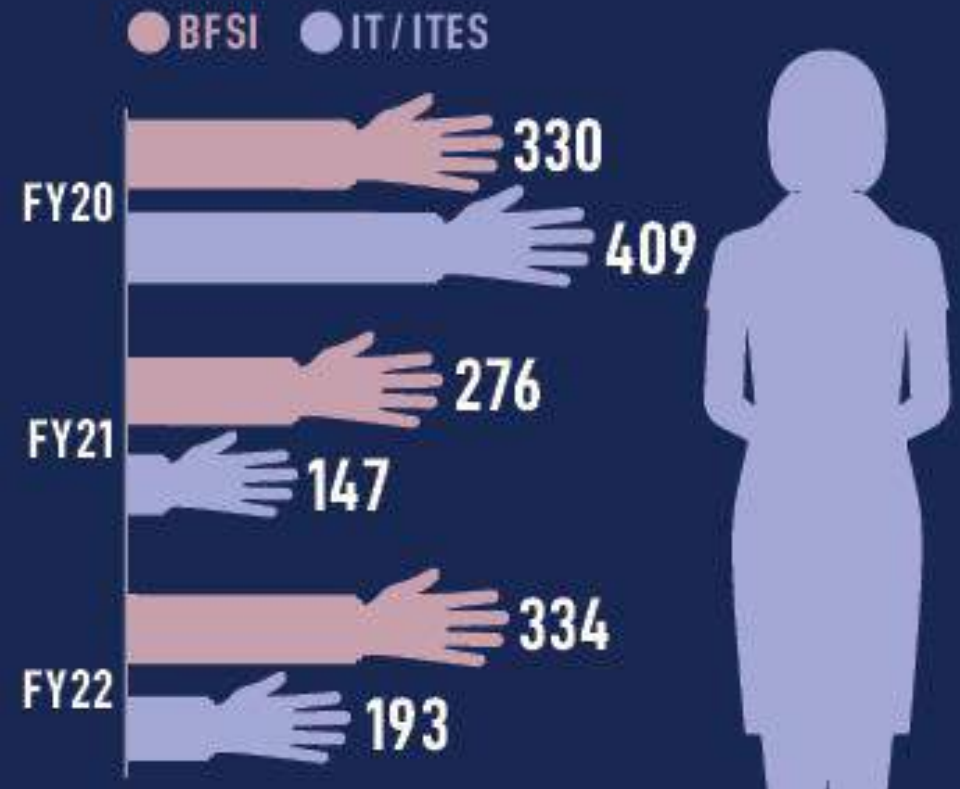
RISE IN SEXUAL HARASSMENT CASES IN INDIA'S TOP COMPANIES SHOWS DICHOTOMY

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Source - <https://www.forbesindia.com/article/take-one-big-story-of-the-day/rise-in-sexual-harassment-cases-in-indias-top-companies-shows-dichotomy/80721/1>

SECTOR ORDER

BFSI & IT/ITES accounted for majority of POSH complaints. BFSI accounted for 44% and IT/ITES accounted for 25.43% in FY22



Note: Data includes companies in BSE100

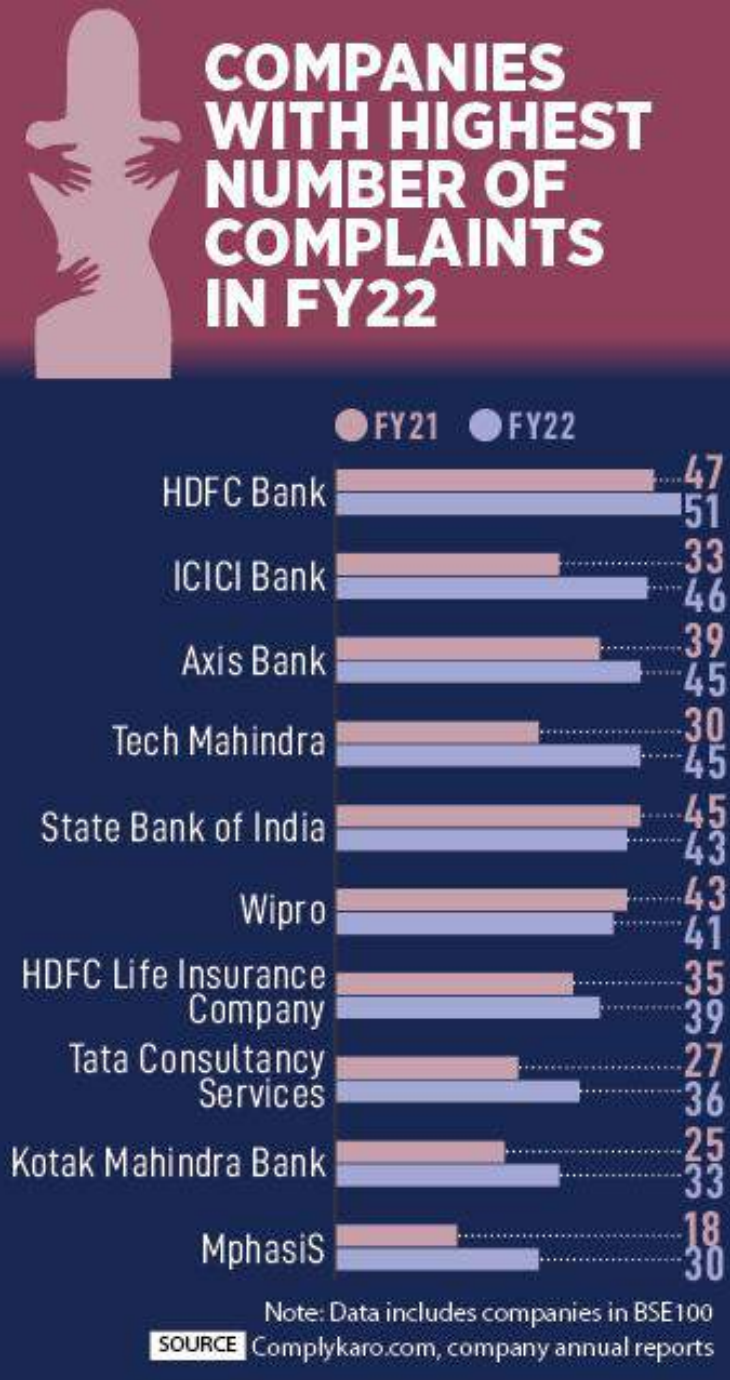
SOURCE Complykaro.com, company annual reports

HOW THE NUMBERS STACK UP?

Among all the companies under review, HDFC Bank with 51 cases received the maximum complaints in FY22, but those are just 8 percent higher than last year. Next are ICICI Bank (46), Axis Bank (45) and Tech Mahindra (45). Tech Mahindra showed the maximum increase in the number of complaints compared to 30 in the previous year.

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Source - <https://www.forbesindia.com/article/take-one-big-story-of-the-day/rise-in-sexual-harassment-cases-in-indias-top-companies-shows-dichotomy/80721/1>



HOW ICC CAN HELP

Photo used for representation purpose

MISSING IN ACTION

Under UGC Regulations 2015, **internal complaints committees** were to be set up from 2016 to deal with sexual harassment cases...

...However, only three DU colleges – Miranda, Hindu and Ramjas – have conducted polls to elect students' representatives...

...In many others, principals are heading ICCs in violation of UGC rules...

...Bharati College has notified for elections



COMPOSITION

- Woman presiding officer (teacher of the level of associate professor or above)
- 2 faculty members
- 2 non-teaching employees
- 1 member of an NGO working on women issues
- 3 students (all women) from each category – UG, masters and MPhil/ PhD – to be elected in a university or students from all three UG years in case of a college

Note: Except the students, all others nominated by the executive authority comprising of VC, pro-VC, registrar, principal (for colleges), deans and department heads (for universities)

TERM: 3 years with 1/3rd of the members changing annually

RESPONSIBILITIES

- Assist an employee or student who chooses to file a complaint with police
- Provide mechanisms of dispute redressal & dialogue
- Protect complainant by not divulging the identity
- Ensure complainants don't feel victimised or discriminated against
- Prohibit retaliation or adverse action against the complainant

HOW TO LODGE A COMPLAINT

Aggrieved person should submit a written complaint to ICC within three months from the date of the incident

This time-limit can be extended

Friends, colleagues, classmates and psychologists can also file a complaint if the aggrieved person is unavailable

Is sexual harassment Act really effective?



ISTOCK

Sexual harassment remains a major concern in India as only 45 per cent organisations admitting that the law in this regard made their workplace safer. A recent survey revealed that though the Act had increased awareness levels, the number of cases being reported had not seen an upsurge.

KelpHR in collaboration with National HRD Network, recently released the first-of-its kind Industry Report 2018, on Effectiveness of Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013.

As many as 200 individuals from across 160 companies participated in this survey. The respondents were HR Heads or the HR representatives and Internal Committee (IC) presiding officers or members, primarily.

The survey covered organisations across cities and sectors in India, and also evaluated major reasons for low reporting of harassment cases. Through the survey, KelpHR has tried to uncover the underlying reasons that exist for such issues. Aware-

ness levels have increased, but that has not translated into changes at the ground level within corporate India. Deep-rooted biases which are part of an organisation's culture need to be transformed for the Act to become more effective.

The report is of value not just from a trends perspective, but also because of the implications it shares, the role that different individuals need to play and how the challenges can be addressed gaps be plugged.

Commenting on the findings, VijiHari, CEO and Co-

Founder, KelpHR, said, "It is good to note that of >70 per cent of the companies are gearing towards being compliant to the Act.

The awareness levels have definitely increased but the number cases being reported is still not very high. The need of the hour is to go one step ahead than the basic compliance and adherence to the Act, the focus should be on a strong company culture and an empowered Internal committee that will help the victims to report the incidents confidently." — TNS

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Thank You!

Questions?

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For further detailed consultancy Connect with Me

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