



सत्यमेव जयते

অসম চৰকাৰ

Govt of Assam

HANDBOOK ON

POSH Act



Assam Administrative Staff College

Jawaharnagar, Khanapara,
Guwahati-781022, Assam Phone: 0361-2363325,
Website: www.aasc.gov.in

ARTPPG Department, GoA

ড° হিমন্ত বিশ্ব শর্মা
Dr. Himanta Biswa Sarma



মুখ্যমন্ত্রী, অসম
Chief Minister, Assam



FOREWORD

The work environment across the globe is undergoing rapid changes, and the utilization of human resources is evolving accordingly, with Assam being no exception. To keep pace with these changes, it is imperative that the Assam government focuses on empowering its human resources with a global outlook while remaining grounded in Indian values.

To achieve this vision, our government is implementing effective changes in work culture and striving to instill new ideas and a broader perspective in the minds of the officials. In line with this effort, the ARTPPG Department of the Government of Assam is introducing a set of training manuals and handbooks. Our Government is ensuring the smooth functioning of the daily administration with the help of these Training Manuals/ Handbooks for the Grade-3 officials. To effectively cater to the requirements of Grade-3 officials, experts have meticulously drafted the training manuals and handbooks, aiming to cover a wide range of relevant topics. Moreover, focused attempts have been made to embed the books with relevant case studies, examples and FAQs on different topics to enable the users to adapt to the procedural yet divergent needs of today's dynamic administration.

True to the objective of our Government in creating a spirited workforce, introduction of multifaceted learning and training programme have been thought of to enable our officials realize their true potential. This would help them to reorient themselves to the day-to-day administrative developments while performing their duties with honesty and transparency.

I believe the Training Manuals / Handbooks will hold immense value as a guiding light on diverse professional trajectories. They will also serve as a roadmap to steer capacity building of the Grade-III officials in a systematic and coherent manner.

(Dr. Himanta Biswa Sarma)

Dr. Ravi Kota, IAS
Chief Secretary
Government of Assam



ড° ৰবি কোটা, ভাঃ প্ৰঃ সেঃ
মুখ্য সচিব
অসম চৰকাৰ



Preparation of a Training policy of a State and aligning it with the needs of the variegated workforce which has to constantly prove its relevance in this era of transition towards technology forms the very backbone of the administration in the form of a challenging task. In this due course of action, capacity building of Grade-III officials not only requires them to remain efficient in their daily official duties but also must be able to motivate them to work, learn and evolve in a comprehensive manner.

The present District training manuals for Grade-III officials have been prepared under the aegis of the Administrative Reforms Training Pension and Public Grievances Department (ARTPPG) and the Assam Administrative Staff College (AASC), who were aided by renowned experts and stakeholders from all the concerned fields. The manuals are a product of much detailed and multiple deliberations on the requisite subjects and it also includes valuable inputs from The Institute of Secretariat Training and Management (ISTM), Delhi in certain applicable topics. The Training Needs Assessment (TNA) was diligently conducted by AASC to chalk out an inclusive need based approach suited for a bottom up perspective for the Grade-III officials and also to ensure that no vital subject has been overlooked.

I believe that the Training manuals will help the Trainers and the trainees as well in a holistic manner and I earnestly request all concerned to send us feedback which would be of great help when we take up further revisionary exercises.

(Dr. Ravi Kota)
Chief Secretary, Assam

Shantanu Gotmare, IAS
Commissioner & Secretary
to the Govt. of Assam
ART, PPG etc. Department
Dispur, Guwahati-6



MESSAGE

The Department of Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) plays a vital role in the formulation of the State Training Policy and training it's civil servants to build capacity for improving 'Ease of Living' for people of Assam.

The content of the district training manuals aims to bolster capacity of the Grade-3 employees in an elaborate and lucid manner. We have worked meticulously to prepare content of the manuals by collaborating with experts and have actively collated through appropriate stakeholders, which objectively present a comprehensive picture for the officials, covering a broad spectrum of their daily official duties.

I express my sincere thanks to the Committee for vetting the full content. ARTPPG acknowledges the contributions of Committee Members in the preparation of the training manuals. Special mention must be made to the Assam Administrative Staff College, Khanapara and my team in ARTPPG Department for relentless work to get the training manuals.

I sincerely hope that that these manuals will be extremely useful to the trainers, trainees and as well as the officials.

(Shantanu Gotmare)



Foreword

The District Training Manuals for Grade-III officials of the Government of Assam have been designed by the Assam Administrative Staff College (AASC) with the help of renowned guest faculty and experts under the able guidance of the Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) Department and inputs from the Institute of Secretariat Training and Management (ISTM), New Delhi.

I hope these manuals will be used extensively by the trainers and trainees and will help the officials become more knowledgeable, competent and productive at their work places.

I would like to convey my gratitude to all the renowned guest faculty and to all the individuals associated with the successful publication of the manuals for their inputs and support throughout the process of designing and printing these manuals.

A handwritten signature in blue ink, appearing to read 'Riju Gogoi', written in a cursive style.

Riju Gogoi
Director of Training
Assam Administrative Staff College

FREQUENTLY ASKED QUESTIONS ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT AND RULES, 2013

Content

1. List of Abbreviations
2. What is the legislative history of the POSH Act?
3. Who is "Aggrieved Woman" under the POSH Act?
4. Who is "Domestic Worker" under the POSH Act?
5. Who is "Employee" under the POSH Act?
6. Who is "Employer" under the POSH Act?
7. Who is "Appropriate Government" under the POSH Act?
8. What is a "Workplace" under the POSH Act?
9. What is "Sexual Harassment" under the POSH Act?
10. Who is protected from sexual harassment under the POSH Act?
11. What is the Internal Committee or Internal Complaints Committee under the POSH Act?
12. Who constitutes the ICC under the POSH Act?
13. What is the composition of ICC under the POSH Act?
14. What is the tenure of ICC Chair person and Members under the POSH Act?
15. What are the grounds for removal of ICC Chair person and Members under the POSH Act?
16. What is Local Committee or Local Complaints Committee under the POSH Act?
17. Who is District Officer under the POSH Act?
18. Who is Nodal Officer under the POSH Act?
19. What is the composition of LCC under the POSH Act?
20. Who is person familiar with issues relating to sexual harassment for the purposes of LCC under the POSH Act?
21. Who can make complaint of sexual harassment under the POSH Act?

22. Is a written complaint required under the POSH Act?
23. Is there a time limit for filing complaint under the POSH Act?
24. Is there a provision for conciliation under the POSH Act?
25. What remedy is available to the aggrieved woman if the respondent does not fulfil the terms of the conciliation?
26. What is the manner in which ICC or LCC will make inquiry into complaint?
27. Can the ICC or LCC terminate the inquiry or give a next-part decision?
28. Can parties bring legal practitioners to represent them before the ICC or LCC?
29. What is the time limit within which ICC or LCC has to complete inquiry?
30. How will the LCC make inquiry into complaint by domestic worker?
31. When does the ICC or LCC have to submit the inquiry report?
32. The ICC or LCC has to submit the inquiry report within 10 days of the completion of an inquiry.
33. Who does the ICC or LCC have to submit the inquiry report to?
34. What is the time limit within which employer or District Officer has to act upon the recommendation in the inquiry report submitted by the ICC or LCC?
35. What shall the ICC or LCC include in the inquiry report?
36. How is the determination of sum payable as compensation done by the ICC or LCC?
37. What is the remedy if employer is unable to deduct compensation from salary of the respondent?
38. What is the remedy if the respondent fails to pay compensation?
39. Can ICC or LCC take any action during pendency of inquiry under the POSH Act?
40. What is the punishment for false or malicious complaint under the POSH Act?
41. What is the punishment for false evidence under the POSH Act?
42. Can the contents of complaint and inquiry proceedings be published under the POSH Act pursuant to an application under the RTI Act?
43. What is the penalty for publication or making known contents of complaint and inquiry proceedings under the POSH Act?
44. Is there provision for appeal under the POSH Act?
45. Where shall the appeal be preferred to?

47. Is there a time limit to prefer an appeal under the POSH Act?
48. What are the duties of employer under the POSH Act?
49. What are the duties of District Officer under the POSH Act?
50. What are the duties of Appropriate Government under the POSH Act?
51. What are the powers of Appropriate Government under the POSH Act?
52. Does the ICC and LCC have to submit annual report under the POSH Act?
53. What will the annual report submitted by the ICC and LCC contain under the POSH Act?
54. What shall the District Officer do with the annual report submitted to him under the POSH Act?
55. What shall the employer do with the annual report submitted to him under the POSH Act?
56. Are there penalties for non-compliance with the provisions of the POSH Act by the employer?

List of Abbreviations

Abbreviation	Full Form
ICC	Internal Complaints Committee
IPC	Indian Penal Code
LCC	Local Complaints Committee
NGOs	Non-governmental organizations
POSH Act	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
POSH Rules	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013
RTI Act	Right to Information Act, 2005

What is the legislative history of the POSH Act?

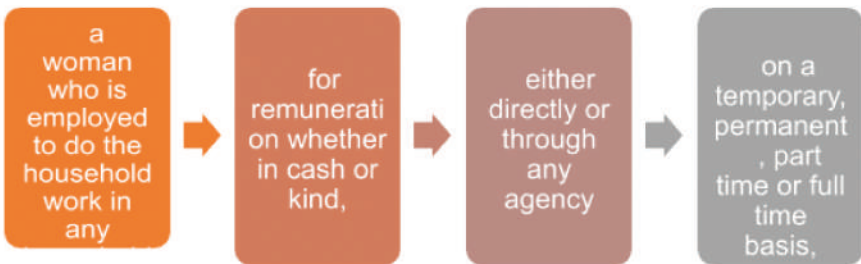
Enactment of POSH Act, 2013	22 April, 2013
Enforcement of POSH Act, 2013	9 December, 2013
Enactment and Enforcement of POSH Rules, 2013	9 December, 2013

Who is “Aggrieved Woman” under the POSH Act?

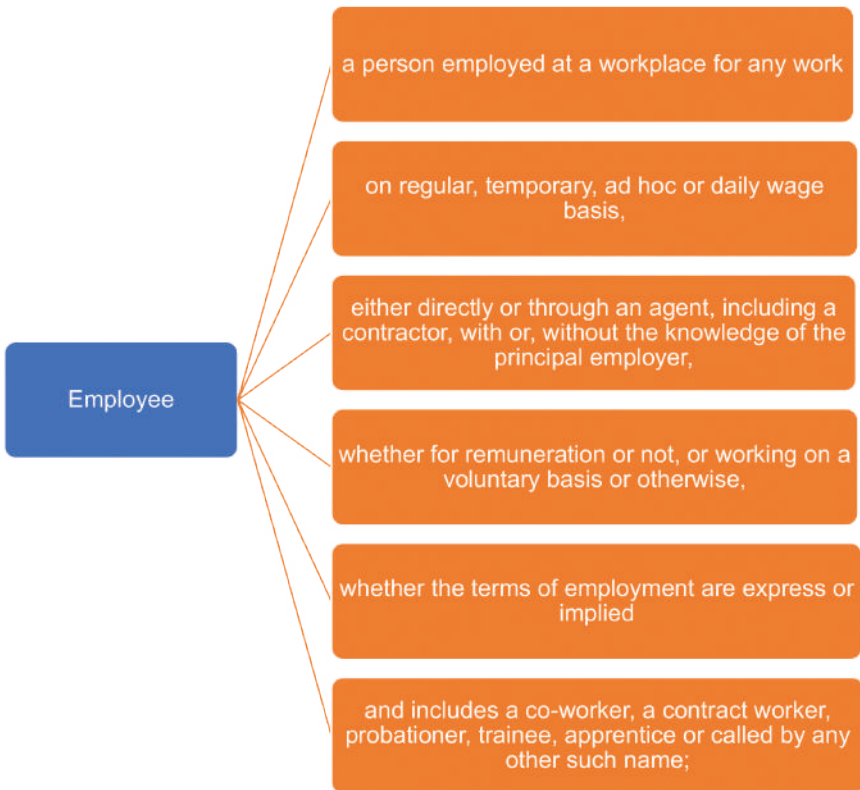
(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

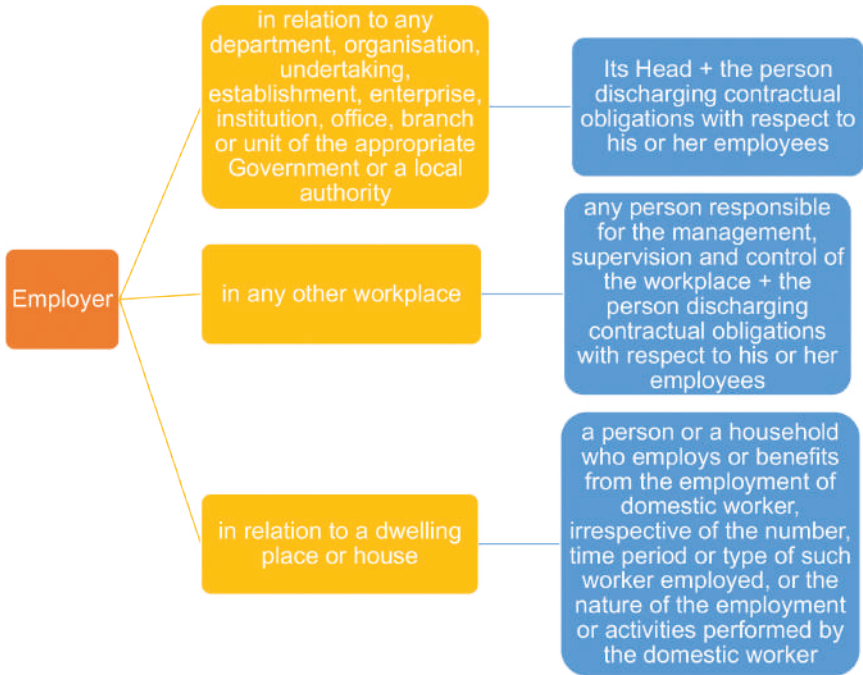
Who is “Domestic Worker” under the POSH Act?



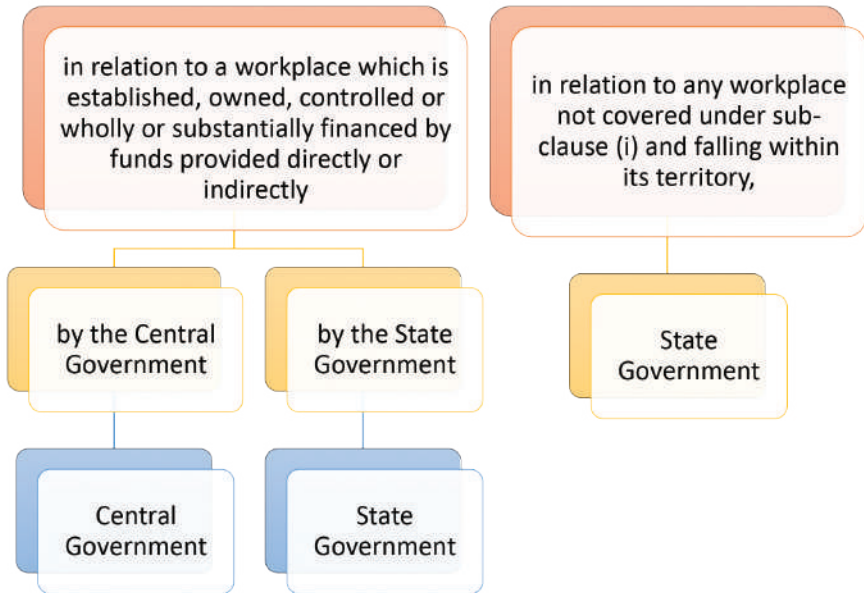
Who is "Employee" under the POSH Act?



Who is “Employer” under the POSH Act?



Who is “Appropriate Government” under the POSH Act?



What is a “Workplace” under the POSH Act?

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
(iii) hospitals or nursing homes;
(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
(vi) a dwelling place or a house;

What is “Sexual Harassment” under the POSH Act?

<p>"sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication)</p>	(i) physical contact and advances; or
	(ii) a demand or request for sexual favours; or
	(iii) making sexually coloured remarks; or
	(iv) showing pornography; or
	(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature:
<p>The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment</p>	(i) implied or explicit promise of preferential treatment in her employment; or
	(ii) implied or explicit threat of detrimental treatment in her employment: or
	(iii) implied or explicit threat about her present or future employment status; or
	(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
	(v) humiliating treatment likely to affect her health or safety.

Who is protected from sexual harassment under the POSH Act?

Women. No woman shall be subjected to sexual harassment at any workplace.

What is the Internal Committee or Internal Complaints Committee under the POSH Act?

- Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”
- Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices

Who constitutes the ICC under the POSH Act?

ICC members are to be nominated by the employer.

What is the composition of ICC under the POSH Act?

Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees

Not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge

One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment

Provided that at least one-half of the total Members so nominated shall be women.

What is the tenure of ICC Chairperson and Members under the POSH Act?

The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

What are the grounds for removal of ICC Chairperson and Members under the POSH Act?

The ICC Chairperson or any of the members shall be removed on any of the following grounds:

- he contravenes the provisions of section 16; or
- he has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- he has so abused his position as to render his continuance in office prejudicial to the public interest

What is Local Committee or Local Complaints Committee under the POSH Act?

- Every District Officer shall constitute in the district concerned, a committee to be known as the “Local Complaints Committee”
- This LCC is to receive complaints of sexual harassment from establishments where
 - the ICC has not been constituted due to having less than ten workers or
 - if the complaint is against the employer himself

Who is District Officer under the POSH Act?

The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer.

Who is Nodal Officer under the POSH Act?

- The District Officer shall designate one nodal officer in every Block, Taluka and Tehsil in rural or tribal area and Ward or Municipality in the urban area

- He has to receive complaints and forward the same to the concerned Local Committee within a period of seven days

What is the composition of LCC under the POSH Act?

a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women

one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district

two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed

the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time

Who is person familiar with issues relating to sexual harassment for the purposes of LCC under the POSH Act?

- Person familiar with the issues relating to sexual harassment for the purpose of LCC shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:-
 - a social worker with at least five years experience in the field of social work which leads to creation of societal conditions favourable towards

empowerment of women and in particular in addressing workplace sexual harassment; or

- a person who is familiar with labour, service, civil or criminal law

Who can make complaint of sexual harassment under the POSH Act?

Aggrieved Woman

where the aggrieved woman is unable to make a complaint on account of her **physical incapacity**, a complaint may be filed by –

- her relative or friend; or
- her co-worker; or
- an officer of the National Commission for Women or State Women's Commission; or
- any person who has knowledge of the incident, with the written consent of the aggrieved woman

where the aggrieved woman is unable to make a complaint on account of her **mental incapacity**, a complaint may be filed by-

- her relative or friend; or
- a special educator; or
- a qualified psychiatrist or psychologist; or
- the guardian or authority under whose care she is receiving treatment or care; or
- any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care

where the aggrieved woman **for any other reason** is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

where the aggrieved woman is **dead**, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

Is a written complaint required under the POSH Act?

- Yes. Complaint has to be in writing
- Where such complaint cannot be made in writing, the Presiding Officer or any Member of the ICC or the Chairperson or any Member of the LCC, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing

Is there a time limit for filing complaint under the POSH Act?

- Yes. Complaint has to be made within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident
- The ICC or the LCC may extend the time limit for making complaint for a maximum of three months
- They will do so if they are satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period
- They have to record their reasons for such extension in writing

Is there a provision for conciliation under the POSH Act?

- Yes
- The ICC or the LCC, may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation
- Monetary settlement shall not be made as a basis of conciliation
- Where settlement has been arrived at, the ICC or LCC, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation
- The ICC or LCC shall provide the copies of the settlement as recorded to the aggrieved woman and the respondent

- Where a settlement is arrived at, no further inquiry shall be conducted by the ICC or LCC

What remedy is available to the aggrieved woman if the respondent does not fulfil the terms of the conciliation?

Where the aggrieved woman informs the ICC or LCC that any term or condition of the settlement arrived at has not been complied with by the respondent, the ICC or LCC shall proceed to make an inquiry into the complaint or, in the case where aggrieved woman is a domestic worker, forward the complaint to the police.

What is the manner in which ICC or LCC will make inquiry into complaint?

- Where the respondent is an employee, the ICC or LCC shall proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and
- Where no such rules exist, the ICC or LCC shall proceed to make inquiry into the complaint as follows:

At the time of filing the complaint, the complainant shall submit six copies of the complaint along with supporting documents and the names and addresses of the witnesses to the ICC or LCC.

Upon receipt of the complaint, the ICC or LCC shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days.

The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses within 10 days of receiving a copy of the complaint.

The ICC or LCC shall make inquiry into the complaint in accordance with the principles of natural justice.

Where both the parties are employees, the parties shall be given an opportunity of being heard during the course of inquiry.

In conducting the inquiry, a minimum of three Members of the ICC or LCC including the Presiding Officer or the Chairperson, as the case may be, shall be present.

ICC shall complete inquiry within 90 days.

ICC has to provide a report of its findings to the employer within a period of 10 days from the date of completion of the inquiry and such report be made available to the concerned parties.

The employer or the District Officer shall act upon the recommendation within 60 days of its receipt by him.

Can the ICC or LCC terminate the inquiry or give an *ex-parte* decision?

- The ICC or LCC shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings
- However, such termination or *ex-parte* order may not be passed without giving a written notice, fifteen days in advance, to the party concerned

Can parties bring legal practitioners to represent them before the ICC or LCC?

The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

What is the time limit within which ICC or LCC has to complete inquiry?

90 days.

How will the LCC make inquiry into complaint by domestic worker?

In case of a domestic worker, if prima facie case exists, the LCC shall forward the complaint to the police, within a period of seven days for registering the case under section 509 or any other relevant provisions of the IPC, 1860.

When does the ICC or LCC have to submit the inquiry report?

The ICC or LCC has to submit the inquiry report within 10 days of the completion of an inquiry.

Who does the ICC or LCC have to submit the inquiry report to?

- The ICC has to submit the inquiry report to the employer
- The LCC has to submit the inquiry report to the District Officer.

What is the time limit within which employer or District Officer has to act upon the recommendation in the inquiry report submitted by the ICC or LCC?

The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

What shall the ICC or LCC include in the inquiry report?

ICC and LCC shall make recommendations in the inquiry report submitted to the employer and District Officer respectively.

What recommendations will be made by the ICC or LCC in the inquiry report?

Where they arrive at the conclusion that the allegation against the respondent has not been proved, they shall recommend that no action is required to be taken in the matter.

Where they arrive at the conclusion that the allegation against the respondent has been proved, they shall recommend as follows:

- Where service rules exist, they will recommend to take action for sexual harassment as a **misconduct** in accordance with the provisions of the service rules applicable to the respondent.
- Where no such service rules have been made, they will recommend to take action for sexual harassment such manner as may be prescribed. The manner of taking action for sexual harassment as prescribed in the POSH Rules includes:
 - a written apology,
 - warning,
 - reprimand or censure,
 - withholding of promotion,
 - withholding of pay rise or increments,
 - terminating the respondent from service or
 - undergoing a counselling session or
 - carrying out community service.
- To deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as the ICC or LCC may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as the ICC or LCC may determine, as compensation.

How is the determination of sum payable as compensation done by the ICC or LCC?

For the purpose of determining the sums to be paid to the aggrieved woman as compensation, the ICC or LCC shall have regard to the following:	(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
	(b) the loss in the career opportunity due to the incident of sexual harassment;
	(c) medical expenses incurred by the victim for physical or psychiatric treatment;
	(d) the income and financial status of the respondent;
	(e) feasibility of such payment in lump sum or instalments.

What is the remedy if employer is unable to deduct compensation from salary of the respondent?

In case the employer is unable to make deduction of compensation from the salary of the respondent due to his being absent from duty or cessation of employment, the ICC or LCC may direct the respondent to pay such sum to the aggrieved woman.

What is the remedy if the respondent fails to pay compensation?

In case the respondent fails to pay the sum, ICC or LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

Can ICC or LCC take any action during pendency of inquiry under the POSH Act?

During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to

- transfer the aggrieved woman or the respondent to any other workplace; or
- grant leave to the aggrieved woman up to a period of three months; or
- grant such other relief to the aggrieved woman as may be prescribed.
- restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;
- restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

What is the punishment for false or malicious complaint under the POSH Act?

Where the ICC or LCC arrives at a conclusion that:

- the allegation against the respondent is malicious or
- the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or
- the aggrieved woman or any other person making the complaint has produced any forged or misleading document,

they may recommend to the employer or the District Officer, to take action against the woman or the person who has made the complaint in accordance with the provisions of the service rules applicable to her or him

Where no such service rules exist, they may recommend to take action as prescribed in the POSH Rules , which includes:

- a written apology,
- warning,
- reprimand or censure,
- withholding of promotion,
- withholding of pay rise or increments,
- terminating the respondent from service or
- undergoing a counselling session or
- carrying out community service.

A mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.

The malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

What is the punishment for false evidence under the POSH Act?

Where the ICC or LCC arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document,

they may recommend to the employer of the witness or the District Officer, to take action in accordance with the provisions of the service rules applicable to the said witness

Where no such service rules exist, they may recommend to take action as prescribed in the POSH Rules , which includes:

a written
apology, warning,
reprimand or censure,
withholding of promotion,
withholding of pay rise or increments,
terminating the respondent from service or
undergoing a counselling session or carrying out community service

Can the contents of complaint and inquiry proceedings be published or made known under the POSH Act?

Under the POSH Act, the following shall not be published, communicated or made known to the public, press and media in any manner:

- The contents of the complaint
- the identity and addresses of the aggrieved woman, respondent and witnesses
- any information relating to conciliation and inquiry proceedings
- recommendations of the Internal Committee or the Local Committee, and
- the action taken by the employer or the District Officer under the provisions of the POSH Act

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under the POSH Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

Can the contents of complaint and inquiry proceedings be published under the POSH Act pursuant to an application under the RTI Act?

- No
- Only information regarding the justice secured to any victim of sexual harassment under the POSH Act may be disseminated without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses

What is the penalty for publication or making known contents of complaint and inquiry proceedings under the POSH Act?

- Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of the POSH Act publishes it or makes it known, he shall be liable for penalty in accordance with the provisions of the service rules applicable to him
- Where no such service rules exist, the employer shall recover a sum of five thousand rupees as penalty from him.

Is there provision for appeal under the POSH Act?

Any person aggrieved from the following may prefer an appeal:

- Recommendation of ICC or LCC that no action is required to be taken in the matter when they arrive at the conclusion that the allegation against the respondent has not been proved
- Recommendation of ICC or LCC that action is required to be taken in the matter when they arrive at the conclusion that the allegation against the respondent has been proved
- Recommendation of ICC or LCC to deduct from the salary or wages of the respondent such sum as the ICC or LCC may consider appropriate to be paid to the aggrieved woman or her legal heirs, as the ICC or LCC may determine, as compensation
- Recommendation of ICC or LCC to take action against the woman or the person who has made the complaint when they arrive at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document
- Recommendation of ICC or LCC to take action against the woman or the person who has made the complaint when they arrive at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document
- Penalty imposed on any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of the POSH Act for publishing it or making it known
- Non-implementation of the above-mentioned recommendations

Where shall the appeal be preferred to?

Where service rules exist, the person aggrieved may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person.

Where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner prescribed in the POSH Rules. The POSH Rules provide that such person may prefer an appeal to the appellate authority notified under section 2(a) of the Industrial Employment (Standing Orders) Act.

Is there a time limit to prefer an appeal under the POSH Act?

Yes. The appeal shall be preferred within a period of ninety days of the recommendations.

What are the duties of employer under the POSH Act?

Every employer has the following duties under the POSH Act:

- to provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace
- to display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the ICC
- to organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the POSH Act and orientation programmes for the members of the ICC in the manner prescribed in the POSH Rules which is as follows:
 - formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women
 - carry out orientation programmes and seminars for the Members of the Internal Committee
 - carry out employee awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha,

women's groups, mothers' committees, adolescent groups, Urban Local Bodies and any other body as may be considered necessary;

- conduct capacity-building and skill-building programmes for the Members of the Internal Committee
 - declare the names and contact details of all the Members of the Internal Committee
 - use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act
-
- to provide necessary facilities to the ICC or LCC for dealing with the complaint and conducting an inquiry
 - to assist in securing the attendance of respondent and witnesses before the ICC or LCC
 - to make available such information to the ICC or LCC as it may require having regard to the complaint made
 - to provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the IPC, 1860 or any other law for the time being in force
 - to cause to initiate action, under the IPC, 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place
 - to treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct
 - to monitor the timely submission of reports by the ICC

What are the duties of District Officer under the POSH Act?

Every District Officer has the following duties under the POSH Act:

- to monitor the timely submission of report furnished by the LCC

- to take such measures as may be necessary for engaging NGOs for creation of awareness on sexual harassment and the rights of the women

What are the duties of Appropriate Government under the POSH Act?

The Appropriate Government has the following duties under the POSH Act:

- To monitor the implementation of the POSH Act and to maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace
- Subject to the availability of financial and other resources,
 - to develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of the POSH Act providing for protection against sexual harassment of woman at workplace
 - to formulate orientation and training programmes for the members of the LCC

What are the powers of Appropriate Government under the POSH Act?

- On being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, the Appropriate Government, by order in writing,
 - call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require
 - authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order

- every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection

Does the ICC and LCC have to submit annual report under the POSH Act?

The ICC and LCC, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

What will the annual report submitted by the ICC and LCC contain under the POSH Act?

The annual report prepared by the ICC and LCC shall have the following details:

- number of complaints of sexual harassment received in the year
- number of complaints disposed off during the year
- number of cases pending for more than ninety days
- number of workshops or awareness programme against sexual harassment carried out
- nature of action taken by the employer or District Officer

What shall the District Officer do with the annual report submitted to him under the POSH Act?

The District Officer shall forward a brief report on the annual reports received to the State Government.

What shall the employer do with the annual report submitted to him under the POSH Act?

The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such

report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Are there penalties for non-compliance with the provisions of the POSH Act by the employer?

- In case of first offence, the employer may be punished with fine which may extend to fifty thousand rupees if he fails to do any of the following:
 - constitute an ICC under the POSH Act
 - take action upon the recommendation given by the ICC
 - include the number of cases filed, if any, and their disposal under the POSH Act in the annual report of the organisation
 - contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder

- If any employer, after having been previously convicted of an offence punishable under the POSH Act subsequently commits and is convicted of the same offence, he shall be liable to:
 - twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence
 - cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity

About the Author

Dr. Gitanjali Ghosh is an Associate Professor of Law at the Department of Law, Tezpur University. Previously, she has served as Assistant Professor of Law at NLUJA, Assam. She has completed doctoral and postgraduate degree in law from NLSIU, Bengaluru after obtaining undergraduate degree in law with a gold medal from NEHU, Shillong.

