



ADYPU Anti- Sexual Harassment policy

Adypu has adopted the norms and procedures as per the ICC constitution under the AEGIS both central and state government authorities.

Constitution of ICC under the POSH Act

Introduction

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted as a comprehensive legislation to provide a safe, secure and enabling environment, free from sexual harassment to every woman. This statute was enacted to fill the legislative void which had been partially addressed by the judiciary in *Vishaka and Others v. State of Rajasthan and Others* (1997 (7) SCC 323). In this seminal public interest litigation verdict, the Supreme Court of India had framed a set of guidelines ("Vishaka Guidelines") for dealing with instances of sexual harassment at the workplace, which has now been codified in the POSH Act.

Under the POSH Act, an ADYPU is legally required to comply with certain statutory requirements. One of these is the constitution of an Internal Complaints Committee ("ICC"), a body envisaged to receive complaints on sexual harassment at the workplace from an aggrieved woman, as well as to inquire into and make recommendations to the employer on the action required pursuant to its inquiry of such complaint made.

The following discussion highlights key aspects that must be borne in mind by an employer seeking to constitute an ICC in compliance with the POSH Act.

Requirement to Constitute ICC

Any establishment employing ten or more employees is required to constitute an ICC by an order in writing by the employer. However, this numerical threshold has not been explicitly stated amongst clauses of the POSH Act pertaining to the formation and working of the ICC. Rather, this has to be inferred from a harmonious reading of the statute, namely provisions directing the government to form a Local Complaints Committee at each district, which committee is tasked with discharging functions similar to an ICC in relation to organizations with less than ten employees, or otherwise where a complaint has been filed against an employer. This interpretation is further supported by official press releases and reading material issued by the Ministry of Women and Child Development, Government of India.

In this regard, it must be noted that the definition of employee under the POSH Act is broad, and encompasses persons employed on a temporary, *ad hoc* or daily wage basis, and includes apprentices, trainees, volunteers and persons employed at a workplace through an agent or contractor. The term employer has also been defined in the context of governmental organizations, private sector organizations and households. With regard to the private sector, an employer is understood to mean



any person responsible for the management, supervision and control of the workplace, with a further clarification that the person, board or committee responsible for formulation and administration of the policies of an organization would be included under the ambit of 'management'.

Employers should also note that the POSH Act does not specifically provide any timeframe for compliance upon its applicability is being attracted - for instance, a period of thirty days upon the threshold of ten employees being reached. Accordingly, an employer should take care to constitute an ICC simultaneously with such employee headcount being achieved.

With a view to track the implementation of such statutory requirement and to ensure that the issue is brought to the attention of the board of directors of companies, the Ministry of Women and Child Development made certain recommendations to the Ministry of Corporate Affairs with regard to corporate reporting requirements. Pursuant to such recommendations, the Ministry of Corporate Affairs notified the Companies (Accounts) Amendment Rules, 2018 ("**Companies Rules**"), issued under Section 134 of the Companies Act, 2013 in order to ensure safe workplaces for women in the private sector. With effect from July 31, 2018, the Companies Rules were amended to include the following mandatory disclosure in the board's report of every company:

"A statement that the Company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

Accordingly, as per the amended Companies Rules, the above statement (on the status of the company's compliance with the requirement to constitute an ICC under the POSH Act) is required to be included in the directors' responsibility statement, which forms a part of the company's annual report.

Constitution of ICC

The Department-related Parliamentary Standing Committee on Human Resources Development ("**Parliamentary Committee**") had analyzed the proposed anti-sexual harassment legislation at a bill stage and made several recommendations on the law after taking into consideration inputs from various stakeholders and the Ministry of Women and Child Development. An issue which was debated upon extensively by the Parliamentary Committee was whether the ICC should be in the nature of a permanent body, with some stakeholders being in favour of the flexibility offered by an *ad hoc* body, to be constituted on any inquiry being required to be conducted, and dissolved upon the completion of such inquiry process.

However, the Parliamentary Committee eventually concluded that by virtue of having a pre-existing panel in place, victims would find it easier to file a complaint and seek redressal of their grievances without having to wait for attendant procedural formalities involved in constituting a committee. Accordingly, the POSH Act requires an employer to mandatorily constitute an ICC upon meeting the threshold of employee headcount, and not await any instance of a complaint being received from any aggrieved party.

Another issue on which there was considerable deliberation was with regard to organizations situated in more than one location. As per the POSH Act, an employer having multiple offices or administrative units in various locations is required to constitute an ICC at all such offices or units. This requirement could be arduous to organizations with several branches, such as restaurants. Further, organizations



