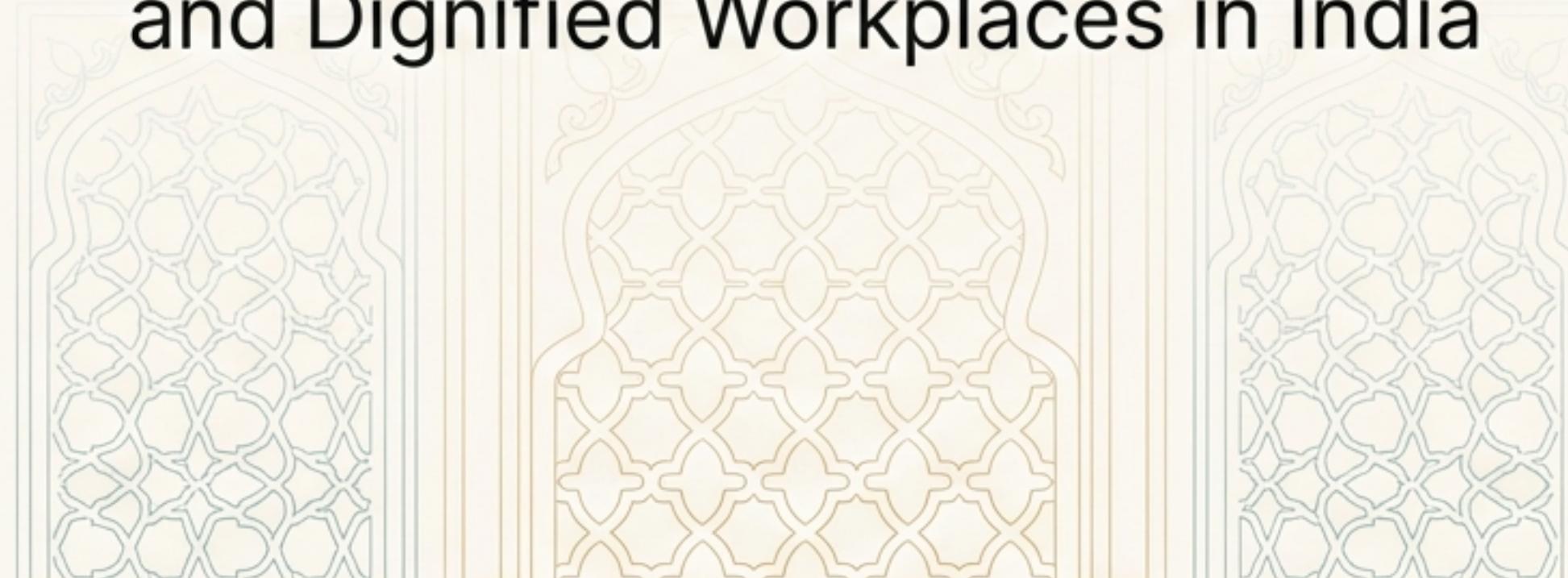


Deconstructing The POSH Act, 2013

A Comprehensive Framework for Safe
and Dignified Workplaces in India



The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

A Law Rooted in Fundamental Rights

The POSH Act is not a standalone policy but an enforcement of fundamental rights guaranteed to every woman by the Constitution of India.

- Article 14 & 15: Guarantee the Right to Equality.
- Article 21: Guarantees the Right to Life and to live with dignity.

The Act operationalises these rights, asserting that a safe workplace, free from sexual harassment, is a non-negotiable condition for a **life of dignity** and for practising any profession or trade.

International Context: It also fulfills India's obligations under international conventions, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which the Government of India ratified on 25 June 1993.

What Constitutes Sexual Harassment?

The Act defines sexual harassment as one or more unwelcome acts or behaviours, whether directly or by implication.

Unwelcome Acts or Behaviour (Direct or Implied)



(i) Physical contact and advances



(ii) A demand or request for sexual favours



(iii) Making sexually coloured remarks



(iv) Showing pornography



(v) Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature

Circumstances Amounting to Sexual Harassment (Section 3)

If connected to any of the acts above, the following may also constitute sexual harassment:



(i) Implied or explicit promise of preferential treatment in employment.



(ii) Implied or explicit threat of detrimental treatment in employment.



(iii) Implied or explicit threat about her present or future employment status.



(iv) Interference with her work or creating an intimidating, offensive, or hostile work environment.



(v) Humiliating treatment likely to affect her health or safety.

The Act's Jurisdiction Extends to Any 'Workplace'

The definition of 'workplace' under Section 2(o) is deliberately broad to ensure comprehensive coverage. It includes:



Identifying the Key Stakeholders

The Act defines the roles and rights of every individual involved in the process.

Aggrieved Woman (Section 2a)



- 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.
- In relation to a dwelling place or house, a woman of any age employed in such a household.

Respondent (Section 2m)



- The person against whom the aggrieved woman has made a complaint under Section 9.

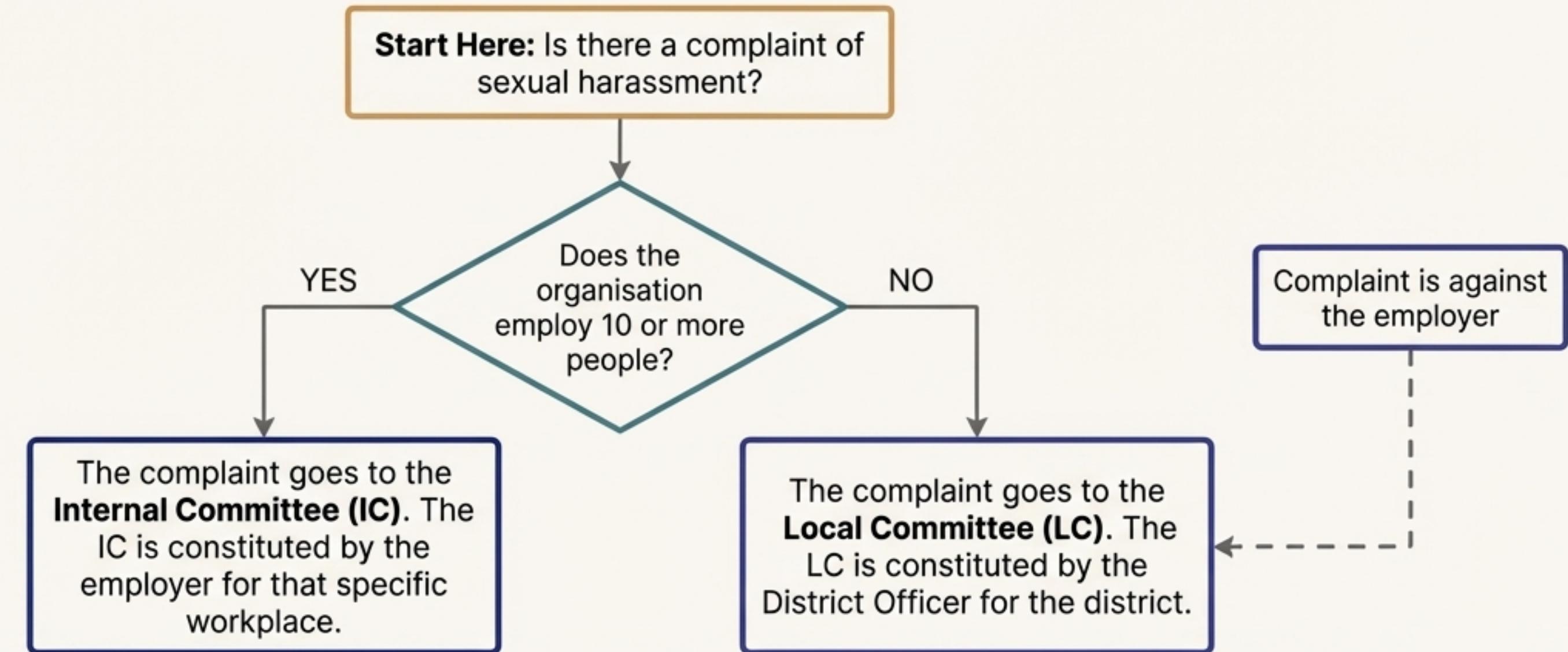
Employer (Section 2g)



- In government or local bodies, the head of the department/organisation or a specified officer.
- In any other workplace, the person responsible for the management, supervision, and control of the workplace. This includes the person or board responsible for policy formulation.
- In a dwelling place, the person who employs or benefits from the employment of a domestic worker.

The Two-Pillar Redressal System

The Act establishes two distinct committees to handle complaints, ensuring no workplace is left without a redressal mechanism.



Every employer with 10 or more employees is legally mandated to constitute an Internal Committee. For all other cases, including the unorganised sector, the Local Committee provides the necessary redressal channel.

Anatomy of the Internal Committee (IC)

As per Section 4, every IC must be constituted by the employer with the following members, each serving a term not exceeding three years:



A Presiding Officer

A woman employed at a senior level at the workplace.



At least two Members

From amongst employees, preferably committed to the cause of women or having experience in social work or legal knowledge.



One External Member

From among non-governmental organisations or associations committed to the cause of women or a person familiar with issues relating to sexual harassment.

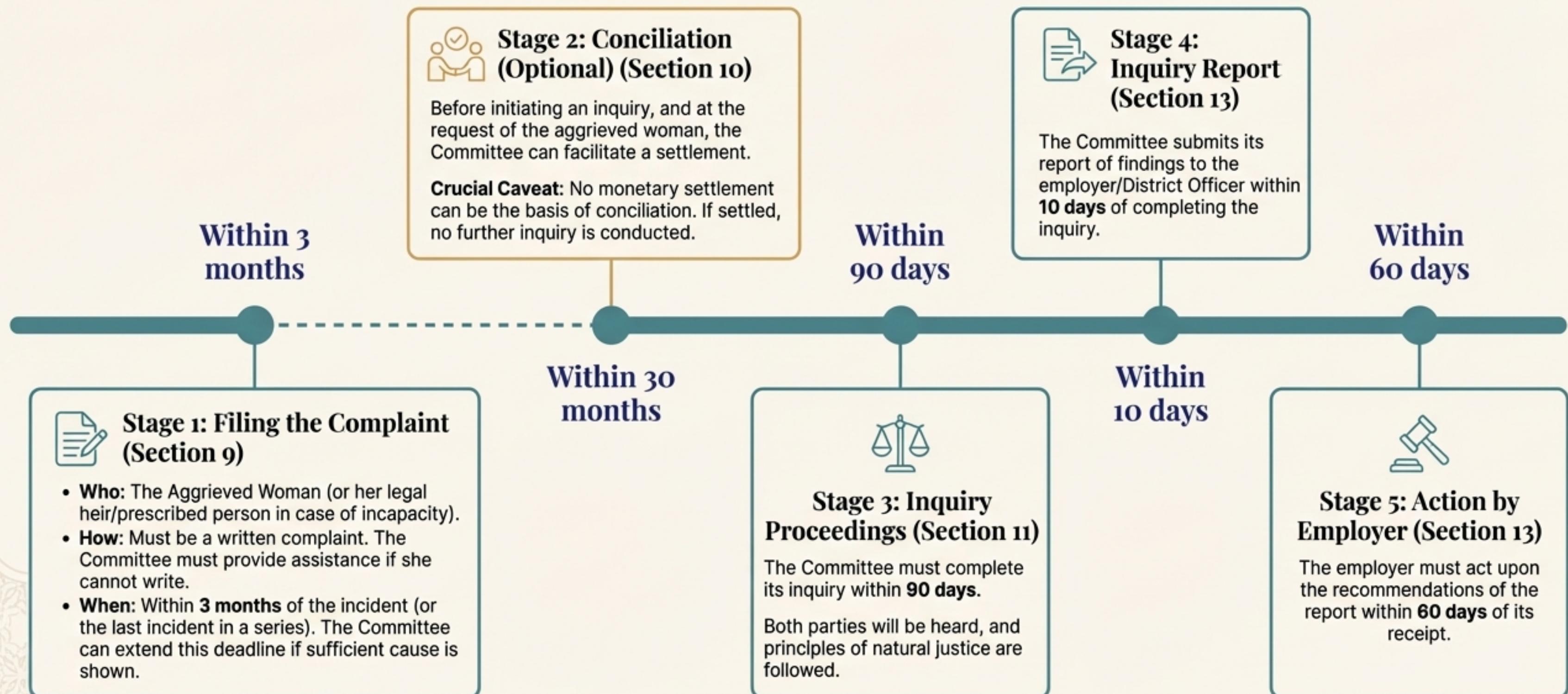


Mandatory Requirements

- At least one-half of the total members must be women.
- The external member is entitled to fees or allowances for holding proceedings, as prescribed by the employer.

Grounds for Removal (Section 4(5)): A member can be removed if they contravene confidentiality provisions, are convicted of an offence, are found guilty in disciplinary proceedings, or abuse their position.

The Complaint and Inquiry Journey: A Timeline



Powers of the Committee and Interim Relief

During the 90-day inquiry period, the Committee is empowered to conduct a thorough and fair investigation and recommend immediate relief measures.



Powers of the Committee (Section 11)

For the purpose of making an inquiry, the IC or LC has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, specifically regarding:

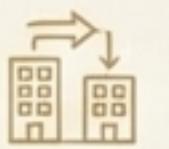


- Summoning and enforcing the attendance of any person and examining him on oath.
- Requiring the discovery and production of documents.
- Any other matter which may be prescribed.



Interim Relief for the Aggrieved Woman (Section 12)

During the pendency of the inquiry, on a written request from the complainant, the Committee can recommend that the employer:



- Transfer the aggrieved woman or the respondent to any other workplace.
- Grant leave to the aggrieved woman for a period of up to three months (in addition to her regular leave entitlement).
- Grant such other relief as may be prescribed.



Inquiry Outcomes and Determination of Compensation

Based on its findings, the Committee makes specific recommendations to the employer, which are binding.



Factors for Determining Compensation (Section 15)

The Committee shall have regard to the following when recommending a sum for compensation:

- The mental trauma, pain, suffering, and emotional distress caused.
- The loss in career opportunity due to the incident.
- Medical expenses incurred for physical or psychiatric treatment.

- The income and financial status of the respondent.
- The feasibility of such payment in lump sum or in instalments.

Safeguards of the Act: Confidentiality and Accountability

The Act incorporates strong provisions to prevent misuse and to protect the privacy and reputation of all parties involved.

Penalty for False or Malicious Complaint (Section 14)



- If the Committee finds that a complaint was made with malicious intent, or that the complainant knowingly produced forged or misleading documents, it may recommend action against the complainant as per applicable service rules.

****Important Proviso:** A mere inability to substantiate a complaint or provide adequate proof does **not** attract action under this section. Malicious intent must be established through a separate inquiry.



Prohibition of Publication (Section 16)



- The identities and addresses of the aggrieved woman, respondent, and witnesses, as well as information pertaining to the inquiry and recommendations, **shall not be published, communicated, or made known to the public, press, or media in any manner.**
- Violation of this provision is subject to a penalty as per service rules.



The Employer's Mandate: Proactive Duties for a Safe Workplace

Section 19 of the Act outlines several duties for every employer, aimed at prevention and effective redressal.



Provide a Safe Working Environment

Includes safety from persons coming into contact at the workplace.



Display Penal Consequences

Conspicuously display the consequences of sexual harassment and the order constituting the Internal Committee.



Organise Awareness Programmes

Conduct regular workshops and awareness sessions for all employees and orientation programmes for IC members.



Provide Necessary Facilities

Ensure the IC/LC has the support needed to conduct inquiries.



Assist in Securing Attendance

Help ensure the respondent and witnesses attend before the Committee.



Provide Assistance

Assist the woman if she chooses to file a police complaint under the Indian Penal Code or any other law.



Treat as Misconduct

Treat sexual harassment as a misconduct under service rules and initiate action.



Monitor Reports

Monitor the timely submission of reports by the IC.

Ensuring Systemic Accountability: Reporting and Monitoring

The Act establishes a clear chain of reporting to ensure its implementation is monitored at the district and state levels.

Annual Reporting (Section 21 & 22)

IC/LC

The Committee must prepare an annual report and submit it to the employer and the District Officer. This report includes the number of cases filed and disposed of.



Employer

The employer must include the number of cases filed and disposed of in their organisation's annual report. If no such report is prepared, this information must be intimated to the District Officer.



District Officer

Consolidates the reports and forwards a brief report to the State Government.

Duties of the District Officer (Section 20)



- Monitor the timely submission of reports by the Local Committee.



- Take measures to engage NGOs for creating awareness on sexual harassment and the rights of women.

The Cost of Non-Compliance: Penalties for the Employer

Section 26 specifies clear penalties for employers who fail to comply with the provisions of the Act.

An employer can be penalised for:

- * Failure to constitute an Internal Committee as per Section 4.
- * Failure to take action on the recommendations of the Committee under Section 86.
- * Failure to take action on the recommendations of the Committee under Section 13 & 14.
- * Contravening or attempting to contravene other provisions of the Act or its rules.

First Offence

₹50,000

A fine which may extend to ₹50,000.

Subsequent Offence

TWICE THE PUNISHMENT

Liable to **twice the punishment** that might have been imposed on a first conviction.

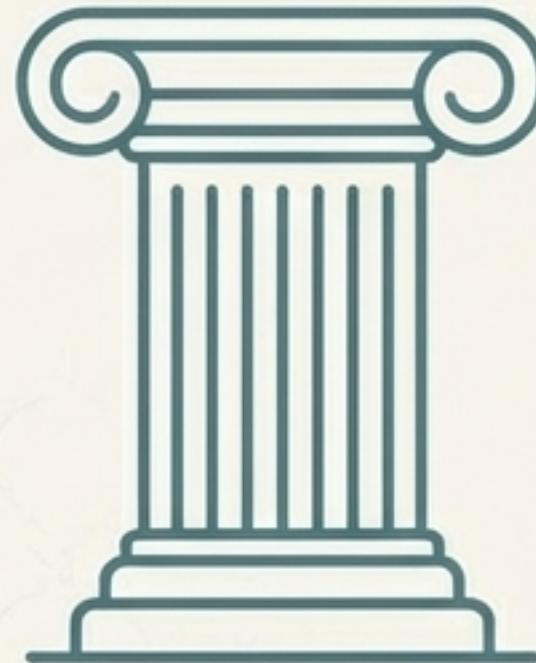


Cancellation or non-renewal of their license or registration required for carrying on their business or activity.

More Than a Law: A Commitment to a Culture of Respect

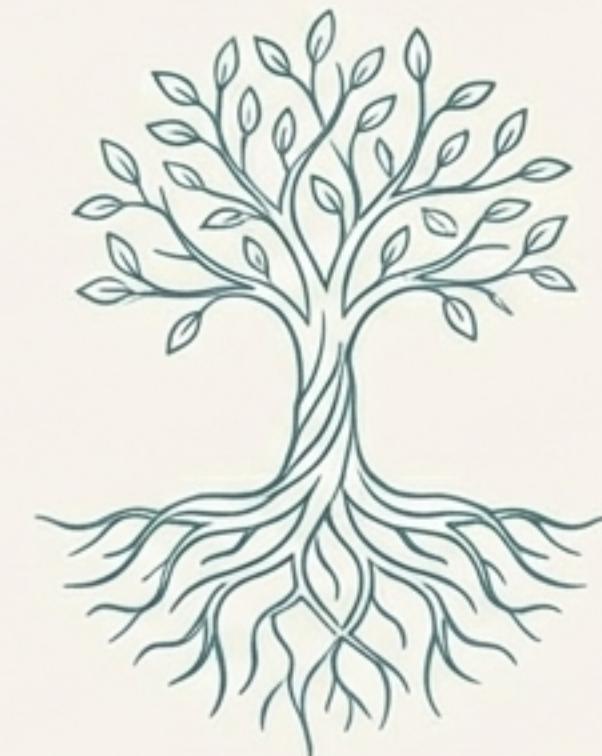
The POSH Act, 2013, provides a robust legal framework for redressal, but its ultimate objective is prevention.

The Legal Framework



- Clear definitions
- Mandatory redressal committees (IC/LC)
- Time-bound inquiry process
- Strict penalties for non-compliance

The Cultural Imperative



- Fostering a zero-tolerance environment
- Building employee trust and psychological safety
- Upholding dignity and equality as core organisational values
- Ensuring every employee has the right to a safe and respectful workplace.

Effective implementation moves beyond compliance to create a workplace where all individuals are empowered, respected, and secure.