

Safeguards for Internal Complaints Committee (ICC) Members

February 18, 2021

Sexual harassment at workplace is an extremely distressing issue that degrades the quality of an organisation, makes it unsafe, reduces an employee's will to work and outrightly disrespects the fundamental rights of the workmen. The PIL filed by advocate Abha Singh and social worker Janaki Chaudhary sought that members of the internal complaints committees (ICC) should be declared as public servants and they should have stability of tenure.

In news: PIL plea in Bombay HC seeks safeguards for ICC members

Placing it in syllabus: Society
Dimensions

- What is an internal complaints committee?
- Composition
- Appointment
- Powers and Functions
- Problems
- How will the petition help, if accepted?

Content:

What is an internal complaints committee?

- Internal Complaints Committee (ICC) is a mandatory committee which every employer is required to constitute within his organization.
- ICC is set up under the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also known as Prevention of Sexual

Harrassement Act (POSH)

- As per the POSH Act, an employer having 10 workers or more is required to set up an Internal Complaints Committee for the redressal of 'sexual harassment' complaints at such entity and to regulate and administer complaints on sexual harassment.
- An Internal Complaints Committee is required to be constituted which shall submit an annual report to its employer and District Officer.

POSH ActThe Sexual Harassment of Women under the Workplace (Prevention, Prohibition and Redressal) Act (hereinafter referred to as "Act") was enacted in the year 2013 with threefold purposes:

- Providing protection to women against sexual harassment at the workplace,
- To prevent sexual harassment
- To provide a redressal mechanism for complaints relating to sexual harassment at the workplace

The Act was enacted after the decision of the Supreme Court in the case of **Vishaka and Others v. State of Rajasthan** (1997).

The honorable court laid down guidelines relating to sexual harassment of women at the workplace, known as "**Vishakha Guidelines**". The guidelines were in force until the enactment of the legislation.

As per the Act, Sexual Harassment includes any of the following unwelcome behaviour, done either directly or through implication:

- Physical contact and advances.
- A demand or request for sexual favours.
- Making sexually coloured remarks.
- Showing pornography.
- Any other physical, verbal or non-verbal conduct of sexual nature.

Composition of ICC:

The Internal Complaints Committee must comprise of:

- **Presiding Officer:** The presiding officer must be a woman employed at a senior level in the organization or workplace to work according to the Internal Complaints Committee Policy.
- **Internal Members:** At least 2 Internal Complaints Committee members must be selected from among the employees who are committed to the cause of women or who have had experience of social work or have legal knowledge.
- **External Member:** The external member of the ICC has to be selected from non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

50% Women of the member should be women: It is mandatory that at least one half of the total members nominated to the ICC must be women.

Appointment of Members:

- In accordance with the Act, Internal Complaints Committee Policy is required to prevent instances of sexual harassment and also to receive and effectively deal with complaints related to such acts.
- Accordingly Internal Complaints Committee (IC) is to be constituted at all administrative units and offices of a company.
- Once the committee is appointed the details of the Internal Complaints Committee Policy is to be notified to all persons at the workplace.

Powers and Functions of ICC

- In case of the complaint against POSH, the ICC is solely responsible to investigate with non-biasness.

- ICC is sole authority to inquire the complaints and make efforts to redress the same
- The Internal Complaints Committee plays an important role in the functioning of the provisions of the POSH Act and to ensure the fulfillment of its objectives of the Internal Complaints Committee Policy.

Thus, the main functions of the Internal Complaints Committee are:

- Implementation of the Internal Complaints Committee Policy relating to the prevention of sexual harassment.
- Resolving complaints by the aggrieved based on the guidelines of the Internal Complaints Committee Policy.
- Recommending actions to be taken by the Employer.

Powers of ICC:

- As per Section 11(3) of POSH Act, the Internal Complaints Committee enjoys the powers same as that of a Civil Court.
- It is empowered to initiate an inquiry into a complaint of sexual harassment at workplace according to the Internal Complaints Committee Policy.
- IC has the power to summon witnesses and parties to give a statement before the committee.
- It enjoys the discretion of summoning evidence to be examined if it may be deemed necessary to do so by the members of the Committee.

As per the law, it is mandatory for every workplace to have an Internal Complaints Committee (ICC) that would critical role in **prevention, prohibition, and redressal of sexual harassment at the workplace.**

The ICC has a **responsibility** to establish an effective internal complaints procedure, where:

- Assurance that no victimization will result from making

a complaint

- The procedure is well documented, available and in accessible formats;
- Members who manage complaints are well trained
- Assistance is provided in the form of language interpreters as needed for parties to a complaint
- Ensuring the process is confidential, independent and based on principles of natural justice
- Ensuring the process has clear timelines
- All conflicts of interest are managed appropriately.

In pursuance of its mandate, the ICC:

- Receives complaints of sexual harassment at the workplace
- Initiates and conducts inquiry as per the company's procedure
- Submit findings and recommendations of all such inquiries
- Coordinates with the Employer in implementing appropriate action
- Maintains strict confidentiality throughout the process as per established guidelines of the Internal Complaints Committee Policy
- Submits annual reports in the prescribed format as prescribed

The Internal Complaints Committee is required to be vigilant to redress the sexual harassment complaints and resolve them expeditiously.

Problems with ICC:

The PIL pointed out that:

- Although the ICC has powers of a civil court, the members of such committees have not been provided with any safeguards like judges of a court.
- As most of the members of ICC are employees of the

organisation, the lack of safeguards hinders the working of ICC to act without fear and favour.

- The report of the Justice J.S.Verma Committee said that an anomalous situation has arisen where ICC members have been conferred with quasi-judicial powers without safeguards.
- This creates a highly unjust and iniquitous situation for ICC members as well as the parties to the case.
- This acts as a barrier to holistically address the issue of sexual harassment at workplace.

The PIL urged the court:

- to declare the service conditions of the ICC members protected by principles of natural justice
- ICC members should be declared as public servants and have the same protection of tenure.

How will the petition help, if accepted?

- Direction from the court to set up a commission could review the deficiencies of ICC holistically in terms of their rights and protection.
- It could prevent adverse action by employers against ICC members.
- If all companies are required to report to the National Commission for Women and their respective local complaints committee about any adverse action taken against any ICC members, They can work impartially
- Security of tenure will also empowers the ICC to act more impartially against the complaints of sexual harassment.

Mould your thought: Internal Complaints Committee members need safeguards to achieve a safer workplace for women.

Evaluate.***Approach to the answer:***

- Introduction
- Enumerate the purpose, functions and powers of ICC

- Discuss the current problems with ICC
- Mention how giving more safeguards improves the performance of ICC
- Conclusion