

## HR Law Hotline

July 24, 2018

### INDIA'S LAW ON WORKPLACE SEXUAL HARASSMENT: RECENT JUDICIAL INTERPRETATIONS

The law on prevention of sexual harassment of women at workplace is nearing its 5<sup>th</sup> anniversary. And during the period, courts in India have already started analyzing cases, interpreting the law and rendering their decisions.

In this legal alert, we have attempted to summarise some important judgements which we hope will provide additional guidance to inhouse counsels and HR practitioners who regularly deal with such matters.

#### BACKGROUND

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India ("POSH Act") was enacted in December 2013. For background on the law, please refer to our research publication on the law and the employer's obligations: [click here](#)

A direct outcome of this new law was increased awareness amongst the employee community. The media played a critical role in spreading that awareness and highlighting lack of compliances by employers. All of this led to creating a robust platform for the female workers to report harassment incidents. After enacting the law, the government on its part made it easier by launching SHe-Box initiative. Please refer to our legal alert on this subject: [click here](#)

#### 1. What constitutes 'sexual harassment'?

- The Delhi High Court held that there must be physical contact having an undertone of sexual nature to constitute 'sexual harassment' under the POSH Act. It opined that an altercation in the context of unwelcoming environment prevailing at the workplace is not a case of sexual harassment.<sup>1</sup>
- In another instance, the Kerala High Court held that the act or behavior must be connected with sexual harassment including allegations of promise, threat or an offensive or hostile work environment towards female employees. A solitary allegation of intemperate language against a female employee in a report does not constitute an offence under the POSH Act.<sup>2</sup>

#### 2. What is a workplace?

- The Delhi High Court upheld the decision of the employer to terminate the employment of the accused in line with the recommendations of the Internal Committee ("IC"), where the accused was alleged to have sexually harassed a female colleague during an outstation visit for work.<sup>3</sup>
- The Bombay High Court pointed out that the definition of 'workplace' is inclusive and deliberately kept wide by the Parliament to ensure that any area where women may be subjected to sexual harassment is not left unattended or unprovoked for.<sup>4</sup>

#### 3. Filing of a complaint with the IC:

- The Rajasthan High Court held that the aggrieved woman can file a complaint with the IC without having to submit the complaint in person. The complaint could be sent to the IC through another person or by any other media, the main point being that it should be received by the IC.<sup>5</sup>
- The Delhi High Court held that merely because the petitioner has an alternate remedy to file the given case before another forum, it would not act as a constitutional bar for the Court to adjudicate upon the matter. It also held that the findings of IC should not be ignored on vague and general grounds.<sup>6</sup>

#### 4. How can IC be constituted?

- The Delhi High Court has opined that the appointment of external member of the IC should be in strict compliance with the POSH Act and the rules thereunder. Accordingly, enquiry proceedings conducted by an IC that is not properly constituted as per the law, may be treated as invalid.<sup>7</sup>
- In another matter before the Rajasthan High Court, it was held that the external member need not necessarily have legal background or knowledge in the aspects of sexual harassment against women. Having experience in the social work is sufficient for being a valid member of the IC.<sup>8</sup>
- The Bombay High Court held that an IC which does not have at least two members (who are either dedicated to the cause of women or have experience in social work or have legal knowledge), would be illegal and contrary to the provisions of the POSH Act. In that judgement, the court also re-emphasized that it is employer's responsibility to constitute proper IC.<sup>9</sup>

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## 5. Powers of the IC:

- a. The Delhi High Court held that the IC could extend the time limit for filing a complaint by another 3 months, i.e. up to six months from the date the incident has taken place, by recording reasons in writing, if it is satisfied that circumstances prevented the complainant filing of complaint earlier.<sup>10</sup>
- b. In another case, it was clarified that the petitioner has the right to approach IC for immediate protection that may be required and that the IC is empowered to grant interim relief, if it deems fit.<sup>11</sup>
- c. The Delhi High Court has clarified that the IC is empowered to enforce the attendance of any person as per the provisions of the POSH Act.<sup>12</sup>
- d. The Bombay High Court held that where the inquiry has been conducted by the IC after giving adequate opportunity to all the parties and it has reached a conclusion, then merely because two views are possible, the court is not expected to re-appreciate the evidence and come to a different conclusion than the one which has been arrived at by the ICC.<sup>13</sup>

## 6. Conducting the inquiry proceedings:

- a. It was ruled that the inquiry proceedings should be fair and impartial. If there is any allegation of bias against any member of the IC, the inquiry proceedings should be stayed or put on hold until the disciplinary authority takes a decision. If the disciplinary authority believes that the allegation of bias is true, then it would invalidate the proceedings, a new committee would be formed and proceedings would need to start afresh.<sup>14</sup>
- b. The Madras High Court set territorial jurisdiction for conducting the inquiry proceedings - it ruled that the inquiry proceedings should be conducted within 500 kms of the place of the incident. In that case, the Hon'ble Judge opined that requiring the victim to travel more than 500 kms to attend the inquiry proceedings would itself constitute harassment!<sup>15</sup>
- c. It was held that the inquiry as per the POSH Act is not a preliminary inquiry but instead a full-fledged enquiry, which needs to be done in the same manner as is done to prove misconduct in disciplinary proceedings. The court mandated the IC to follow principles of natural justice and give fair opportunity to the respondent to defend himself.<sup>16</sup>
- d. The Delhi High Court pointed out that strict rules of evidence are not required to be followed in inquiry proceedings and that the IC can adopt its own procedure in conformity with the principles of natural justice and especially in a case of sexual harassment.<sup>17</sup>
- e. In another matter before Rajasthan High Court, it was observed that the POSH Act and the rules enable a three-member team to conduct the inquiry so long as the Presiding Officer is present. Therefore, the inquiry report does not stand vitiated unless it is shown that there were less than 3 members who conducted the inquiry.<sup>18</sup>

## 7. Employers' rights and territorial jurisdiction of the courts:

- a. The Patna High Court held that the disciplinary authority can dismiss an employee from the services once the sexual harassment charges are proven.<sup>19</sup>
- b. The Gauhati High Court held that the court which shall have the territorial jurisdiction to hear the matter of sexual harassment shall be the place where the act has occurred. Accordingly, if the harassment occurred in Kolkata while the parties were travelling for office work, the court in Kolkata shall have the jurisdiction even if the workplace of the offender is in Guwahati.<sup>20</sup>

## ANALYSIS

Since the POSH Act is still at a nascent stage, these cases help us clarify the position of law and better analyse the matters relating to sexual harassment at workplace. While several of these cases are specific to their unique backgrounds, they serve as an aid to the IC who are required to investigate complaints.

It is pertinent to note that the courts are recognizing and upholding the powers to the IC as provided by law.

Accordingly, employers and their ICs need to ensure that the proceedings are conducted in a fair manner and in compliance with the law and the principles of natural justice.

Sexual harassment allegations in the workplace not only run the risk of loss of employer's reputation but also lead to legal troubles. Needless to mention, sexual harassment at workplace continues to remain one of the most sensitive issues that needs to be dealt with immense care and sensitively. As opined by the Bombay High Court, employers need to genuinely be concerned with the safety of women at workplace rather than staging a farce of compliance under the POSH Act.<sup>21</sup>

— Archita Mohapatra, Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

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<sup>1</sup> Shanta Kumar v. Council of Scientific and Industrial Research (CDIR) & Ors, Delhi High Court ((2018) 156 FLR 719)

<sup>2</sup> K.P. Anil Rajagopal v. State of Kerala, Kerala High Court ((2018) 1 KLJ 106)

<sup>3</sup> Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors. (2015 SCC OnLine Del 11026)

<sup>4</sup> Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University (2014 SCC OnLine Bom 814)

<sup>5</sup> Shital Prasad Sharma v. State of Rajasthan and Ors. (2018 SCC OnLine Raj 1676)

<sup>6</sup> Sarita Verma v. New Delhi Municipal Corporation & Ors, (2016 LLR 785 (2))

<sup>7</sup> Ruchika Singh Chhabra v. Air France India and Anr. (2018 SCC Online Del 9340)

<sup>8</sup> Shital Prasad Sharma v. State of Rajasthan and Ors. (2018 SCC OnLine Raj 1676)

<sup>9</sup> Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University, Bombay High Court (2014 SCC OnLine Bom 814)

<sup>10</sup> Tejinder Kaur v. UOI (2017 SCC Online Del. 12221)

<sup>11</sup> Confidential v. Indian Institute of Corporate Affairs (2018 SCC Online Del 6801)

<sup>12</sup> Ashok Kumar Singh v. University of Delhi and Ors (2017 LLR 1014)

<sup>13</sup> Vidya Akhave v. Union of India, Department of Women & Children & Ors (2017 LLR 357)

<sup>14</sup> Tejinder Kaur v. UOI, Delhi High Court, (2017 SCC Online DeL 12221)

- <sup>15</sup> K.Hema Latha v. State of Tamil Nadu, Madras High Court, (MANU/TN/1414/2018)
- <sup>16</sup> Sibbu v. Air India Limited, ((2016) 2 KLJ 434)
- <sup>17</sup> Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors. (2015 SCC OnLine Del 11026)
- <sup>18</sup> Shital Prasad Sharma v. State of Rajasthan and Ors. (2018 SCC OnLine Raj 1676)
- <sup>19</sup> Mohan Kumar Singh v. Chief Manager (HRD) Central Bank of India, (2017 SCC OnLine Pat 2483)
- <sup>20</sup> Biplab Kumar Das v. IDBI Bank Ltd and Others, (2017 LLR 1148)
- <sup>21</sup> Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University (2014 SCC OnLine Bom 814)
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