

IN BRIEF – NUANCES OF THE POSH ACT



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The issues of sexual harassment that women faced at the workplace and the vacuum that existed in the legislations at that point in time, led the Supreme Court¹ to lay down specific guidelines for the protection of women at the workplace. This landmark judgement subsequently resulted in the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which marked the advent of a more organised and regulated manner of dealing with complaints of sexual harassment against women at the workplace.

The Act and the Rules, albeit *inter alia* laying down the process and procedure based on which sexual harassment matters have to be dealt with, only provides a broad structural framework to be adopted. This is for the reason that the law will not be able to anticipate every situation that may arise and it is expected that the entity dealing with a complaint of sexual harassment complies with the law, keeping in mind the purpose and intent of the same. Any person, therefore, dealing with the Act, would have to harmoniously interpret the same and apply it to each unique situation, while ensuring to not go beyond the scope of what is already laid down.

A few unique situations that have presented themselves, which did require some interpretation of the applicability of the Act, are as below:

- (i) **Can a complaint of sexual harassment be made by an aggrieved woman, against another woman?**

One would ordinarily tend to believe that a complaint of sexual harassment would be made by a woman against a man, and not usually by a woman against another woman. If, however, the Act is read closely, it will be observed that while an ‘aggrieved woman’ is defined to be a ‘woman’ who makes the complaint, the term ‘respondent’ is defined in such a manner, whereby a respondent is a ‘person’ against whom an aggrieved woman makes a complaint. The definition does not use the term ‘man/ male’.

In fact, the Calcutta High Court², while dealing with such a situation, *inter alia* examined the definitions of who a ‘respondent’ would be under the Act and what acts would constitute ‘sexual harassment’. The Court observed that sexual harassment must not be a static concept but must be interpreted against the backdrop of social perspective and further stated that nothing contemplated within the Act indicates that a person of the same gender cannot hurt the modesty or dignity, as envisaged under the Act.

Therefore, it does appear that a complaint of sexual harassment could be made against another woman, while the complainant should always be a woman who has been aggrieved.

- (ii) **Do group companies generally functioning under the same management, conducting its business from a single building, require separate Internal Committees?**

A common question that gets asked is whether group companies who generally function under the same management and from the same premises require separate Internal Committees. In this case, it must be noted that the Act applies to every entity individually and independently, and every such entity will have to comply with the requirements under the Act.

Therefore, group companies, being separate legal entities, though working from the same premises or generally under the same management, will have to constitute separate Internal Committees and independently comply with the provisions of the Act.

- (iii) **If the complainant (aggrieved woman) and the respondent belong to separate legal entities, which Internal Committee should deal with the complaint?**

The Act and Rules do not specifically provide for such a situation but keeping in mind the intent and purpose of the Act, should a third Internal Committee, with members of the Internal Committees of both the complainant and the respondent be created or should one undertake the proceedings jointly with representatives of both Committees present or should the Committee of the respondent undertake the proceedings entirely?

¹ *Vishaka and Others v. State of Rajasthan and Others*, (1997) 6 SCC 241

² *Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors.*, 2020 SCC OnLine Cal 3262

It is found that the first and third options are difficult to implement, being fraught with possible legal complications. In the first option, if there is a third committee, ambiguities would arise regarding which organization that committee should belong to and who would be responsible for that committee. Insofar as the third option, while it may work in case the respondent is found guilty of the allegation, what if the complaint is a false or malicious one – is the legal entity of the complainant bound to implement the recommendations of the Internal Committee constituted by another legal entity?

The second option often appears to be the possible solution, where representatives of both Committees conduct the process jointly.

(iv) **Whether the definition of a ‘workplace’ under the Act could be extended to places outside the physical workplace?**

The definition of ‘workplace’ under the Act is an inclusive definition, meaning that while the Act recognises certain specific places to be workplaces, it also provides for the term to be interpreted broadly.

The question that very often gets asked is, if an act happens outside the physical brick and mortar premises of the employees, does the employer have a responsibility in relation to the matter? Again, and as stated above, the Act is a structural framework with the definition of the term workplace being an inclusive one. Therefore, a workplace of an employee cannot always be strictly interpreted to be limited to the physical workplace but can also, based on the circumstances, extend to places such as corporate dinners, off-site visits, etc., where individuals of the organisation are present in their capacity as employees.

These are some of the questions that are raised on the scope and applicability of the Act and the Rules. As a general rule of thumb in the case of the Act and the Rules, while the scope of the Act should not be exceeded, the interpretation and applicability of the same should also be based on the intention and purpose of the Act, i.e., to protect women employees against sexual harassment in the workplace.

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