

POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

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POSH LIVE brings to you updates and information relating to matters of sexual harassment irrespective of the gender and age. This is an effort to create awareness about laws relating to sexual harassment and any form of discrimination.

POSH JUDGEMENTS IN 2021 – AN OVERVIEW!

At the onset of new year 2022, we would like to reflect on how POSH cases were dealt with in the courts during last year. In an attempt to bring to you a gist of what different courts had to say during the passing year, we present a brief summary of various cases appeared in Courts and their judgements.

Before we go ahead and look at the judgements, let us discuss why should we study them.

Judgements are interpretations of law. They help us understand the application of statute in a better way. Judicial precedents where Precedent is a principle declared in previous legal case, act as a source of law. Such judicial precedents are followed by courts. Similarly, they can be very useful in solving cases with similar facts, they can act as guidelines, and form support system while dealing with tricky situations.

As a member of Internal Committee, it is important to know how such precedents can be used effectively. Aiming this, we make this effort of analysing POSH judgements of last year.

2021 created a buzz with its judgements in POSH law! While several of them discussed and enlightened us on various concepts in the law, some talked about inquiry procedure in detail, some correctly pointed out the lacunae in the procedure!

MJ Akbar Vs. Priya Ramani (Avenue District Court, New Delhi), the judgement was empowering and comprehensive as it touched upon every fundamental right available with women in context of living with dignity and raising their voice against any form of sexual abuse. It also took into consideration the social stigma related to the topic and set an example how sensitively the cases of sexual harassment be heard.

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Disclaimer

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GOOD TO KNOW!

POSH Compliance Checklist for the year 2022!

Let us begin this year with a ready checklist of POSH Compliances and good practices that organizations can take up. The below mentioned list will give you an insight to compliance and good practices that you already follow and that can be taken up as new initiatives.

Compliance List -

1. Formulation/Periodic revision of POSH Policy
2. Constitution of Internal Committee
3. Appointment of External member on IC
4. POSH Awareness training for employees
5. Capacity building training for IC
6. Annual Return at the end of the calendar year
7. Display of extract of the POSH law and policy on the notice board/intranet
8. Display of names and contact details of IC members on the notice board/intranet
9. Circulate Policy and list of IC members through email periodically to employees working from home
10. Carry out periodic 'safety of women at workplace' audits

Good Practices –

1. Skill building workshops for IC members
2. Gender sensitivity trainings for employees
3. POSH Training Assessment Surveys

It would be appropriate to quote the statement from the judgement while discussing it, viz., *“The woman cannot be punished for raising voice against the sex-abuse on the pretext of criminal complaint of defamation as the right of reputation cannot be protected at the cost of the right of life and dignity of woman as guaranteed in Indian Constitution under article 21 and right of equality before law and equal protection of law as guaranteed under article 14 of the Constitution. The woman has a right to put her grievance at any platform of her choice and even after decades.”*

The Priya Ramani judgement further stated that, *“The Indian women are capable, pave the way for them to excel, they only require the freedom and equality. The ‘glass ceiling’ will not prevent the Indian women as a road block for their advancement in the society, if equal opportunity and social protection be given to them.”*

In another case, **Nagaram Balakrishna Vs. State of Andhra Pradesh (Andhra Pradesh High Court, Amravati)**, the honourable judge illuminated the aspects of who can file a sexual harassment complaint and how an inquiry can suffer from severe illegality if the complaint is filed by an incompetent person.

Though **State (Through CID CB North Goa) Vs Tarun Tejpal judgement (District and Sessions Court, Panaji)**, was heard as a criminal case yet we still need to take the cognizance as the alleged crime had taken place at the workplace. This judgement questioned woman’s conduct stating that the victim did not exhibit any behaviour displaying trauma and shock which a victim of sexual assault might possibly show. It raised concerns on the tone and reasoning given by the learned judge.

Later, the judgement in case of **‘P Vs A and others’ (Bombay High Court)** was held in the interest of protecting parties against disclosure of their identities. It further laid down guidelines so as to how should the proceedings and court hearings under POSH law be conducted. It talked about protecting the identities of parties involved and suggested guidelines on hearing cases, release of orders for public perusal, it set filing protocols, guidelines to access details, public access and media disclosure.

Let us now have a look at different judgements and what they have to add to our understanding of law.

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Sr. No	Names of parties	Court	Point of discussion	Interpretation of judgement
1	Anant Prasad Vs. The Guwahati High Court	The Guwahati High Court	Criteria for suspension order against respondent before completion of inquiry procedure	The court stated if the disciplinary authority has no reasons/records to believe that the presence of respondent at work would adversely affect the proceeding, suspension would be deemed inappropriate
2	Anshuman Kar Vs. State of west Bengal and Others	The High Court of Calcutta	Can IC suo moto conduct inquiry without a formal complaint?	IC cannot conduct a suo moto trial without a formal written complaint. The judgement also talks about timeline by which the complaint should be made and accepted. Any delay in filing the complaint is not acceptable.
3	Dr. Arabi Vs. The Registrar	Karnataka High Court	Can a dismissal order be passed before completion of inquiry?	The Dismissal order cannot be passed before completion of inquiry. The order sets aside the dismissal order of petitioner as such order can't be passed without an inquiry.
4	Dr. Duraisamay Baskaran Vs. Chairman Md, M/S Gailindia LTD.	High Court of Telangana - Hyderabad	Importance of inquiry procedure	IC should not recommend action on Sexual Harassment Complaint merely based on preliminary investigation but an in depth inquiry is required as prescribed under the law
5	Havildar Sunil Kumar Vs. The State of Jharkhand	High Court of Jharkhand	Courts need not interfere in IC's functioning	The order pinpoints the fact that the courts should not substitute their discretion for the authority of IC. The judgement states that Judicial review is directed not against the decision, but is confined to examination of decision-making process. The Court has set clear boundaries in role of IC and role of Courts while discussing recommendations by IC
6	MJ Akbar Vs. Priya Ramani	Avenue District Court, New Delhi	Defamation case against Complaint made as a part of #metoo movement	Women can raise their voice against sexual abuse/harassment even after decades. This right to voice against sexual harassment should not be taken away under the pretext of defamation
7	N. Sanakara Rao Vs. Andhra Pradesh Power	Andhra Pradesh High Court - Amravati	Interim relief in the form of transfer of respondent	Interim order such as transfer is not a punishment but an administrative ground to keep the respondent away to avoid interference in life and liberty of complainant. Hence such order can be made

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8	Nagaram Balakrishna Vs. State of Andhra Pradesh	Andhra Pradesh High Court - Amravati	Definition of sexual harassment, who can file a complaint	While discussing definition of Sexual Harassment, it was highlighted that 'Objectionable material surfing as a part of duty cannot be called as sexual harassment.' On who can file a complaint - If the incompetent person registers the complaint, the same is contrary to the provisions of law and suffers from serious illegality. D
9	Mary Rajasekaran vs. University of Madras and Ors	Madras High Court	Definition of sexual harassment and IC to investigate on the basis of evidences	Misunderstandings and personal feud etc cannot be called as sexual harassment at workplace. It also highlighted the role of IC stating that investigating case cannot be merely based on submission of complaint. It must be done after proper discovery of facts, on evidence and records
10	Neeraj Bala vs. Union of India & Ors	Delhi High Court	Security of tenure of Presiding officer against the transfer order	Presiding officer or IC Members being member of quasi-judicial authority, there should be security of tenure. Considering this, the order of transfer which is in question was set aside.
11	Poonam Vijay Thakkar vs Aditya Birla Capital Shared Services Limited & Ors	Bombay High Court	Can any employee file an appeal for non-compliance of POSH in the company?	Aggrieved woman can file an appeal for non-compliance of POSH in the company
12	P vs A and others	Bombay High Court	Guidelines on hearing POSH cases	Provides guidelines and discusses aspects like anonymizing orders, sets filing protocols, guidelines to access details, public access and media disclosure.

Although there have been many other cases under POSH, we have consolidated the significant ones which add value to our understanding and interpretation of the law.

While concluding this overview, it would be apt to share statement from one of the judgements by honourable judge in Aparna Bhat Vs The State of Madhya Pradesh, which is, *"in a legal system where judgments of courts set precedents, and in particular within a common law system, judgments have significance beyond their authoritative resolution of a specific dispute—particularly in the Supreme Court. Thus, the judge is not only communicating to the parties their rights and liabilities in the context of the specific dispute being litigated; the judge is also addressing the broader legal community—other lawyers, judges, legal academics, law students—and indeed the public at large."*

NEWS CORNER – "Right to work in a peaceful atmosphere is a basic right" states Madras High Court

Madras High Court in one of the significant cases, highlighted that administrative lapse in handling sexual harassment complaints can't be entertained. The Court outlined the responsibility of administration in disposing off complaints expeditiously as possible. The case had allegations of sexual harassment against an officer of Bhabha Atomic Research Centre.

ABOUT THE AUTHORS

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Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services

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