

POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

By Vaishali Bhagwat, Adv

www.vaishalibhagwat.com

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.

Supreme Court Guidelines on Effective Implementation of POSH Law (Ref. to Initiatives For Inclusion Foundation and ANR Vs Union of India and others (Writ Petition (Civil) No. 1224 of 2017))

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; came into existence on 9th December, 2013 with an objective to lay down provisions that will ensure prevention, prohibition and redressal of sexual harassment of women at workplace. It's a decade for this law to have come into force and indeed no better time to look at what has been achieved and what remains.

Earlier this year, in **Aureliano Fernandes Vs. State of Goa and others (Civil Appeal No. 2482 of 2014)** Supreme Court had provided directions for effective implementation of law. This Judgement also mentioned that, "However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the State and non-State actors." The several guidelines provided by the Honourable Court in this Judgement have also been re-iterated in the recent judgement of Supreme Court passed on 19th October, 2023; in '**Initiatives For Inclusion Foundation and ANR Vs Union of India and others (Writ Petition (Civil) No. 1224 of 2017)**'. Further to it, It gives us detailed directions addressing the lacunae in implementation and thus guiding with further actions. In this article, we will thoroughly understand about the **Role of District Officer** along with different lacunae highlighted in this Judgement and also look at what are the directions Apex Court has provided to fill in these gaps and embark towards better implementation.

Chapter VII, Section 20 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (also known as POSH ACT, 2013) provides Duties and Powers of District Officer where District Officer shall –

- (a) Monitor the timely submission of reports furnished by the Local Committee;
- (b) Take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and rights of the women

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Commissioner of Women and Child Development Department, Pune; appointed as State Nodal Officer

Disclaimer

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GOOD TO KNOW!

Commissioner of Women and Child Development Department Pune – appointed as State Nodal Officer for Maharashtra State

Maharashtra State Government wide notification dated 23rd November, 2023 has suggested as below –

1. Commissioner, Women and Child Development, Pune should be declared as State Nodal Officer. State Nodal Officer should carry out responsibility as Co-ordinating Officer along with Central Government.
2. It will also be necessary for the State Nodal Officer to collate the data and send the data and information to the State Government in order to send such data and information to the Central Government from time to time.
3. Commissioner, Women and Child Development Department should organize periodical and regular training programs for District Officers and Local Committee's as per Section 24 (b) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
4. Commissioner, Women and Child Development Department should make necessary fund arrangements by requesting funds from the appropriate government.
5. Commissioner, Women and Child Development Department Pune should prepare Standard Operating Procedure for monitoring the implementation under section 23

As per **Section 5 of the POSH Act, 2013**; the appropriate government may notify District Magistrate or Additional District Magistrate or Collector or Deputy Collector as District Officer for every District to exercise powers or discharge functions under this Act. Further, **District Officer under Section 6 shall constitute a committee known to be as "Local Complaints Committee"** to receive complaints from establishments where Internal Committee has not been constituted due to having less than 10 number of employees or if the complaint is against the employer.

It is thus clear that District Officer is the most important functionary in the system responsible for keeping the redressal and monitoring framework intact and smoothly running. For situations where people are not aware of the Local Committee and there is no information available as to who is the District Officer, the entire system falls flat.

The recent Judgement by Supreme Court while hearing for '**Initiatives For Inclusion Foundation and ANR Vs Union of India and others (Writ Petition (Civil) No. 1224 of 2017)**' points out at this lacuna and gives with detailed analysis for better implementation of the law. *"The affidavit filed by the petitioner highlights many lacunae and lack of uniformity in the implementation of the POSH Act, by various state governments. District Officers were in most states notified after notice of this writ petition was served on them, and even among those states that have taken action – they have simply notified a specific post as District Officer, without providing any specific details of the officers, their contact information, etc. Most states have failed to provide documentation on constitution of LCs, and even those who have, many have not constituted one in each district."* Stated Supreme Court in its Judgement.

Section 6 (2) of the POSH Act, 2013 states that District Officer shall designate one **Nodal Officer** in every block, taluka and tehsil in rural or tribal area and ward or municipality in urban area; to receive complaints and forward the same to the concerned Local Committee within period of seven days.

The court observed that only a handful of states had provided any details of Nodal Officers and that too which are specific posts notified and not the individuals as contemplated under section 6 of the act.

The Judgement largely discusses below mentioned gaps in effective implementation –

A) Appointment of District Officers and Nodal Officers

"The failure to notify district officers specifically, has a snowballing effect on appointment of the LCs and nodal officers, in addition to other aspects. The complaint mechanism, and larger framework - no matter how effective, remain inadequate if the authorities set out in the Act, are not duly appointed/notified." Therefore, it is advised that appropriate government should at all times ensure that every district, has a notified District Officer; to enable smooth transition between officers, and ensure that there is always someone in charge of this position and sensitise these district officers, with regards to the provisions of the Act and Rules, with an emphasis on their roles and obligations. Similarly, sensitization must be conducted for the nodal officers appointed and LCs constituted by each district officer.

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B) Local Committees

The inclusion of definitions of “domestic worker” and “unorganised sector” has widened the scope of the application of the law. An aggrieved domestic worker can file the complaint to the Local Committee. **Spreading the awareness of the Local Committee’s is inevitable and should form highest priority of the State, as suggested in this judgement.** It further stated, “Operationalizing LCs and ensuring their effectiveness, remains the key to making these remedies accessible to the unorganized sector.”

C) Appropriate Government to take steps to publicise the Act

Section 24 of the Act states, the appropriate government may, subject to the availability of financial and other resources –

1. Develop relevant information, education, communication and training materials and organize awareness programmes to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of women at workplace
2. formulate orientation and training programmes for the members of the Local Committee

With regards to this, the judgement highlights the **requirement of setting the budget for the implementation of this Act at each district level and state level to ascertain disbursement of grants from Union Government.**

D) Appropriate Government to maintain data

“The court stated that Central Government or State Government as the case may be, in the interest of transparency and good governance may consider to make these statistics public– the access to which, would certainly have a positive impact on various stakeholders. This in turn will also strengthen the monitoring of the implementation of this Act.”

Considering these aspects, the Apex Court has provided directions as given further –

A) Coordination between Union Government and State Governments

- i) The Women and Child development ministry should consider identifying nodal officer who will be responsible for overseeing and aiding the implementation of law and coordinate with Union Government on related matters
- ii) Each State/UT Government will submit the compliance report within 8 weeks from date of this judgement and Union Government to take action within 12 weeks from the date of judgement

B) Appointment of Public authorities

- i) The concerned Principal Secretary of state/UT Ministry of Women and Child development will personally ensure appointment of a district officer in each district within their territorial jurisdiction as per section 5 of the act within 4 weeks from the date of this judgement.
- ii) Each District officer will appoint Nodal Officers as per section 6(2); constitute Local Committee as per section 6 and 7
- iii) Each District Officer will ensure that contact numbers of Nodal Officers and Local Committee’s shall be forwarded to the Nodal Officer in State/UT Women and Child Development Ministry within 6 weeks from this judgement. Such information should be uploaded on State Government’s website along with a compiled version of the Act, Rules, and simple charts/explainers on the basics of the Act, within 6 weeks from the date of this judgment.

C) Amendments and gaps in Rules that State must fill

- i) The Union Government ought to consider amending Rules so as to operationalise Section 26 – Penalty for non-compliance with provisions of Act, by recognising reporting and fine collecting authority
- ii) The Union Government may also consider amending the Rules so as to identify one Department (preferably Women and Child Development) and creating a Nodal Officer post within the Department to be responsible for coordination required for implementation of the Act.

D) Training and Capacity Building

- i) The District officers and LC's should be mandatorily trained regarding their responsibilities. The State Governments, must organise periodic, and regular training sessions at the District level which are to be attended by the District Officer, members of the LC, and nodal officers [ref: Section 24(b)]

E) Larger Efforts towards Awareness

- i) In furtherance of Section 24, the State/UT Governments, and Union Government are directed to set out the financial resources allocated and or needed, to developing educational, communication and training material for spreading awareness of the provisions of this Act to the public, and formulate orientation and training programmes. This plan of action, must form part of the compliance affidavit filed by each State.
- ii) The appointed District officers should identify NGO's working for Women and take action pursuant to creating awareness.
- iii) Efforts should also be taken by appropriate government or District officers in question to spread awareness regarding LC's and make them approachable for unorganized sector.
- iv) The Handbook on POSH ACT released by Women and Child Development ministry can be used by IC's and LC's and targeted effort must be made to share this information with each District officer who may in turn disseminate the information to respective LC's and employers who have constituted IC's

F) Annual Compliance Reports

- i) District Officers should undertake due compliance on annual reports as mentioned in section 21 and section 22, collection annual reports from IC's and LC and a brief report on this should be shared with State Government.
- ii) State Government/UT is directed to create Standard Operating Procedure, including procedure and timelines for this process to enable and in turn comply with Section 23 of monitoring implementation and maintaining data as under the Act.

G) Monitoring IC's and compliance by employers

- i) Efforts made must be in line with the scheme of the Act, and through the authorities so designated for the various roles for monitoring the compliance
- ii) Directions are made to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues [as defined in Section 2(o)(iii) and (iv)] to establish ICs, and report compliance as per the duties under this Act.
- iii) The District Officer must be supplied a list of establishments (compiled by the relevant departments of the State/UT Government) that fall within the scope of Section 2(o) – (workplace definition), so that they may write to them and ensure that they are well versed with the provisions relating to employers, and their duties (including constitution of ICC under Section 4, duties under Section 19, etc.) and are implementing them in letter and spirit. This will also enable collection of annual reports, as contemplated under Section 21. The consequent direction to all private sector workplaces under Section 2(o)(ii) can be passed once the District Officer is able to discern an exhaustive list of entities as stated in the judgement.

The matter will be heard again in February 2024.

NEWS CORNER

"Fuck Off" is Sexual Harassment – Delhi High Court

While hearing the matter **Tausif-ul Hassan Vs. The State (Govt. of NCT of Delhi)**, The Delhi High Court stated that, "f**k off" is sexually coloured and can result in legal action for insulting someone's modesty. The court described it as "vulgar" and "offensive American language," noting that it is not used in Indian culture, schools, or institutions to ask people to leave." Additional Session Judge Sanjay Sharma upheld the charges framed by the Mahila Court under Section 354A/509 (outraging women's modesty) and 506 (criminal intimidation) IPC against a man for allegedly outraging a women's modesty by using the word "f**k off" against her and calling her "bazaru aurat".

Adv Vaishali Bhagwat



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

www.vaishalibhagwat.com



Mrudula Arjunwadkar

BSc., LLB, MPM

POSH Consultant

Helping organizations in end to end POSH Compliance, External member to IC, POSH trainings