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A quarterly insight to the POSH Law!

By V.P Shintre & Associates

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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.

Stereotypes – Invisible Barriers in Ensuring Justice under POSH

Prejudice often emerges as a natural instinct, deeply connected to our morals and our societal perceptions. While it may help us categorize, simplify and understand our complex surroundings, it often leads to rigid and oversimplified stereotypes. At times, prejudice is responsible for stereotyping certain groups of individuals around us. The word stereotype is derived from the Greek word "Stereos" means solid or firm and "typos" meaning impression or print, initially referred to printing process where a solid plate was used to duplicate text and eventually the word "stereotype" got expanded beyond the printing trade and now is being interpreted as oversimplified image or idea of a particular type of person or thing.

These stereotypes, particularly those related to gender create the invisible barriers influencing our behaviour in formal settings thus causing a hindrance to our judgement. Gender Stereotyping puts respective genders into a confined box of characteristics and personality traits leaving a very grim scope to deviate beyond that. These stereotypes are often ingrained and internalized in our thinking due to societal and cultural conditioning.

In this article, we attempt to understand the influence of different stereotypes on the decision of Internal Committee under POSH law. The Internal Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would be responsible to inquire into the complaint of sexual harassment and provide recommendations based on the outcome of the inquiry. As a member of Internal Committee, one is expected to be sensitive and mature to understand the nature and impact of sexual harassment complaint received and function free of bias. Ignorance of bias can create a vicious cycle of injustice.

When characteristics or roles of women are fixed it often leads to double standards in cases addressing sexual harassment, the traditional expectation that a woman must naturally be demure or non-confrontational at the same time should not diminish the credibility of her testimony.

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GOOD TO KNOW!

Women Help Desk in Police Stations

With an objective to create 'One Stop Support Centre' for Women at all Police Stations, as per the guidelines from WCD, each police station will have a Women Help Desk.

These Help Desks aim at –

1. Make Police station women friendly and approachable
2. To be the first and single point of contact for any woman walking into the police station
3. The Desk will have enlisted panels of experts like lawyers, psychologists, NGO's who can provide shelter, rehabilitation, and training for accessing the outside support

No woman under distress should be denied service on account of jurisdictional issues. It shall be the sole responsibility of whichever police entity a woman under distress reaches out to, to ensure redressal. Even if the jurisdiction belongs to another police station, the WHD, first contacted by the woman in distress, shall ensure that appropriate action is immediately taken by informing and pursuing with all concerned.

We bring to you some of the commonly observed stereotypes to name a few (not limiting to) that we have come across and how it may affect the inquiry process.

1. Delayed complaint is a false complaint: IC members need to note that delay in reporting should not be a blanket reason to doubt the genuineness of a complaint. A lot of times survivors are scared or hesitant to report the incident immediately due to fear, societal stigma and trauma. It is to be never forgotten that it takes courage to come out and file a complaint. The courts have observed the same in **State of Himachal Pradesh v. Gian Chand**, stated that **"Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay"**. In **MJ Akbar Vs. Priya Ramani**, Delhi High Court states, **"woman has the right to raise her grievances even after decades"**.

2. If she did not resist, she is lying or it was not harassment/ She should have said NO: Sexual harassment is not to be looked at in isolation but with reference to context, power equation and individual's ability to speak up against it. Many a times, specially, in cases of quid pro quo; aggrieved women may not be in a position to say NO and that does not mean that she was not subject to sexual harassment. Even if she says NO, asking for a sexual favour is also a sexual harassment at workplace and needs to be called out.

3. Casual comments/Jokes are not harassment: Casual comments with sexual connotation implicit or explicit; whether direct or indirect amount to sexual harassment at workplace. IC should be looking at such complaints from the complainant's perspective to understand the impact of such comments. The law emphasizes on impact more than the intention and hence without considering the impact, it would be shallow of IC to address the issue. In the recent Judgement given by Bombay High Court where it stated that singing a song "yeh reshmi jhulfein" or commenting on how the complainant was managing hair does not amount to sexual harassment. The Honourable High Court has clearly not considered the impact of implicit form of sexual harassment and has also not looked at the complaint by understanding the power equation.

4. Same sex complaints are not sexual harassment complaints – In **Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors.** 2021(1) SCT 431 (Calcutta), the court pointed out that there is nothing under the POSH Act that precludes a same gender complaint and that a person of the same gender can also hurt the dignity of a woman.

5. Feeble no means yes – We have seen the judgment given by Delhi High Court which was highly criticized throughout the country in **Mahmood Farooqui vs State (Govt Of Nct Of Delhi)** on 25 September, 2017, which stated, "In such cases, it would be really difficult to decipher whether little or no resistance and a feeble-no", was actually a denial of consent." This is a dangerous precedent that may not necessarily mean no and trying to train the victim to behave in a particular way even when in a challenging/difficult situation.

6. Women who are drinking alcohol or smoking want to engage in sexual relations with men and if a man touches such a woman without her consent, it is her fault or she was asking for it: Consent is to be respected irrespective of whether the woman is drinking alcohol or is wearing any kind of clothes. A man who touches a woman without her consent must not be permitted to take the defence that the woman invited his touch by drinking or smoking.

7. If the comment was not directed towards complainant, how can she file a complaint: The POSH Law defines sexual harassment as any unwelcome behaviour with sexual connotation which includes physical advances, demands or request of sexual favour, making sexually coloured remarks, showing pornography, any other physical, verbal, non-verbal form of sexual harassment whether direct or indirect, implicit or explicit. This clearly refers to indirect form of sexual harassment which is not necessarily directed towards a particular individual or group of individuals but can also be an overhearing of objectional comments, offensive jokes resulting into hostile work environment. When Internal Committee is aware of this aspect, it can prevent from biases which ridicule the complaint of indirect form of sexual harassment.

We have seen courts **give directions of getting rakhi tied as condition for bail or presenting gift to the survivor or even marrying her which is highly unacceptable and has a diluting and eroding effect on the offence of sexual harassment.**

In *Aparna Bhat Vs. State of MP*, the honourable court stated, "The act perpetrated on the survivor constitutes an offence in law, and is not a minor transgression that can be remedied by way of an apology, rendering community service, tying a rakhi or presenting a gift to the survivor, or even promising to marry her, as the case may be. The law criminalizes outraging the modesty of a woman. Granting bail, subject to such conditions, renders the court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes."

It further stated, "'Judicial stereotyping' refers to the practice of judges ascribing to an individual specific attributes, characteristics or roles by reason only of her or his membership in a particular social group (e.g. women). It is used, also, to refer to the practice of judges perpetuating harmful stereotypes through their failure to challenge them, for example by lower courts or parties to legal proceedings. Stereotyping excludes any individualized consideration of, or investigation into, a person's actual circumstances and their needs or abilities."

The Judgement also points out the following stereotypes that are often encountered in the course of judicial decision making and should be avoided –

1. Women are physically weak
2. Women cannot make decisions on their own
3. Men are the head of the household and must make all the decisions related to family
4. Women should be submissive and obedient
5. Good women are sexually chaste
6. Every woman wants to be a mother
7. Women should be the ones in charge of their children
8. Being alone at night or wearing certain clothes make women responsible for being attacked
9. Women are emotional and often overreact or dramatize hence it is necessary to corroborate their testimony;
10. Testimonial evidence provided by women who are sexually active may be suspected when assessing "consent" in sexual offence cases; and
11. Lack of evidence of physical harm in sexual offense case means consent was given

In *V.K. Vs. Bulgaria*, The **CEDAW Committee** observed, '**stereotyping affects women's right to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence**'

The genesis of Vishakha Guidelines and POSH Law takes us to the case of Bhanwari Devi. She was gang raped by the family members of a girl child as an act of retaliation on prevention of the child marriage of the said girl child. Stereotypes reflected from the Bhanwari Devi's case when In 1995, the trial court acquitted the accused, observing inter alia:

- a) members of dominant caste would not participate in a gang rape
- b) older men aged 60-70 cannot participate in gang rape
- c) men of different castes would not participate in gang rape
- d) it was improbable that the woman could be raped in presence of her husband

Supreme Court has published a Handbook on Combating Gender Stereotypes for the Judiciary with an intention as mentioned in the Handbook, "**identifies common stereotypes about women, many of which have been utilised by courts in the past and demonstrates why they are inaccurate and how they may distort the application of the law.**"

Section 11 (3) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 states that – for the purpose of making an inquiry under sub-section (1), the Internal Committee of Local Committee, as the case may be, shall have same powers as are vested in a civil court under the Code of Civil Procedure, 1908. By that way, we can say that Internal Committee members are judges for the purpose of conducting the inquiry into the sexual harassment complaint.

Members of IC can play a significant role in ridding the inquiry process of harmful stereotypes. They have an important responsibility to base their decisions on the law, facts, evidences, and not engage in stereotyping as it may compromise the impartiality of the decision and affect the credibility or culpability of the accused person.

Gender stereotypes deeply influence societal behaviour in turn influencing the judicial minds as well. While stereotyping may simplify our understanding of the society and our surroundings it is particularly harmful in the context of societal and institutional transformation creating an invisible barrier. They lead to a cycle of injustice often left unchallenged. In this the role of the Internal Committee is crucial in enabling the individual's right to choose their identity and path in life is respected and protected under the law.

NEWS CORNER

Jharkhand High Court Conducts Workshop on Gender Sensitization and POSH Act to Promote Safe Work Environment

The Jharkhand High Court on 20th March 2025 organized and successfully conducted a workshop on Gender Sensitization with respect to the Prevention of Sexual Harassment at the Workplace (POSH) Act, 2013 and related High Court of Jharkhand Regulations, 2021. The workshop aimed at creating a fair and just atmosphere within the legal fraternity.

The workshop saw participation from members of the Registry, members of the bar, officers and staff of the High Court, volunteers of the Gender Sensitization Committee, as well as bank officers and police personnel deputed at the High Court. The session included detailed discussions on the POSH Act, 2013, and the related High Court of Jharkhand Regulations, 2021, with presentations, live examples, and case studies. A POSH quiz and interactive session also took place, encouraging active participation from attendees.

NEWS CORNER

Kerala High Court Directs State to Frame Guidelines to Ensure Anonymity of Complainant from Public Domain During Enquiry

The Kerala High Court has directed the State Government to formulate guidelines for anonymising details of the complainant from public domain during the enquiry proceedings under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). The Court stated that at present there is no mechanism under the POSH Act to anonymise the details of the complainant during the enquiry proceedings.

Regarding anonymising details of complainant, the Court also referred to Bombay High Court decision in P v. A & Others (2021) where some guidelines were issued to ensure the privacy of the victim under the POSH Act during the court proceedings. The Court stated that the State government can consider to these guidelines for reference.

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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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