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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.

ROLE AND RESPONSIBILITIES OF IC MEMBERS

One of the highlights of the Law relating to Sexual Harassment of Women at Workplace, the POSH Act, is having an internal redressal mechanism that makes it easy for the aggrieved woman to file a complaint. Women are generally reluctant to speak about any incident of sexual harassment of which they have been a victim due to various reasons, such as the fear of retaliation, defamation, or of being expelled from the job, or normalization of such behaviour, believing that sexual harassment is bound to happen as it is a part and parcel of their work life. The POSH Law offers safety, confidentiality and non-retaliation to the victims and gives an opportunity to complain fearlessly and seek redressal through an easily approachable internal mechanism. Keeping this purpose in mind, the role of an ICC member is sensitive, approachable, and mature. The members of the ICC are responsible and accountable for their actions. The mindset and actions of these members can have a huge impact on not only the redressal mechanism but also in driving a gender neutral, safe and healthy work culture. The ICC members for example should explain the redressal process to the complainant, ensure confidentiality and non-retaliation. This makes it significant to be rightly aware of roles and responsibilities of the members of Internal Complaints Committee under PoSH Act.

Before we delve deeper in the roles and responsibilities of ICC members, let us have a look at the constitution of ICC. Section 4 of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes it mandatory for the employers to constitute a Committee to be known as Internal Complaints Committee, which shall consist of –

1. **Presiding Officer** – A woman employed at senior level at workplace from amongst the employees (where such senior woman is not available, such shall be nominated from other offices or administrative units)
2. **Minimum 2 members** – From amongst the employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge
3. **1 External member** – From NGO's, or a person working for a cause of wellbeing of women or aware of their problems, social worker, or lawyer or psychologist counsellor.

Inquiry proceedings in absence of an external member is considered invalid as there is sufficient chance of employer's influence on the proceedings.

Disclaimer

This newsletter does not intend to advertise or solicit work. The sole intention of this newsletter is to share the PoSH related information with the readers. The information provided in this newsletter is available at your request and without any express or implied warranty of any kind and does not create any attorney-client relationship.

In case any reader seeks any further information or assistance, he/she must seek independent legal advice.

GOOD TO KNOW!

Format used for recording minutes of meeting of Internal Committee, Quarterly meetings

Please mention the below details along with the title as mentioned -

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Date:

Place:

Time:

Agenda:

Individuals present for the meeting:

Points discussed:

Annexure: List and signatures of individuals attending the meeting.

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While commenting on it in *Ruchika Singh Chhabra vs M/S. Air France India And Anr.* C.M. APPL.16802-03/2018, the Court stated that “the objective behind the requirement of external member is to prevent the possibility of any undue pressure of influence from senior levels.”

The role and significance of an external member is discussed in the later part of this article.

The half of the committee members should be women and the term of such Internal Committee is for 3 years.

Powers of ICC members –

The members of ICC, as per section 11(3), are bestowed upon with the powers same as in a Civil Court, such as –

1. Summoning and enforcing the attendance of any person and examining him on oath,
2. Requiring the discovery and production of documents
3. Any other matter as may be prescribed

The roles and responsibilities of ICC members are discussed hereafter.

Identify the nature of complaint

- a) **Preliminary Stage** - The complaint is received and ICC members try to understand the nature of the complaint. It includes having entire information regarding the complaint.
- b) **Does it prima facie reveal a case of sexual harassment** - After having all the details of the complaint, ICC members should analyse the complaint and determine whether it prima facie reveals a case of sexual harassment. In **Debdul Maity vs National Insurance Co. Ltd. & Ors, WP No.728 of 2014, Calcutta High Court** specified that the Act does not require the IC to mechanically issue a notice upon receipt of complaint. The IC should apply its mind to determine whether the complaint relates to sexual harassment and whether the incident has happened at workplace.
- c) **Whether the incident took place at “workplace”?** - ICC members need to understand the complaint, have details about the incident/incidences and need to understand if such incidence has happened at workplace, as per the definition of workplace given under the Law. Only if the incidence took place at workplace, can ICC members look into the complaint and begin with the redressal mechanism.

Grant interim relief

At the request of complainant, ICC may pass interim orders of transfer, long leave, change of department, change in reporting structure, holding onto appraisals of the respondent or any other suitable interim relief in order to safeguard the aggrieved woman from further suffering.

Facilitate conciliation

- Only at the request of complainant IC may initiate conciliation before the commencement of inquiry.
 - ICC should only act as facilitator and should not be discussing the case with either of the parties.
 - The Outcome of conciliation is to be decided only by the complainant and respondent.
 - IC should take care that this option should not be abused by the employer or any other party by pressurising complainant. Monetary settlement should be avoided.
- IC should record the statement and details of conciliation and may forward the same to employer for necessary compliance.

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Fact finding and recommendation

ICC should act as a full-fledged fact-finding mechanism and not just the preliminary investigation body. ICC members should be aware of their powers and should conduct the inquiry in the light of natural justice. Following points must the members adhere to –

- Maintain minimum quorum of three members should be maintained throughout the proceedings. Presiding officer and external member should be present during the inquiry
- Complete the inquiry within 90 days
- Submit the detailed report along with recommendations to the employer
- Record all the minutes of meeting and also any alterations in timelines made with the reasons for the same
- Document every proceeding
- Determine compensation to be paid to the aggrieved woman
- In case of malicious complaint, suggest action as per service rules

Attend every meeting

It is a good practice to attend every meeting of IC. It also shows the sensitivity and seriousness of ICC members towards the issue that they are supposed to address

Maintain confidentiality, be sensitive, unbiased and impartial

The identity of complainant, respondent witnesses, any other information relating to conciliation and inquiry proceedings, recommendations of Internal Committee, action taken by the employer, shall not be disclosed or published to anyone, to any media or press as such.

Role of an external member

1. Conduct inquiry with no influence of employer or any other party whatsoever. It is the important role of an external member to see to it that the inquiry is conducted in an unbiased and impartial manner
2. Conduct inquiry in accordance with the principles of natural justice

The role of an Internal Complaints Committee member is crucial as it is in charge of the “Redressal” of a “sexual harassment” complaint. It is of great importance in setting a non-tolerant approach by employers towards sexual harassment and that of creating a safe work culture. The spirit of the law is preserved when the ICC members are completely aware of their roles and responsibilities and are in a position to think and decide independently.

NEWS CORNER - Goa Government challenges the acquittal of Tarun Tejpal in a sexual assault case

Additional sessions court judge Kshama M Joshi, in her judgement on May, 21; gave Tarun Tejpal the benefit of doubt stating, “as there is no corroborative evidence supporting the allegations made by prosecutrix.” The court said that the prosecution had only established that Tejpal, as then editor-in-chief of Tehelka, was in a position of trust or authority and could have had control or dominance over the victim. It had failed to prove five other crucial charges under various sections of the IPC (Indian Penal Code), including wrongful restraint, assault with intent to outrage modesty and person in a position of authority committing rape. A potentially crucial piece of evidence—CCTV footage of Tejpal and the victim mistakenly emerging from the elevator on the first floor, which might have contradicted the allegation of assault—was destroyed by the police, the judge said. Tejpal’s letter of apology to the pro-secutrix could not be held to incriminate him, the judgment says, as it was not an admission or confession of any crime but a letter to Tehelka that he is recusing himself as editor-in-chief due to the allegations.

On May 25, four days after the verdict, the Goa government filed an appeal in the state bench of the Bombay High Court. On June 2, Justice S.C. Gupte of the high court issued a notice to Tejpal to respond on or before June 24.

IMPORTANCE OF RULES OF NATURAL JUSTICE

Natural justice, simply in one word is 'fairness'. It is fairness by the authority concerned. Fairness depends upon the situation and context. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included 2 rules namely, i) No one shall be a judge in his own case and ii) no decision shall be given against a party without affording him a reasonable hearing. Very soon thereafter a third rule was envisaged and that is iii) quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily or unreasonably. During all these years, many more subsidiary rules came to be added to the rules of natural justice.

The rules of natural justice in a nutshell -

1. Nemo debet esse judex in propria causa

It means no man can be judge in his own cause. The decision-making authority should be impartial and act without bias. In case any member of the committee has a pecuniary or monetary bias, or a personal bias or an official bias or by any other means there is a conflict of interest that is likely to prejudicially affect the judgement of the member of inquiry committee; such member should recuse himself/herself from participating in the inquiry.

The POSH Act insists on how an external member of the committee needs to ensure transparency, accountability and also ensure that all inquiry proceedings are conducted without any interference or influence from the management. In Ruchika Singh Chhabra vs M/S. Air France India And Anr. C.M. APPL.16802-03/2018, the Court stated that "the objective behind the requirement of external member is to prevent the possibility of any undue pressure of influence from senior levels."

2. Audi alteram partem

It simply means that all the parties involved in an inquiry should be given an opportunity to be heard. Without such opportunity, any decision given is invalid. This principle forms an essence of fair trial. It includes –

- a) **Notice** – It means all the parties to the inquiry proceedings should get a copy of the documents filed in the inquiry such as complaint, reply, supporting evidence in advance and also the dates of hearing are to be intimated in advance giving reasonable time to the parties to appear or respond. The minimum period of notice is to be as defined under the Law. Chamoli Dist. Coop Bank Vs. Raghunath Singh Rana & Others SC 2016, the court discussed various stages of an enquiry and the significance of rules of natural justice in each stage.
- b) **Right to provide explanation** – Parties to the inquiry should be given sufficient opportunity to offer an explanation to the charge levelled against them.

High Court of Kerala, In L.S. Sibbu vs Air India Limited, WP(C). No. 4001 of 2016, stated that any person against whom prejudicial statements are being made, should be given an opportunity to correct and contradict.

c) Cross examination – Respondent and complainant should be given an opportunity to cross examine the witnesses and even lead them. There have been several cases where courts have set aside the recommendations of IC on not providing an opportunity to respondent to cross examine the witnesses.

In Manjeet Singh vs Indrapastha Gas Limited W.P.(C) 6352/2016, the court set aside the decision of IC on grounds that the right to cross examine was denied. Similarly, in Prof Bidyut Chakraborty vs Delhi University & Ors. W.P.(C) No.8226/2007, the Supreme Court upheld the right of delinquent to cross examine the witness.

d) Copy of report – Both the parties should be provided with the copy of report. In Shital Prasad Sharma vs State Of Rajasthan And Ors, S.B. Civil Writs No. 2313/2018, the Court denied the recommendation of IC on account of gross violation of principles of natural justice as the delinquent was not given the copies of statement, he was rejected the opportunity to cross examine the complainant and witnesses and that he was not even provided with the copy of report.

e) One who decides must hear – The hearing and decision should be done by the same person. If one person hears and other decides, this divided responsibility works against the principle of fair trial.

3. Quasi – judicial inquiries must be held in good faith

The inquiry by IC under POSH Law is a quasi-judicial inquiry and such inquiry must be held in good faith, which means the actions of the committee should be fair, reasonable and just. Along with the same, the reports submitted after such inquiry should give clear and brief reasons for the decision taken.

In Hukum Singh Vs State of Punjab AIR 1975 PH 148, the court discussed that while exercising the discretionary powers, relevant considerations must be taken into account and irrelevant considerations disregarded, they must be exercised in good faith and not arbitrarily or capriciously.

These principles of natural justice should necessarily be adhered to by judicial, quasi-judicial and administrative authorities to have a fair, unbiased and impactful decision.

The Courts have only interfered in the decisions of IC when there has been gross violation of principles of natural justice. Wherever these principles have been followed and the inquiry is conducted as per the rules under the law, the courts have refrained from commenting. As in *Vidya Akhave vs Union of India and others Writ Petition No. 796 of 2015*, the proceeding was conducted as per the provisions and in the light of natural justice, the court upheld the recommendations of IC.

As it is rightly said, “Justice must not only be done, but must also be seen to be done”, by Lord Hewart.

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