

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.

"Cool and not so cool"

Sexual Harassment often occurs in two forms, viz., a) Quid Pro Quo b) Hostile Work Environment. While Quid Pro Quo involves occurrence of sexual harassment which includes sexual demands in return of a favour or a threat; the hostile work environment can be caused due to use of vulgar language, obscenity, or any other explicit/implicit act of sexual harassment.

Profanity at workplace can also create a hostile work environment. For example, using slang "F" words and its reference to context, use of bad words, curse words etc. Does such act be intended to any specific person to call it a sexual harassment? Not necessarily! Vulgar language or profane language need not necessarily be directed towards you for you to complaint against it. Even if an offensive comment is not personally addressed, one can 'speak up' against it to the IC constituted under "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Words like "Fuck" or "Bitch" or "Asshole" are few amongst most common slang words used by today's generation under the pretext of being so cool! We see youngsters today using such words casually and without literally understanding or implying the meaning of these words. When asked to a few Gen Z employees regarding use of these words at workplaces, we had several responses like "it's the stress buster" or "fun at work", or "why so serious always, take a chill pill"! Of course, use of "cool" words at workplaces with likeminded people may add humour at work and may even help release the work pressure but what if someone at work feels awkward? Should that person file a complaint to the IC? Also, Imagine using synonym words in regional languages like Hindi or Marathi. Would the impact be same? Will it add humour at workplace? Food for thought!

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Disclaimer

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GOOD TO KNOW!

Childline 1908

Childline 1908 is a service of Ministry of Women and Child Development.

Childline India Foundation is a non-governmental organization in India that operates telephone helpline called Childline. This helpline is for children in distress.

Childline 1908 service is available all over India. It is a toll – free number accessible all over India. The caller can remain anonymous.

Using inappropriate language or lousy language can be looked with reference to context to decide if it can be called as sexual harassment. If the aggrieved person felt uncomfortable, if the act is amounting to hostile work environment, if it has sexually coloured remarks/words, it should be inquired as sexual harassment complaint.

Let us for example assume that a woman highlights to her colleague about her awkwardness on use of such words and the colleague behaves in a way which embarrasses her; Or transfers her to another department, Or makes fun of her because she is not used to the “cool” language; all of this contributes to the hostile work environment and should be inquired by the IC on submission of complaint.

“So cool” is not just limited to profanity but also use of certain smilies or GIF’s which is also a part of today’s communication. Using certain GIF’s with offensive content or inappropriate Smilies can lead to sexual harassment at workplace. Use of gestures when talking cool with your colleagues adds reference to the context which should also be considered.

We tend to normalize certain behaviours and consider it as Okay when it may not be. How should we segregate between the “cool” and “not so cool”? Is it not subjective? What does the “code of conduct” policy at your workplace has to say on using such language? The code of conduct policy would definitely act as a guideline for you to decide what kind of language is acceptable. Going ahead, it would be better if we stop assuming that everyone would be okay with the “cool” language we use and be professional at while at work. There was one team leader who used to hug his team members to wish them good morning. While this was perceived as an approachable person and a “cool dude” by some team members, there was one person who found it really awkward. Is it okay for the team leader to assume that all would be fine with this act? Let’s say if the person who does not like it and voices it, and faces bully or isolation in return, it is resulting into harassment of that person. The conclusion we can derive from this example is that we should learn to respect each other’s boundaries rather than our behaviour which may be based on certain assumptions which we tend to normalize as a trend or a casual practice.

The grey area that lies between cool and not so cool can be addressed by being more aware about the workplace culture, showing respect towards each other and maintaining professional boundaries and lastly by adhering to the code of conduct policy at workplace.

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Relationship - A license to harass?

"My friends, both of them were in a relationship and suddenly we got to know that the girl filed a sexual harassment complaint against the boy for misbehaving with her. How can she file a complaint against her boyfriend?" he asked during a training. "Why can't she?" I asked in return. There was a puzzled look on his face. Only if I could read the face, it would ask me, "If she is his girlfriend, then how can that be called as sexual harassment?"

"There are a few girls in the company who have 'relationship' with their colleagues because they want money from them. So, if something goes wrong in that relationship, the girls should not complain" said the other person from the training. "Whatever the basis of relationship is - love or money, should you not respect the consent of the girl? Does having a relationship give you the license to harass?" I asked them.

The very thought of treating your partner as your own property is deeply rooted in the society. Normally, people feel that the concept of consent is not applicable for people in relationship. The consent of the girlfriend or wife is taken for granted. While we all know that 'NO' means 'NO'; but sometimes we fail to understand that 'YES' can also mean 'NO'! In most of the cases, people don't even feel the need to ask consent.

Most of us have grown up watching films giving no importance to consent. We often hear songs like, "tu haan kar ya naa kar" or dialogues like "hasee to phasee" and many more! We also often see that the boy stalks his love interest everywhere and finally the girl realises this is the true love. Somewhere the actions as such are normalized by showcasing love and romanticism this way.

What is meant by 'consent'? Consent in literal sense means "in agreement" of something. To put it to context, it means "agreement to sexual relations". The consent has to be voluntary, free from coercion and given with sound mind.

The definition of sexual harassment under "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" emphasizes on 3 aspects viz.,

- i) the act is unwelcome
- ii) the act is sexual in nature
- iii) it is subjective

The difference between voluntary and welcomeness can be addressed while we look at these aspects.

The US Supreme Court in *Meritor Savings Bank Vs. Mechelle Vinson* held that, "Welcomeness and not the voluntariness, shall be the standard for sex that is not violative of women's rights consistent with gender equality". From the same token, a woman might say 'Yes' not because she wants to but due to several reasons such as 'Fear to lose the job', 'threat', or any other. So rather than looking just at the verbal consent given by that woman at workplace, points like whether it was free, wilful and if it had the 'welcomeness' is what will differentiate it from being a sexual harassment.

Sometimes, obvious expressions are misunderstood as consent. Such as smiling or hugging each other. In such cases it is important to understand that the consent is determined by the receiver.

To conclude, we can say that even in a relationship, based on love or money; if there is lack of consent; it can be called out as a sexual harassment. Having a relationship with your partner does not give the right over your partner to make choices.

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NEWS CORNER

Hold in – camera trial in all sexual harassment cases, apart from Rape; Says Supreme Court

Supreme Court directs trial courts to hold in camera trial in all sexual harassment cases. As per section 327 of code of criminal procedure, the in – camera trials are mandated only in rape cases. This ambit has been expanded by the Court with an objective to avoid agony and harassment of women who file complaints of sexual harassment.

The Court also reiterated on the importance of dealing with victims of sexual crimes in sensitive manner. It also issued directions to ensure that the cross – examination of victim is carried out in a sensitive and respectful manner.

The bench comprising Justice D.Y. Chandrachud and Justice JB Pardiwala noted that legal proceedings tend to be more onerous for complainants of sexual assault as they are dealing with trauma and societal shame. The Courts have an important responsibility to appropriately handle such matters.

Madras High Court restrains media from revealing identity of victims of sexual violence, publishing depositions given in trial

The Madras High Court restrained print and electronic media from publishing details of the victims, their family members, and the witnesses or any materials pertaining to the deposition of the victims. The Court observed that publishing such details would have an intimidating effect on the victim and would consequently lead the offenders to walk free. The court said, "True it is that the print and electronic media thrive on the pulse of the people and the news which they take to its citizens at the earliest point of time, determines their place and rating in the league, but that cannot be the basis to play with the lives and liberties of the citizens and equally with the justice delivery system, which is the ultimate saviour of the common man."

It further stated, "It is made clear that any infraction by the print or electronic media of the aforesaid directions would entail in severe action being initiated by this Court against the said entity Registry is directed to communicate a copy of this order to the Press Council of India, New Delhi and also to the State Press Council, Chennai, for being circulated among all the print and electronic media in the country."

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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