

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.

Supreme Court Guidelines On Implementation of POSH Act

The POSH act came into enforcement in December, 2013 and this year December, it would complete 10 years. Looking back, we have come a long way and yet a long way to go to achieve the objective of this Act in letter and spirit.

In the light of recent complaints made during the wrestlers protest, we have yet again realized the importance of effective implementation. The Supreme Court of India in its recent notable judgement in Aureliano Fernandes v. State of Goa & Ors, cited a recent report by a national daily stating that 16 out of 30 of India's sports federations have not constituted IC till date.

This judgement focused on implementation of the Act and effectively so by providing directions to Union Government and State Governments to "take affirmative action and make sure that the altruistic object behind enacting the POSH act is achieved in real terms." In this article, we bring to you these directions issued by the honourable Apex Court and also provide other guidelines focusing on effective implementation of law.

The Directions issued by the Supreme Court in Aureliano Fernandes v. State of Goa & Ors are as below –

1. The Union of India, all State Governments and Union Territories are directed to undertake a **timebound exercise to verify** as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case may be and that the composition of the said Committees are strictly in terms of the provisions of the POSH Act.

2. It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and **internal policies are made readily available on the website** of the concerned Authority/Functionary/ Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

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Disclaimer

This newsletter does not intend to advertise or solicit work and is for private circulation only. This newsletter is for the purpose of education and creating awareness on POSH law and its latest developments. It does not intend to be comprehensive nor intends to provide any legal advice. Though every effort is made to share accurate, reliable and current information, POSH LIVE is not responsible for any errors or omissions in information made available through this Newsletter. Sharing of this Newsletter does not intend to create attorney – client relationship between authors and reader.

GOOD TO KNOW!

Helplines for women in distress

This information is available on NCW's (National Commission for Women) website

1. National Commission for Women Helpline – 7827170170
2. Central Social Welfare Board Police Helpline – 1091/1291/ (011) 23317004
3. Shakti Shalini (NGO responds to gender and sexual violence) – 10920
4. Shakti Shalini Women's Shelter – (011) 24373736/ 24373737
5. Saarthak – (011) 26853846/ 26524061
6. All India Women's Conference – 10921/ (011) 23389680
7. JAGORI (women safety and rights) – (011) 26692700/ +918800996640
8. Joint Women's Program – (011) 24619821
9. Sakshi (violence intervention centre) – (0124) 2562336/ 5018873
10. Saheli (women's organization) – (011) 24616485 (Saturdays)
11. Nirmal Niketan – (011) 27859158
12. Nari Raksha Samiti – (011) 23973949
13. RAHI (Recovering and healing from incest) – (011) 26238466/ 26224042/ 26227647

3. A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

4. Immediate and effective steps shall be taken by the authorities/managements/employers to **familiarize members of the ICCs/LCs/ICs with their duties** and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

5. The authorities/management/employers shall **regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs** and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

6. The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall **develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups** with the provisions of the Act, which shall be included in their annual calendar.

7. The National Judicial Academy and the State Judicial Academies shall include in their **annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.**

Further the Court also ordered for a copy of judgement to be transmitted to all Ministries, Governments, Departments, Statutory Authorities, who shall look into the implementation of the directions issued and demanded a compliance report from these authorities.

Focusing on the point highlighted by the court directing all organizations to display the name and contact details of IC on their website along with the procedure to file a complaint will build a sense of responsibility, create transparency in the procedure.

The Supreme Court in its judgement stated, "*The working of the Act is centred on the constitution of the Internal Complaints Committees (ICCs) by every employer at the workplace and constitution of Local Committees (LCs) and the Internal Committees (ICs) by the appropriate Government, as contemplated in Chapters II and III, respectively of the POSH Act. An improperly constituted ICC/LC/IC, would be an impediment in conducting an inquiry into a complaint of sexual harassment at the workplace, as envisaged under the Statute and the Rules. It will be equally counterproductive to have an ill prepared Committee conduct a half-baked inquiry that can lead to serious consequences, namely, imposition of major penalties on the delinquent employee, to the point of termination of service.*" Through this, the Court has enshrined light upon importance of training of IC members and their capacity building towards conducting inquiry process as per law.

By stating, *"it is imperative to educate the complainant victim about the import and working of the Act. They must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the ICC/LC/IC is expected to function under the Statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a complainant if dissatisfied with the Report of the ICC/LC/IC etc"*, Supreme Court has emphasized on creating awareness amongst employees with regards to where and how to lodge the complaint in case of a sexual harassment incident at workplace.

The **State Commission of Women** has also recently published the **SOP for Internal Committees** to function. The key points provided in those guidelines are as below –

1. IC members should be impartial and should avoid conflict of interest. IC members should not be having any enmity towards parties involved.
2. IC should rely upon the facts
3. IC should follow principles of natural justice
4. Complainant/Aggrieved woman should feel IC as a trustworthy body looking into the complaint

The SOP also provides Behavioural characteristics of IC members to adopt -

1. IC members should be approachable and available when the aggrieved woman tries to contact
2. Should understand the nature of complaint and be empathetic
3. Be sensitive towards the complainant/aggrieved woman
4. Be non-judgemental
5. Understand that it is not easy to speak about sexual harassment and it may take time for victim to gather courage and speak about it
6. Commitment towards the cause

The UGC has also issued advisory to the Universities/ Colleges/ Higher Educational Institutes to constitute an Internal Complaints Committee and a Special cell in the institutions, to deal with issue of gender based violence and conduct gender sensitization programmes.

Quoting the words from Supreme Court judgement, *"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."* We strive for better implementation of this law and hope that we are able to create safe places for all.

NEWS CORNER

Complimenting a female colleague's figure, amounts to sexual harassment – Bombay High Court

The honourable High Court noted that telling a female co-worker repeatedly that she has a beautiful figure and has maintained herself well amounts to outraging her modesty. The accused duo further repeatedly asked the complainant woman for a date, which further added to the harassment allegations levelled by her.

Karnataka High Court disposes PIL for establishment of Internal Committee in all Educational Institutions

The Karnataka High Court on Monday disposed of a PIL seeking directions to the State's Department of Primary and Secondary Education to issue circulars mandating all educational institutions to establish Internal Committee as per Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In doing so, it relied upon 'Aureliano Fernandes Vs State of Goa', whereby the Supreme Court issued a slew of directions to fulfil the promise that the POSH ACT holds out to working women all over the country.

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

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