

# Prevention of Sexual Harassment at Workplace: Lessons from Case Laws



Sexual harassment at workplace remains a highly sensitive issue despite the POSH Act of 2013 establishing clear guidelines. A look at the judicial interpretation being adopted by courts in cases related to sexual harassment at the workplace

By **Vikram Shroff** | **Preetha S**

**I**ndia's law on prevention of sexual harassment of women at workplace was enacted in 2013, much before the #MeToo movement. This law was widely applauded by the employee community as the need of the hour and now that it is nearing its fifth anniversary, the courts in India have started interpreting the provisions of the law keeping in mind the broader objectives that it seeks to achieve.

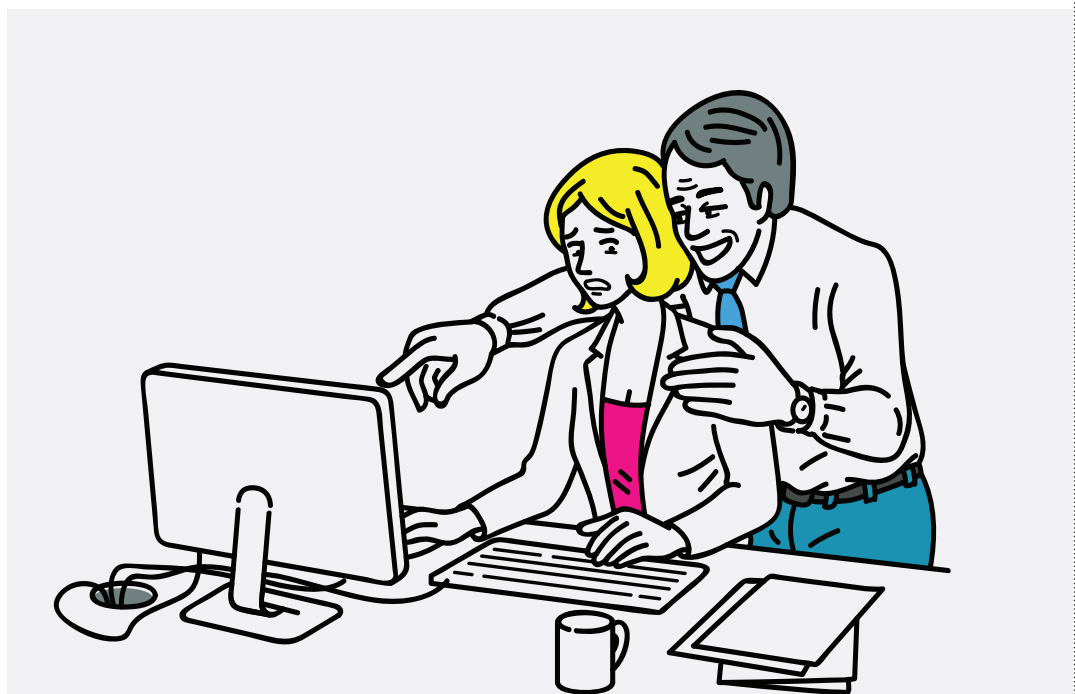
Being the first of its kind, the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) led to an increased awareness on the do's and don'ts in terms of workplace conduct. The media also played a critical role in spreading awareness besides bringing into limelight several

startling incidents of sexual harassment at the workplace. However, despite the awareness and the measures being taken by the government to ensure effective implementation of the law, sexual harassment at workplace remains a highly sensitive issue. From running a reputational risk to huge legal troubles, the road is not easy for employers who are slapped with sexual harassment cases.

This article seeks to provide in-house counsels and HR practitioners due perspective on the judicial interpretation being adopted by the courts in such matters.

## What is 'sexual harassment'?

As per the High Court of Delhi, in order that a 'physical contact' constitutes 'sexual harassment',



it should have the color of an ‘unwelcome sexually determined behavior’. A mere accidental physical contact, even though unwelcomed, would not amount to sexual harassment<sup>1</sup>. In a case before the High Court of Kerala, it was observed that although the language used by an officer in his report regarding an event organized by a junior female colleague was inappropriate, the same did not amount to ‘sexual harassment’. This was because there was no allegation of a promise, threat or creation of an offensive or hostile work environment for the female employee.<sup>2</sup>

### What constitutes ‘workplace’?

The definition of ‘workplace’ covers within its scope, places visited by employees during employment, or reasons arising out of employment including transportation provided by the employer for commuting to and from the place of employment.

In a case where a female employee had alleged sexual harassment by a colleague during an outstation visit to Hyderabad, the High Court of Delhi upheld the employer’s decision to terminate the employment of the accused based on the recommendations of the Internal Committee (IC).<sup>3</sup>

The High Court of Bombay pointed out that the definition of ‘workplace’ under the POSH Act is inclusive and deliberately kept wide in order to ensure that any area where women may be subject to sexual harassment is not left unattended or unprovoked for. This illustrates the intention of the legislature to provide protection and prevention at all possible workplaces where either the aggrieved woman works or may visit in connection with her duty or the place where the respondent is at work.<sup>4</sup>

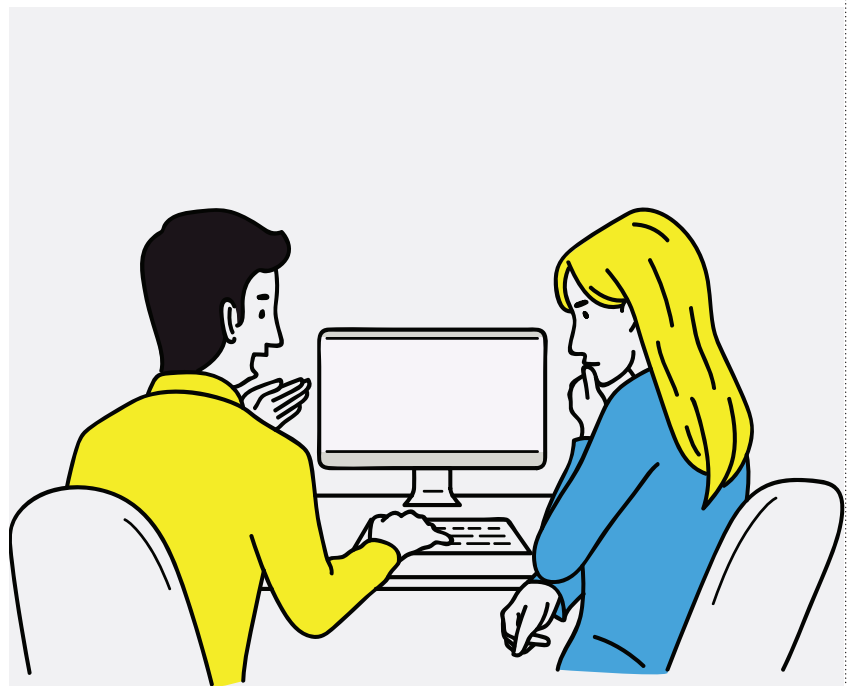
### How should the IC be constituted?

While examining various aspects in relation to the composition and constitution of the IC, courts have taken the following views:

Where the employer was unable to demonstrate that the members appointed from amongst the employees fulfilled the requirements under the POSH Act, the High Court of Bombay directed the employer to re-constitute the IC, conduct a fresh inquiry and submit its report afresh.<sup>5</sup>

The Rajasthan High Court, in a case<sup>6</sup>, held that an employer must nominate two members from amongst employees ‘preferably’ committed to the cause of women or who have the experience in social work, or possess legal knowledge. The court opined that given the use of the term ‘preferably’, it cannot be construed that any person having no legal knowledge cannot be appointed as an IC member. Also, the mere fact that the Presiding Officer of an IC is lower in rank than the accused does not invalidate the IC constitution, because accepting such a contention would mean that the composition and constitution of the IC will always be dependent on the rank of the person against whom such complaint is to be examined.

The High Court of Delhi opined that the external member to the IC should be a person associated



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with a non-governmental organization (NGO) or an association committed to the cause of women or a person familiar with the issues relating to sexual harassment. In a specific case<sup>7</sup>, the employer had appointed a labor lawyer as the external member on the IC and was unable to demonstrate that the external member was familiar with sexual harassment issues.<sup>6</sup>

### What powers does the IC possess?

As per the High Court of Delhi, the IC has the power to extend the time limit for filing a complaint by 3 months, i.e. up to a total of six months from the date when the incident took place by recording reasons in writing if it is satisfied that certain circumstances prevented the complainant from filing the complaint earlier.<sup>7</sup>

The High Court of Delhi also confirmed the IC’s power to enforce the attendance of any person as per the provisions of the POSH Act.<sup>8</sup> The same court clarified that the petitioner has the right to approach the IC for immediate protection and the IC is empowered to grant interim relief, if it deems fit.<sup>9</sup>

The High Court of Bombay held that where an inquiry has been conducted by an IC after giving adequate opportunity to all the parties and the

IC has come to a conclusion, then merely because two views are possible, the court is not expected to re-appreciate the evidence and come to a different conclusion than the one which has been arrived at by the IC.<sup>10</sup>

### How should the complaint be filed?

The High Court of Delhi held that a complaint cannot be rejected by the IC merely on the grounds that the complainant had delayed in filing the complaint. In this case, the allegations of the complainant were clearly supported by the statements of several other witnesses who corroborated that the accused had indulged in similar conduct with them as well.<sup>11</sup>

The Rajasthan High Court held that an aggrieved woman can file a complaint with the IC without having to submit the complaint in person.



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The complaint can be sent to the IC through another person or by any other media, the main point being that it should be received by the IC.<sup>12</sup>


### How should the inquiry proceedings be conducted?

The High Court of Delhi ruled that if the employer believes that an allegation of bias is true, then a new IC needs to be formed and the proceedings should start afresh.<sup>13</sup>

With respect to adhering to the principles of natural justice, the High Court of Delhi pointed

out that in the enquiry proceedings, strict rules of evidence are not required to be followed. The IC has the flexibility to adopt its own procedure in conformity with the principles of natural justice.<sup>14</sup>

The High Court of Kerala, pointed out that the inquiry as per the POSH Act is supposed to be a full-fledged enquiry, similar to a disciplinary inquiry in cases of misconduct.<sup>15</sup> The Rajasthan High Court observed that the POSH Act and the rules enable a three-member IC to conduct the inquiry so long as the Presiding Officer is present. Therefore, an inquiry report does not stand vitiated if not less than three members had conducted the inquiry.<sup>16</sup> The High Court of Delhi reiterated that the findings of an IC should not be ignored on vague and general grounds.<sup>17</sup>

Case laws enable employers and their ICs to deal with sexual harassment complaints keeping in mind the judicial interpretation of the law. From an HR perspective, it is critical for employers to set the right precedent for its employees so that the morale and work ethics at the workplace is not adversely affected. Formulation of a comprehensive and efficacious mechanism preventing sexual harassment should be on the priority list for every CEO. As opined by the High Court of Bombay, employers need to genuinely be concerned with the safety of women at workplace rather than staging a farce of compliance under the POSH Act.<sup>18</sup> 

### References

- 1 Shanta Kumar v Council of Scientific and Industrial Research (CDIR) & Ors, Delhi High Court ((2018) 156 FLR 719)
- 2 K.P. Anil Rajagopal v State of Kerala, Kerala High Court ((2018) 1 KLJ 106)
- 3 Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors. (2015 SCC OnLine Del 11026)
- 4 Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University, Bombay High Court (2014 SCC OnLine Bom 814)
- 5 Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University, Bombay High Court (2014 SCC OnLine Bom 814)
- 6 Ruchika Singh Chhabra v. Air France India and Anr. (2018 SCC OnLine Del 9340)
- 7 Tejinder Kaur v UOI, Delhi High Court, (2017 SCC OnLine DeL 12221)
- 8 Ashok Kumar Singh v. University of Delhi and Ors, (2017 LLR 366)
- 9 Confidential v Indian Institute of Corporate Affairs, (2018 SCC OnLine Del 6801)
- 10 Vidya Akhawe v. Union of India, Department of Women & Children & Ors. (2017 LLR 357)
- 11 Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors. (2015 SCC OnLine Del 11026)
- 12 Shital Prasad Sharma v. State of Rajasthan and Ors. (2018 SCC OnLine Raj 1676)
- 13 Tejinder Kaur v UOI, (2017 SCC OnLine DeL 12221)
- 14 Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors. (2015 SCC OnLine Del 11026)
- 15 Sibv v Air India Limited, ((2016) 2 KLJ 434)
- 16 Shital Prasad Sharma v. State of Rajasthan and Ors., (2018 SCC OnLine Raj 1676)
- 17 Sarita Verma v New Delhi Municipal Corporation & Ors, (2016 LLR 785 (2))
- 18 Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University, (2014 SCC OnLine Bom 814)

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