

India: Increased Complaints of Sexual Harassment

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An increased number of cases of sexual harassment have recently been reported in India. As the law on sexual harassment in the workplace is more than five years old, the increase is likely to have resulted from the #MeToo movement and greater awareness of the issue. It seems female employees are more likely to report unwelcome incidents than used to be the case.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India (POSH Act) mandates employers to, inter alia, frame an internal policy/charter prohibiting sexual harassment at the workplace and set up an internal committee (IC) to investigate any such complaints. Some important case laws under the POSH Act include the following:

- The Bombay High Court has considered the scope of the term “workplace” under the POSH Act to include any area where women may be subjected to sexual harassment provided that such place is in connection with her work.
- The Punjab and Haryana High Court agreed with a complainant that since there was no external member appointed to the IC, the IC was incorrectly constituted.
- The High Court of Delhi clarified that appointing a lawyer or someone with legal knowledge is not sufficient for the required external member. The external member on the IC should be a person associated with a non-governmental organization or association committed to the cause of women, or a person familiar with the issues relating to sexual harassment.
- The Kerala High Court set aside an order of the IC since it did not follow the procedure set out under the POSH Act. Specifically, the accused was not provided with a copy of the complaint and findings of the IC investigation; therefore, the proceedings were held to be vitiated.
- The High Court of Delhi clarified that an alleged offender should be given the right to cross-examine the witnesses of the complainant. The court also listed out the manner of conducting proceedings by the IC, starting from informing the parties of the date and venue of the proceedings, through to the cross-examination of witnesses.
- The Bombay High Court has held that if the decision of the IC is based on proper inquiry giving adequate opportunity to both parties, the court shall not intervene in the matters.

Comment

The case law suggests that the courts are taking a strict interpretation of the POSH Act. Accordingly, employers may want to ensure that they fully understand the requirements of the law and comply with it. As it is a relatively new and situation-specific piece of legislation, prudent employers may want to take appropriate steps to not end up on the wrong side of the law. Additionally, since there are quite a few cases where the inquiry proceedings are challenged, members of the IC may also want to be well versed with the procedural aspects of carrying out investigations and refer to these cases as and when there are interpretational issues.

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