

Notional Extension of Workplace vis-à-vis POSH Act, 2013

written by Smita Paliwal | June 10, 2019

The concept of Notional Extension

has been applied by Indian Courts in various cases falling under Workmen Compensation, in order to ensure the applicability of beneficial labour legislation to situations wherein the course of employment cannot be limited to

the time or place of the specific work which the workman is employed to do.

In

line with the same concept we can see how the said doctrine has been applied time and again to broaden the concept of “workplace” as “extended workplace” under

the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (hereinafter referred to as the “Act/POSH Act”).

Workplace

as Defined under the Act:

Under the Act, “workplace” has

been defined as which means establishments, enterprises, institutions, offices,

branches, premises, locations or units established, owned, controlled by the Company or places visited by the employees out of or during the course of employment including accommodation, transportation provided by the employer for

undertaking such journey.

The definition provided by the

statute, itself is broad and does not restrict the place of work of the perpetrator to the physical environment of the workplace, it takes into account, all possible access places/points/scenarios wherein the aggrieved woman can come into his contact.

The Various Notional Extension of Workplace:

Team Outings

Team

Outings are usually organised by the Employer/employees in order to build better understanding of the working teams for better co-ordination and co-operation among team members. Going by the principles of extension of the workplace,

such outing destinations gets covered under the purview of “workplace” as the said outing is organised and controlled by the Employers and the outing has been attended during the course of employment. Reference could be drawn to International Labour Organisation (“ILO”) observations on the subject, which emphasized that the definition of workplace should not be “restricted to the physical environment of the workplace”; it must take into account the ‘access’

that a perpetrator has to the harassed by virtue of a job situation or work relation”. The reason is obvious, “Sexual harassment is not restricted to workplaces in the sense of one physical space in which paid work takes place for eight hours per day”.^[1] ILO has specifically

considered the different scenarios or events wherein a woman can be exposed to

an unpleasant situation outside the premises of the employer, at conferences, on business trips, at company-sponsored social events or via telephone or

electronic mail and had proposed broadening the definition of workplace by the concerned countries in the region.

Cyber Space

Nowadays, business activities are conducted through video or audio teleconferences in order to ensure timely deliverables and connectivity across cross-country offices. If during such conference, any incident of harassment takes place, one cannot take the plea that such calls and conferences shall not fall under the purview of the Act. In the case of *Saurabh Kumar Mallick vs. CAG*[2], the court has specifically referred to such a scenario and clarified that with the advent of technology, a broader interpretation has to be adopted in order to cover such situations.

Cab Services

Renting cabs for daily commute is a common occurrence, in recent past there have been instances where passengers were harassed by the driver. Such an incident happening in cab, levies direct liability on the providers of cab services. As insides of the cab is an extension of the workplace of the driver of which the employer is in control and shall ensure safety of the women passengers commuting the ride. In *Saurabh Kumar Mallick vs. CAG*[3], the Division Bench of the Delhi High Court has opined that in view of the objective behind the decision of the Supreme Court in *Vishaka & Ors. vs State of Rajasthan & Ors.*[4]“a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression ‘office’ that is a place where any person of the public could have access.” Referring to the “the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology”.

Food Delivery Services

Most delivery services function through delivery partners who in turn on receipt of the order through the food delivery application, co-ordinate with the restaurants and deliver food to the customers. Recently, there have been instances wherein the customers have complaint of harassment from these delivery partners. This falls within the purview of the POSH Act, as by any extension of place of work where the employer has control or management on the employee should qualify as workplace by giving a wider connotation of the expression. The activities of the food delivery partners can be managed and controlled by the employer as long as they are delivering the said order to the place of delivery, their movements can be tracked by the Employer and can

always be contacted through their delivery support. In the case of *Ayesha Khatun vs State of West Bengal*[5], the Single Bench of the Calcutta High Court observed and was of the opinion that a logical meaning should be given to the expression “workplace” so that the purpose of framing the guidelines in the Vishaka case[6] is not defeated.

Notional Extension - The Ground Reality:

In spite of the fact that the law and interpretation of the definition of “workplace” is very clear on the subject and covers all possible places which by the notion of extension of employers’ control or management: -

1. No awareness among employees regarding the provisions and the extent of applicability of the POSH Act: - Employers shall take on the responsibility of conducting workshops and training sessions regarding the applicability and the extent of applicability of provisions under the POSH Act, in order to ensure compliance and avoid any penalties and prosecution under the Act. Under the POSH Act, the Employer is mandated to organise such workshops and training sessions at regular intervals for sensitising the employees under the POSH Act. In order to inculcate interest in such workshops, employers can provide some incentives for the attendance.
- Provisions/Policies are incomprehensive: Conducting of training sessions in vernacular language in order to ensure that the employees/personnel can apprehend it accurately.
- Specific mention of sexual harassment policy in agreements with employee/personnel/consultants: - In order to ensure that employees or personnel are aware of the provisions of the POSH Act and the applicable policies of the organisation, there should be a specific mention of the same in their agreement with the company/organisation.
- Zero Tolerance Approach towards such incidents: - While the POSH Act and the rules thereunder are very clear on the penalties imposed on the accused, however there have been instances wherein such complaints are not acted on and are not dealt as per the provisions under the Act.
- No clarity on applicability of POSH committee to drivers’/delivery partners’: - Though the law is clear on its applicability of the provisions of the POSH guidelines, the cab operators and e-commerce players have not been able to understand the concept of notional extension or extended workplace and have assumed that the Internal Complaints Committees do not cover their drivers, delivery operators thereby relieving the companies of responsibility for their behavior.

Conclusion

While the Vishaka Guidelines were confined to the traditional office set-up and recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of 'notional extension' or an 'extended workplace'. The said concept is definitely a positive step to ensure safety of women in the era of e-commerce and technology, however the buck stops at the lackadaisical approach of the employers/organisations towards the sensitivity of such incidents happening during the course of business and look at it in a broader perspective.

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[1]

"Action Against Sexual Harassment at Work in Asia and the Pacific" (ILO 2001) 22, 126

[2]

(2008) 151 DLT 651

[3]

(2008) 151 DLT 651

[4]

(1997) 6 SCC 241

[5]

2012 SCC OnLine Cal 1860

[6]

(1997) 6 SCC 241

[1]

(2008) 151 DLT 651

[2]

(1997) 6 SCC 241

[3]

2012 SCC OnLine Cal 1860

[4]

"Action Against Sexual Harassment at Work in Asia and the Pacific" (ILO 2001) 22, 126

[5] (2008) 151 DLT 651

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