

POSH Act, a biased legislation: Busting the myth!

written by Richa K Gaurav | October 1, 2019

Industrialization and globalization paved way for influx of women in the workforce, resultantly, prevention of sexual harassment

at workplace assumed greater importance. Harassment and discrimination violates the fundamental rights

of a person, impedes growth and exposes to physical and emotional suffering coupled with mental trauma.

Protection against sexual harassment and the right

to work with dignity are universally recognised human rights by international conventions and instruments. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 ("POSH Act") is aimed at providing

a safe, secure and dignified working environment to women free from all forms of harassment. Redressal of grievance and fair adjudication of the complaint is

a *sine qua non* for dispensation of justice.

The legislation has safeguards to ensure that the safety of men at work is not jeopardised and that the provisions of the POSH Act are neither used as a weapon to settle personal vendetta nor misused by filing false complaints which can have repercussions on men as they undergo torture, extortion and public humiliation so much so that it leaves them scarred for life both at personal and professional fronts.

Respite

under the POSH Act:

The POSH Act has safeguards to check the menace of false complaints and prevent misuse of the legislation so as to ensure justice

is served to worthy: -

1. Initiation of Action Against

False Complaint: - The POSH Act specifically provides that if the Internal Complaints

Committee /Local Committee ("ICC" or "Committee") arrives at a conclusion that

either the complaint was malicious or false evidence was adduced to avail favourable orders, the ICC may recommend t action against the complainant as per the applicable service rules of the employer. Same actions could be taken against the Complainant as would have been taken against the accused, if found

guilty under the provisions of the said Act.

• Limitation on Filing of

the Complaint: - Under the POSH Act, there is a specific limitation for filing of the complaint.

As per Section 9 of the POSH Act, complaint can be filed before the ICC within a

period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of the last incident.

The particular provision ensures and limits the scope of retaliatory

complaints, as even if the complaint is accepted by the Committee after a delay of three months, the Complainant had to assign the reason for delay. Most of the false cases of sexual harassment are usually triggered by some incident between the parties, after which an afterthought complaint is filed, the probability of such cases shall reduce because of the limitation to file such complaints.

- Well Trained Internal

Complaints Committee ("ICC" or "Committee"): - The POSH Act read with applicable rules clearly specify that it is the duty of the employer to ensure and make provisions for conducting orientation programmes and seminars for the members of the ICC, organising capacity building and skill building programmes for the members of the ICC in order to ensure that there is a well-trained and skilled committee of members in place who are well informed about the subject matter. A well-trained and skilled internal complaints committee shall be able to adjudicate the complaints in a more effective way and shall be able to decide on the complaints effectively after considering and analysing the situation and the facts along with evidences placed before them. There is no doubt that dealing with workplace sexual harassment complaints is often complex, that is the reason, the POSH Act, itself acknowledges the importance of having a committee in place which possess critical skills/capacity to effectively carry out their roles.

- External Member to be Part

of the ICC: -The POSH Act clearly provides for one external member to be part of the ICC. The external member shall be from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Such expertise will greatly benefit the ICC in terms of fair and impartial handling of the complaint leading to a rational order. One of the very basic objectives to involve an external member

is to ensure that the parties to the complaint can be self-assured that the internal dynamics or management of the workplace shall not be having any effect

on the working of the external member.

- Informal Mechanism of

Resolving the Complaint: - Many a time there is a misunderstanding between the parties, and intent of the accused gets misconstrued in a different manner to the complainant. In order to prevent such situations, the POSH Act mandatorily requires the ICC to

explore the possibility of conciliation between the parties before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation, provided the basis

for such proceedings are not monetary settlement.

- Principles of Natural

Justice to be Followed: - The intent of the legislation is to ensure that no

party should be

condemned unheard, the POSH Act specifically states that the ICC should follow

the principles of natural justice while conducting the inquiry into the complaint

which means that the respondent should be given reasonable opportunity to present his case. Once the complaint is filed, a copy of the complaint along with the documentation filed with the complaint is required to be shared with the respondent within 7 days from the date of receipt of the Complaint. Respondent gets a reasonable time and opportunity to reply to the accusations and lead his case with the evidence and witnesses from his end.

- **Maintaining Confidentiality**

of the Parties: - In order to prevent any embarrassment or witch-hunting of the parties to

the complaint including the accused, the POSH Act, prohibits any publication or

making known the contents of the complaint and inquiry proceedings sub-judice with the ICC. Section 16 and 17 of the POSH Act, clearly prohibits dissemination of any information related to the conducting of the inquiry into

the complaint which also includes conciliation proceedings and recommendations

provided by the ICC.

- **Penal Provisions for Breach**

of Confidentiality: - In the event, anyone is found to be in breach of confidentiality provisions,

the Act specifies for strict actions to be taken as per the service rules of the organisation along with a penalty of Rs. 5,000/- (Indian Rupees Five Thousand) to be recovered by the employer from such person.

- **Applicability of Service**

Rules: - Applicability of the service rules to the POSH Act in terms of penalising the complainant on filing of the false complaint clearly shows that

it is treated as mis-conduct under the service rules applicable to the employees of the organisation. This generates a significant deterrent in the filing

of false complaints, as the penalty could be in the form of suspension, demotion

and even termination of employment.

1. **Provisions of Appeal:** - One of the significant mechanisms to prevent abuse of the process of law is the appeal provision enunciated in Section 18 of the POSH Act. The respondent has the 'right to appeal' under section 18 of the POSH

Act read with applicable service rules in case the respondent is not satisfied

with the recommendations/findings arrived at in the complaint by the ICC. The appeal can be preferred within a period of ninety days from the date of recommendation.

Paving

the way:

The Courts in India have also started taking stern

actions on false complaints filed under the POSH Act, which is a welcome move and will pave the way for the balanced approach to be taken towards the incidents of sexual harassment at the workplace. Recently, the Delhi High Court

in the matter of *Anita Suresh vs Union of India & Others*^[1], dismissed the petition

for its 'lack of merit' and ordered the costs of Rs. 50,000/- on the petitioner

for filing a false complaint and misusing the provisions of the POSH Act. The single judge bench comprising of Justice J.R Midha also granted liberty to the respondent-ESI

Corporation to initiate appropriate action against the petitioner for the same.

Conclusion:

Anita Suresh's judgement has the potential to what can possibly be a watershed moment in rethinking the provisions of the POSH Act from a different perspective. This decision also gives us a revelation as to how provisions of the POSH Act can also be misused for settling personal vendetta. The Court has rightly come to the aid of the Respondent who otherwise

would have fallen victim to shaming and the surrounding social stigma that could have been fatal to both his personal and professional life.

Need of the hour

is that though we should be sensitive towards the cause but at the same time should not get blinded by pre-conceived notions like 'men are always wrong; women can never lie.' The wronged woman must get justice but at the same time a

man should not be wronged as well. The principles of socialism and social justice should not be pushed to extremities so as to become a weapon in the hands of few to be misused for ulterior motives. The right balance must be struck. The workplace environment should be such that the harassment matters do

not go unreported and at the same time men should not be made to undergo torture and humiliation on account of false complaint.

Let's not crush

the principle of "*innocent until proven guilty*" in our quest for "Justice".

^[1] W.P

(C) 5114/2015

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