

## POSH: The Law against Sexual Harassment in India

### Why in news?

Kerala High Court asked organisations associated with the film industry to take steps to constitute a joint committee to deal with cases of sexual harassment of women, in line with the POSH Act.

### What is POSH?

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed in 2013.
- It defined sexual harassment, lay down the procedures for a complaint and inquiry, and the action to be taken.
- It broadened the Vishaka guidelines, which were already in place.

### What are the Vishaka guidelines?

- With reference to the ***Vishaka vs State Of Rajasthan*** (Bhanwari devi case), the Vishaka guidelines were laid down by the Supreme Court in 1997.
- The guidelines were legally binding and imposed three key obligations on institutions — prohibition, prevention, redress.
- **Definition of Sexual Harassment** - It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause the following:
  - Physical contact or advances
  - A demand or request for sexual favours
  - Sexually coloured remarks
  - Showing pornography
  - Any other unwelcome conduct whether it is physical, verbal or non-verbal
- **Safer working environment** - It is the duty of each employer to provide a safe working environment for each and every employee working in the organization through appropriate efforts and actions.
- **Duty of the employer**- It is the obligation of the employer to file a complaint if the conduct towards an employee amounts to a criminal offence which is punishable under the Indian Penal Code.
- **Complaint redressal committee** - It is mandatory for all organisations to set up a complaint redressal committee to ensure that the complaints of the employees are dealt properly.
- **Employer's assistance**- If the employee is sexually harassed or tortured by a third party, an employer should assist the employee in every possible manner.
- **Awareness**- It is the duty of the employer to spread awareness in his organisation with regard to the matters pertaining to sexual harassment and the safety of women.
- **Duty of government** - The guidelines urged the centre and the state government to pass the necessary legislation so as to ensure that the private sector is also bound by these guidelines.
- The Vishaka guidelines were later on replaced by the Sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act, 2013.

*The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) implemented in 1979 by the UNGA enumerates what constitutes discrimination against women and also sets up a goal for national action to end such discrimination.*

## **What are the key features of the POSH Act?**

- **Definition of Sexual Harassment** - It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause the following:
  - Physical contact or advances
  - A demand or request for sexual favours
  - Sexually coloured remarks
  - Showing pornography
  - Any other unwelcome conduct whether it is physical, verbal or non-verbal
- Additionally, the Act mentions five circumstances that amount to sexual harassment
  - promise of preferential treatment in her employment
  - threat of detrimental treatment
  - threat about her present or future employment status
  - interference with work or creating a hostile work environment
  - humiliating treatment likely to affect her health or safety
- The Ministry of Women & Child Development's Handbook on Sexual Harassment of Women at Workplace constitutes more stances of sexual harassment.
  - Sexually suggestive remarks, serious or repeated offensive remarks, inappropriate questions about a person's sex life
  - Display of sexist or offensive pictures, posters, MMS, SMS, WhatsApp, or emails
  - Intimidation, threats, blackmail around sexual favours
  - Unwelcome social invitations with sexual overtones
  - Unwelcome sexual advances
- **Complaints-** Every employer is required to constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
- An ICC constituted by an organization should have a minimum of 4 members including an external member and at least one-half of the ICC members should be women.
- The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- The Complaints Committees have the powers of civil courts in respect of summoning and examining any person, and production of documents.
- **Procedure for complaint-** It is not compulsory for the aggrieved victim to file a complaint for the ICC to act.
- If the woman cannot complain because of physical or mental incapacity or death or otherwise, her legal heir may do so.
- Under the Act, the complaint must be made within 3 months from the date of the incident. However, the ICC can extend the time limit upon its satisfaction.
- The ICC may either forward the victim's complaint to the police, or it can start an inquiry that has to be completed within 90 days.
- When the inquiry is completed, the ICC must provide a report of its findings to the employer within 10 days.
- The report is also made available to both parties.
- **Identity-** The identity of the woman, respondent, witness, any information on the inquiry,

recommendation and action taken should not be made public.

- **Action** - If the allegations of sexual harassment are proved, the ICC recommends that the employer take action in accordance with the provisions of the service rules of the company.
- It also recommends that the company deduct from the salary of the person found guilty.
- **Compensation**- Compensation is determined based on five aspects:
  1. suffering and emotional distress caused to the woman
  2. loss in career opportunity
  3. her medical expenses
  4. income and financial status of the respondent
  5. feasibility of such payment
- **Appeal**- After the recommendations, the aggrieved woman or the respondent can appeal in court within 90 days.
- **False complaints**- Section 14 of the Act provides that the ICC may recommend to the employer to take action against the person who has made the malicious complaint and false evidence.

## References

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