



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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WHAT CONSTITUTES AS ‘SEXUAL HARASSMENT’ UNDER THE POSH ACT? : IS IT JUST PHYSICAL?

~Anika Rawal

INTRODUCTION

In any scenario, when “sexual harassment” is mentioned, most people assume it to be overt physical abuse and unwanted acts such as inappropriate touching. This is one of the most dangerous misconceptions of the modern corporate environment. It is extremely misleading to categorise sexual harassment only on the physical basis. Sexual harassment has a much broader spectrum than just unwanted physical attention. In most cases harassment begins through gestures, verbal comments, psychological threats or any other type of sexual conduct that makes the work environment hostile.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is also known as the POSH Act and is an integral part of India’s legislation. It was enacted on the basis of the Supreme Court’s Vishaka Guidelines given in the 1997 case of *Vishaka v. State of Rajasthan*.

The POSH Act ensures that women have a right to work in an environment free of sexual harassment. It also broadens the scope in order to protect women from not just physical abuse but also other forms unwelcome of sexual conduct.

UNDERSTANDING THE POSH ACT

The Vishaka Guidelines recognised sexual harassment at workplace as a violation of fundamental rights under Articles 14, 15, 19(1)(g) and 21. The POSH Act was enacted based on these guidelines on 9th December 2013. This Act aims to prevent, inquire and provide redressal in cases of sexual harassment at workplace.

This Act has defined “sexual harassment” under *Section 2(n)* as any unwelcome behaviours such as physical contact, showing pornography, making sexual remarks, demanding sexual favours and any other conduct of sexual nature. This Act emphasizes the impact of these “unwelcome acts” on the recipient instead of the intent of the perpetrator. If a behaviour is unwanted or offensive in any way to the victim, it is automatically considered as harassment under this Act, notwithstanding if it was meant as a joke or compliment.

IS SEXUAL HARASSMENT JUST PHYSICAL?

One of the biggest misconceptions of the POSH Act is that it considers only physical abuse as harassment. But that is absolutely not true. The Act classifies harassment into three categories of physical, verbal and non-verbal conduct. This includes not only unwanted touching but also sexual comments, obscene gestures, staring and explicit remarks.

It is important to keep in mind that the problem does not lie in expressing interest, but in refusing to respect boundaries. Performing the same conduct incessantly even after discomfort has been expressed to that behaviour leads to harassment.

Modern day workplaces have also seen a rise in digital sexual harassment. In an environment where workers have each other's information such as phone numbers and email, chances of digital harassment also increase. In the digital world, harassment can also take place through sexual messages, use of explicit emojis or images, demanding intimate images, or even sending non-work related messages after working hours.

LEGAL CATEGORIES UNDER THE POSH ACT

The POSH Act has categorised sexual harassment at workplace into two forms. These are Quid Pro Quo and Hostile Work Environment. Quid Pro Quo refers to “this for that” and it occurs when employment benefits are granted only in exchange of sexual favours. This may lead to refusal of promotion, appraisal or increase in salary or threat to transfer if the sexual advances are denied.

A hostile work environment may be not directly correlated to sexual advances. It is recognised under *Section 3(2)* of the POSH Act and may be any behaviour that makes the environment oppressive and offensive, making it hard to be productive at work. Even if the victim is not directly touched, the work environment may become hostile through humiliating sexual jokes, circulating intimate images, spreading intimate details, sexist jokes or isolation due to denial of sexual favours.

WHAT CONSTITUTES AS SEXUAL HARASSMENT?

An act may not qualify as harassment just because it made someone uncomfortable. It is important to understand the situation and the context of the behaviour. Some acts may just be professional feedback or workplace disagreements. The real intention of the acts depend on circumstances, tone or repetition.

It is also important to note that one serious incident is enough to constitute as sexual harassment and file a complaint. Smaller incidents may also constitute harassment based on their nature and frequency. Though the “minor” acts shall not be dismissed if they are creating a hostile work environment.

CONCLUSION

The POSH Act is a very important addition to the Indian judicial system, especially in the modern day work environments. This Act has successfully broadened the scope of sexual harassment from just physical touch to verbal abuse, gestures and digital messages. This Act takes an initiative to prevent such conduct from causing damage to a person’s dignity and sense of security.

This also leaves a huge responsibility on employers to provide a safe environment for their employees. Even the minor complaints must be addressed, whether physical or not, if it is capable of creating a hostile, offensive or humiliating work environment.

Employees must be aware of their rights and responsibilities towards their coworkers, while the employer must foster a safe and respectful environment. Having a harassment-free environment is fundamental to professional well-being and a healthy workplace.

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