



Ayana Legal

THE BUZZ

Vol. 03-03

8th March is International Women's Day

Important Judgements

Vishaka v. State of Rajasthan,
AIR 1997 SC 3011

Highlighting the dangers that working women may be exposed to, the apex court in this case laid down guidelines to address the lack of any legislation addressing protection of women from sexual harassment. It was from these guidelines that the POSH Act was born. The Hon'ble court held that:

"The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation"

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, REDRESSAL) ACT, 2013

Born from the Supreme Court's recognition of the legislative lacuna addressing sexual harassment at workplace, the Sexual Harassment Of Women At Workplace (Prevention, Prohibition, Redressal) Act, 2013 (POSH Act) was enacted to give effect to the "*...human right to gender equality and guarantee against sexual harassment and abuse...*" as well as the fundamental rights under Article 14, 19 and 21.

What Constitutes Sexual Harassment

As per the statute, sexual harassment at the workplace may include:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

Important Provisions

Indian Constitution -

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 19(1)(g) - Right to practice any profession or to carry out any occupation, trade or business

Article 21 - Right to life and personal liberty

Article 42 - The State shall make provision for securing just and humane conditions of work and for maternity relief

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

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Where To Complain

Every employer of a workplace (more than 10 employees) shall constitute to inquire into complaints of sexual harassment an Internal Committee (IC). Establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself every District Officer shall constitute in the district a committee to be known as the Local Committee (LC). District Officer may be the - District Magistrate or Additional District Magistrate or the Collector or Deputy Collector.

Complaints Against Sexual Harassment

Complaints must be made either to IC or LC in writing within a period of three months from the date of incident. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint. Before initiating inquiry conciliation settlement will be attempted between the aggrieved party and the respondent, at the sole instance of the aggrieved party. It is pertinent to mention that no monetary settlement shall be made as a basis of conciliation. If settlement fails or the terms of the settlement have not been complied with, an inquiry into the complaint can be initiated by the IC or the LC. Inquiry is to be completed within 90 days. On completion of the inquiry an inquiry report shall be submitted to the employer/District Officer within 10 days. The recommendation of penalty for sexual harassment may be in the form of either a written apology/warning/reprimand/censure, withholding of promotion, increments/ pay rise; termination from service; undergoing a counselling session; carrying out community service; deduction from salary and wages to be paid to the complainant or payment of compensation. Or the employer may initiate appropriate action as per the service rules.