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NEED OF THE HOUR TO UNDERSTAND POSH AT WORKPLACE - ITS IMPACT AND INFLUENCE IN CORPORATES WITH REFERENCE TO NEO WORLD

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Abstract :

The term sexual harassment is not that new in India, but unwanted and undesirable acts of a sexual nature, collectively referred to as "eve teasing" (public sexual harassment or sexual assault of women by men), are not a completely new development in India as an alternative. balloon components. It is a reality for various women / ladies / women in India. While most cases of harassment in the workplace are perpetuated by men against women, no woman or man should tolerate such behaviour because it damages the respect and dignity of the victim and has negative effects on people's consciences and organizations and society as a whole. Recognizing the need to suppress / stop or end such behaviour, several countries in Asia have adopted legislative measures to prohibit harassment in the workplace in order to make the work environment safe and healthy Harassment of women in the workplace work Prevention, prohibition and repair law. 2013.

This law was passed by the Lok Sabha and therefore the Rajya Sabha on September 3, 2012 and February 26, 2013 respectively, and announced on April 23, 2013. It recognizes that this unwanted harassment leads to the violation of the fundamental right of women to equality under articles 14, 15 and 21, which promote equality before the law, the prohibition of discrimination based on belief, race, caste, gender or place. foresee the birth, the protection of life and private liberty. The law provides protection against harassment for women in the workplace and the statute of limitations and redress for complaints about harassment at intervals of employment in the workplace. Using an equivalent definition of harassment given by the Supreme Court of India in the Vishaka case against the state of Rajasthan (1997), the law is a crucial step in the fight against discrimination and gender-based violence in India, although they remain some gaps because it protects only women / women. / women (and not men) of harassment in the workplace.

The Government of India and in particular the Ministry of Labour and Employment (MoLE) have taken a specific decision to address the difficulty of harassment as it hinders women's equal access to equal treatment and opportunities in a work / workplace. Place. The pledge was developed at its second meeting on March 15, 2012 at the triangular inter-ministerial working group on gender equality in the workplace by employment, endorsed Vishaka's notices with the assistance of the ILO. However, with the approval of the Law on Harassment of Women at Work (Prevention, Prohibition and Redressal) in 2013, it was decided to update

this draft notice and create this guide in accordance with the law to implement the law among the governments. at the federal, state and district levels, as well as employers', employees and women's organizations.

Keywords : *Sexual Harassment, work place, prevention, precautions*

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Introduction :

Men used to be the only true breadwinner in a family long ago. Globalization has brought about an abrupt change/qualitative leap in the position of women around the world. However, with the increase in the flow of women into India's thinking workforce, bullying in the workplace has unethically involved larger / broader dimensions. Harassment in the workplace could be a type of gender discrimination that violates women's fundamental right to equality and the right to life, enshrined in Articles 14, 15 and 21 of the Indian Constitution ("Constitution"). Bullying in the workplace not only creates an unsafe and hostile operating environment for women/women/women, it also impedes their ability to adjust to today's competitive world. In addition to hindering their work performance, it also negatively affects their social and economic growth and exposes them to despair. India's initial legislation specifically addresses the difficulties encountered by sexual harassment in the workplace; Harassment of Women in the Workplace (Prevention, Prohibition and Remedy) Act 2013 ("POSH Act") was enacted by the Indian Ministry for the Development of Women and Children in 2013. The government. it subsequently jointly notified the principles set forth in the Sexual Harassment Prevention Act (POSH) entitled Women Harassment in the Workplace (Prevention, Prohibition and Redressal) Rules of 2013 ("POSH Rules"). The year 2013 witnessed the enactment of the Law (amendment) of the Legal Code of 2013 ("Criminal Law Change Law") which criminalized crimes such as harassment, stalking and paraphilia (a type of mental disorder characterized by a preference or obsession with unusual acts). sexual practices, such as paedophilia, sadomasochism or exhibitionism).

The POSH Act was enacted to prevent and protect women against workplace harassment and to confirm an effective remedy for harassment complaints. While the statute aims to provide every woman (regardless of age or employment status) with a safe, secure and dignified operating environment, free from any kind of harassment, the proper implementation of the statutory provisions remains a challenge.

While the law preventing workplace harassment has been good since 2013, ambiguity remains in the multi-country aspects of the statute, along with what constitutes harassment, associated leader obligations, resources / safeguards accessible to the victim, investigation procedure, etc. moreover, many are not at all attentive to the criminal consequences of harassment. Obscene jokes, inappropriate comments, etc. they have a pink slip as a traditional one, and women hesitate to act out of fear of being incredulous or ridiculed; which underlies the need for greater awareness and greater social control. Any tool would be useless if the person using it doesn't know how it will be used.

Evolution of the Law on Workplace Sexual Harassment :

The eradication of gender-primarily based totally discrimination has been one in each of the fundamentals of the Constitutional constructing of India. The precept of gender equality is idolized in the Constitution, in its

Preamble, fundamental rights, fundamental responsibilities and Directive Principles. However, Place of labour employment molestation in India, become for the extraordinarily 1st time diagnosed through the Supreme Court of India (“Supreme Court”) in its landmark judgement of Vishaka v. State of Rajasthan (“Vishaka Judgement”), wherein the Supreme Court framed positive recommendations related issued instructions to the Union of India to enact an relevant regulation for fighting Place of employment molestation. Nothing much less of an underestimation, the POSH Act and additionally the sleek Rules become enacted 16 years while the Vishaka Judgement.

In the absence of a specific regulation in India, the Supreme Court, in the Vishaka Judgement, ordered down positive recommendations growing it essential for every chief to supply a mechanism to redress grievances pertaining to Place of labour employment molestation (“Vishaka Guidelines”) that have been being accompanied through employers until the enactment of the POSH Act.

1. The Vishaka Judgement :

In 1992, Bhanwari Devi, a Dalit lady used with the horticultural improvement program of the Govt. of Rajasthan, was violently assaulted by virtue of her endeavours to restrict the then practice saw of Child Marriage. This occurrence uncovered the perils that working ladies were presented to on consistently to day premise and featured the earnestness for shields to be authorized during this respect. Maintaining the justification behind working females inside the nation, ladies’ freedoms activists and attorneys recorded a public interest official procedure inside the Supreme Court under the flag of Vishaka.

The Supreme Court for the essential time, recognized the prominent administrative deficiency and recognized work place attack as a character’s rights infringement. In outlining the Vishaka pointers, the Supreme Court trusted on the Convention on Elimination of such Discrimination against female workers, taken on by the general Assembly of the worldwide association, in 1979, that India has each marked and taken on. According to the Vishaka Judgement, the Vishaka pointers gave under Article 32 of the Constitution, till such time an authoritative system on the subject has been drawn-up and sanctioned, would have the aftereffect of law and should be compulsorily trailed by associations, each inside the non-public and government area.

According to the Vishaka judgement, ‘Lewd behaviour’ incorporates such not really settled conduct (regardless of whether straightforwardly or by suggestion) as:

- Sharing physically improper pictures or recordings, like sexual entertainment or lustful gifs, with associates
- Sending intriguing letters, notes, or messages
- Displaying unseemly sexual pictures or banners in the working environment
- Telling scurrilous jokes, or sharing sexual accounts
- Making improper sexual signals
- Staring in a physically interesting or hostile way, or whistling
- Making sexual remarks about appearance, dress, or body parts
- Inappropriate contacting, including squeezing, tapping, scouring, or intentionally reviewing against someone else
- Asking sexual inquiries, like requests about somebody’s sexual history or their sexual direction
- Making hostile remarks about somebody’s sexual direction or sex personality.

Where any of those demonstrations square measure submitted in conditions under that the casualty of such direct contains a reasonable acknowledgment that in regard to the casualty's business or work (regardless of whether she is drawing compensation or prize or deliberate assistance, regardless of whether in government, public or non-public venture), such lead are frequently lowering and will address a wellbeing and security disadvantage, it adds up to attack inside the Place of work. It's oppressive, for instance, when the lady has reasonable grounds to accept that her complaint would weakness her concerning her business or work (counting selecting and advancement), or when it makes a threatening working air. Unfriendly outcomes would conceivably result if the casualty doesn't agree to the lead being referred to or brings up any criticism thereto"

2. Post Vishaka – another Judgements :

(1) Attire Export Promotion Council v. A.K Chopra

The Vishaka judgement initiated a nationwide discourse on Work space molestation and threw out wide open a problem that was brushed underneath the carpet for the longest time. The primary case before the Supreme Court when Vishaka during this respect was the case of attire Export Promotion Council v. A.K Chopra. During this case, the Supreme Court recapitulated the law ordered down within the Vishaka Judgement and upheld the dismissal of a superior officer of the Delhi based Export Promotion Council UN agency was found blameworthy of sexually harassing a subordinate feminine worker at the Place of employment. During this judgement, the Supreme Court amplified the definition of molestation by ruling that physical contact wasn't essential for it to quantity to associate act of molestation. The Supreme Court explained that "sexual harassment could be a type of sex discrimination projected through unwelcome sexual advances, request for sexual favours and alternative verbal or physical conduct with sexual overtones, whether or not directly or by implication, significantly once submission to or rejection of such conduct by the feminine worker was capable of being employed for touching the utilization of the feminine worker associated immoderately busy bodied together with her work performance and had the result of making an daunting or hostile work atmosphere for her."

(2) Medha Kotwal Lele & Ors. V. Union of India & Ors.

A letter composed by Dr. Medha Kotwal of Aalochana (a NGO) featured assortment of individual instances of attack expressing that the Vishaka pointers (Guidelines) weren't by and large successfully implemented. Changing the letter into a legal writ appeal, the Supreme Court obliging it and attempted recognition of execution of the Vishaka pointers the nation over by driving state legislatures to record affirmations move on the means made by them to carry out the Vishaka pointers. In its judgment, the Supreme Court discovered that "the execution of the Vishaka pointers should be not exclusively in kind anyway also in substance and soul in this way on form realistic free from any and all harm environment at Place of work in each side and subsequently endorsing working ladies to go to work with poise, fairness and due regard.' Not being persuaded with the execution of the Vishaka pointers, it guided states to put in comparable and significant systems to affirm powerful execution of the Vishaka pointers. At long last, the Supreme Court pronounced that for good measure of a rebelliousness or non-adherence of the Vishaka pointers, it very well may be responsive the wronged people to move toward the singular High Courts.

3. Key Provisions of the POSH Act

(1) Applicability and Scope

- Applicable Jurisdiction: the Prevention of Sexual Harassment (POSH) Act extends to the 'entire of India'.
- Aggrieved Woman: As in line with the Prevention of Sexual Harassment (POSH) Act, accomplice 'aggrieved lady' in connection with a piece vicinity, can be a lady of any age, whether or not or now no longer used or now no longer, UN company alleges to own been subjected to any act of molestation, furnished that the definition does not necessitate the lady to be accomplice worker, even a customer/patron UN company is likewise sexually vexed at a piece vicinity will declare safety under the Prevention of Sexual Harassment (POSH) Act.
- The Act extra stipulates that a female shall now no longer be subjected to molestation at her paintings vicinity, however, it will be mentioned that in order for a female to mention safety under the Prevention of Sexual Harassment (POSH) Act, the incident of molestation must have taken vicinity at the 'workplace'.
- The Act is not a gender-impartial rules and protects totally lady employees. Therefore, the safeguards under the Prevention of Sexual Harassment (POSH) Act are not relevant to 'men' sufferers al even though employers would possibly decide to increase the safety via their policy.

(2) What amounts to Sexual Harassment?

The POSH Act defines 'sexual harassment' in step with the Supreme Court's definition of 'sexual harassment' inside the Vishaka Judgment. As consistent with the Prevention of Sexual Harassment (POSH) Act, 'sexual harassment' consists of unwelcome sexually tinted behaviour, whether or not or now no longer at once or through implication, like (i) bodily touch and advances, (ii) call for or request for sexual favours, (iii) developing sexually coloured remarks, (iv) displaying pornography, or (v) the alternative unwelcome bodily, verbal or non-verbal behaviour of a sexual nature. The next circumstances, amongst special circumstances, in the event that they arise or ar present in connection with or related with any act or behaviour of molestation would possibly amount to sexual harassment: • implied or explicit promise of high quality remedy in employment; • implied or explicit hazard of prejudicial remedy in employment; • implied or explicit hazard concerning present or destiny employment status; • interference with paintings or making companion discouraging or offensive or opposed paintings environment; or • humiliating remedy apparently to have an impact at the girl employee's fitness or safety. While a few varieties of molestation like sexual attack are intrinsically disrespectful and inevitably striking, and could need to be forced to arise simply the as soon as for it to be handled as 'sexual harassment', every other bureaucracy may not be truly distinguishable. Since there may be no best line test in identifying what could decide to a 'opposed working environment', the load can lie at the inner committee to make your mind up whether or not or now no longer the harassment suffered through a sufferer is satisfactorily extreme to own created a opposed working putting or now no longer. Further, identifying what constitutes 'sexual harassment' relies upon upon the specific statistics and additionally the context at some stage in which the behaviour has occurred.

(3) Employee

The definition of accomplice 'employee' under the Prevention of Sexual Harassment (POSH) Act within reason huge to incorporate regular, temporary, surprising staff, human beings acting on a each day salary

foundation, both at once or via accomplice agent, agreement labourers, co-workers, probationers, trainees, and apprentices, with or whilst now no longer the records of the important chief, whether or not or now no longer for remuneration or now no longer, working on a voluntary foundation or otherwise, whether or not or now no longer the phrases of employment place specific or silent.

(4) Workplace

While the Vishaka suggestions had been confined to the usual administrative centre set-up, spotting the very reality that molestation may not basically be confined to the primary vicinity of employment, the Prevention of Sexual Harassment (POSH) Act has delivered the assemble of accomplice 'prolonged administrative centre'. As according to the Prevention of Sexual Harassment (POSH) Act, 'administrative centre' consists of wherever visited via way of means of the employee springing up out of or for the duration of the direction of employment, in addition to transportation furnished via way of means of the chief for the goal of commutation to and from the vicinity of employment.

(5) Complaints Committee

An crucial characteristic of the Prevention of Sexual Harassment (POSH) Act is that it envisages the appropriate of a complaint redressal forum.

A. Internal Committee

B. Constitution of the IC

A. **Internal Committee** : The POSH Act desires an companion chief (employer) to line up companion 'inner committee' ("IC") at each place of work or branch, of a corporation the use of ten or extra of personnel, to concentrate to and redress grievances regarding molestation. Failure to symbolize the IC has crystal rectifier to imposition of a excellent underneath the Prevention of Sexual Harassment (POSH) Act. B. Constitution of the IC Presiding Officer: Female Positioned at a senior degree on the paintings area from among the personnel contributors. Members: A pair of contributors from among personnel, preferably devoted to the motive in the back of lady welfare or UN organization and feature had know-how in welfare paintings or have felony information. External member: From companion or Social Organization or affiliation devoted to the motive in the back of take care of girls or man or woman conversant in troubles almost about molestation. Not however 1/2 of the IC Members will be Females. The time period of the IC Members shall now no longer exceed 3 years. A minimal of 3 Members of the IC in addition to the chief are to be gift or to be had for accomplishing the inquiry. C. Registration of the IC The Department of Women and Child Development of Telangana and Maharashtra vicinity has issued a circular (on 01.07.2019 for Telangana) related an place of work order (on 23.03.2017 for Mumbai) mandating registration of the IC in Telangana & Mumbai. While employers in Mumbai have been had to sign in their ICs with the place of work of the District Women and Child Development Officer in the prescribed format, employers in the country of Telangana have been had to sign in their ICs at the molestation Electronic Box. D. Local Committee At the district degree, the govt. is wanted to line up a 'nearby committee' ("LC") to analyze and redress court cases of harassment from the unorganized zone or from establishments anyplace 20. As according to Repealing and Amending Act, 2016, the phrase of Local Complaints Committee turned into changed to Local Committee. The IC has now no longer been implanted attributable to the group having however 10 or if the grievance is towards the chief withinside

the worker list. The LC has unique relevancy in instances of harassment of home personnel or anyplace the grievance is towards the chief himself or a third celebration WHO isn't always Associate in Nursing worker.

B. Constitution of the LC Chairperson : Associate in nursing, eminent girl in the subject of welfare paintings and devoted to the motive for girls. Local girl: One in each of the contributors to be appointed from among the girls running in block, taluka, tehsil or ward or municipality in the district. NGO contributors: 2 contributors, out of that, at least one will be a lady to be advised from an organization or Associate in Nursing affiliation devoted to the motive for girls or a person conversant in troubles regarding harassment. At least one have a historical past in regulation. At least one need to be a Woman happiness to the normal Castes or normal Tribes. E. Powers of the IC/LC The POSH Act stipulates that the IC and LC shall, while inquiring right into a grievance of labour area harassment, have identical steady powers as a civil courtroom docket under the Code of Civil Procedure, 1908 as soon as making an strive of fit in recognize of: i. conjuring and enforcing the attending of someone and analysing him on oath; ii. requiring the discovery and manufacturing of files; and iii. the alternative count number which may be prescribed

(6) Criticism Mechanism/ Complaint Mechanism

An aggrieved girl WHO intends to report a grievance is wanted to publish six copies of the written grievance, along side assisting files and names and addresses of the witnesses to the IC or LC, interior three months from the date of the incident and simply in case of a chain of incidents, interior an quantity of three months from the date of the closing incident. Prompt information of Associate withinside the stated act of harassment is possibly as critical as quick motion to be taken with the aid of using the government on receiving a grievance. In truth the extra activate the grievance is, the extra true it is treated. In times anyplace ok motive is incontestable with the aid of using the plaintiff for the postpone in submitting the grievance, the IC/LC may expand the timeline for submitting the grievance, for motives to be recorded in-writing. The regulation moreover makes provisions for friends, relatives, co-workers, scientist & psychiatrists, etc. to report the grievance in matters anyplace the aggrieved girl is not able to shape the grievance attributable to bodily disability, intellectual disability or death.

(7) Conciliation

Before starting up motion on a accusation, the IC at the request of the aggrieved girl, will create efforts to settle the problem among the events via conciliation with the aid of using well-which means agreement. Conciliation is largely an informal approach of partitioning criticisms earlier than the grievance escalates into a very blown formal inquiry. Thus, whilst an accusation of harassment has been lodged, the aggrieved girl may request the IC to solve the problem with the aid of using conciliating among the events earlier than graduation of the inquiry proceedings, although economic agreement should not be created as a foundation of conciliation Once the agreement has been were given wind of, the IC or the LC (because the case maybe) shall file the agreement were given wind of and henceforth deliver copies of the agreement to the aggrieved girl additionally due to the fact the respondent. Once a agreement has been were given wind of, the IC shall now no longer continue with inquiry under the POSH Act.

(8) Redressal process/ Inquiry

Timelines Written court cases (6 copies) along side assisting files and names and addresses of witnesses must be pressured to be filed interior three months of the date of the incident. Timeline stretchable with

the aid of using some other three months. Upon receipt of the Accusation, one replica of the identical is to be despatched to the respondent interior 7 days. Upon receipt of the replica of accusation, the respondent is wanted to answer to the grievance along side an stock of assisting files, and names and addresses of witnesses interior 10 running days.

The Inquiry record has were given to be issued interior 10 days from the date final touch of inquiry. The head organization is wanted to behave at the suggestions of the IC/LC interior 60 days of receipt of the Inquiry record. Appeal in opposition to the selection of the committee is authorized interior ninety days from the date of suggestions.

(9) Interim Reliefs

At the request of the plaintiff, the IC or the LC (because the case may be) might also additionally propose to the lead organization to deliver period in-between measures such as: i. switch of the aggrieved female or the respondent to the alternative workplace; ii. granting go away to the aggrieved female as much as an quantity of three months moreover to her normal statutory/ written settlement go away entitlement; iii. save you the respondent from information at the paintings overall performance of the aggrieved female or writing her personal record, that obligations is likewise transferred to opportunity staff.

(10) Social Control and Compensation

The POSH Act prescribes the subsequent punishments that can be imposed with the aid of using an organization on an worker for indulging in an act of sexual harassment: i. social manage prescribed below the carrier guidelines of the corporation; ii. if the corporation does not have carrier guidelines, disciplinary motion collectively with written apology, warning, reprimand, censure, withholding of promotion, withholding of pay upward thrust or increments, terminating the respondent from carrier, present process a message session, or carrying out network carrier; and iii. discounting of reimbursement collectable to the aggrieved female from the wages of the respondent. The POSH Act moreover envisages fee of reimbursement to the aggrieved female. The reimbursement due will be decided primarily based totally more often than not on: i. the intellectual trauma, pain, struggling and emotional misery prompted to the aggrieved worker; ii. the loss in profession danger way to the incident of sexual harassment; iii. clinical charges incurred with the aid of using the sufferer for physical/ medication treatment; iv. the economic advantage and status of the alleged perpetrator; and v. feasibility of such fee in fee or in instalments.

(11) Superficial Complaints

In order to ensure that the protections envisaged under the POSH Act do not appear to be victimised, provisions for motion in opposition to “fake or malicious” complainants are enclosed inside the statute. As in step with the POSH Act, if the IC/LC concludes that the allegation created with the aid of using the litigator is faux or malicious or the grievance has been created understanding it to be unfaithful or forged or misleading information has been furnished for the duration of the inquiry, disciplinary motion according with the carrier guidelines of the agency can be taken in opposition to such litigator. Where the agency does not have carrier guidelines, the statute affords that disciplinary motion like written apology, warning, reprimand, censure, withholding of promotion, withholding of pay upward thrust or increments, terminating the respondent from carrier, present process a content material session, or carrying out network carrier may also be taken. The POSH Act greater clarifies that the mere incapability to verify a grievance or deliver ok evidence need not suggest that the grievance is faux or malicious.

(12) Confidentiality

Recognising the sensitivity linked to subjects regarding harassment, the POSH Act attaches noteworthy significance to ensuring that the accusation and linked information are unbroken and maintained confidentially. The POSH Act particularly stipulates that information regarding Place of labour employment harassment shall now no longer be challenge to the provisions of the Right to Information Act, 2005. The POSH Act greater prohibits dissemination of the contents of the accusation, the identification and addresses of the litigator, respondent, witnesses, any information with regards to conciliation and inquiry proceedings, suggestions of the IC/LC and consequently the motion taken to the overall public, press and media in any manner. That said, the POSH Act lets in dissemination of expertise regarding the justice that has been secured to any sufferer of harassment, whilst now no longer revealing the name, address, identification or the alternative details that could result in the identity of the litigator or the witnesses, revealing of the justice secured could not totally deter extraordinary humans from collaborating in acts of harassment, but moreover introduce inside the minds of employees and public that the Management of the agency is critical regarding presenting a steady paintings environment and harbours intolerance for any kind of harassment on the Place of labour employment.

(13) Consequences of Non-Compliance :

If an agency fails to represent/represent an IC or does now no longer fits the needs prescribed under the POSH Act, a monetary penalty of as an awful lot as Rs. 50,000 INR (Fifty Thousand) (approx. US\$ 700) also can be obligatory. A repetition of a similar offence may also reason the penalising being doubled and/or de-registration of the entity or revocation of any statutory business agency licenses. It's unsure on that business agency licenses region unit being named all through this case. It is furthermore pertinent to observe that each one offences under smooth Act region unit non-cognizable.

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