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[“ARTICLE 2 – CS-MULTIFACETED PROFESSIONAL Opportunities in Sexual Harassment of Women at workplace \(Prevention, Prohibition and Redressal\) Act, 2013 \(POSH\)”](#)

OVERVIEW:

“Equality is the soul of liberty; there is in fact, no liberty without it.” - Frances Wright (American Social Reformer). Equality, liberty and fraternity are the pillars of justice. Justice can't be there when there is no equality, liberty or fraternity. However today, these pillars of justice are ravaged by a variety of social menaces. One of such menace is sexual harassment at work places. Its tentacles are so widespread that it isn't just prevalent in developing and under- developed countries but also in developed countries. This issue affects all women across all socio-economic levels. It is not a sporadic or an isolated incident. Countless women are being harassed sexually by their superiors globally, yet the matter is shrugged off under the carpet in majority of the cases.

It is alarming to know that seventy-five percent of women in professional capacity or in top managerial roles have experienced sexual harassment in their lifetime (As per study conducted by World Bank). In fact, the world only realized the magnitude of this issue when in the year 2017, the “#Me too movement” (Harvey Weinstein sex scandal) imploded in the entertainment industry in the United States. This incident has paved way for more women to fearlessly open up, new legislations and a change in outlook of society towards this issue and its victims. The world has begun to see how the society treated this issue as trivial. It is high time that this issue is weeded out from the society. This can only be achieved with the presence of stringent legislations and their effective implementation

INDIA'S TRYST WITH SEXUAL HARRASSMENT AND INTRODUCTION OF POSH

As far as India is concerned, sexual harassment at workplaces is widely prevalent across both formal and informal job sectors. It is because of the fear of losing their job, social stigma, embarrassment, poor enforcement of appropriate legal mechanisms, lack of confidence and lack of awareness that cases are not reported, and justice isn't served. Moreover, India's ranking in the Global Gender Gap Index 2021

conducted by world economic forum is a dismal 140 among the 156 countries which were evaluated. More the inequality between men and women, more is the prevalence of such issues. Further one must note that this problem is experienced by women even at well established, reputed corporates and business firms.

INTRODUCTION OF POSH IN INDIA:

In 1997, the Supreme Court passed a landmark judgment in the Vishaka v. State of Rajasthan laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue.

Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India ("Constitution"). Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth. In India, although the Vishakha Guidelines to prevent workplace sexual harassment were formulated in 1997, it was only in 2013, a full 16 years later, that the POSH Act was enacted.

The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as Act) was notified on 9th December 2013, superseding the Vishaka Guidelines for Prevention Of Sexual Harassment (POSH) to provide protection of women against sexual harassment at workplace and for prevention & redressal of complaints and grievances of aggrieved person under this Act, thereby creating a workplace which is safe and equitable. The Act extends to whole of India.

The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

OPPORTUNITIES FOR COMPANY SECRETARIES IN POSH:

1) CS in Employment:

Company Secretaries in employment have the status of "Key Managerial Personnel" (KMP) who shall be responsible for the day to day functioning of a company. Role of CS in employment is to advice Board of Directors regarding framing and implementation of policy as well as ensuring compliance with various laws applicable to the company.

Section 4 of the POSH Act requires an employer to set up an 'internal committee' ("IC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. Failure to constitute the IC has led to imposition of a fine under the POSH Act. Hence, Company Secretary being compliance officer of the company is vested with prime duty to ensure that the company complies with all the applicable acts including POSH. Following are some of the duties of CS under POSH.

- Advise the company regarding constitution of internal committee (preferable to have odd number of members in order for the IC to arrive at a decision based on majority in case of divided opinion)
- CS shall help the members of Internal Committee understanding their roles & Responsibilities under the Act.
- Hold period meetings of IC members and conduct regular training of committee members.
- Maintain documents of proceeding of every inquiry meeting.
- Ensure that members of IC are sensitive to issues pertaining to gender based violence and should have good credibility and technical competency to handle grievance procedures.
- The functioning of IC should be made autonomous such that there is no scope of allegations of bias or favouritism.
- Sensitize the employees/Members of IC of the company regarding workplace harassment.
- Make statement in the Directors Report whether or not the company has complied with the provisions regarding constitution of the Internal Complaints Committee.
- Confidentiality is a critical aspect that every CS as well as IC member must maintain at all times.
- Make disclosure relating to number of cases filed and disposed off in every calendar year to the employer.
- CS shall also fulfil obligation to ensure said disclosure is included in the annual report of the company which is to be filled with Registrar of Companies (ROC).
- Interactive sessions for employees
- Assisting in establishing a formal grievance redressal mechanism
- Publication of POSH-related policies,

2) **CS in Practice:**

Company Secretaries in practice provides secretarial and compliance related services to wide range of companies/LLPs across all the sectors/Industries. Following are some of the advisory services that CS in practice can provide:

- Advise the client companies regarding compliance under the Act like constitution of internal committee, role & duties of committee members.
- Assist in handling of grievance relating to harassment and sensitize the employees of the company regarding workplace harassment.
- CS in practice can act as a member of internal committee or local committee as an External member/Local member respectively.

- Conducting meeting of Internal committee and maintaining minutes and other documents relating to meetings.
- Make the committee members aware relating to emerging trends and practices with respect to harassment.
- Help corporate clients in framing of sexual harassment at workplace policy and altering it from time to time as per the needs.
- Ensuring compliance of the Act as non-compliance may result into monetary penalty or may result into cancellation/revocation of any statutory business license/ Registration of the company (Employer).
- CS can help the companies in filing disclosures with respect to any harassment cases bought before the internal committee in the annual return to be filled with Registrar of Companies (ROC) including the cases against which action is being taken or pending (if any)
- To prevent and handle harassment cases proper polices and procedure is required to be laid down by the company, which the CS in practice can help drafting.
- CS can help its clients in proper implementation of anti - harassment policies.
- Web based awareness modules
- conciliation process at the behest of the aggrieved women

POSH UNDER THE NEW NORMAL OF WORK FROM HOME

Workplace dynamics have shifted from physical to virtual space in the ongoing Pandemic and it shall remain so to some extent even after the pandemic as people have got used to the new normal. Therefore, it is essential for corporates to tweak their Anti sexual harassment policy to align it with new definition of “workplace to include virtual office”, “work timings”, “forms of sexual harassment” and others. Along with tweaking the policy of the Company, it is also important to inform or sensitize the employees about workplace ethics in the new normal so that ignorance is not taken as harassment. For example, stipulated work hours, contacting on unauthorized communication channels, avoiding late night in the meetings needs to be defined and made aware to the employees.

It is also essential to provide the employees the choice of filing complaints online through email or dedicated portal for POSH, for which the POSH Policy needs to be reworked.

Any compliant in POSH needs to be supported by evidence which would be digital in the work from home scenario. The Internal Committee members needs to be familiarized with the digital evidence, conducting online meetings and generating encrypted files during the investigation process to maintain confidentiality.

All the above activities need to be planned, implemented, executed by a Professional and Company Secretaries being compliance professionals are the apt choice to monitor these and ensure effectiveness of the changes.

STATISTICS:

The National Commission for Women estimated that since 2017 two women were sexually harassed each day in their workplaces. As per a report published by the Ministry of Women and Child Development for the same year, the number of cases of sexual harassment in the workplace registered in India has increased by 264%, i.e. from 371 cases in 2014 to 980 in 2017.

In India even to this day majority of Sexual Harassment cases go unreported due to many reasons like fear of losing job in case of reporting against seniors, reputation damage of employee, fear of threat, oppression by the employer, not knowing proper means of reporting under the Act, non-cooperation of employer & many others.

Indian Corporate sector has witnessed marked increase in POSH Cases in the last 5 years:

Year	Number of cases received	Number of cases pending
FY16	798	54
FY17	980	102
FY18	1120	103
FY 19	1448	180
FY 20	1400	202

India's listed companies saw a marginal decline in the sexual harassment cases at workplaces, which experts attributed to growing sensitization efforts. Data compiled from annual reports of top 44 Nifty companies showed that total complaints have dropped by 2.6% in FY20 compared to previous year.

Data on reported cases showed that these companies registered a total 1400 cases in financial year 2020 compared to 1448 cases reported in FY19. Among Nifty firms, at least six have not reported a single sexual harassment complaint since FY 2015-16 date possibly hinting at the need for such corporates to invest more in creating awareness amongst employees. Companies such as Adani Ports and Special Economic Zone Ltd, Bajaj Finserv, Coal India, Reliance Industries, UPL Ltd and Shree Cement have had nil sexual harassment cases reported in FY20.

JUDICIAL PRONOUNCEMENTS:

In the very recent case of Anita Suresh Vs the Union of India & others, the Court upheld that false or malicious complaints under POSH is not maintainable, in fact a penalty was imposed on Petitioner due to insufficient evidence. In recent past, there have many frivolous complaints resulting in waste of time of judiciary and misuse of rights given under the Act, therefore this judgement will serve as a benchmark. Another noteworthy case is that of Genpact sexual harassment case, in which the unfortunate incident of accused AVP committing suicide happened. Learnings the case would be that charges of sexual harassment have to be handled very sensitively, unbiased, dispassionate manner in which equal opportunity needs to be provided to both parties to present their case and submit evidences without any bias or prejudice mindset. In this particular case, hasty decision of suspension of AVP resulted in him taking such a extreme step without going into the merits of the alleged harassment.

In the case of Global Health Private Limited Vs. Local Complaints Committee, District Indore and others, the Madhya Pradesh High Court imposed a large fine for not constituting an IC on an employer for failing to comply with mandatory provisions of POSH. There have been many more judgements around this compliance by various High Courts in recent times.

In view of these judgements and Governments proactive steps in sensitising the workforce and Business about gender rights and consequences of non-compliance, Corporates, Hospitals and other establishments where POSH is applicable are gradually moving towards implementation of POSH in spirit and not just Law.

CONCLUSION:

Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/ safeguards available to the victim, procedure of investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed which underpins the need for greater awareness and greater enforcement.

The level of importance given to a sexual harassment case in corporate India also remains a cause of concern.

It is also important for employers to regularly train their IC members on the nuances of the POSH Act and investigation formalities. In order to keep litigation at bay, a comprehensive understanding of the interpretation being adopted by courts in India and the ability to look at things from the lens of the judiciary, is necessary.

With the rising number of reported cases of workplace sexual harassment of women, it becomes imperative for employers and their respective HR & in-house legal teams to take pro-active steps to prevent and effectively redress complaints of workplace sexual harassment.

Indian Ministry for Women in November 2017 launched the 'SHe-Box', an online portal that directly forwards complaints to the IC of the employer or organisation thereby providing a forum outside the organisation for female employees to complain to. Various State Governments have also taken steps towards effective implementation of POSH.

To name a few, Women Development and Child Welfare Department issued a general notice that any business in Telangana that had ten or more employees was now required to register their IC with [the State Shebox portal](#). [The government of Maharashtra](#) issued a similar letter, requiring all businesses to fill out a form outlining their compliance status and internal committee and submit it to the Sub-Divisional Magistrate. This is in an effort to allow officials to better track the compliance statuses of businesses around the area and sensitize the Employers towards gender diversity & effective implementation of the Statute. In both situations, a failure to follow the rules could lead to businesses getting fined.

However, any actions of the Government in awareness & ease of implementation around POSH has to be supplemented by bona fide and genuine efforts of Corporates & workplaces to provide a safer environment to women.

