

## HR Law Hotline

October 07, 2021

### INDIA'S LAW ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE: ANALYSIS OF CASE LAWS - PART 4

In a first of its kind judgment, the Bombay High Court has issued guidelines to ensure confidentiality of hearings pertaining to matters of workplace sexual harassment of women. The guidelines issued by the court, in the matter of *P v. A & Ors.*<sup>1</sup> ("**PoSH Confidentiality Guidelines**"), relate to *inter alia* the manner in which such cases should be heard and handled; how decisions should be recorded, pronounced and communicated and the precautionary steps to be followed while reporting such matters including by the media.

The PoSH Confidentiality Guidelines shall serve as a working protocol for the courts. The objective is to protect the identities of the parties from even accidental disclosure. The PoSH Confidentiality Guidelines as pointed out by the Bombay High Court are the bare minimum to be followed by the courts and are subject to necessary revisions or modifications.

#### BACKGROUND

One of the key objectives of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**PoSH Act**") has been to provide for an effective grievance redressal mechanism for women who have been unfortunately subjected to workplace sexual harassment. However, the fact remains that owing to the fear of having to compromise their privacy resulting in shame, anxiety, humiliation, and fear, a large section of women still continue to take a back seat when it comes to reporting incidents of workplace sexual harassment.

In order to protect the confidentiality of the parties concerned, section 16 of the PoSH Act restricts the contents of the complaint, the identity and addresses of the parties (including the aggrieved woman, respondent and witnesses), any information relating to conciliation and inquiry proceedings, recommendations of the Internal Complaints Committee (**ICC**) or the Local Complaints Committee, and the action taken by the employer or the District Officer under the provisions of the PoSH Act from being published, communicated or otherwise being made known to the public, press and media in any manner. However, the law permits dissemination of information regarding the justice secured to the victim, subject to the condition that the name, address, identity or any other particulars leading to the identification of the aggrieved woman and witnesses is not disclosed. In the event that any person is found to violate the aforementioned confidentiality obligations, the PoSH Act provides for a monetary penalty of INR 5,000 (approx. USD 70)<sup>2</sup>.

In spite of the afore-said confidentiality restriction, as observed by the Bombay High Court, there has been no established guidelines so far in such matters, often leading to a scenario where the confidentiality of the parties stood compromised. Therefore, it had become imperative for the court to lay down certain guidelines in this respect.

#### GUIDELINES FOR HANDLING CASES

The PoSH Confidentiality Guidelines include the following directions:

- To anonymize identities of the parties:
  - While identity documents may be requisitioned for by the Registry to establish the identity of the deponent, no such document or personally identifiable information ("**PII**") shall be retained on file.
  - The names of the parties will not be mentioned in the order sheets. Instead, they will be referred to as Plaintiff, Defendant No.1, etc.
  - There will be no mention of any PII in the order whether it be the names, email ids, mobile or telephone numbers, addresses etc. of the parties. Additionally, no witnesses will be mentioned, nor will their addresses be noted.
  - All orders and judgments will be delivered in private, that is, they will not be pronounced in open court but will be conducted only in chambers or in-camera.
  - There will be no online or hybrid facility for hearings. All hearings will require physical attendance.
  - Orders/judgments on merits will not be uploaded.
- Hearing and access to confidential information:
  - Only the advocates and the litigants shall be permitted to attend hearings. Except the Court Master/Associate or Sheristedar and the stenographer or person providing secretarial assistance, all other staff (including clerks, peons, etc) must leave the Court.
  - No one other than an Advocate on Record with a valid *vakalatnama* will be allowed to take inspection of the

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order.

3. Prohibited disclosures:

- a. Any form of recording of any part of the proceedings is strictly forbidden.
- b. If any order is to be released into the public domain, it will require a specific order of the Court. Even if a permission has been obtained, only the fully anonymised version of the order can be published.
- c. Both sides and all parties, advocates and witnesses are forbidden from disclosing the contents of any order, judgment or filing to the media or publishing any such material in any mode or fashion by any means, including social media, without specific leave of the court. In fact, witnesses to the action, in addition to the usual oath, must sign a statement of non-disclosure and confidentiality.

4. Proceedings in other courts:

- d. The Labour Courts and Industrial Courts shall be bound by these guidelines and shall strictly adopt and comply with these and any future guidelines.

Failure to comply with the conditions of anonymity laid down by the courts including by the media and/or any attempt to record or transcribe any part of the proceedings will be treated as an offence amounting to contempt of court and will be punished accordingly.

## ANALYSIS

The objective of the PoSH Act is not only to implement an effective grievance redressal mechanism, but also to create a system wherein women feel secure and confident to file their complaints of sexual harassment at the workplace. While the law accomplishes that goal admirably in several different ways, confidentiality has been a critical element which has often been overlooked especially at the time of litigation.

The PoSH Confidentiality Guidelines are therefore an important step in the right direction as it will serve as a guidance not just for the courts but also as a reminder to the employer, ICC members and witnesses, besides the parties who are directly involved in relation to the complaint of sexual harassment at the workplace. The ruling of the Bombay High Court also reinforces the importance for employers to take similar measures to ensure that sexual harassment complaints are investigated and handled in a confidential manner without exposing the identities of the parties involved. In view of the PoSH Confidentiality Guidelines, the parties may now feel more confident to make use of the court process.

While there is a good enough reason to protect the confidentiality of the parties given the personal and sensitive nature of such matters, on the flip side, it needs to be seen as to how this can be balanced against the need for transparency and accountability. Also, the PoSH Act being a relatively new law, employers and ICC members have been keenly following the principles laid down by various courts in such matters while interpreting provisions of the PoSH Act, which may not be possible going forward in view of the PoSH Confidentiality Guidelines.

It is hoped that the PoSH Confidentiality Guidelines are followed by courts across the country. However, it remains to be seen whether the guidelines would be limited to workplace sexual harassment matters or be extended to cases unrelated to the workplace as well.

– Preetha S & Vikram Shroff

You can direct your queries or comments to the authors

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<sup>1</sup> Suit no. 142 of 2021, Bombay HC, decided on September 24, 2021

<sup>2</sup> Rule 12 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

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