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Employee safety: Building a case for stricter punishment for malicious complaints under the PoSH Act

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Abstract

Purpose: Every Act is prone to being misused and the same is true for the PoSH Act as well. The authors intend to understand this unexplored area of research in the context of Indian workplaces. The section where the punishment prescribed for a woman making a malicious complaint is the same as a male respondent found guilty. Despite this clear provision, complaints are still made with a malicious intent.

Design Methodology/Approach: Real life case studies were analysed by POSHCA team members and their associates from amongst over 100 complaints handled over an eight year period of 50 plus organisations pan-India. An attempt was made to understand the reasons why women made malicious complaints. Three case studies are produced here as sample cases to understand the situations that led to levelling of false allegations against males.

Findings: It was analysed that malicious complaints can be mainly categorized into the following three segments-

- 1) To take leave allowed under the “interim period” when inquiry is on
- 2) To arm twist for personal gains
- 3) For taking revenge against work-related matters

Practical Implications: The fear created amongst male colleagues and especially the superiors because of the misuse by women for their personal gain creates an unproductive workplace. In the long run, the superiors begin to avoid hiring women and this goes against the “Diversity and Inclusion Policy” and creates a gender imbalance which again is counter-productive. Here lies the need for stronger steps to be taken to deter women from misusing the noble PoSH Act. Also, there is a psychological and societal loss for men who take years to build their reputation and promotions through honesty and hard work.

Originality/Value: This paper is an original piece of work of practitioners who handle complaints in the capacity of External Counsels on the Internal Complaints Committees of organisations differing in size/ownership/locations etc. This contribution by the authors adds value to the literature on the implementation of the Act in India.

Keywords: PoSH Act, sexual harassment, workplace, malicious complaint, gender equality

Introduction

Protection of women-legal interventions

Women have been given special protection and rights in our Constitution especially Article 15 (3)-special provisions can be made for women, Art 39-Equal rights-earn/work/health, Article 42-Maternity relief, Article 43-Decent standard of living etc.

Also, the target set under the Sustainable Development Goals, specific mention has been made for women. For example, SDG 16 focusses on ‘Peace, Justice, & Strong Institutions’

The targets set are two-fold:

16.A) Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.

16.B) Promote and enforce non- discriminatory laws and policies for sustainable development.

There have also been numerous legislations that have been passed for protection of women ever since Independence. Some of these are:

- Hindu Succession Act, 1956
- Immoral Traffic (Prevention) Act, 1956

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- Dowry Prohibition Act, 1961
- Family Court Act, 1984
- Indecent Representation of Women Act, 1986
- Commission on Sati Prevention-1987
- Protection of Human Rights Act, 1993
- Protection of Women from Domestic Violence Act, 2005
- POCSO Act, 2012
- Sexual Harassment of Women at Workplace Act, 2013
- Muslim Women (Protection of Rights on Marriage) Act, 2019

The specific Act being delved into here by the authors is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (or PoSH Act in short).

It was after a ghory incident of 1992 where a woman in Rajasthan was gang-raped at work. Her case was taken up by an NGO named Vishaka and the Hon'ble Supreme Court issued the Vishaka Guidelines in 1997 for the protection of women at their workplace. A legislation was to follow but it took almost seventeen years before the PoSH Act came into place.

Under this Act, there is a provision where a woman can make a complaint if she faces sexual harassment at workplace. Most of the countries have a gender-neutral Act but in India it is clearly mentioned that a complainant can only be a woman.

Legislations prone to misuse

In India, there has been misuse of these legislations and this has led to a general perception that the laws are tilted in favour of women. Thus women tend to take advantage of these legislations. In fact, the extreme steps that women took of ensuring that the husband and his side of the family was behind bars was taken to such an extreme measure that the legislation on the Dowry Act was amended to ensure that it was less prone to misuse than what was happening at that moment in the country.

Similarly, under the PoSH Act, there was similar fear that this legislation would be misused as well. These fears were revealed when the authors interacted with employees during the mandatory "Employee Awareness Sessions" where all employees were explained the provisions of the Act. The authors were inundated with questions about the consequences of arbitrary sexual harassment allegations on the superiors especially the males. These apprehensions of the superiors were genuine and as were the queries on how they should protect themselves should such a situation arise for them.

Methodology

This paper follows a case study method. It draws upon experiences of POSHCA (an NGO empanelled with Ministry of Women and Child Development) members who are a part of the ICC (Internal Complaints' Committee) as External Counsels.

The POSHCA members and their associates discussed the various complaints handled of which they had handled and then agreed to enunciate three cases that were typical of the kind of malicious complaints received. These complaints have been handled over a period of eight years pan-India in fifty plus organisations. This research paper is an attempt to

analyse the motives of such complaints, understand the impact on the respondent or respondents thereby building a case for stricter punishment under the Act.

The authors share some such complaints that they have been received from different organizations at different times. These are shared here as the cases.

Case studies and analysis

Case I

A woman employee (complainant) complained that there was there were four males (Respondents) within the organization who were indulging in sexual harassment and making her very uncomfortable at work.

Allegations

Complaint I: The woman complained that she approached Respondent 1 because of her email was not working properly. Respondent 1 did the needful and sent her a test-mail. The complainant objected to being sent a message in the test mail saying "hello" instead of saying "test mail".

- 1) Complaint II: The complaint's laptop was not working properly and she went to the technical department to get it repaired. There are about 8 people working around a table in an open room in that department. The allegation levelled by her was that Respondent II kept his hand on her shoulder when he was trying to check her computer i.e., he leaned on her and this made her very uncomfortable. However, she came back to her seat without saying anything.
- 2) Complaint III: The 3rd complaint was against a male colleague (Respondent III) who she said had called her at 7:00 A.M. on a Sunday. She said he made casual conversation and she produced her call log as evidence
- 3) Complaint IV: the last complaint she made was against another colleague who she said always tapped her on the shoulder when he wanted to talk to her. She said that that was not comfortable for her at all and that colleagues must respect women.

Steps taken by ICC

The complainant came along with a male who introduced himself as a guardian. He insisted on sitting with her during the hearing. When asked about his profession, he said he was a lawyer. It took some persuasion to help him understand that lawyers were not permitted during the hearings in ICC hearings under the Act. He reluctantly agreed to wait outside. The complainant was crying and appeared really disturbed. She reiterated that she found this workplace a very unsafe one. She felt she was being harassed because of her 'single mother' status. She requested the ICC that she should granted leave till the time the inquiry is underway.

Deposition of Respondents before the ICC

- 1) Respondent I: He said he had simply written 'hi' instead of 'writing test' mail and that he had no wrong intention. He had spoken to her minutes before he wrote the mail. He assumed she will understand the context.
- 2) Respondent II: The technical head deposed that he sits in an open space where a total of eight of his colleagues sit together. He denied the allegation and wanted other seven that nothing of the kind had ever happened where he had put his hand on her shoulder or leaned on her at any point in time he was clear that all the remaining

seven colleagues to be called as witnesses.

- 3) Respondent III: He wanted to visit a monument that was located in her hometown (about 200kms away from NCR) on that Sunday with his family. He had called her at 7:00 AM on to seek her advice on whether it would be too crowded during that time. He gave a call log in his or defence and it revealed a call from 7:00 AM to 7:02 AM. He also gave the Facebook pictures of that day when he did visit the monument.
- 4) Respondent IV: In his defence he said that the complainant always wear headphones. He said calling her by her name does not help and therefore as the last resort, he had was to slightly tap her on her shoulder. He also offered a list of witnesses amongst colleagues.

As the ICC proceeded to question the witnesses, it became amply clear that the complainant was not justified in making any of the allegations that she had levelled.

In fact, the reason why she was levelling these allegations, was that she was wishing to take leave and she wanted this to be a paid leave misusing the provision where a woman can be given up to 3 months of leave over and above all other leaves while the investigation is on.

When the due process was completed, a copy of the Report was to be shared with her. She said she was at her hometown and should be paid cab fare to appear before the ICC. She made a written request that each of the respondents be made to pay this amount since she had suffered at their hands.

The ICC members reached a conclusion that there was a definitive misuse of the Act and hence the ICC recommended to the “employer” that:

- 1) She should be terminated
- 2) She should give an apology letter to all four respondents
- 3) This recommendation should be a part of her personal file and shared with prospective employers.

Case II

There was a case of a complainant who approached the Local Complaints’ Committee. This is a Committee formed for every district under the Act. This committee looks into three kinds of complaints:

- 1) Those received from organisation with less than ten employees.
- 2) The unorganised sector like househelps, gardeners, labourers etc.
- 3) The complaint is against the “employer” himself or herself.

The complaint was against the HR head and the MD of a rather large organization for sexually harassing her.

Allegations

- 1) The HR head had been calling her at late hours and the MD also joined in at times. They spoke in sexual undertones with her. They asked her to stay back till late at night.
- 2) She also alleged that there were no women guards when the late-night meetings took place.

Evidence: Attendance log with time-in and time-out.

Witness: Her junior who agreed to the fact that the complainant did stay late in office however she said that the

MD and HR head talk to her in their cabins and therefore she was not privy to any of the conversations and hence could not say whether there was any kind of verbal sexual harassment as was alleged by the complainant.

Deposition of Respondents before the ICC:

When the hearings began, the MD and HR Head sent their representatives with the entire set of documents. These documents were very comprehensive and they contained the records of more than 2 years.

- 1) There was an indication that the HR head had been informed by some of the employees and the dealers that the complainant had been diverting some of the products that they sell to a particular distributor who had been newly introduced. The colleagues managed to dig information from social media that clearly established that the this new distributor who happened to be closely known to her.
- 2) The evidence further established that there was a meeting between the HR Head and the complainant and she had been asked to resign gracefully. On being told to leave, she expressed in a mail that she liked working with the under the HR Head and had learnt a lot from him and would be happy to come back if they ever had an opening in the same position from which she was resigning. She was a senior designer drawing an enviable package.
- 3) During the full and final settlement, there was a loan that had been given to her. It was when that loan was being settled that she decided to raise a complaint of sexual harassment.

Ruling

The LCC ruled in the favour of the MD and the HR Head. It was recommended that:

- 1) She should give an apology letter to both the respondents admitting that she had a malicious intent
- 2) She should settle the loan amount

Case III

The External Counsel to the ICC was telephonically asked if the organisation needed to take any action as a PoSH Committee since they had received a complaint from a woman employee. The allegation was that she was feeling mentally harassed. Her senior had been calling her up at odd hours to ask if she had finished the work as per the deadline. The External Counsel made it clear that since the word mental harassment had been used and the complaint was regarding the deadlines of the work that had been given therefore this was not a case of sexual harassment. The complaint was inquired into by the HR and a mutual settlement was reached.

However, after a few days the complainant again wrote to the head and this time said that she was feeling harassed by the bosses.

Allegations

- 1) She mentioned that her immediate superior had been calling her to his cabin very often without work, made her sit for long and oggled at her.
- 2) She also alleged that on days when he got an opportunity he always repeatedly told her to move from her present residential address to a place closer to the office since the distance took her a good one and a half

hours of travel one way everyday.

- 3) The complainant went on to say that on days when she was wearing black the superior complimented her and called her to the cabin especially for a cup of tea on those days.

These allegations now fell into the category of sexual harassment and were therefore taken by the ICC as mandated under the PoSH Act. On the day of deposition, she carried a hundred and thirty page complaint. The complainant was crying continuously while talking and she said she was very scared to come to office and face the superior every day.

She broke down again and said that there was a religious prayer meet in X's (a close colleague) house and that they had gone from the office to the residence of X. The complainant said she went with him in the same car with her immediate superior. During the journey she alleged that he tried adjusting the seat belt and touched her in the process. This now amounted to Allegation (4).

Evidence: She submitted a voice recording from her phone where she was giving instructions to the boss about which about the route to take to her colleague and a close friends place.

Witness: The list comprised her three colleagues including X.

Deposition of Respondent and Witnesses:

- 1) The two colleague who worked with her (at the same position) deposed that the superior did tell her that she should relocate closer to the office to save travelling time. Infact, they added that they were also advised relocation closer to office. None of them accepted that the complainant was called for long hours or without work or was oggled at by the senior.
- 2) X, the most crucial witness, also deposed that the superior and the complainant had come together in one car to her house for the ceremony. (The recordings proved that that they travelled together)
- 3) She also said that the complainant and she are very good friends and therefore the complainant is very familiar with her husband as well. She said that after the ceremony she had offered that her husband would drop the complainant to the metro station.

Consensus by ICC

The respondent denied all allegations. He clarified that she had taken maternity leave and wanted to extend it but he did not allow any leave beyond what was stipulated by the organisation policy.

This, combined with depositions of witnesses, the allegations 1,2 and 3 proved baseless.

Allegation 4 clearly established that the complainant was comfortable enough with the respondent. She would have ideally grabbed the offer of being dropped to the metro station by X's husband- who she was familiar with. Instead, she said "I came with the boss, I will go back with him."

Allegation 4 that was received on the day of the first deposition now felt like an after-thought. It was a rather long documented complaint written in legal language with verbatim paragraphs from the PoSH Act itself. It did not seem to be drafted by her since there was a wide gap

between her spoken and written English. On top of the typed complaint was the page from the Act where "Relief during the interim period" is mentioned.

Though she kept crying during the hearing, the ICC members were not yet convinced about the need for granting long leave but allowed her to work from home for a couple of days (till the date of the next hearing).

The intent of making the complaint was with an intent to malign the boss and to take revenge.

Ruling

The ICC gave the following recommendations:

- 1) The complainant to tender an apology to the boss
- 2) She is to be terminated with immediate effect
- 3) The organisation to offer creche facility

Conclusion

The impact felt by those who suffer the flak of malicious complaints is rather intense. Hence, the effort must be on to plug the loopholes. The Act needs urgent steps for effective implementation of existing provisions as well as changes in legal and constitutional framework to deal with sexual harassment of women at workplace provided they are genuine complaints.

Building a case for stronger action

- 1) The fear created amongst male colleagues and especially the superiors because of the misuse by women for their personal gain creates an unproductive workplace.
- 2) In the long run, the superiors begin to avoid hiring women and this goes against the "Diversity and Inclusion Policy" and creates a gender imbalance which again is counter-productive.
- 3) Also, there is a psychological and societal loss for men who take years to build their reputation and promotions
- 4) Here lies the need for stronger steps to be taken to deter women from misusing the noble PoSH Act.

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