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Proposed Amendments In The Sexual Harassment At Workplace (Prevention, Prohibition And Redressal) Act, 2013

Anhad Law

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Presently, the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) mandates the creation of Internal Committee (“**IC**”) in every workplace, with ten or more employees, and Local Complaint Committee (“**LC**”) at district level to receive and adjudicate the complaints of the aggrieved woman against sexual harassment.

While the existing laws, other than POSH Act, have provided a platform for women to voice this crime against them and punish the offenders, the high rate of pending cases, under Section 509 of the Indian Penal Code, 1860, highlighted by the "Crime in India report of 2021", questions the efficacy of the current ecosystem in place. Additionally, the J.S. Verma Committee constituted to recommend amendments to the Criminal Laws in the year 2012, addressed that the constitution of IC and LC is counter-productive to the ends of the proposed POSH Act as the inhouse redressal of grievances would discourage women from filing complaints and "may promote a culture of suppression of legitimate complaints." Another limitation highlighted by the Committee was the fixed time period of three (3) months to make a complaint contained in Section 9 (1) of the POSH Act for the reason that any such timeline may prevent women from filing complaints about the repeated instances of harassment or filing complaints after three months of incident.

To deal with the above issues, a Bill no. CXI of 2022 titled Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Amendment Act, 2022 (“**Amendment Bill**”) has been introduced in the Rajya Sabha, details of which have been published in the Gazette of India by Government of India on December 08, 2023.

Amongst other amendments, the Amendment Bill proposes amendments to the POSH Act to nullify the roles and powers of the LC by mandating constitution of the Employment Tribunal. Accordingly, for the words "Local Complaints Committee" or "Local Committee ", wherever they occur in the POSH Act, the words "Employment Tribunal ", shall be substituted. The Employment Tribunal shall hold the power to treat the cases of sexual harassment as thorough legal cases which would give more cognizance to the cases of sexual harassment and improve the efficiency in resolving the cases and increase the rate of conviction.

For section 6 of the POSH Act, the Amendment Bill propose the following new section to be substituted, namely :—

"6 (1) Every District Judge shall constitute in the district concerned, a tribunal to be known as the "Employment Tribunal" to receive complaints of sexual harassment from establishments where Internal Committee has not been constituted or the Internal Committee or aggrieved person directly and such complaints would be considered as legal trials.

(2) Every District Judge shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area to receive complaints and forward the same to the concerned Employment Tribunal within a period of seven days.

(3) The jurisdiction of the Employment Tribunal shall extend to the areas of the district where it is constituted."

The Employment Tribunal is proposed to be constituted as below:

- (a) Chairperson being a retired female judge of District Court;
- (b) One retired judge from amongst the retired female judges of District Court;
- (c) One member to be nominated from amongst the eminent social activists in the field of gender based discrimination;

- (d) One member to be nominated from amongst the women working in block, taluka or tehsil in the district;
 - (e) Two members of at least one being a woman nominated from amongst the eminent sociologists ;
- Provided that at least one of the nominees, should preferably have a background in law or legal knowledge; and
- (f) One member to be nominated from amongst the female advocates of the District Court.

The Amendment Bill further seeks to extend the time period where aggrieved women can file or report the complaint of sexual harassment by substituting Section 9 of POSH Act as under:

“9 (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Employment Tribunal, within a reasonable period of time with regard to the facts and circumstances surrounding the making of such a complaint and the personal circumstances of the complainant, to be determined by the Tribunal:

Provided further that the Internal Committee or the Employment Tribunal as the case may be, may, for the reasons to be recorded in writing, extend the time limit based on the discretion of the Employment Tribunal, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.”

Additionally, the Amendment Bill proposes to resolve the inconsistency in the expressions used in the POSH Act regarding the binding validity of the recommendations of the Inquiry Report by IC.

At present, there are conflicting judicial precedents on the binding nature of the Enquiry Report submitted by IC. Section 13(3) of the POSH Act provides that where the IC or the LC, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer.....Section 13 (4) of the POSH Act provides that the employer shall act upon the recommendations of IC within sixty days of its receipt by him. Therefore, as of now the language employed in Sections 13(3) and 13(4) of the POSH Act is interpreted to as Enquiry Report by IC as recommendations and does not make it imperative for the employer to act on the recommendations of IC by accepting them. It has been interpreted by Courts that the expression “act upon the recommendation” would mean either accept or reject the recommendation, for reasons to be recorded in writing. Had the recommendations been binding, then they would cease to be a recommendation and partake the character of a command which obviously would not have been the legislative intent.

To avoid the ambiguity, the Amendment Bill proposes to substitute the words "recommend to" in Section 13 (3) of the POSH Act, with the word "direct" so as to make the recommendations by IC binding upon the employer and not mere recommendatory. The Amendment Bill further proposes to substitute Section 13(4) of the POSH Act by providing that “the employer or the District Judge shall act upon the directions of the Employment Tribunal within sixty days of its receipt.”

Anhad Law’s Perspective

It is important to remember that the POSH Act is a complex document that has been subject to ongoing debate and interpretation. A decade into its existence, the POSH Act remains hampered by drafting flaws in both the POSH Act itself and the accompanying Rules. Clause 3 of the Amendment Bill provides for the constitution of a tribunal to be known as the "Employment Tribunal" by the District Judge in the district concerned, and clause 4 of the Bill provides for composition, tenure and other terms and conditions of the Employment Tribunal, which shall nullify the duties and powers of the existing LC established by the POSH Act.

Even in the Amendment Bill, it is unclear as to what is the rationale for the Employment Tribunal to receive complaints from IC or aggrieved person directly. It is even unclear as to what is the meaning of the expression “such complaints would be considered as legal trials” used in clause 6(1) of the Amendment Bill.

The Amendment Bill proposes to substitute “District Officer” with the words “District Judge”.

Further, in case of limitation period of filing complaint, the POSH Act provides for limitation period of three (3) months from date of incident which can be further extended by three (3) months. However, the Amendment Bill proposes to substitute the said period with “within a reasonable period of time”. Now what could be the reasonable period of time, would depend upon the facts and circumstances of each case. It may, in a given case, be of not more than six months and in another case, it could be of even three years. Usually, this expression is used when there is no requirement for the thing to be done quickly — instead, a reasonable period of time is acceptable. Therefore, the

expression “reasonable period of time” cannot be left to be defined by individual preference as has been done in the Amendment Bill. Additionally, complaints raised after a long time, after an incident (s) had happened, could more likely add practical challenges given the nature of complaints.

The constitution of Employment Tribunal is likely to involve diversion of funds and grants utilized by erstwhile LC to the Employment Tribunal. Additionally, it will require consultation with subject matter experts and various agencies who will be compensated for their involvement and will involve recurring expenditure from the Consolidated Fund of India, which needs finalization.

Nonetheless, while there are legitimate concerns about its inconsistent drafting, POSH Act has played a crucial role in raising awareness and providing legal recourse for victims of sexual harassment in India.

There can be no doubt that the POSH Act is a piece of protective legislation for women, intended to preserve their dignity, the cherished goal of Article 21 of the Constitution, as well as to extend equal opportunities at their workplace, which is an integral part of Articles 14 and 16 of the Constitution.

Subject to the above discussion, the proposed amendments suggest the willingness of the government to bring in certain changes in the POSH Act to make it more relevant for the organizations or workplaces to create a safer workplace environment for women. However, much would depend on whether the proposed Amendment Bill passes legislative scrutiny before the Parliament and becomes a law.

Anhad Law - Manishi Pathak and Ranjan Jha

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