POSH: The Law against Sexual Harassment in India

Why in news?

Kerala High Court asked organisations associated with the film industry to take steps to constitute a joint committee to deal with cases of sexual harassment of women, in line with the POSH Act.

What is POSH?

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed in 2013.
- It defined sexual harassment, lay down the procedures for a complaint and inquiry, and the action to be taken.
- It broadened the Vishaka guidelines, which were already in place.

What are the Vishaka guidelines?

- With reference to the ***Vishaka vs State Of Rajasthan*** (Bhanwari devi case), the Vishaka guidelines were laid down by the Supreme Court in 1997.
- The guidelines were legally binding and imposed three key obligations on institutions — prohibition, prevention, redress.
- **Definition of Sexual Harassment -** It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause the following:
    - Physical contact or advances
    - A demand or request for sexual favours
    - Sexually coloured remarks
    - Showing pornography
    - Any other unwelcome conduct whether it is physical, verbal or non-verbal
- **Safer working environment -** It is the duty of each employer to provide a safe working environment for each and every employee working in the organization through appropriate efforts and actions.
- **Duty of the employer-** It is the obligation of the employer to file a complaint if the conduct towards an employee amounts to a criminal offence which is punishable under the Indian Penal Code.
- **Complaint redressal committee -** It is mandatory for all organisations to set up a complaint redressal committee to ensure that the complaints of the employees are dealt properly.
- **Employer's assistance-** If the employee is sexually harassed or tortured by a third party, an employer should assist the employee in every possible manner.
- **Awareness-** It is the duty of the employer to spread awareness in his organisation with regard to the matters pertaining to sexual harassment and the safety of women.
- **Duty of government -** The guidelines urged the centre and the state government to pass the necessary legislation so as to ensure that the private sector is also bound by these guidelines.
- The Vishaka guidelines were later on replaced by the Sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act, 2013.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) implemented in 1979 by the UNGA enumerates what constitutes discrimination against women and also sets up a goal for national action to end such discrimination.

What are the key features of the POSH Act?

- **Definition of Sexual Harassment -** It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause the following:
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- Additionally, the Act mentions five circumstances that amount to sexual harassment
    - promise of preferential treatment in her employment
    - threat of detrimental treatment
    - threat about her present or future employment status
    - interference with work or creating a hostile work environment
    - humiliating treatment likely to affect her health or safety
- The Ministry of Women & Child Development's Handbook on Sexual Harassment of Women at Workplace constitutes more stances of sexual harassment.
    - Sexually suggestive remarks, serious or repeated offensive remarks, inappropriate questions about a person's sex life
    - Display of sexist or offensive pictures, posters, MMS, SMS, WhatsApp, or emails
    - Intimidation, threats, blackmail around sexual favours
    - Unwelcome social invitations with sexual overtones
    - Unwelcome sexual advances
- **Complaints-** Every employer is required to constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
- An ICC constituted by an organization should have a minimum of 4 members including an external member and at least one-half of the ICC members should be women.
- The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- The Complaints Committees have the powers of civil courts in respect of summoning and examining any person, and production of documents.
- **Procedure for complaint**- It is not compulsory for the aggrieved victim to file a complaint for the ICC to act.
- If the woman cannot complain because of physical or mental incapacity or death or otherwise, her legal heir may do so.
- Under the Act, the complaint must be made within 3 months from the date of the incident. However, the ICC can extend the time limit upon its satisfaction.
- The ICC may either forward the victim's complaint to the police, or it can start an inquiry that has to be completed within 90 days.
- When the inquiry is completed, the ICC must provide a report of its findings to the employer within 10 days.
- The report is also made available to both parties.
- **Identity**- The identity of the woman, respondent, witness, any information on the inquiry,

recommendation and action taken should not be made public.

- **Action -** If the allegations of sexual harassment are proved, the ICC recommends that the employer take action in accordance with the provisions of the service rules of the company.
- It also recommends that the company deduct from the salary of the person found guilty.
- **Compensation**- Compensation is determined based on five aspects:
    1. suffering and emotional distress caused to the woman
    2. loss in career opportunity
    3. her medical expenses
    4. income and financial status of the respondent
    5. feasibility of such payment
- **Appeal-** After the recommendations, the aggrieved woman or the respondent can appeal in court within 90 days.
- **False complaints**- Section 14 of the Act provides that the ICC may recommend to the employer to take action against the person who has made the malicious complaint and false evidence.

References

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