

**BOMBAY HIGH COURT ISSUES GUIDELINES TO PRESERVE ANONYMITY IN SEXUAL HARASSMENT CASES**

**1. INTRODUCTION**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) was enacted for the purpose of protecting women against sexual harassment at the workplace, and for providing an effective inquiry and redressal mechanism. The POSH Act defines the actions and circumstances that may amount to sexual harassment at the workplace, provides for the constitution of an Internal Complaints Committee (“**IC**”) within every workplace for the purpose of dealing with complaints of sexual harassment, and also lays down the due process for conducting investigations. While the provisions of the POSH Act are progressive, there are certain practical and operational difficulties that arise during the course of an investigation, which may not be effectively addressed by the POSH Act. Recognising the urgent need for more detailed guidelines, the Bombay High Court (“**Court**”) recently released a detailed work protocol for orders, hearings and case file management in relation to cases filed under the POSH Act. The Court also observed that these guidelines are merely an initial step towards the preservation of anonymity in sexual harassment cases and at best, constitute the minimum requirements for such purpose.

**2. HIGHLIGHTS**

The following are some of the key directions that were issued by the Court:

- (a) The names of the parties involved in the proceedings cannot be mentioned in order sheets, and must be read as ‘A v. B’, ‘P v. D’, etc. Furthermore, the body of the order cannot contain the names of the parties or the witnesses;
- (b) The body of an order cannot contain any ‘personally identifiable information’ such as phone numbers, addresses, email ids, etc. of any person, including the witnesses. This prohibition is absolute and will continue to apply even when the concerned information has been obtained by using the contents of any judgment or order for information already in the public domain;
- (c) All orders and judgments are to be delivered in private (either in chambers or in-camera). All hearings must be by way of physical attendance only, and hybrid or online facility for hearings is not allowed. Furthermore, no person other than the advocates and the litigants are permitted to attend hearings. Any form of recording of the proceedings is strictly prohibited and any attempt to transcribe or record proceedings will amount to contempt of court;
- (d) No person other than an advocate-on-record with a current and valid *vakalatnama* will be allowed to inspect or take copies of any filings or orders. The entire record is to be kept sealed

and is not to be given to any person without an order of the Court. The record is also not permitted to be digitized by any third-party solution provider without an order of the Court;

- (e) Orders, judgments and witness depositions are not permitted to be uploaded. If a particular order is required to be released into the public domain, the same shall require a specific order of the Court. This again is subject to the condition that the anonymity of the parties involved is preserved in its entirety, in the version of the judgments made available to the public;
- (f) All concerned parties and advocates have been prohibited from disclosing the contents of any judgment, order or filing to the media, and from publishing any associated material in any mode or fashion by any means (including social media) without the court's permission. Additionally, witnesses must sign a statement of non-disclosure and confidentiality; and
- (g) Any failure to ensure strict compliance with the guidelines, especially the anonymity obligations, on the part of any person (including the media) will amount to contempt of court.

### 3. **INDUSLAW VIEW**

It is important to remember that the guidelines are primarily restricted to the handling of sexual harassment cases before judicial courts, including those on appeal from an IC's recommendations. However, employers would do well to take a closer look at these guidelines, with a view to examining and adapting them to their own internal investigations, if possible. For instance, employers can, as part of their internal policies, consider including specific guidelines on preserving the anonymity of parties involved in sexual harassment proceedings. These guidelines can also include steps such as encrypting party statements and evidence and ensuring that all relevant material is always password protected, so that no unrelated third person can access these details. In our view, employers must also expressly stipulate that strict disciplinary action would be initiated against any person who violates policies on confidentiality of matters relating to sexual harassment.

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