

**PATTERNS OF WORKPLACE ONLINE SEXUAL HARASSMENT OF FEMALE
UNIVERSITY STUDENTS BY FACULTIES IN INDIA AND LEGAL RECOURSE: A
CRITICAL COMMENTARY**

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ABSTRACT

Workplace sexual harassment at universities in India has been rising steeply. But it would be wrong to say that sexual harassment at universities may happen only physically. It may happen on cyber space as well. During the Covid 19 lock down, universities were forced to take up new normal procedures for conducting classes undergraduate and post graduate students. This has increased the chances for online sexual harassment of women including female university students by male faculties. This chapter researches on the patterns of online workplace sexual harassment on the basis of the Sexual harassment of women at workplace prevention, prohibition and redressal) Act, 2013 (POSH Act). It provides a commentary on the commentary on the legal recourse to such problems as offered by the POSH Act and argues that there are several lacunae in the said Act which may not encourage female students to report or to withdraw their complaints. This chapter suggests that more awareness about the POSH Act as well as about patterns of online harassment and penal provisions regarding the same may improve the situation.

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Part I

INTRODUCTION

Workplace sexual harassment of women in India did not get proper legal recognition before the case of Bhanwari Devi in 1992 when she was gang raped by upper-caste people of a village. She was engaged in creating awareness related to prevention of child marriages in Bhatneri of Rajasthan, India as a volunteer of Women's development project of Rajasthan government (Mathur, 1992).¹ The gangrape was considered not only as a preventive measure to stop any activity to prevent age-old customary practices in the said region, but also as a message of male dominance and suppression of women workers who would dare to stand against gender discrimination and fight for equal rights for women. Bhanwari Devi filed an FIR against the gang rape. But she was not successful in getting proper remedy as the trial court acquitted the accused. Much later her case was taken up by public spirited women's group who went for a public interest litigation (PIL) in the Supreme court of India. The case famously known as Vishakha vs State of Rajasthan,² created a landmark precedent for restitution of justice for women victims of workplace sexual harassment of women in 1997 and the guidelines formulated by the Supreme court in this regard came to be known as Vishakha guidelines, 1997. But it was not before 2013 that the Indian legislature could formally create a statute addressing sexual harassment of women at workplace and the same was titled as The Sexual Harassment of Women at Workplace (prevention, prohibition and redressal) Act, 2013 (the POSH Act). This statute has an exhaustive definition of workplace sexual harassment in S.2(n) which says as follows:

“sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”

S.3 (2) of the Act further explains what may be construed as workplace sexual harassment in relation to or connected to the sexually harassing behavior at workplace and this includes the followings:

“(i) implied or explicit promise of preferential treatment in her employment; or (ii) implied or explicit threat of detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety”.

The above mentioned provision must be construed as an extension of the definition of the term sexual harassment at workplace as has been defined under S.2(n) of this Act. The Act

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¹ Mathur, K. (1992). Bhatneri rape case: Backlash and protest. *Economic and Political Weekly*, 2221-2224.

² Air 1997 Sc 3011

has further explained the meaning of workplace under S.2(o) which includes any government or private organization, hospitals, sports stadium, complex, institution and ground and even domestic and residential places where women may be engaged as maids, helpers etc.,³ and who may fall within the meaning of unorganized sectors.⁴

As we may understand from the provisions mentioned above, universities have also been included within the meaning the meaning workplace. Sexual harassment of women are rampant in universities. India is no exception. In the ancient Indian culture *guru-shishya* (teacher-student) relationship has been considered as the most sacred relationship. But this relationship has been exploited to a large extent in the contemporary society. Indian students, especially female often come to the institutions with a pre-installed moral obligation to teachers, especially male teachers. The former may not prefer to report any oppression, discrimination and sexual harassment against the latter because the Indian orthodox patriarchal system may not allow women report violence of any sort. Teachers on the other hand may enjoy certain discretionary power to assess students according to their own measuring mechanisms. This may include the grades, behavior in the classrooms, cooperation with the peers and above all obedience to the teachers. This situation on several occasions have encouraged harassment, verbal bullying and corporal punishment of students by teachers. Vishakha guidelines extended its scope to any organization where fiduciary relationship may be present between the victim and the respondent. The Sexual Harassment of Women at Workplace(prevention, prohibition and redressal) Act, 2013 has statutorily addressed this issue by including educational institutes, relationships between colleagues, superiors and subordinates, teachers and female students within its scope. While S.2(n) read with S.3(2) of the Act lays down the meaning of sexual harassment under this Act, the meaning also extends to online sexual harassment of female graduate and post graduate students. Several researches have shown that sexual harassment of female university students by male faculties can be of various types: it may be physical sexual harassment which may include inappropriate touching, sexual assault etc.; such harassment may also include taking female students alone to secluded places, demanding for sexual favors etc. Second type of sexual harassment may include harassment through verbal communication. This may include online as well as offline verbal communication involving sexual harassment.

This article aims to analyze the patterns of online sexual harassment of female students by faculties within the meaning of Ss.2(n) read with S.3(2) of the Act. It needs to noted that while this article was being prepared, due to Covid -19 restrictions and internet connectivity

³ S.2(o) of the Act states as follows;

(o) “workplace” includes—

- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (iii) hospitals or nursing homes;
- (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
- (vi) a dwelling place or a house;

⁴ S.2(p) of the Act further explains the meaning of unorganized sector as follows:

“unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

challenges, this author could not carry out a detailed empirical study on this issue. Hence this article throws rather an analytical study on the patterns of online sexual harassment within the meaning of the above-mentioned provisions and this is done in the second part of the article. The third part discusses about legal recourse for online sexual harassment of women at workplace. In the conclusion this article suggests that the victims must be given proper protection not only against the victimization which may have caused her to approach the sexual harassment committee, but the scope of such protection must be extended against any future revengeful activity, defamatory post etc., which may be done either by the perpetrator or by anyone who may support the perpetrator.

Part II

Patterns of online sexual harassment under Sexual harassment of women protection and prevention Act (POSH Act):

As discussed in the above paragraphs, S.2(n) of the POSH Act explains certain behaviors or acts including certain speech and expressions which may fall within the category of sexual harassment of women in the workplace. These include speech and expressions while executing physical advances for sexual gratifications. A deep reading into S.2(n) of the POSH Act would also show that physical advances shall not be considered as only evidence to prove the mens rea: it may even include sexual advances made via phone calls, messages or even by showing contents that may not be acceptable professionally and also legally. The patterns of such sexual harassments are as below:

- (i) Sexual harassment in the nature of criminal intimidation: The first type of the offence in the category of online sexual harassment as described by S.2(n)(ii) of the POSH Act is “a demand or request for sexual favors”. Even though it has not been made explicitly clear whether this should be done by way touching or by a gesture which may show that the offender may be demanding or requesting such favors, it may be presumed that demand or request for sexual, favor may be made in both ways. Saying this, I also emphasize upon the point that such demand or request may also be made by words communicated orally via digital telecommunication mediums. This may further be done either by voice call or by text messages or by messaging using words which may be indecent and morally wrong. S.2(n)(ii) of the POSH Act has indicated that sexual favor may be demanded and/or requested. Both convey different meanings; while the former conveys an authoritative expression, for the latter, the victim may or may not necessarily consent, but the request is neither made for any positive purpose. In case of the former, the victim may be pushed to a traumatizing position because she may feel that if such demand is not fulfilled, her assignments, exam marks or thesis may not be evaluated properly and she may have to face disciplinary actions which may even ruin her educational prospects and future career because of the power and status of the offender/professor (Brackenridge, C. 1997).⁵ In case of the latter, the student/victim may still feel traumatized because she may have never expected such request from a person who is morally not supposed to do this. This is mainly because in India the relationship

⁵ Brackenridge, C. (1997). HE OWNED ME BASICALLY...! Women's Experience of Sexual Abuse in Sport. *International Review for the Sociology of Sport*, 32(2), 115-130.

of students and teachers is considered to be a very sacred one where the former and the latter are not supposed to enter into any relationship other than guru-shishya relationship during the engagement of both in an educational institution as a teacher who imparts knowledge and a student who is the recipient of such knowledge. This may destroy the fiduciary relationship and the trust on the teacher or Guru (Raina, M. K. (2002)⁶. In case the ‘demand’ is made for sexual favor over phone or messaging platforms or via social media chats, it may necessarily include intimidation and also speech which may be morally wrong. Such act is necessarily considered as sexual harassment as well. Both these are addressed by Indian penal Code: S.503 of the Indian Penal Code defines criminal intimidation in the following words:

“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation”.

S.506 of the Indian Penal Code goes ahead to prescribe punishment for criminal intimidation: it limits the punishment for ordinary criminal intimidation to maximum two years of imprisonment or fine or with both and in case the criminal intimidation is done for causing immoral acts to a woman, the jail term for a maximum period of seven years or with fine or with both.

In case the offender extends the workplace sexual harassment to the victim by way of ‘request for sexual favour’, it may not fall in the category of criminal intimidation since the term request linguistically may not attract the concept of ‘threat’. But it may neither fall outside the restricted speech category as this request is not meant to be a welcome request by the recipient, i.e., the victim. Such ‘request’ may fall under several other categories of harassing speech which may include conveying of sexually explicit contents over digital communication mediums, which is criminalized under S.67A of the Information technology Act and , indecent speech as has been explained under Indecent representation of women prohibition Act etc. Such request or demand may also fall within the category of speech or gesture which harms the modesty of women; such categories of behaviors are criminalized under S.509 of the Indian penal code. All these are explained below under different heads.

- (ii) Sending harassing contents over digital communication mediums: S.2(n)(ii) of the POSH Act further mentions that requesting for sexual favor shall also be considered as a sexually harassing conduct under the POSH Act. Here we have to understand that a request may be sent through different manners in this internet era; it may be sent via plain textual conversation, through messages that may carry the message for sexual favor, through messages accompanied with emojis of heart, love signs or kissing symbols, through voice messages, through images which may depict sexually explicit contents or may be a plain and simple symbol of love. (Soma

⁶ Raina, M. K. (2002). Guru-shishya relationship in Indian culture: The possibility of a creative resilient framework. *Psychology and developing societies*, 14(1), 167-198.

Owen, P., 2018); Cramer, H., de Juan, P., & Tetreault, J. (2016, September).⁷ In the Indian legal understanding such messaging or communicating with women in the workplace or with women who may not be within the spousal relationship or any other emotional relationship and who may not welcome the receipt of such messages, is considered as indecent, immoral and degrading. Hence such communication may be considered as sexually explicit communication over digital mediums which attracts punishment under S.67A of the Information Technology Act, 2000 (amended in 2008) which prescribed punishment with imprisonment for maximum five years and with fine with maximum Rupees 10 lakhs (around fourteen thousand dollars). The scope of this provision extends to publishing or transmitting or causing to be publishing or transmitting any sexually explicit content including conduct over electronic mediums. In case of second conviction, the punishment is enhanced to seven years of imprisonment. Such communication either in words or in gesture or in any conduct even if conveyed by electronic medium, which may have been made with specific purpose for harming the modesty of the victim woman and infringing her privacy and which the sender intends to be seen by the victim, may also attract punishment under S.509 of the Indian Penal Code which prescribes punishment for imprisonment upto three years along with fine.

It is important to note that the above provisions necessarily mentions about harming the modesty as an essential element of the legal wrong for committing sexual harassment of women including workplace sexual harassment. Indian understanding of modesty is not the same as the western understanding. In the case of *Rupan Deol Bajaj Vs. K P S Gill* (1995),⁸ the Supreme Court of India opined that the literal meaning of modesty must be expanded beyond the concept of chastity and sexual reputation of the women. It must be adhering to the core meaning of right to live with dignity. As such, unwelcome communication over digital communication medium even for workplace colleagues or juniors which harms the modesty of women must not be trivialized and trapped within the meaning of harming the sexual reputation of women. But must be considered as a serious crime against women at large.

- (iii) Cyber stalking: The demand or request for sexual favor over phone or over messaging platforms or through social media chats may necessarily involve cyber stalking. S.2(n)(v) of the POSH Act further mentions that workplace sexual harassment shall also include any other unwelcome physical and verbal or nonverbal sexual conduct which may make the target victim feel uncomfortable. This also necessarily includes cyber stalking as the concept of demanding or requesting for sexual favor may also include stalking including cyber stalking. POSH Act does not mention about cyber stalking specifically. But as may be seen from the above discussion, the prohibited conducts include cyber stalking. S.354D of the Indian

⁷ Cramer, H., de Juan, P., & Tetreault, J. (2016, September). Sender-intended functions of emojis in US messaging. In Proceedings of the 18th International Conference on Human-Computer Interaction with Mobile Devices and Services (pp. 504-509). Soma Owen, P. (2018). Conservation photography: evaluating the impact of photographic images in conveying conservation related messages (Doctoral dissertation)

⁸ *Rupan Deol Bajaj Vs. K P S Gill* 1996 AIR 309, 1995 SCC (6) 194

Penal Code defines stalking including cyber stalking and prescribes punishment for the same. It says as follows:

“(1) Any man who follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking;....Provided that such conduct shall not amount to stalking if the man who pursued it proves that it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”⁹

The above paragraph would show that cyber stalking may need three essential elements to be recognized as a penal offence: (a) the contact must be repeated, (b) the contact must be unwelcome by the recipient and (c) the contact must create threat in the mind of the recipient victim (Halder, 2016). However, it must be noted that repeated calling at odd hours beyond the physical office hours may not always be counted as cyber stalking especially if seen from the Covid-19 pandemic situation when most of the offices have permitted their employees to work from home. But the call or the communication in order to be outside the purview of sexual harassment related conduct, must be related to the work, must not be sexually intimidating and must not create threat in the minds of the recipient.

(iv) Showing pornography: S.2(n)(iv) of the POSH has categorized showing of pornography to female colleagues or university students within the workplace as a sexually harassing conduct. This implies certain other related behaviors which are as follows:

- (a) watching pornography in official devices and intentionally showing the same content to the victim or forcing her to see the content in the workplace during office hours without her wish;
- (b) accessing the porn contents through the official devices and storing them in the official devices with an intention to show the same to the victim;
- (c) sending the porn content through personal devices to the victim without her wish;
- (d) sending the porn content to the victim forcefully in an attempt to foster personal relationship with the victim;

All of the above mentioned behaviors may fall within the meaning of ‘showing pornography’ and all may not only be addressed by S.2(n) read with S.3 of the

⁹ See in S.354D IPC

POSH Act, but also by S.509 IPC as well. When the conduct includes sending the contents to the victim through persona and official devices, it may also be addressed through Ss.67A of the Information technology Act as discussed above as well as by S.354D of the IPC.

It must be noted that S.2(n) of the POSH Act is reflected in S.354A of the Indian Penal Code which penalizes sexual harassment. The provision reads as follows;

“(1) A man committing any of the following acts—(i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment1(2). Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

The two provisions differ in their main aims and remedial measures. S.2(n) of the POSH Act is necessarily for the purpose of prevention and penalizing sexually harassing conducts in the workplace . S. 354A of the Indian penal code on the other hand is necessarily meant for penalizing sexual harassment in general. However, S.354A of the Indian penal code may have a wider application if the same is considered as inclusive of S.2(n) read with S.3 of the POSH Act for the purpose of prevention and punishing sexually harassing conducts in the workplace.

Part III

LEGAL RECOURSE

The POSH Act is not necessarily a penal code. Rather it is a statute for prescribing mechanism to prevent sexual harassment at workplace for women. Given this understanding the Act prescribes certain mechanisms to prevent the accused person from continuing to harass victim/s in the workplace. Chapters IV, V and VI of the Act are mentionable here. Chapter IV discusses about procedure to receive complaint, initiation of investigation and conciliation. The POSH Act has made certain layers to assess the compliant. It makes it mandatory for every workplace to have an internal complaints committee under S.4 which should have a chairperson and minimum three members of whom two should be from the employees who may have worked for social cause or who may have legal knowledge and one from amongst any nongovernmental organization which works for the cause of women.¹⁰ The internal complaints

¹⁰ S.4 of the POSH Act says as follows:

4. Constitution of Internal Complaints Committee.— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

committee is not a legal forum, but may act as a quasi legal forum which does not have the power to prescribe punishment. It can summon the accused and the victim for inquiry, may receive the counter statements of the parties and may prepare its decision on the basis of evidences provided by both the parties. However, the internal compliant committee can not and should not take independent measures to examine the electronic devices. Since the examination of electronic devices may need several legal formalities especially for admissibility of electronic evidences and protecting the privacy of the accused as well as victims, the internal complaints committee needs to follow guidelines provided by S65B of the Indian Evidence Act which speaks about admissibility of electronic records.¹¹ It is for this very

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment;

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

¹¹ S.65B of the Indian Evidence Act 1872 states as follows:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period

reason that the POSH Act has not been considered as an exclusive statute. It is rather inclusive in nature whereby the stakeholders including the internal complainant committee, victim and the respondent may seek assistance from other statutes including the Indian Penal Code, Information Technology Act 2000(amended in 2008), Indian Criminal Procedure Code and Indecent representation of women (prohibition) Act, 1986 etc. the POSH Act also offers to seek help from the police and the courts in case the workplace does not have internal policies for taking care of sexual harassment complaints and in cases where the accused refused to cooperate with the internal complainant committee under S.11 of the Act.¹² Posh Act further

shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

¹² S.11.of the POSH Act states as follows:

Inquiry into complaint.— (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

refers to assessing the of the complaints of sexual harassment by Local Committees under S.6 for workplaces where internal Complaints committee has not been constituted.

The internal complainant committee after receiving the complaint from the victim needs to follow principles of natural justice and fair hearing: it can not pass its recommendations on the basis of the victim's complaint alone. However, considering the status of the victim (especially when she is a student and may fear for her academic career because of the authority of the accused professor/faculty), the POSH Act under S.9 provides a maximum time period for filing the complaint which is a period of three months from the last date of the occurrence of the sexual harassment to her. The internal complainant committee needs to see if the case can be resolved through conciliation as prescribed under S.10 of the POSH Act. But this conciliation must be voluntary and should not be coerced. Further, the settlement should not be arrived at by paying of any money by way of any corruptive practices. It is for this reason that S.10 of the POSH Act makes it mandatory for the internal complainant committee to record the entire proceeding. Further, the victim, the respondent and the witnesses are given right to file for any appeal under S.18 of the POSH Act against any decision or suggestion by the internal complainant committee to the court or tribunal in accordance with the service rules.¹³ Chapter V of the POSH Act discusses about inquiry on the complaint and prescribes for protection of the victim /complainant on a written request made by her during pendency of inquiry under S.12. The Section states that the aggrieved woman or the respondent may be transferred to other departments during the pendency of the inquiry so that the victim's right to privacy and protection can be secured, the victim/complainant can be granted leave for a maximum period of three months or the internal complainant committee may recommend for such other mechanism to prevent the respondent to approach the victim or create threat in the minds of the victim as the service rules of the particular organization may suggest. But simultaneously the POSH Act through S.13 also prescribes that if the complaint is made on the basis of false and malicious grounds to damage the reputation of the respondent, the internal complaint committee must recommend for punishment against the complainant or any other person who may have made such complaint in accordance with the service rule book of the organization. The respondent however, may be at liberty to file for a defamation suit in this regard. The POSH Act makes it mandatory to provide equal opportunity to the respondent to be heard and to seek legal aid for defending his rights. It also makes it mandatory that the internal complainant committee should take any decision only after the victim and the respondent have been given prior notice for inquiry and they have been properly communicated for requiring their presence before the committee. If the internal complainant committee reaches to the conclusion that the respondent is found to have committed the harassment, it may (as S.13 of the POSH Act prescribes) recommend to the organization to take appropriate action against the accused as the service rule book of the said organization may suggest. Generally the organizations may suspend the services of the respondent if the allegations are proved true or may demote the respondent or may stay any further promotion for the respondent (Thomas, A. 2015).¹⁴

¹³ S.18 of the POSH Act states as below :

Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

¹⁴ Thomas, A. (2015). Incidents of sexual harassment at educational institutions in India: Preventive measures and grievance handling. *International Journal of Recent Advances in Multidisciplinary Research*, 2(03), 0317-0322.

The above discussions would show that the as mentioned in S.13 of the POSH Act the employer organization is duty bound to follow the service rules to take action against the respondent on the suggestions of the internal complainant committee. The employer organization can also deduct a penal amount from the wages or the salary of the respondent if the service rules so suggests and the same amount may be paid to the victim as compensation. In case this is not possible because the respondent may have left the organization, the organization can ask the respondent to pay a sum as a compensation to the victim. In case the respondent is not available or may have been absconding, the organization can seek help from the district officer who is a designated officer to deal with such sexual harassment complaints under the POSH Act to recover the money from the land revenue. As such, POSH Act does not allow the internal compliant committee or the workplace to either arrest or punish the respondent. It only allows for taking action as per the service rules. But if no such service rules exist or if the victim wishes to lodge a criminal complaint against the respondent, she may go ahead according to the penal laws. In that case also , the workplace may take decisions according to the service rule book for the misconduct of the employee.

While the above paragraphs discuss about the legal recourse for restitution of justice for the aggrieved victim, we must note that such complaints may have deep impacts on the workplace reputation of the victims even though POSH Act strictly restricts anybody from publicizing the names of the victims in any media unless the victim decides to share the news herself.¹⁵ The victim may later undergo severe trauma because her victimization and then subsequent reporting stories may reduce her chances to get better opportunities in other organizations who may treat her as ‘problem creator’. The #metoo movement failure in India can be a good example in this regard (Pegu, S. ,2019).¹⁶ S.16 of the POSH Act extends it scope for addressing such issues. But the awareness needs to be more strengthened in this regard.

Part IV

CONCLUSION

POSH Act provides a mechanism for preventing sexual harassment at workplace. It lays down certain patterns of sexual harassment including online sexual harassment of women at workplace. But when it comes to sexual harassment of university students by male faculties, the Act does provides certain precautionary measures but in a limited way. The Act has not indicated for a uniform rule book that may be applied for taking action against guilty respondents. Resultant, the guilty respondents may or may not be suspended from their duties. In such cases the victim student may have to withdraw her complaint for fear of revengeful activities by the respondent. Further, if the respondent resigns before the internal complainant

¹⁵ S.16 of the POSH Act states as follows;

Prohibition of publication or making known contents of complaint and inquiry proceedings.—Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings,

recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

¹⁶ Pegu, S. (2019). MeToo in India: building revolutions from solidarities. *Decision*, 46(2), 151-168.

committee reaches a decision finding the former guilty, there may be possibilities that the respondent may join other organizations and may continue to show his revengeful attitude to the victim. In short, POSH Act does not specifically provide mechanisms for correction of the behavior of the respondent which may guarantee for his rectified behavior in future. The victim students may still seek help from the criminal justice machinery. But they may be more worried about further online harassment and stalking and revictimizing at the police stations. The respondents in such cases being in an authoritative and higher position than the victims may even afford to seek courts' intervention to stall the inquiry proceedings which may make the victims more traumatized. It is for this very reason ratio of reporting of sexual harassment of students at universities is still very low. It is hoped that with more awareness building and empowering women to access to justice, the situation may improve.