



Balasbri Jalgar  
Senior Associate

## KERALA HIGH COURT ON GENDER BIAS AT WORKPLACE

### A. Introduction

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) prohibits sexual harassment of women at workplace.<sup>1</sup> ‘Sexual harassment’ includes physical contacts or advances, a demand or request for sexual favours; making sexually coloured remarks ; showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.<sup>2</sup>

### B. Brief Facts

A Writ petition in *Dr. Prasad Pannian v. Central University of Kerala*<sup>3</sup> was referred to the division bench of Kerala High Court (“**Kerala HC**”) on a complaint by the respondent alleging gender bias as a form of sexual harassment under the POSH Act.

### C. Contention of the Petitioner

The petitioner, Dr. Pannian, contended that:

1. Allegations in the complaint of the respondent did not disclose any form of sexual harassment.
2. In *Anil Rajagopal* case,<sup>4</sup> the single bench of Kerala HC observed that a solitary allegation of any or all acts enumerated under Section 3(2) cannot constitute an offence under the POSH Act. The HC observed that *“This Court also does not find any allegation of a promise, threat or an offensive or hostile work environment or a humiliating treatment against the 6th respondent, from the complaint; which is in connection with an act or behaviour of sexual harassment. There is no allegation that the purported harassment was intended at sexual exploitation of the complainant; which can only be if there is any allegation as such of a sexual offence.”*

Harassment can be meted out against an individual in different forms and only in instances where the harassment has an element of sexual advance in some form, it becomes a sexual harassment.

### D. Contention of the Respondent

The respondent Central University contended that:

1. The definition of sexual harassment in the POSH Act itself is not exhaustive but inclusive in nature. Any form of sexual intimidation, discrimination or behaviour which tends to harass only on account of difference in sex can also be characterized as sexual harassment.

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<sup>1</sup> Section 3 of the POSH Act.

<sup>2</sup> Section 2(n) of the POSH Act.

<sup>3</sup>[https://services.ecourts.gov.in/ecourtindiaHC/cases/display\\_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d7JqJ9sJRD3%2B8uiKa9GJ58cF2H%2BfgKdeL5FxDMQeP9km&caseno=WP\(C\)/9219/2020&cCode=1&appFlag=](https://services.ecourts.gov.in/ecourtindiaHC/cases/display_pdf.php?filename=U%2BbhtlrLe2adAHN8Tz%2F1d7JqJ9sJRD3%2B8uiKa9GJ58cF2H%2BfgKdeL5FxDMQeP9km&caseno=WP(C)/9219/2020&cCode=1&appFlag=)

<sup>4</sup> *Anil Rajagopal v. State of Kerala* - 2017 (5) KHC 217.

<sup>5</sup> *Punita K. Sodhi vs. Union of India (UOI) and Ors.* (09.09.2010 - DELHC) : MANU/DE/2229/2010

2. Dr. Pannian relied on the Delhi HC judgment in Dr. Punita K.Sodhi case<sup>5</sup> where the court observed: *“Incidents of sexual harassment ought not to be viewed in isolation. The other parts of the complaint are as relevant in determining whether there was any persistent conduct of the perpetrator which could be termed as sex based discrimination or harassment over a prolonged period.”*

## E. Decision

The Kerala HC observed that:<sup>6</sup>

1. Sexual harassment of a woman at workplace results in violation of her fundamental rights of equality, enshrined under Articles 14 and 15 of the Constitution of India and her right to live with dignity under Article 21 of the Constitution of India.
2. In order to constitute sexual harassment, there should be an attempt on the part of the wrongdoer to do some act which was unwelcome or by way of behaviour, either directly or by implication makes the victim to feel that it amounts to sexual harassment.
3. The very concept of sexual harassment of woman at workplace against should start from an express or implied sexual advance, sexual undertone or unwelcome behaviour which has a sexual tone behind it without which provisions of POSH Act will not apply.
4. The POSH Act does not contemplate a situation of discrimination on the basis of sex but it specifically deals only with sexual harassment at workplace.

The HC held: *“...any form of sexual approach or behaviour that is unwelcome will come under the definition of ‘sexual harassment’ and it is not confined to any of the sub clauses mentioned in Section 2(n), which of course will depend upon the materials placed on record and on a case to case basis. But it is made clear that in order to take action under the 2013 Act, the acts complained of should come within the purview of S.2(n) and Section 3 of the Act or any other form of sexual treatment or sexual behaviour on the part of the respondent.”*

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<sup>5</sup> *Punita K. Sodhi vs. Union of India (UOI) and Ors.* (09.09.2010 - DELHC) : MANU/DE/2229/2010

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