

Does PoSH Act Protects Transgender?

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POSH Act - The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act 2013 (PoSH Act 2013), is purely for women only, not for men or transgender persons.

Though it protects the Women at work, it is not biased against Men or Transgender persons.

We have seen as many case studies, where accused men were

- (a) convicted or
- (b) found that the complaint was not proved or
- (c) it is a malice.

What happens, in case of Transgender –

- (i) where in the Transgender person is “Sexually Harassed” or
- (ii) a Complaint was made on such Transgender person who commits Sexual Harassment (on a woman)?

There are no case studies, openly available and discussed, if the complaint (by an aggrieved woman) is on a Transgender person (point (ii) of the above).... but if the Transgender person is sexually harassed, what needs to be done, is detailed below, with reference to Hon’ble High Court Judgment.

The case is called “Anamika vs.Union of India and Ors.” (Hon’ble Delhi High Court)

The Delhi Police has clarified the Delhi High Court's ruling which allows transgender persons to file complaints of sexual harassment under section 354 A of the Indian Penal Code (IPC).

The development came after a transgender student's complaint of sexual harassment was not entertained by the police. The Delhi University student had allegedly gone to the police station to file a complaint against some male students for harassing her on the college campus. The police stated that they did not file the complaint because there was no appropriate section under the IPC

"The petitioner is painfully aware that she was sexually harassed because of her gender identity and expression, which is that of a transgender woman. The petitioner is also aware that she was denied a legal remedy because of her gender identity and expression as a transgender woman." According to the arguments made by the petitioner, section 354 A of IPC has been interpreted in such a way that protection is denied to gender non-conforming, binary 'woman'

The declaration has been made by the Delhi Police in a writ petition preferred by a transgender person challenging the constitutional validity of clauses (i), (ii) and (iv) of sub-section (1) of Section 354A of IPC, to the extent that they are interpreted to exclude victims of sexual harassment who are transgender persons. The section, the petitioner had claimed, was ultra vires Articles 14, 15 and 21 of the Constitution of India.

The petitioner had moved the High Court after the Delhi Police refused to proceed with a criminal complaint made under Section 354A IPC, doubting if the Section was applicable to transgender.

The Delhi Police has affirmed before the Delhi High Court that if cognizable offences under Section 354-A of the Indian Penal Code are made out on sexual harassment complaints made by transgender, the same shall be registered and proceeded with in accordance with law.

Before a Division Bench of Justices Siddharth Mridul and Sangita Dhingra Sehgal, the Delhi Police has asserted that the decision follows the Supreme Court's verdict in National Legal Services Authority v. UOI, which extended to transgender the same Constitutional and legal rights as available to any other citizen

During the course of the proceedings, the Court had also allowed petitioner's request to maintain anonymity, and directed that the cause title would read as "Anamika versus Union of India & Ors."

The Delhi Police also informed the Court that an FIR pursuant to the petitioner's complaint has been registered at the Rajouri Garden Police Station, and investigation is underway.

In view of the assertions made by Delhi Police, the petitioner did not pursue the proceedings any further and the writ petitioner was disposed of by the Court.

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