



Handbook on Combating Gender Stereotypes - the Supreme Court of India - a POV

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August 2023

A day after India's Independence Day on August 15th, 2023, the Hon'ble Supreme Court of India released its Handbook on Combating Gender Stereotypes. I read the Handbook late last night and this morning, intermittently laughing aloud and cheering and shaking my head in disbelief at some of the cases cited, a few of which I had read in law school and others that I may have forgotten but which came up in the Handbook.

Quoting from the foreword by Chief Justice Chandrachud, the Handbook aims at assisting judges and the legal community in “identifying, understanding and combating stereotypes about women. It contains a glossary of gender-unjust terms and suggests alternative words or phrases which may be used while drafting pleadings as well as orders and judgments. The Handbook identifies common stereotypes about women, many of which have been utilised by courts in the past and demonstrates why they are inaccurate and how they may distort the application of the law. The intention is not to criticise or cast doubt on past judgements but merely to show how stereotypes may unwittingly be employed. Finally, it encapsulates the current doctrine on key legal issues which may be relevant while adjudicating certain cases, particularly those concerning sexual violence.”

One of the strongest points I speak about in my POSH Act trainings for the Internal Committee members is to avoid stereotyping and bias. To see the Handbook deal head-on with these aspects gives me such joy – each aspect of the guidelines will well serve employers as well to work on DEI measures. A few key takeaways from the Handbook which I feel are important from an employer-employee relationship are:

- Incorrect stereotypes promoting language, including from a transgender individual perspective.
- Stereotypes based on the so-called “inherent characteristics” of women – a stereotype of women being overly emotional, illogical, and incapable of taking decisions, whereas reality is cited as “A person's gender does not determine

or influence their capacity for rational thought.”

- From a maternity law perspective, a stereotype that “All women want to have children” – the Handbook mentions that “All women do not want to have children. Deciding to become a parent is an individual choice that every person takes based on a variety of circumstances”. Hiring folks and colleagues need to be aware of this, with no questions raised on a female candidate's marital status or whether she has/plans on having a child/children.
- Stereotypes based on gender roles - even where male and female employees are of the same designation, a female employee may be tasked with administrative duties such as organising office-events or buying stationery, while male employees are exempted from such tasks. While the Equal Remuneration Act requires an employer to not discriminate between male and female employees while recruiting for the same type of work or in employment conditions (which aspects the Code of Wages has further made gender neutral), gender-based perception and discrimination issues continue at the Indian workplace and a call-out like this is necessary.
- Stereotypes concerning sex and sexual violence - From a POSH Act perspective, specific reference is made to the 1997 Supreme Court of India Vishaka Guidelines, the benchmark for India’s current law on the prevention of sexual harassment at the workplace. A few examples stated in terms of reality is that “Rape and sexual violence have long been used as a tool of social control. Dominant caste men have historically used sexual violence as a tool to reinforce and maintain caste hierarchies.” Also, “A woman who consents to sexual activity with one man does not consent to sexual activity with all men.¹² Similarly, a woman who consents to sexual activity with a man at a particular instance does not ipso facto consent to sexual activity with that same man at all other instances. A woman’s character or morals are unrelated to the number of sexual partners she has had.” These are aspects I continuously reiterate in the POSH trainings – past history of a complainant (or of a respondent, for that matter) is not a matter of judgement by the employer's Internal Committee.

I hold this Handbook as one of the most relevant legal guidelines issued in India in relation to DEI measures historically. I’m happy to answer any questions you may have on these issues.

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