

### **Standard of proof in POSH cases: Preponderance of Possibilities**

The Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 recognizes that sexual harassment often happens in isolation or in circumstances where evidence is difficult to come by.

In several of these incidents, securing evidence like, messages, recordings, video footage, screenshots, etc... becomes a challenge. This leaves the committee with the word of the victim against the word of the perpetrator.

The Evidence Act of 1872 states the importance of proof to establish the existence of a crime. Criminal cases require evidence '*beyond reasonable doubt*' to prove facts and hold someone guilty. However, civil cases are proved based on the principle '*Preponderance of Possibilities/ Probabilities.*' Since POSH cases are civil in nature and its IC has the power of the civil court, the Evidence Act of 1872 criterion does not apply.

In POSH cases for an IC to determine sexual harassment, it has to form its belief based on either of the following:

Direct evidence on occurrence of SH E.g.: WhatsApp messages, CCTV Footage	In case of absence of direct evidence, IC has to believe that the incident would have possibly occurred. This is called 'Preponderance of Possibilities.'
--	---

Following the elements of this principle, that needs to be satisfied:

- There is more likely for the event(s) to happen than not to happen. (Probability of one event being more true than the other, i.e. more than 50 %)
- Should satisfy: prudent man test. (IC fact finding and coming to conclusion from the perspective of a reasonable man)
- Principles of Natural Justice has to be followed

Steps for applying this principle:

- Look into facts
- Repair the chances
- Weigh the chances that tend to intermingle
- First: Weeding out the impossible
- Second: Weeding out the improbable
- Final decision

Case: Medha Kotwal Lele & Ors. V. Union of India and Others, 2012

*"The standard of proof is preponderance of probability and there is no need to establish the charge of sexual harassment beyond reasonable doubt as in a criminal proceeding. All that is necessary is that the inquiry must be conducted in a fair and transparent manner and in due compliance of the principles of natural justice, after giving full opportunity to the delinquent to defend his case."*

Follow us on LinkedIn for more articles on POSH.