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POSH Live

Prevention Of Sexual Harrasment

A quarterly insight to the POSH Law!

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***POSH LIVE** brings to you updates and information relating to matters of sexual harassment irrespective of the gender and age. This is an effort to create awareness about laws relating to sexual harassment and any form of discrimination.*

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Does Internal Committee under POSH Law have Statutory Powers?

The Internal Committee (IC) plays a pivotal role in the workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. It is responsible for receiving and addressing complaints of sexual harassment, conducting inquiries, and recommending appropriate actions to ensure justice and a safe work environment. The Presiding Officer of the IC must approach their duties with utmost seriousness, as they hold a critical position in safeguarding employees' rights and fostering a culture of respect and equality. Their impartiality, integrity, and adherence to due process are essential in maintaining the credibility and effectiveness of the IC, ensuring that victims feel safe and supported in coming forward.

Does IC have statutory powers?

Section 11(3) in The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013

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.

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Disclaimer

This newsletter does not intend to advertise or solicit work and is for private circulation only. This newsletter is for the purpose of education and creating awareness on POSH law and its latest developments. It does not intend to be comprehensive nor intends to provide any legal advice. Though every effort is made to share accurate, reliable and current information, POSH LIVE is not responsible for any errors or omissions in information made available through this Newsletter. Sharing of this Newsletter does not intend to create attorney – client relationship between authors and reader.

GOOD TO KNOW!

The Special Cell for Women and Children

The Special Cell for Women and Children (hereafter, Special Cell) is an effort aimed at eliminating violence against women (VAW). It is a service provided to women survivors by trained social workers, strategically located in the police system with a clear understanding that VAW is a crime and that it is the responsibility of the State to prevent and counter it.

The location within the police station aims to lead to a more co-ordinated, coherent and in-depth response to the issue by integrating quality psycho-social-legal services within the police system. The first Special Cell for Women and Children was established in 1984 as a strategic collaboration between Bombay Police and the Tata Institute of Social Sciences, Mumbai.

The first Special Cell workers were given space in the office of the Commissioner of Police. Over the years this space expanded to more police stations of the city. UNIFEM funding of Special Cell was initiated for the short-term when UNIFEM, TISS, and the Government of Maharashtra (Departments of Women & Child Development, and Home, especially Police) signed a memorandum in 2001 that made Special Cell a joint programme of all three partners and with an agenda to expand the work of the Cells across the state.

Section 13 (3)

Where the Internal Committee or the Local Committee as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15

Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman

Provided further that in case the respondent fails to pay the sum referred to in clause *(ii)*, the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Section 18 – 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 subsection *(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.

Rule 9 of POSH Act Rules 2013

Manner of taking action for sexual harassment –
Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a **written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.**

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Further –

Section 19 of IPC states that –

The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person - who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empow-ered by law to give such a judgment.

According to section 19, every person "who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment" is a judge. Both the expressions "legal proceeding" and "definitive judgment" have presented some difficulty in interpretation and require to be considered.

The statutory powers as per various sections in POSH Law are listed as below –

1. **Power to Summon and Enforce Attendance and Administer Oath (section 11)**
   The IC can summon and enforce the attendance of any person and examine them under oath. This includes calling the complainant, the respondent, and any witnesses.
2. **Power to Require the Production of Documents (section 11)**
   The IC can require the discovery and production of documents relevant to the complaint. This includes written records, emails, messages, or any other evidence that may be pertinent to the case.
3. **Power to Conduct Inquiries (section 12, 13 of law and section 7 of rules)**
   The IC is empowered to conduct a detailed inquiry into complaints of sexual harassment. This includes interviewing the parties involved, examining evidence, and gathering information relevant to the case.
4. **Power to Recommend Interim Measures (section 12 of law and section 8 of rules)**
   During the pendency of the inquiry, the IC can recommend interim measures to the employer. These measures may include –
   - Transferring the complainant or the respondent to another workplace
   - Granting leave to the complainant
   - Restraining the respondent from reporting on the complainant's work performance
   - Ensuring that the complainant and respondent do not work together during the inquiry
5. **Power to Recommend Disciplinary Action (section 13 of law and section 9 of rules)**
   Upon completion of the inquiry, if the IC finds the complaint to be substantiated, it can recommend actions to the employer, such as –
   - Written apology
   - Warning, reprimand, or censure
   - Withholding of promotion or pay raise
   - Termination of employment
   - Undergoing counselling sessions or attending awareness programs
6. **Power to Maintain Confidentiality and take action against retaliation (section 16 and 17)**
   The IC is bound to maintain confidentiality regarding the identity of the complainant, respondent, witnesses, and the contents of the inquiry proceedings.
   The IC will suggest recommendations so as to protect the complainant from the retaliation
7. **Power to Recommend Compensation (section 15)**
   The IC can recommend the payment of compensation to the complainant, based on various factors like the severity of the harassment, loss of career opportunities, medical expenses, and emotional distress
8. **Power to facilitate Conciliation (section 10)**
   The IC can facilitate conciliation between the parties at the request of the complainant, provided that no monetary settlement is made as a basis for conciliation
9. **Binding effect on employer**
   The recommendations given by the Internal Committee are binding on the employer and Employer must take appropriate actions in implementing the recommendations within 60 days from the submission of Report by the Internal Committee
10. **Power to execute own order**
    The law makes it mandatory for the employer to implement the recommendations given by the Internal Committee which can be in different forms such as disciplinary action and financial compensation. Power to execute own order includes order to attach a property on non-payment of compensation.

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Case Law 1
Neeraj Bala vs Union Of India & Ors W.P.(C) 6712/2021

The Delhi High Court stated,
"We are further of the prima facie view that when an officer, by virtue of a post, is also a Presiding Officer or Member of the ICC, ordinarily there should be security of tenure. **The principles which apply to security of tenure of Judges and Presiding Officers of various quasi-judicial tribunals would, in our opinion, also apply to Members/Presiding Officers of ICC.**

The Presiding Officers and Members of ICC, in our view, are also 'Judges' within the meaning of Section 19 of the Indian Penal Code, 1960. Per Section 11 (3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also, for the purpose of making an inquiry, ICC has the same powers as are vested in a Civil Court under Code of Civil Procedure, 1908 in the matter of summoning and enforcing attendance of any person and examining him on oath and requiring discovery and production of documents."

Case Law 2
IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION PUBLIC INTEREST LITIGATION NO. OF 2019

The Honourable High Court mentioned -
"In Section 11(3) of the Act, such a Committee has been conferred the powers of a civil court: "**For the purpose of making an inquiry, the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure**, 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 any other matter which may be prescribed." (Emphasis supplied). From the above it is evident that the legislative intent of the Prevention of Sexual Harassment Act is to impart statutory duties on Members of ICCs in the nature of a judicial office. That ICC members are akin to judges is further corroborated by the definition of a Judge which is provided in Section 19 of the IPC.

Further the Judgement states that, "Section 11 of the Act confers upon it powers to make an inquiry into a complaint of sexual harassment. Section 18 of the Act provides for an appeal against the decision of the ICC, and in the absence of such appeal, the decision of the ICC is definitive. Thus, the POSH Act empowers ICC members to pass definitive judgments, which can be appealed against, thereby treating them as 'judges'."

Case Law 3
L.S. Sibu Vs. Air India Ltd WP(C). No. 4001 of 2016 (A)

High Court of Kerala
The judgement states as below –
"Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15

Provided that in case the employer is unable to **make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman**
Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee **may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer**."

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"The power of the ICC is also very clear from the Section 15 itself. **The Committee can also determine the compensation payable by the delinquent to the victim.** Thus, it is very clear from Sections 11, 13 and 15, the report of the ICC is the determining factor to take follow up action by the employer in accordance with service rules or otherwise."

It further states that,
"It is also specifically noted that Section 18 provides an appellate remedy as against the recommendation. This also would show that the conclusive nature of the finding of the fact in the enquiry to be made by the ICC. Thus, **it has to be summed up that the enquiry conducted by the ICC as to the fact finding is final unless it is varied in appeal. It cannot be varied by the employer** in a follow up action to be taken in terms of Section 13."

Case Law 4

Vidya Akhave Vs Union of India Writ Petition No. 796 of 2015

The Honourable Court stated, "It is well settled that unless the court comes to the conclusion that the penalty imposed by the Disciplinary Authority is shockingly disproportionate to the misconduct committed by the delinquent employee, this court has to be slow in interfering with the order of punishment which is imposed on the delinquent employee."

Comparative Study of Internal Committee under POSH Law and Disciplinary Committee in the Organizations

In the context of gender-neutral policies, the roles of Presiding Officers and Internal Committee (IC) members are crucial in fostering an inclusive and equitable workplace. Having said that, addressing sexual harassment complaints under gender neutral policies, IC members must not lose sight on the objective of POSH law. While we have observed few IC members being casual about the process of inquiry and promote gender neutral policies, it is imperative to preserve the spirit of the law and emphasize on the procedure as prescribed by the law.

We bring detailed analysis on functions and powers of Internal Committee as per POSH Law and Disciplinary Committee constituted by organizations to look into the sexual harassment complaints

Comparative study of Internal Committee under Posh Law and Disciplinary Committee constituted under Gender Neutral Anti-Harassment Policy

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NEWS CORNER

CJI Reconstitutes Supreme Court Gender Sensitisation and Internal Committee

Chief Justice D.Y. Chandrachud reconstituted the Supreme Court Gender Sensitization and Internal Complaints Committee (GSICC) as per the news report in The Indian Express. The committee will now be headed by Justice B.V. Nagarathna and is tasked with addressing issues related to gender discrimination, harassment, complaints, and inequality. The newly formed committee includes the following members: Justice Nongmeikapam Kotiswar Singh; Dr. Sukhda Pritam, Additional Registrar (Officer in service of the Supreme Court of India); Dr. Menaka Guruswamy, Senior Advocate (Senior Member of the Supreme Court Bar Association); Nina Gupta, Advocate; Soumyajit Pani, Advocate; Sakshi Banga, Advocate (Representative of the SCBA); Anindita Pujari, Advocate-on-Record (Member of the SCBA); Madhu Chauhan, Representative of the Supreme Court Bar Clerks' Association; Bansuri Swaraj, Senior Advocate; Jaideep Gupta, Senior Advocate (Senior Member of the SCBA and Nominee of the CJI); and Dr. Leni Chaudhuri, Executive Director, University of Chicago Centre in India Pvt. Ltd. (Nominee of the CJI).

Comparative factor	Internal Committee	Disciplinary Committee
Legal Basis	Internal Committee is constituted as per Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Disciplinary Committee is generally formed as per organization's internal policies and procedures and not as a per any specific legislation
Function	1. Redressal of Sexual Harassment Complaints at workplace as per the provisions of POSH Law and Rules. 2. Ensure implementation of Preventive Measures such as Awareness Trainings 3. Annual Report Submission	Investigates complaints of misconduct, violation of company policies, or ethical breaches
Scope	Focuses on Sexual Harassment at Workplace as per the POSH Law. As per the law, only an aggrieved woman can submit the complaint of sexual harassment at workplace	Any aggrieved person (irrespective of gender) can submit the complaint of sexual harassment at workplace
Composition	Minimum of 4 members, Headed by Presiding Officer, appointment of external member mandatory, 50% must be women	Composition is based as per Company's policy. It generally comprises of senior management and HR representatives
Process	Follows the Process as per POSH Law and Rules	Follows the Process as per Organization's policy and procedure
Statutory Powers	Internal Committee has powers as vested as of Civil Court (section 11)	Does not have Statutory Powers
Can administer oath	As per section 11 of POSH law, the IC must administer oath before recording the testimony	It is not mandatory to administer the oath while recording the testimony
Summon and enforce attendance	IC can summon and enforce attendance of parties/witnesses	Disciplinary Committee cannot enforce the attendance of parties/witness
Payment of Compensation	IC on recommendation of payment of compensation to the victim can ensure such payment. If the respondent does not adhere to this, IC can order for recovery by attaching the property	Disciplinary Committee may recommend the payment of compensation, however does not have the necessary power to enforce the same
Binding on employer	Recommendations given by Internal Committee are binding on the employer	Recommendations given by the Disciplinary Committee are not binding on the employer
Power to execute own orders	Internal Committee has power to execute its orders. Non-compliance is punishable	Disciplinary committee may suggest actions but does not have the power to execute orders. Non-compliance is not punishable
Right to appeal	The parties have the right to appeal in tribunal or industrial courts as the case may be against the Report given by the Internal Committee	An employee aggrieved by the action of the disciplinary committee may file a complaint before the Labour Court / Industrial Tribunal for Unfair Labour practice, if the employee comes under the definition of worker under labour law. Otherwise, the only recourse may be a civil action for damages. There is no statutory right available to employees to appeal against the decision given by the disciplinary committee.

Internal Committee (IC) members, hold a critical role in ensuring justice and fairness. Their responsibilities are profound, as they must protect the rights of both the complainant and the respondent. Therefore, IC members must use their powers wisely and not treat their roles casually.

IC members must conduct themselves with the highest level of professionalism, integrity, and diligence. They are entrusted with sensitive information and are expected to maintain confidentiality, impartiality, and fairness throughout the inquiry process. Casualness or bias can lead to miscarriages of justice, undermining the credibility of

IC members are obligated to follow legal procedures strictly as laid out under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in India and conduct inquiry in the light of principles of natural justice. ICs must adhere to prescribed legal procedures to maintain the legitimacy of their findings and decisions, focusing on Conducting a Fair inquiry, Following Procedural Norms, and Documentation and Reporting.

IC members have a significant responsibility to ensure that justice is served. They must exercise their powers judiciously, maintain impartiality, and follow legal procedures to uphold the integrity of the inquiry process. Failing to do so can lead to legal repercussions and undermine the credibility of the entire system.

NEWS CORNER

'Justice Hema Committee Report paves way for #METOO Movement in Mollywood

The Kerala government had made the redacted version of the report available to the public, exposing the harrowing experiences of women professionals in the Malayalam-language film industry, also called 'Mollywood'. The report was commissioned by the Kerala government in 2017. The 235-page document, produced by a three-member panel led by a former Kerala High Court judge, brought to light the stranglehold that a small group of male producers, directors, and actors exert over the industry, perpetuating a culture of abuse and inequality.

The report highlights that the film industry in Kerala is dominated by a small, powerful group of male actors, producers, and directors who wield enormous influence, making open demands for sexual favours from women. Those who refuse often face severe professional repercussions, effectively ending their careers before they can even begin. The Women in Cinema Collective (WCC), an organisation formed by industry insiders to advocate for women's rights, told the committee that women are often silenced to protect the prestige of the film industry. The panel's investigation gathered substantial evidence, including video and audio clips and WhatsApp messages, supporting these claims.

Adv Vaishali Bhagwat

Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.
Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.
Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services
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