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POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

By V.P Shintre & Associates

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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.

Navigating POSH Investigations: The Preponderance of Probability Standard

Acts and gestures constituting sexual harassment often occur in private, making it difficult for a survivor to gather direct evidence or witnesses to corroborate their account. Such incidents frequently lead to mental trauma, which can make it even more challenging for a survivor to come forward. The absence of concrete evidence can further suppress the matter, as the survivor may fear not being believed. Consequently, it is a significant challenge for the Internal Complaints Committee (ICC) to make a fair and just decision during such inquiries.

The question, therefore, arises: How should an IC Committee proceed when evidence is insufficient or barely existent? This is where the **principle of preponderance of probability** becomes paramount. This principle mandates that evidence must demonstrate that a fact is more likely than not to be true. Think of it like a set of scales: even if one side tips just slightly in favour of the complainant's claim (say, a 51% probability), the standard is met. **This is the standard of proof used in POSH IC proceedings** because, as a quasi-judicial body these are not criminal trials but disciplinary proceedings, the matters it adjudicates are civil, not criminal, in nature.

In **Medha Kotwal Lele & Others vs Union of India and Others, (2012) 9 S.C.R. 895**, the Hon'ble Supreme Court stated that "*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.*"

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GOOD TO KNOW!

'One Stop Centres' for Women in Distress!

The One Stop Centre (OSC) is a component of the Sambal vertical under the umbrella Mission Shakti.

It provides integrated support and assistance under one roof to women affected by violence and those in distress, both in private and public spaces.

It provides services like medical aid, legal aid and advice, temporary shelter, police assistance and psycho-social counselling to needy women.

According to the Ministry of Women and Child Development statistics, there are currently 812 operational OSCs across the country. and they have assisted over 10.80 lakh women since inception (01.04.2015) till 31st January 2025.

In Pune, the One Stop Centre or also called as Sakhi Centre is in Mundhwa, opposite Mundhwa Police Station, Pune.

It means that during these proceedings, the committee does not need to establish the accused's guilt beyond a reasonable doubt, the standard used in criminal trials. This means that the evidence presented is so convincing that there's no logical or sensible reason to believe the person is innocent. The jury or judge must be almost completely certain of the person's guilt before they can convict them. If there's any reasonable doubt in their minds—not just a far-fetched possibility, but a real, sensible doubt—they must acquit.

Why do POSH investigations use this standard?

Since most incidents of sexual harassment occur in private without any witnesses, applying the standard of proof of beyond reasonable doubt becomes almost impractical. If this standard were used, it would be extremely difficult to hold the harasser accountable for their actions, thereby defeating the very purpose of the Act.

The objective of the Act is to safeguard employees from unsafe environments that endanger their safety in a professional setting. Imposing the near-impossible burden of proof required in criminal trials would make access to justice highly impractical, given the nature of harassment, which is often subtle and relies heavily on interpretation, unlike clearly defined sexual offences under criminal law.

Let's imagine an employee, Nisha, files a complaint against her senior manager, Sameer, for making inappropriate jokes and comments during an in-person meeting. There are no other witnesses. Sameer denies the allegations, claiming his jokes were just "office banter" and not sexual in nature.

The Internal Committee (IC) must now decide between two conflicting versions of events. Since there's no direct evidence, such as a recording, they can't prove the case "beyond a reasonable doubt."

Instead, the IC applies the preponderance of probability standard by doing the following:

- **Interviewing Nisha:** They listen to Nisha's detailed account, noting the specific jokes, the dates, and how it made her feel. They find her testimony to be consistent and credible.
- **Interviewing Sameer:** They question Sameer about his jokes and his perspective, finding his responses to be vague and inconsistent. He may admit to making jokes but downplays their nature, creating a sense of implausibility.
- **Checking for Circumstantial Evidence:** The IC looks for other subtle clues. They might notice that Nisha's work performance has declined since the alleged incidents, or that she now avoids meetings with Sameer. While not proof on its own, this supports her claim that something unwelcome happened.

After weighing all the evidence, the IC determines that Nisha's version of events is more probable than Sameer's. Even though there is no definitive proof, the IC concludes that the evidence "tips the scale" in her favour. They can then recommend action against Sameer.

If the IC had to use the "beyond a reasonable doubt" standard, the case would likely be dismissed due to a lack of corroborating evidence, and Nisha would be left without a remedy. This example highlights why this standard of proof is essential for the POSH Act to be effective.

The IC must consider all available evidence, not just direct evidence. This includes:

- **Testimonies:** This is often the most critical part. The IC carefully listens to the statements of the complainant, the respondent, and any witnesses. They analyse the consistency, plausibility, and emotional impact of each person's account.
- **Circumstantial Evidence:** The IC looks for indirect clues. For example, has the complainant's behavior or work performance changed since the alleged incident? Are there changes in communication patterns between the parties (e.g., messages suddenly stop)?
- **Documentary Evidence:** This includes any physical evidence, such as emails, text messages, CCTV footage, or other documents that might corroborate either person's story.

In the case of *Bhuvan Chandra Pandey V. Union of India AIR ONLINE (2020) UTR 211*, the High Court of Uttarakhand stated that:

a) as the sole testimony of a prosecutrix, in a criminal case involving sexual harassment and molestation, would suffice if it is otherwise reliable, there is no justifiable reason not to accept the sole testimony of a victim, of sexual harassment and molestation, in a departmental inquiry as the enquiry held by a domestic Tribunal is not governed by the strict and technical rules of the Evidence Act. (Sardar Bahadur (1972) 4 SCC 618)

b) In a departmental enquiry, guilt need not be established beyond reasonable doubt. Proof of misconduct is sufficient (J.D. Jain (1982) 1 SCC 143)

When faced with conflicting accounts, the IC's primary task is to assess who is more believable. They don't have to find that the complainant's story is an absolute truth; they just need to find it more probable than the respondent's.

Some factors they might consider are:

- **Consistency:** Is the person's story consistent throughout the investigation?
- **Motive:** Does either party have a clear motive to lie or fabricate the complaint?
- **Plausibility:** Does the person's account make sense in the context of the events and the relationships involved?
- **Body Language:** Does the person appear over rehearsed or unnatural in their responses? Is the person's behaviour consistent with different parts of testimony?
- **Demeanour:** Is the person calm and respectful during the proceedings, or do they appear hostile, aggressive, or excessively defensive?
- **Willingness to cooperate:** Is the person responsive to questions and willing to provide details when asked? Are they open to clarifying inconsistencies, or do they avoid answering directly?

After gathering and weighing all the evidence, the IC must conclude which version of events is more likely to have occurred. This is a judgment call based on the "balance of probabilities." If the IC believes the complainant's claim has a **greater than 50% chance** of being true, they can find the respondent guilty.

For instance, in a case where there are no witnesses and the only evidence is the two conflicting statements, the IC can still decide in favour of the complainant if her testimony is more consistent, detailed, and credible than the respondent's, and she has no apparent motive for lying. The IC's job is to act as a **prudent person** would, acting on the assumption that the more probable version is the truth.

However, there are instances where allegations are not substantiated, when the alleged Act does not fall under the purview of sexual harassment or lack of evidence to reasonably conclude whether a harassment took place. In such circumstances the IC may issue a **No Action Report** after completing the inquiry.

Such a no action report may make employees too hesitant to come forward in future, maybe perceived as IC being unfair even though it was a fair proceeding, the complainant may feel invalidated, even the workplace tensions may still remain. Despite these consequences a no action report also safeguards the integrity of the process, protects the respondent from being penalized when allegations are not substantiated. However, such no action reports must be well reasoned i.e. why no action was taken, sensitive towards the complainant acknowledging their grievance along with well-being steps such as counselling, employee training and sensitization.

The possibility of a No Action Report highlights both the strengths and limitations of applying preponderance of probability in POSH cases, it ensures fairness but also requires care to avoid discouraging genuine complaints.

The POSH Act empowers women to speak up against harassment without fear, establishing a system of accountability for employers to ensure a harassment free work environment. This standard of proof ensures a just and fair process especially when direct evidence is unavailable.

SHE-Box is an **online complaint management system** launched by the Ministry of Women and Child Development. It allows any woman—working in government, private sector, organized, or unorganized workplaces—to file complaint of sexual harassment. India, first launched She-Box in 2017. In pursuant to the series of guidelines for better implementation of POSH law, Government of India, relaunched She-Box in August 2024. In this article, we make an attempt to understand the objective of She-Box, Why is it important for organizations to register on it and How can organizations navigate through this additional compliance.

The **SHE-Box (Sexual Harassment Electronic Box)**, is a powerful online platform that allows women to directly lodge complaints of sexual harassment at the workplace.

The objective of SHE-BOX is to ensure safe and secure work environment for women, aiming at –

1. Prompt and effective redressal of sexual harassment complaints
2. Promote awareness
3. Increased accountability among employers regarding POSH Law implementation

Who can file a complaint on SHE-BOX?

Any woman employee—whether employed in the government, private sector, organized or unorganized sector, NGOs, domestic work, or other institutions—can file a complaint through SHE-BOX if she has experienced sexual harassment at her workplace.

Key Features of SHE-BOX

1. **Online Complaint Registration** – Women can file complaints anytime, from anywhere.
2. **Direct Access to Authorities** – Complaints are directly sent to the Internal Committee (IC) or Local Committee (LC) depending on the case.
3. **Tracking Mechanism** – Complainants can track the status of their case online.
4. **Government Monitoring** – The Ministry monitors the progress of cases to ensure timely redressal.
5. **Covers All Workplaces** – Both government and private organizations fall under its scope.

Importance of SHE-BOX

- **Encourages Women to Speak Up** – Provides a safe and digital platform to lodge complaints without physical barriers.
- **Ensures Transparency** – Women can track the status of their cases in real-time.
- **Strengthens Compliance** – Pushes organizations to form Internal Committees and handle complaints effectively.
- **Government Oversight** – Adds a layer of accountability beyond the organization.
- **Bridges Gaps for Unorganized Workers** – Helps women working in unorganized sectors access justice.

Compliance Implications for Organizations

1. Mandatory IC Formation

- Every employer with 10 or more employees must constitute an **Internal Committee (IC)**. Such IC should be updated on the organization's profile on SHE-BOX
- If a complaint reaches the IC through, SHE-BOX, the absence of a functional IC exposes the organization to **non-compliance penalties**.

2. Timely Inquiry and Reporting

- The POSH Act prescribes strict **timelines** - inquiry must be completed within 90 days and the report submitted within 10 days.
- SHE-BOX complaints are tracked at the **government level**, meaning any delay in inquiries becomes visible and may attract scrutiny.

3. Transparency and Accountability

- Once a complaint is lodged, the complainant can **track the status** online.
- This reduces the possibility of organizations delaying or suppressing complaints, making accountability a visible metric.

4. Responsibility Beyond Internal Mechanisms

- Even if an organization has a functioning IC, failure to act promptly and effectively on a SHE-BOX complaint can harm its **legal standing, reputation, and credibility**.
- Escalation through SHE-BOX often means that the complainant feels internal mechanisms are inadequate — a clear signal that organizations must **revisit their culture, training, and grievance handling processes**.

Challenges in Implementation

- **Awareness Gap** – Many women employees and organizations are still unaware of SHE-BOX.
- **Follow-Up Issues** – While the portal monitors complaints, delays may still occur at the IC/LC level.
- **Digital Divide** – Rural or unorganized women workers may find it difficult to access the online platform.
- **Lack of Clear Guidelines from Central and State Government** – Clear guidelines on registration on SHE-BOX portal and whether it is mandatory, whom to contact if organizations are facing technical issues; are missing. The liaisoning between organizations and State/District Nodal officers has scope of improvement.

For organizations, SHE-BOX is not just the complaint mechanism but a compliance test. Its presence underscores the need for employers to:

- Establish a **functional IC**,
- Conduct **timely inquiries**, and
- Foster a **safe and inclusive culture** where employees trust internal mechanisms.

When internal mechanisms are robust, complaints are resolved effectively within the organization. When they are weak, SHE-BOX becomes the external route for employees — bringing in government oversight.

Thus, SHE-BOX should be seen as both a **safety net for employees** and a **compliance compass for organizations**.

NEWS CORNER

Sexual Harassment Complaint must be filed within six months, time-barred complaints liable to be rejected: Supreme Court

In case SLP (C) NO. 17936/2025, The Supreme Court has clarified that under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, complaints of sexual harassment must be filed within a maximum period of six months from the date of the last incident.

The Apex Court, further stated, “Where a complaint on the simple reading of the averments made therein appears to be patently barred by limitation, it can be rejected at the very first instance on the analogy of Order VII Rule 11 CPC, without even calling the other side to participate in the proceedings.”

NEWS CORNER

Written Complaint essential for Adjudicating POSH cases, Labour Disputes not covered under POSH Act

Kerala High Court, in WA NO. 1622 OF 2025; observed that the appellant was clearly capable of filing written complaints, given that she had lodged grievances before the police, the Women’s Commission, and the Labour Court. Her failure to submit a written complaint under the POSH Act therefore could not be excused. The bench categorically ruled that oral statements made before the Committee cannot substitute for the statutory requirement of a written complaint.

The Court also distinguished between sexual harassment and labour disputes. While the appellant claimed she was subjected to hostility, there was no allegation of sexually coloured behaviour, physical advances, or requests for sexual favours. The Court clarified that a hostile work environment or unfair labour practice, absent a sexual element, does not fall within the definition of sexual harassment under Section 2(n) of the POSH Act. To interpret otherwise would dilute the Act’s core objective and improperly expand its scope into areas governed by labour law.

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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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