

# POSH

Prevention Of Sexual Harrasment

## Live

*A quarterly insight to the POSH Law!*

By VP Shintre and Associates

[www.vaishalibhagwat.com](http://www.vaishalibhagwat.com)

**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.

## **Obligations Under POSH Act, 2013 that every employer must know!**

The Prevention of Sexual Harassment (POSH) Act, 2013, is a critical piece of legislation aimed at ensuring a safe and respectful workplace for women employees. The primary objective of "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which also famously known as POSH Act, 2013 is to focus on prevention of sexual harassment and also to provide redressal mechanism for sexual harassment complaints.

It places specific legal obligations on employers to prevent and address sexual harassment at the workplace. Failure to comply can lead to significant legal and reputational consequences. Here are the key responsibilities every employer must know and implement under the POSH Act.

### **1. Policy Implementation**

Employers must draft and implement a comprehensive POSH policy. The policy should clearly define sexual harassment, outline the complaint mechanism, and specify the disciplinary actions for violations. It must be prominently displayed at the workplace to ensure awareness among all employees.

### **2. Constitute an Internal Committee (IC)**

Every organization with 10 or more employees is required to constitute an Internal Complaints Committee (ICC).

- The ICC should include at least four members, with a woman as the presiding officer.
- At least one member must be an external member

The Internal Committee should meet every quarter and take necessary steps towards prevention, prohibition and redressal of sexual harassment at workplace

## IN THIS ISSUE

### **Articles –**

Obligations under POSH Act that every employer must know!

Directions for effective implementation of POSH Law – By Supreme Court of India!

### **News Corner –**

Inquiry Report must be given to Complainant – Supreme Court imposes penalty

Oral Complaint cannot substitute requirement of written complaint for conducting inquiry under POSH Act – Kerala High Court

### **Good to know –**

Launch of updated SHE-Box and NSE Guidelines

### **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.

.... Continued on page 2

## GOOD TO KNOW!

### Launch of updated SHe-Box!

SHe-Box portal is the centralized platform aiming to streamline the process of reporting and addressing complaints of sexual harassment both in government and private sectors.

**Purpose** – The SHe – Box Portal collects all information about Internal Committees and Local Committees that handle sexual harassment complaints. It ensures that complaints are processed efficiently and effectively

**Accessibility** – It is accessible to all women employees regardless of their employment status on reporting the complaint

**Functionality** – It directs the complaints to the concerned IC or LC ensuring that each complaint is handled effectively and promptly

Website – [www.shebox.wcd.gov.in](http://www.shebox.wcd.gov.in)

All organizations having 10 or more employees are required to ensure that their information of Internal Committee and Nodal Officer is uploaded on this portal.

In regards to the same, **NSE has issued Guidelines for Mandatory Compliance with SHe-Box portal on 27<sup>th</sup> December, 2024.**

All the trading members are advised to submit on [women-welfare1@gov.in](mailto:women-welfare1@gov.in) the details of their Internal Committee, including the names, designations, email addresses and contact numbers of members and the details of Nodal Officers responsible for Sexual Harassment compliance **within 15 days** from the date of the circular which is dated 27<sup>th</sup> December, 2024

### 3. Employee Awareness Training Programs

Employers must regularly organize training programs for employees. These training programs create awareness about the understanding of sexual harassment, help employees to understand of where to draw the line while dealing with colleagues, focusing on impact vs. intent and give clear instructions on what is not acceptable at workplace. This helps send a clear message to employees about the employer's zero tolerant approach towards sexual harassment at workplace.

### 4. Trainings/Workshop for IC member

Employers must arrange workshops or trainings for IC member to build their knowledge, information beyond basics of POSH Law. The IC members are responsible for conducting inquiry into the sexual harassment complaint hence they must be aware of the provisions and rules of the POSH Act, 2013. Arranging workshops and trainings regularly, builds their knowledge on procedural part of inquiry and also develops their perspective required to deal with sensitive topic such as sexual harassment.

### 5. Annual Reporting

Every employer with 10 or more employees must constitute an Internal Committee. The Presiding Officer at the Internal Committee on behalf of the Organization must submit the Annual Report to the respective District Officer for the Calendar Year.

Apart from the responsibilities listed above, certain additional requirements from the employers are –

1. Display the list of IC along with their contact details on the notice board
2. Display the list of IC on the Company's website (As per the Supreme Court Judgement in Aurelino Fernandes Vs. State of Goa)
3. Display the POSH Policy on the notice board/ ensure each employee has access to it

### Consequences of Non-Compliance

Non-compliance with the POSH Act can lead to penalties, including fines of up to ₹50,000. Repeated violations may result in higher fines, cancellation of business licenses, and damage to the organization's reputation.

The POSH Act goes beyond legal compliance; it is a commitment to fostering a workplace culture that upholds dignity and equality. By meeting these legal obligations, employers not only safeguard their employees but also strengthen their organization's integrity and inclusivity. Implementing the POSH Act effectively is a step toward building a safer and more respectful workplace for all.

## *Directions of Effective Implementation of POSH Law by Supreme Court*

The Supreme Court of India, while hearing Aureliano Fernandes Vs State of Goa and ors. has given multiple directions on effective implementation of POSH Law. The recent Directions came on 3rd December, 2024 in additions to the ones passed in May, 2023 and October, 2022.

On 12th May, 2023, The Supreme Court had given the Directions to Union and State Governments to undertake timebound exercise to analyse if all the organizations have Internal Committees and all Districts have Local Committees as applicable and that all the details should be made available on the respective websites. It had also directed for the UT/State Governments to file affidavits reporting compliances within eight weeks.

There was another judgement giving directions on effective implementation of POSH Law by Supreme Court - Initiatives for Inclusion Foundation Vs. Union of India and ORS on 19th October, 2023. This judgement has given number of directions on effective co-ordination between union and state governments by appointment of Nodal Officers, on appointment of public authorities like local committees and authorities collecting fines on non-compliance, and on monitoring compliance by employers.

The recent Directions issued by Supreme Court on 3rd December, 2024 are on the similar lines as above which consist of namely -

### **a) Appointment of District Officers and Nodal Officers**

- The Chief Secretary of every state and Union Territories should ensure that the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as the case may be, be appointed as District Officer for every district to exercise powers or discharge functions under the provisions of the Act.

- The District Officer shall also designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and to forward the same to the concerned Local Committee within a period of seven days from the date of receipt of such complaint. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

- the Chief Secretaries of each State shall also direct the Deputy Commissioners, District Magistrates or Additional District Magistrates, Collector or Deputy Collector of each district to survey the number of organisations, both public sector as well as private, within the district, which have already constituted the Internal Complaints Committee and seek information in that regard.

- Further, wherever the Internal Complaints Committee have not been constituted, the District Officer shall take steps to ensure that such Committees are constituted by sending the necessary advisories/directions to the said entities.

### **b) Local Committee - Tenure and other conditions**

- the District officer of every district has to constitute a Committee to be known as Local Committee to receive complaints of sexual harassment as stipulated in sub-Section 1 of Section 6 of the Act

- In order that the aggrieved women may be able to make the complaint to the Local Committee, the names of the nodal officer and their designation for each Block, Taluka and Tehsil in the rural or tribal areas and ward or municipality in the urban areas, who would receive the complaints and forward the same to the Local Committee shall be notified on the website of the District Officer, who is none other than the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector or the Deputy Commissioner, as the case may be, ex officio

.... Continued on page 4

#### a) SHE - BOX Portal

- In whichever States or Union Territories the Sexual Harassment electronic Box (SHe-Box) portal has been instituted by the Government of the States or the Union Territories the same shall also indicate the name and designation of the nodal officer for each district.
- The District Officer appointed for every district could also upload the requisite details of constitution of the Internal Committee in a workplace by every employer as well as the Local Committee which has been constituted for each district through the Labour Department/Department of Women and Child of each State which shall in turn upload the details to the She-Box which has been instituted by the Union of India.
- Every state could also think of instituting a She-box for the purpose of registering complaints, either before the Internal Complaints Committee of a work place or through a Local Committee of a district as a means of access to make such a complaint and if any such She-box is or has been constituted by the State Government/Union Territory, the same shall be activated and the complaints received shall in turn be referred to the respective Internal Complaints Committee or the Local Committee

The Courts have done their jobs in giving guidelines and providing directions time and again, what happens to these directions later is more important. It's high time that the Governments and people who are responsible for implementation - take necessary actions as per these Directions. We hope that these words do not just remain on the paper but are converted to actions. As we all know, "Actions speak louder than words!"

### NEWS CORNER

#### Inquiry report must be given to complainant – Supreme Court imposes penalty

The Supreme Court recently imposed a penalty of Rs. 25,000 on the Border Security Force (BSF) for failure to provide a copy of the inquiry report to a complainant who initiated proceedings against an officer under the the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act (POSH Act), 2013.

The BSF countered that the Report of the Inquiry Committee was not given to the petitioner, as she was not an accused and moreover, the Inquiry Report did not find anything material against the accused person.

Rejecting the above submission, the Court observed that there was a procedural violation as the petitioner came under the ambit of 'concerned parties' under S. 13(1) of the Act. Since it was an admitted fact that the report copy was not given to the petitioner, the Court directed the imposition of Rs. 25,000/- as penalty on BSF.

### NEWS CORNER

#### Oral Complaint cannot Substitute requirement of written complaint for conducting inquiry under POSH Act – Kerala High Court

The **Kerala High Court** has held that oral complaints given by an employee alleging sexual harassment to various authorities cannot be a substitute for a written complaint for carrying an inquiry under Section 11 of the Prevention of Sexual Harassment at Workplace Act.

The Court observed that Section 11 of the POSH Act contemplates and that Section 12 of the POSH Act provides that inquiry shall be on a written complaint made by the aggrieved person. It also noted that Rule 6 of the POSH Rules deals with the procedure for submission of the complaint.

In the facts of the case, the Court stated that the employee failed to give a complaint and that inquiry was carried out without a complaint. It thus stated that the inquiry conducted by the local level committee was illegal.

### 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

[www.vaishalibhagwat.com](http://www.vaishalibhagwat.com)



### Mrudula Arjunwadkar

*BSc., LLB, MPM*

#### POSH Law Trainer and External Member

Helping organizations in end to end POSH Compliance, External member to IC, POSH trainings