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POSH

Prevention Of Sexual Harrasment

Live

A quarterly insight to the POSH Law!

By V.P Shintre & Associates

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.

Redefining Jurisdiction of the Internal Committee under POSH Act

Critical Analysis of The Supreme Court Judgement – Dr. Sohail Malik Vs. Union of India and others
Civil Appeal No. 404 of 2024

The *Dr. Sohail Malik Vs. Union of India* judgment is a landmark Judgement by India's Apex Court on December 10, 2025, which interprets and emphasizes on a remedial and accessible approach to sexual harassment complaints at workplace. It reinforces that **women's access to justice** should not be constrained by technical jurisdictional barriers. Yet, effective implementation will require clear procedural protocols, especially for inter-departmental and cross-organizational cases.

In this article, we attempt to understand the Court's expansive interpretation on the Jurisdiction of IC for the purposes of inquiry and bring attention to the legal rationale, operational challenges, and unresolved questions emerging from this judgment.

Facts of the case –

1. Appellant who is an officer of IRS posted as OSD, Investigation, Central Board of Direct Taxes, Delhi and aggrieved woman who is IAS officer posted at the relevant time at as Joint Secretary, Department of Food and Public Distribution alleged that Appellant sexually harassed her at her workplace which was Krishi Bhawan, New Delhi.
2. A complaint under the POSH Act was presented before the ICC constituted under Section 9 of the POSH Act at the aggrieved woman's department / workplace, i.e., the Department of Food and Public Distribution.
3. The ICC through its Member Secretary issued a meeting notice/order to the Appellant, scheduling a hearing for the complaint, for him to appear along with a response to the complaint
4. It was at this stage the Appellant filed Objection (OA) before the CAT seeking direction to set aside the order/notice and all consequential proceedings arising therefrom.
5. The CAT dismissed the Objection (OA) filed by the Appellant, which has been upheld by the High Court vide the impugned order

GOOD TO KNOW!

Registration of IC details on SHE BOX portal

1. Organizations who have registered on SHE BOX portal must have received the log in credentials through which the IC details for each Organization/Location should be updated on the profile
2. The report on workshops/trainings arranged by employers can also be updated on the Company's profile

Submission of Annual Report on SHE BOX

A copy of Annual report should be uploaded on the SHE BOX portal using the log in credentials. It is mandatory to submit the Annual Report to the District Officer and on SHE BOX portal.

Website link
<https://shebox.wcd.gov.in/>

6. Upon preferring the present appeal before this Court, vide order dated 18.07.2023 it was directed that the inquiry may go on, but the final outcome of the inquiry shall be kept in a sealed cover.

7. Accordingly, an inquiry had been conducted and Apex Court was supplied with a copy of inquiry report and proceedings in a sealed cover, which is awaiting action, subject to outcome of the present appeal in the Supreme Court

The Apex Court has widely discussed Section 11 of the POSH Act which lays down the provision for inquiry into the complaint which also is a major bone of contention in the present case.

*Section 11. Inquiry into complaint – (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, **where the respondent is an employee**, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and **where no such rules exist**, in such manner as may be prescribed **or in case of a domestic worker**, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) 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.*

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

The Appellant urged that use of the words 'where the respondent is an employee' in Section 11 implies that the inquiry into a complaint for sexual harassment must be done by the ICC constituted at the workplace where the Appellant is employed.

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Arguments from Appellant –

1. Appellant's controlling authority is different from the controlling authority of the aggrieved woman where ICC proceedings have been instituted
2. Placing heavy reliance on Section 13 of the POSH Act, it was argued that the ICC constituted where the appellant is an employee, solely has jurisdiction to entertain complaints of sexual harassment, since it is only his employer which may take action based on the findings of the ICC.
3. Learned Senior Counsel also urged that the use of the phrase '**where the respondent is an employee**' in Section 11 necessarily requires that the ICC proceedings must be instituted at the workplace of the Appellant.
4. It was also argued that as per Section 19(h) of the POSH Act, the only remedy available to the aggrieved woman when the perpetrator of an act of sexual harassment is not an employee of the same department, is to initiate action under the IPC or any other law.

Arguments from Aggrieved –

1. Such an interpretation of Section 11 and other provisions of the POSH Act would cause violence to the general ethos of the POSH Act and defeat its very purpose.
2. The wide ambit given to the word 'workplace' in Section 2(o) of the POSH Act and the word 'employer' in Section 2(g) of the POSH Act shows the legislative intent to ensure sexual harassment complaints by all women are duly addressed and enquired into.
3. Under Section 13(3), upon allegations of sexual harassment being proved, it has been said that the employer or the district officer shall take necessary action, which duly addresses the present situation
4. It was argued that the option to initiate criminal proceedings under Section 19(h) cannot be read to be in derogation or exclusion of the proceedings under the POSH Act.

Issues that The Honourable Supreme Court has taken into consideration –

1. Whether the use of the words 'where the respondent is an employee' as contained in Section 11 of the POSH Act would mandate that ICC proceedings must be instituted and carried out at the workplace of the 'respondent' instead of the workplace of the aggrieved woman where incident occurred and complaint was made?
2. Whether the ICC constituted in one department of the Central Government has the jurisdiction to entertain a complaint of sexual harassment under the POSH Act against an employee of a different department of the Central Government?
3. How is action supposed to be taken by the department of the 'respondent' in pursuance of the findings of the ICC constituted at the aggrieved woman's department?
4. Whether the proceedings of the ICC constituted at the workplace of the aggrieved woman, in the present case, have caused any prejudice to the Appellant, warranting interference by this Court?

While analysing these issues, the Honourable Court has widely discussed the interpretation of statute with reference to text and context. The Court states, "a part of a section cannot be read in isolation, the construction of the entire section must be made as a sum of its parts and no word or phrase thereof can be picked out in isolation to give a certain meaning to the section as a whole." The Court also focuses on the long title of the Act and its Preamble for the purpose of the interpretation of statute.

Issue Number 1 discussed as -

1. Whether the use of the words 'where the respondent is an employee' as contained in Section 11 of the POSH Act would mandate that ICC proceedings must be instituted and carried out at the workplace of the 'respondent' instead of the workplace of the aggrieved woman where incident occurred and complaint was made?

The Court, in its detailed analysis of the first issue of consideration, have analysed the use of words "where the respondent is an employee" as in Section 11 of the POSH Act and states that, "The grammatical function of the word 'where' as appearing in Section 11 of the POSH Act is that of a 'conditional conjunction' (similar to 'in that case' or 'if'). It introduces a scenario, contingency or condition and lays down the action which follows." "Use of the phrase 'where the respondent is an employee' is essentially a procedural trigger, directing the ICC to apply the service rules which are applicable to the 'respondent', it is not a jurisdictional constraint limiting a particular ICC to hear the complaint"

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Issue Number 2 discussed as -

2. Whether the ICC constituted in one department of the Central Government has the jurisdiction to entertain a complaint of sexual harassment under the POSH Act against an employee of a different department of the Central Government?

Whether the complainant and respondent must be from same workplace?

While addressing this issue, the Court states "The definitions of the word 'employee' and 'workplace' as quoted above in this judgement at their respective places are completely neutral, in the sense that they do not suggest that the 'respondent' must necessarily be an employee of the workplace where the aggrieved woman works." "The word 'respondent' has been defined in Section 2(m) of the POSH Act as 'a person against whom the aggrieved woman has made a complaint under Section 9'. It does not require the 'respondent' to be someone working at the same workplace as the aggrieved woman, rather the exact words used are 'a person' which can be any person against whom complaint has been made."

Thus, it can be said that Any person against whom a complaint is filed by the aggrieved woman before the ICC constituted at her workplace under Section 9, is a 'respondent' under the POSH Act and as per the scheme of Section 11(1), if the 'respondent' is an 'employee', his service rules shall apply and in the absence of service rules, inquiry shall be conducted as prescribed, but the 'respondent' need not necessarily be an employee of the same 'workplace'.

The Court disagrees on the argument from the Appellant's side that "the only remedy available to the aggrieved woman when the perpetrator of an act of sexual harassment is not an employee of the same department, is to initiate action under the IPC or any other law." And states that, "since Section 19(h) makes it a duty of the employer to facilitate the initiation of action under the IPC if the aggrieved woman so desires, it is not in derogation or exclusion of the power to initiate proceedings under the POSH Act. Even where the 'respondent' is not an employee anywhere, criminal proceedings may be initiated and such initiation of criminal proceedings must be facilitated by the employer"

It also focuses on the legislative void which was highlighted in Vishakha Judgement thereby mentioning, "The POSH Act does not merely punish acts of sexual harassment, but actively imposes a legal duty on employers to prohibit and prevent harassment, it ensures that the women in each workplace have open access to a mechanism for redressal of complaints of sexual harassment in the form of ICC. It aims to bring about safety and accountability in the workplace in order to enable women to pursue their career without the fear of a hostile environment. It is thus seen that the POSH Act is a social welfare legislation and it must be interpreted as thus."

Keeping in mind the object behind the enactment of the POSH Act, if the aggrieved woman had to approach the ICC constituted at the workplace of the 'respondent' for every third-party incident, it would fall short of the aforesaid object. If only the ICC of the workplace of respondent has the jurisdiction to inquire into the complaints against him, this condition would undermine the POSH Act's remedial social welfare intent since it would create significant practical hurdles for the aggrieved woman.

While arriving at a conclusion on this issue, the Court differentiates between the authority to inquire into the facts and the authority enforce the findings. Hence, it clarifies that the findings by IC of complainant can be acted upon by the employer of respondent by stating, "As intended, the ICC constituted at the aggrieved woman's workplace shall send its recommendations to the 'employer' of the 'respondent' for further necessary action, i.e., initiation of disciplinary proceedings as per service rules, or to take action as prescribed. Section 13 does not state therein that the employer of the aggrieved woman and the 'respondent' must be one and the same." To strengthen this interpretation, the court further states, "It goes without saying that the sanctity of the report of the ICC is statutorily mandated and all employers are required to act upon the said report." "It is also pertinent to mention here that if the recommendations of the ICC are brushed aside and not acted on by the employer, a right to appeal has been provided under Section 18 of the POSH Act."

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The Court throws light on how an inquiry in such a case be conducted which is highlighted pointwise –

1. Under the scheme of the POSH Act and particularly looking to Section 13 of the POSH Act, nothing prevents the ICC constituted at the workplace of the aggrieved woman from carrying out the preliminary / fact-finding inquiry at the first stage. Hence if the aggrieved woman files a complaint to the ICC at her workplace, the ICC shall conduct the fact finding inquiry and after the completion of the fact finding inquiry, the ICC can send its recommendation and report to the employer of the respondent.
2. Upon receiving the findings and recommendations of the ICC constituted at the aggrieved woman's workplace, the employer of the 'respondent' and the Disciplinary Authority, upon making a decision that disciplinary proceedings are warranted, can then issue a chargesheet to the 'respondent' and initiate disciplinary proceedings against him
3. The ICC constituted at the workplace of the 'respondent' may conduct the second stage formal inquiry, acting as the inquiring authority for the purpose of the disciplinary proceedings.

Issue Number 3 discussed as -

3. How is action supposed to be taken by the department of the 'respondent' in pursuance of the findings of the ICC constituted at the aggrieved woman's department?

To address this issue, The Honourable Court suggests to consider the findings of the ICC of complainant as first stage of inquiry which has carried out preliminary inquiry or has conducted a fact finding inquiry. Such report can be sent to the employer of respondent. Based on the preliminary inquiry conducted by the ICC of complainant, employer may initiate disciplinary proceedings under the applicable service rules where the ICC at respondent's workplace shall be the inquiring authority.

Issue Number 4 discussed as -

4. Whether the proceedings of the ICC constituted at the workplace of the aggrieved woman, in the present case, have caused any prejudice to the Appellant, warranting interference by this Court?

The Court has analysed the several aspects as under –

1. The ICC of complainant may not be privy to details of respondent's scope of duty, work, service records etc, however, the IC has communicated with the respondent's employer and as sought required information
2. The duty of the employer to co-operate in ICC proceedings was duly complied with
3. Respondent has not been able to show any prejudice that has caused to him due to proceedings being conducted by the Complainant's ICC.
4. The right to being heard and principle for application of mind before imposing punishment is to be balanced
5. Any contentions regarding facts and findings of complainant's ICC, Appellant has the right to raise them in the disciplinary proceedings conducted by the ICC at his workplace and Court restrained from commenting on it except for the question of jurisdiction or validity of proceedings by ICC of Complainant's workplace.

Conclusion -

A) Ratio Decidendi lies in the Supreme Court's authoritative interpretation of the jurisdiction and powers of the Internal Committee. The key elements of the ratio are -

1. ICC has the jurisdiction to inquire into the allegation of sexual harassment arising out of workplace relationship even if the respondent is not a direct employee of the organization
2. Expansive interpretation of "Workplace"
3. Purpose driven interpretation of POSH Act
4. ICC's jurisdiction is not ousted merely because parallel proceedings exist
5. Due process safeguards apply, but cannot be used to nullify ICC authority

B) Obiter Dicta consists of broader reflections and cautionary notes which carry strong persuasive value. The observations are –

1. Emphasis on workplace dignity as a constitutional value
2. Need for responsible functioning of ICC's
3. Institutional accountability beyond employment contracts

Expansive Jurisdiction of Internal Committee's under the POSH Act forms the stare decisis of this landmark judgement.

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The legal rationale in this judgement emphasizes on the intent of the POSH Act and focuses on it being a social legislation, focusing on purposeful interpretation of “where the respondent is an employee”, thereby further distinguishing between the fact finding authority and authority to initiate disciplinary action and implement the recommendation. However, it does not explicitly talk about the operational challenges such as i) Co-ordination between different employers ii) Application beyond Government Employees iii) Procedural complex arising due to Two-stage inquiry mechanism iv) Training and Competence of IC members v) Awareness and Administrative Preparedness vi) Remedies if the Employer fails to act

This Judgement can be considered as the significant jurisprudential development that aligns statutory interpretation with the remedial goals of the POSH Act, ensuring complainants are not left stranded by technical jurisdictional barriers. It draws on purposive interpretation and textual analysis to expand access to ICC inquiries. However, the decision also highlights **operational complexities** and **unresolved procedural questions** — especially concerning inter-departmental coordination, enforcement of ICC findings, and consistent application across diverse workplaces. These areas will likely require further judicial interpretation, legislative clarification, or administrative guidelines to ensure effective implementation.

Intention vs. Impact- Why Impact Matters?

We all, at some point in our workplace, hear people say, “I did not mean it that way,” “It was just a joke,” or “I think you should just laugh it off.” The idea that a person can be absolved of responsibility simply because they did not intend any harm, even when their words or actions have made someone else uncomfortable, is a common misunderstanding.

Unlike criminal proceedings, where mens rea, that is, the intention behind the act, is considered while determining guilt, POSH proceedings cannot take such intent into account. This is because the primary purpose of the Act is to ensure a safe and dignified working environment for women. Allowing someone to escape responsibility merely because they “did not intend” to cause discomfort not only defeats the purpose of the Act but also deprives the affected person of the most fundamental and innate feeling of being treated with equality and being safe in their surroundings.

Why impact matters more than intentions - good intentions do not erase impact!

The question to ask oneself here is: Is harassment experienced only when the perpetrator intends it? Does one feel unsafe only when someone is consciously threatening their safety? Harassment can occur when a person feels unsafe or uncomfortable, even without any harmful intention behind the behaviour. This is because, even if the accused believes they had “good intentions,” their actions may still cross personal boundaries, create a hostile work environment, or cause emotional or physical discomfort. To create a truly safe workplace, the integrity and dignity of the people working there must be protected; these are fundamental rights. Impact can be assessed by understanding how the recipient experienced the behaviour and whether a reasonable person would feel harassed in the same situation. The behaviour can be assessed by the reasonable behaviour standard by applying a simple test if the behaviour fits into reasonable behaviour standard at workplace which means “how would a reasonable person behave in a given context”. One can assess one’s behaviour with this simple test and be more aware of the impact of one’s actions on others. This will lead to ensuring prevention of sexual harassment at workplace.

Sec 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment as any one or more of the following unwelcome acts or behavior (whether directly or by implication), namely: —

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

“Unwelcome”, as stated in the definition, is determined by the recipient, not the sender, as the Act nowhere considers the intent of the accused rather gives more importance to the impact on the recipient.

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Similarly, Sec 3 [2] of the Act states (2) The following circumstances, among other circumstances, if they occur, or are present in relation to or connected with any act or behaviour of sexual harassment, may amount to sexual harassment:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety

The “Implied inappropriate behaviour” does not refer to intention; it refers to behaviour that communicates or suggests something inappropriate, even if it is not stated outright. Simply not having a bad intention does not erase the bad impact.

- You may not mean to offend → but you still did
- You may think it’s harmless → but it affected someone negatively
- You may think the person is overreacting → but their discomfort is valid

Therefore, the behaviour may still be considered sexual harassment.

In the case of HCL Technologies Ltd. V. N.Parsarathy W.P. No.5643 of 2020, the court stated that decency does not mean decency that the Respondent thinks within himself, but how he makes others feel with his actions. The standard of reasonableness is not the standard of a reasonable man but the standard of a reasonable woman.

The Standard of a reasonable woman

It is a legal benchmark used in sexual harassment cases wherein it is determined whether a conduct was offensive or not if a reasonable woman would find the behaviour as harassing. This highlights the difference in perception between men and women. It is a feminine viewpoint as a basis to measure the conduct of the perpetrator. This standard exists because men and women may perceive behaviour differently. A “reasonable man” standard can undervalue or dismiss women’s discomfort. Harassment often involves subtleties that women are more acutely aware of.

The standard basically asks - Would a reasonable woman, in the same situation, find this behaviour offensive, unwelcome, or harassing? This automatically shifts the analysis away from intention and towards impact, because:

The perpetrator’s justification is irrelevant.

The woman's perception and experience take centre stage.

The legal assessment focuses on whether the conduct was capable of creating discomfort or a hostile environment.

In USA, Ellison v. Brady 924 F.2d 872 (9th Cir. 1991), a case where a female Internal Revenue Service employee alleged that her male colleague created a hostile work environment by repeatedly sending her unwanted lunch invitations and affectionate notes. Although the district court dismissed her claim, the Ninth Circuit Court of Appeals reversed the decision, holding that hostile environment cases must be evaluated from the viewpoint of a reasonable woman. The court also emphasised that the intent of Title VII of the Civil Rights Act of 1964 is a prohibition against sex discrimination and creating equal employment opportunities.

Respecting boundaries is more important than making excuses

Safety and dignity cannot simply be declared; they must be actively cultivated through shared responsibility. A person’s sense of safety cannot be enforced upon them. It grows naturally from the culture, environment, and behaviour of colleagues in the workplace.

It is everyone’s equal responsibility to respect their co-workers, regardless of designation, hierarchy, or position. Creating a safe and cohesive workplace is a collective duty, where each person ensures that no one feels threatened, dismissed, or harassed in any way. Good intentions alone are not enough; genuine respect for others’ boundaries is what truly contributes to a safe working environment.

Similarly, when someone is made to feel uncomfortable, unsafe, or harassed, the impact of that behaviour directly affects their dignity and their ability to work. The reasonable-woman standard ensures that individuals cannot take refuge in the excuse of “I didn’t intend it.” What matters is the effect of the behaviour on the recipient.

NEWS CORNER

Posting Objectionable Posts Defaming Women On Facebook Amounts To Offence U/S. 354,354D IPC: Bombay High Court

While rejecting an application to quash proceedings in a criminal case registered against a man, the Bombay High Court has held that posting defamatory and objectionable material relating to a woman on Facebook amounts to committing an offence under Sections 354 & 354-D of the Indian Penal Code, 1860.

The applicant had approached the High Court by filing the application under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the First Information Report for the offences punishable under Sections 354, 354-D of the Indian Penal Code, 1860.

The Division Bench of Justice Urmila Joshi-Phalke & Justice Nandesh S. Deshpande held, "In the light of these legal provisions, if we peruse the First Information Report in question and the post to which there is an objection, it can certainly be said that posting of a post on a social site i.e. Facebook, would amount to committing an offence as contemplated under the above sections."

NEWS CORNER

Clicking photos or videos of women without consent during non-private acts not voyeurism: Supreme Court

The woman alleged that the appellant-accused intimidated her by clicking her pictures and making her videos on his mobile phone without her consent and by doing so, he intruded upon her privacy and outraged her modesty.

The Supreme Court, while quashing a criminal case, recently held that capturing photos or making videos of a woman during non-private acts would not attract the offence of voyeurism under section 354C of the Indian Penal Act (IPC). As per Explanation 1 of section 354C of the IPC, private act includes watching a person in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear or the victim is using a lavatory, or the victim is doing a sexual act that is not of a kind ordinarily done in public.

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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