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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.

Importance of Internal Committee Training – Risks and Mitigation

Introduction

An Internal Committee (IC) constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is not merely an administrative body created to receive complaints. It performs a statutory fact-finding function and is expected to conduct inquiries fairly, objectively and in accordance with the principles of natural justice.

This makes the competence and preparedness of IC members critical.

A well-drafted POSH policy, a properly constituted IC and regular awareness programmes are important elements of compliance. However, when a complaint is actually received, the effectiveness of the organisation's POSH framework is tested through the quality of the inquiry itself.

One of the common misconceptions surrounding POSH compliance is that once an organisation has constituted its IC and conducted an annual awareness programme, the major compliance requirements have been addressed.

The more difficult question is:

Is the IC actually equipped to conduct a fair and legally sustainable inquiry when a complex complaint is received?

An IC may encounter complaints involving senior employees, remote working arrangements, multiple witnesses, WhatsApp messages, emails, audio or video recordings, conflicting versions, anonymous information, allegations arising from offsites or business travel, or questions about whether the complaint falls within the jurisdiction of the Committee.

These situations cannot always be addressed by simply following a checklist.

They require members to understand the law, apply a structured process and exercise independent judgment.

GOOD TO KNOW!

NCW (National Commission for Women) launched Handbook on Inquiry Procedure for Internal Committee and Local Committee

The National Commission for Women (NCW) released the Handbook on Inquiry Procedure for Internal Committee and Local Committee under the POSH Act, 2013 to provide step-by-step guidance, procedural clarity, and best practices for conducting fair and legally sustainable workplace inquiries.

The Handbook is a Step-by-Step Procedural Guide, with Flowcharts and Frequently Asked Questions, under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Rules, 2013 read with the Central Civil Services (Conduct) Rules, 1964 and the Central Civil Services (Classification, Control and Appeal) Rules, 1965

<https://cdn.ncw.gov.in/wp-content/uploads/2026/07/PoshInquiryHandbook.pdf>

Key Risks Arising from an Inadequately Trained IC

- **Incorrect jurisdictional decisions** – rejecting or accepting complaints without properly understanding the scope of workplace, parties and IC jurisdiction. The Dr. Sohail Malik decision highlights the need for IC members to correctly assess jurisdiction.
- **Violation of natural justice** – failure to give both parties a fair opportunity to present their case, respond to evidence and address material relied upon against them.
- **Improper recording of evidence** – incomplete statements, failure to identify documents or electronic evidence, reliance on assumptions or hearsay, and inadequate recording of admissions or contradictions.
- **Defective cross-examination** – not permitting evidence to be tested where credibility or disputed facts are material, or allowing irrelevant, intimidating or repetitive questioning.
- **Unsustainable findings** – conclusions not supported by evidence or reasoned analysis may be challenged and set aside. The Supreme Court in Aureliano Fernandes emphasised the importance of fair procedure and trained IC members.
- **Organisational exposure** – defective inquiries can result in appeals, litigation, fresh inquiries, delay, management time, employee dissatisfaction and reputational damage.

The cost of an ineffective inquiry may therefore be significantly greater than the cost of investing in proper IC capability-building at the outset.

Training Should Go Beyond "Knowing the POSH Act"

Risk Mitigation –

1. **Regular IC training and refresher programmes** on jurisdiction, natural justice, evidence, cross-examination and report writing.
2. A **clear inquiry SOP** with standard formats for notices, witness statements, evidence records, cross-examination and final reports.
3. **Practical mock-inquiry training**, particularly on recording evidence and handling difficult cross-examination.
4. **Periodic compliance review** of IC constitution, tenure, training records and inquiry processes.
5. **Access to independent legal/process** guidance in complex cases, without interfering with the IC's independent findings.

A trained IC is better positioned to identify jurisdictional issues, conduct a procedurally fair inquiry, evaluate evidence carefully and prepare reasoned findings. Ultimately, this strengthens not only the organisation's legal compliance but also the credibility of its workplace grievance-redressal mechanism.

POSH compliance is not complete when the IC is constituted. It becomes meaningful when the IC is capable of doing its job effectively.

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The POSH Casebook

Vishaka & Ors Vs. State of Rajasthan and Ors.

This case arose from the brutal gang rape of Ms. Bhanwari Devi, a social worker in Rajasthan, who was attacked in retaliation for her efforts to stop child marriage. A group of women's rights activists and NGOs, under the banner of "Vishaka", filed a Public Interest Litigation (PIL) under Article 32 of the Constitution. Since no domestic law addresses workplace sexual harassment at the time, the petitioners sought government intervention to fill this legislative gap and enforce women's fundamental rights.

The court examined whether sexual harassment at the workplace violated fundamental rights under:

- Article 14 (Right to equality before law)
- Article 15 (non-discrimination on the grounds of sexual harassment)
- Article 19 (1) (g) (Right to practice any profession or trade)
- Article 21 (Right to life and personal liberty, which includes the right to life with dignity).

Justice Verma, on behalf of the bench, held that a safe working environment is intrinsic to a woman's right to practice any profession under Article 19(1)(g), and that sexual harassment violates her right to life with dignity under Article 21. In the absence of domestic legislation, the Court relied on India's International obligations, especially under the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), which is ratified by India, invoking Article 51(c) and 253 of the Constitution to justify reading international norms into domestic fundamental rights.

The Court laid down binding guidelines to be followed by all workplaces until parliament enacted specific legislation. These guidelines included:

- A clear **duty on employers** to prevent and deter sexual harassment.
- A broad **definition of sexual harassment**, covering physical contact, demands for sexual favours, sexually coloured remarks, showing pornography and other unwelcome conduct.
- **Preventative measures, including** notifying prohibitions and amending service rules/ standing orders.
- A **complaints mechanism**, including a Complaints Committee headed by a woman, with at least half its members women and involvement of a third party (NGO) to prevent institutional bias.
- Provisions for **criminal and disciplinary action** and **protection of complainants/ witnesses from victimisation**.

The Court declared these guidelines binding under Article 141, giving them the force of law until superseded by legislation.

The Vishaka Case is a landmark in Indian Constitutional jurisprudence for several reasons:

- It is one of the earliest and clearest examples of the Supreme Court exercising its power under Article 32 to create binding law in a legislative vacuum, illustrating "judicial activism."
- It established the principle that international conventions, where not inconsistent with domestic law, can be read into constitutional fundamental rights.
- It gave Indian working women legally enforceable protection against sexual harassment at the workplace for the first time.
- The guidelines remained the operative law for 16 years, until the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which largely codified the Vishaka framework.

The case remains a foundational precedent on gender justice, judicial law-making, and the domestic application of international human rights norms in India.

The POSH Spotlight

MYTH BUSTED: THE POSH EDITION

Decide whether the following statements are Facts or Myths:

1. Comments framed as Compliments or jokes cannot amount to sexual Harassment since there is no bad intention.

Hint: Think about how repeated remarks can affect someone, regardless of intent.

2. A single incident cannot count as Sexual Harassment; there must be pattern of repeated behaviour.

Hint: Think about severity vs. Frequency

3. Friendly or romantic relationships between colleagues means an employee Hint: cannot later complain of harassment by that colleague.

Hint: Consent can change or withdrawn overtime

4. Sexual Harassment can only happen when senior person like a boss harasses a junior employee.

Hint: Consider peers, clients, vendors and same gender situations

5. As long as, a company forms a committee of employees to handle complaints it satisfies the legal requirement for an internal committee.

Hint: Think about who the law requires to sit on the committee beyond just being an employee

NEWS CORNER

Can marital discord between colleagues be raised as POSH Complaint, asks Allahabad High Court

The Allahabad High Court will examine whether a dispute arising essentially from marital discord between husband and wife working in the same office can be brought under the POSH Act 2013. The husband has challenged a fact-finding report and charge sheet issued to him after his wife made a complaint under POSH Act 2013. The Court has stayed the disciplinary proceedings against the husband until further orders.

NEWS CORNER

ICC's Threshold Rejection Of Sexual Harassment Complaint Can Be Treated As Recommendation For Appeal U/S 18 POSH Act: Bombay High Court

The Bombay High Court while interpreting the statutory scheme of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), has held that an Internal Complaints Committee's (ICC) communication rejecting a complaint at the threshold for lacking a sexual element constitutes a "recommendation" under Section 13(2), thereby making it appealable under Section 18 of the Act.

A Bench of Justice Sandeep V. Marne observed, "...when the Internal Committee violates the mandate under Section 11 of the POSH Act by not conducting inquiry into the complaint of sexual harassment and rules that the complaint does not have any sexual element, the ruling to that effect made by the ICC without holding inquiry will have to be necessarily treated as a 'recommendation' under Section 13(2) with a view to provide a remedy to the Complainant under Section 18 of the POSH Act. Otherwise, appellate scrutiny of ICC's decision can be easily avoided by rejecting every complaint at the threshold". "On combined reading of Sections 11 and 13 of the POSH Act, every decision taken by the Internal Committee on a complaint of sexual harassment would form a 'recommendation' within the meaning of Section 13(2) or 13(3)...The word 'recommend' needs to be construed in the context of provisions of the POSH Act...", it further noted.

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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