



IN THIS ISSUE

Articles –

Duty, Diligence, and Protection: What Every IC Member Needs to Understand Right Now

News Corner –

1. Belated POSH Complaints Can't Be Rejected At Threshold Without Considering Reasons For Delay: Allahabad High Court
2. Bombay High Court says shared auto not 'workplace' under POSH Act, sets aside ICC order

Good to know –

NCW (National Commission for Women) Issues Advisory to States, Calls for Mandatory POSH Audits and Robust Workplace Safety Mechanisms Nationwide

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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.

Duty, Diligence, and Protection: What Every IC Member Needs to Understand Right Now

Introduction

The Internal Complaints Committee (IC) is the cornerstone of an organisation's commitment to providing a safe, respectful, and harassment-free workplace. Its purpose extends beyond merely receiving complaints. It is entrusted with ensuring that every aggrieved employee has access to a fair, impartial, confidential, and effective mechanism for redressal. Recent judicial developments have brought this role into sharper focus. In a widely discussed case involving a prominent company, the Court reportedly denied bail to an Internal Committee member, observing that the alleged failure to act on the survivor's complaint warranted examination under the principle of abetment of the offence. This development serves as a significant reminder that being the member of IC is not merely an honorary or administrative role. It is a statutory responsibility that demands diligence, independence, fairness, and strict adherence to the law. This evolving legal landscape underscores the need for IC members to clearly understand not only their powers and duties but also the potential legal consequences of failing to discharge those responsibilities appropriately.

In this article, we examine the legal responsibilities and potential liabilities of Internal Complaints Committee (IC) members when they fail to discharge their statutory duties under the law. Importantly, this article distinguishes between **liability** and **diligence**. While the law does not seek to penalise IC members for every error in judgment, it does expect them to act with due care, independence, fairness, and in compliance with the statutory framework.

GOOD TO KNOW!

NCW (National Commission for Women) Issues Advisory to States, Calls for Mandatory POSH Audits and Robust Workplace Safety Mechanisms Nationwide

In a significant step towards strengthening workplace safety and safeguarding the dignity of women, the National Commission for Women (NCW) has issued an advisory to all States and Union Territories, calling for the immediate and effective implementation of comprehensive measures under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

The Advisory recommends -

1. State Level POSH Monitoring cells and Compliance Dashboards
2. Mandatory Annual POSH Audits
3. District Level Accountability for Women's Safety
4. Universal Constitution of Internal Committees
5. Ensuring Functional and Legally Compliant Internal Committees
6. Strengthening Local Committees for the Unorganized Sector
7. Nodal Officers for Last-Mile Access to Justice
8. Transparency through Public Disclosure
9. Strict Compliance by all employers
10. Capacity Building and Sensitization
11. Professional Training for IC and LC Members
12. Effective Utilization of She-Box
13. Strengthening Annual Reporting Compliance
14. Protection against Retaliation
15. Special Focus on Educational and Healthcare Institutions
16. Awareness Campaigns in Unorganized Sectors
17. Safer, Inclusive and Gender Sensitive Workplaces
18. Active monitoring by District Administrations

Under **Section 11**, the ICC has the power to conduct inquiries, to summon witnesses, require document production, and examine evidence. This is a quasi-judicial function. The Act sets a strict **ninety-day timeline** within which the inquiry must be completed. This is not a guideline. It is a statutory mandate.

Under **Section 13**, the ICC must submit its findings and recommendations to the employer within ten days of completing the inquiry. Again mandatory, not aspirational.

The law does not demand perfection. It demands genuine, documented, timely effort.

Where does the POSH Law End and Criminal Law Begin?

The POSH Act's own penalty provisions are primarily directed at employers i.e. organisations that fail to constitute an ICC, fail to act on its recommendations, or fail to maintain the structural conditions in which it can function. The Act is largely silent on individual criminal liability of ICC members themselves.

Bharatiya Nyaya Sanhita (BNS), 2023 operates on a parallel track, and it does not defer to POSH's internal framework. Several of its provisions are directly relevant to workplace harassment: **Section 75 addresses sexual harassment; Section 78 addresses stalking.** But it is **Section 45 abetment** that carries the most significant implications for ICC members.

Abetment under the BNS is not confined to active encouragement of a wrongful act. It extends to omission, the deliberate failure to act where a person has a legal duty to do so. An ICC member holds a statutory duty under POSH to receive complaints, initiate inquiry, and act within prescribed timelines. Where that duty is not discharged not because of honest error or procedural complexity, but through sustained and knowing inaction the doctrine of abetment by omission can apply.

*For example, if the IC member receives the verbal complaint and the complainant has not submitted the complaint in writing, Section 9(1) of POSH Act, 2013 states that, "Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing" This provision casts a statutory obligation on the Presiding Officer or any other IC member to assist aggrieved woman in writing her complaint. This duty is not discretionary; it is mandatory safeguard intended to ensure that procedural formalities do not become a barrier to justice. Absence of such support to the aggrieved woman may invite scrutiny under **BNS Section 45 Abetment of a thing under illegal omission***

This means POSH and the BNS are not alternatives. They are **concurrent frameworks**. Where POSH governs the institutional response and the employer's obligations, the BNS governs individual conduct including the conduct of those entrusted with roles of institutional responsibility. An ICC member who allows harm to continue through inaction does not find shelter in POSH's silence on individual criminal liability. The BNS fills that gap.

For the member who understands their duties and discharges them diligently, these provisions do not act as a threat. Courts are not criminalising honest effort or good-faith procedural judgment. The threshold for criminal liability is sustained when there is known inaction and deliberate failure to act while harm continues. That is a standard that process, documentation, and genuine engagement will always protect against.

The Difference Between Liability and Diligence

The line between exposure and protection is not arbitrary. It is drawn by conduct and conduct is within your control.

What Creates Exposure	What Protects You
Ignoring verbal complaints without formally recording them	Documenting every complaint verbal or written from the moment it reaches you
Dismissing a complainant informally without initiating inquiry	Following the Section 11 inquiry process, even when complaints seem minor or informal
Allowing management pressure to delay or derail proceedings	Maintaining records of your independent conduct and documenting any external pressure
Inaction over extended periods while harm continues	Acting within statutory timelines and recording reasons for any unavoidable delay
No communication with the complainant after initial contact	Keeping complainants informed at every stage of the process
Failing to register formal complaints that are brought to your attention	Treating every approach formal or informal as potentially triggering your duty to act

Every item in the protection column is something within your control. Liability does not find the diligent ICC member it finds the absent one.

Reiterating this the above explanation in the case of **Vidya Akhave Vs. Union of India**, Bombay High Court 2017; the courts have observed that the court shall not ordinarily interfere with the proceedings of ICC except when there is a non-compliance of the fairness.

Similarly in the case of **HCL Technologies V. N. Parasathy** W.P. No.5643 of 2020 the court has observed that the scope of judicial review concerning ICC inquiry reports is limited to examining whether the inquiry was conducted fairly and properly, and whether basic principles were adhered to.

Practical Steps: For Existing Members and Those Considering the Role

If you are already serving on an ICC:

- Revisit the POSH Act specifically focusing on your your duties. Familiarity with the statute is a baseline requirement.
- Understand what constitutes a complaint. Verbal disclosures, informal approaches, and messages seeking guidance can all potentially trigger your duties.
- Document everything your actions, your communications with complainants and respondents, your reasoning for procedural decisions. Documentation is your strongest defence.
- If you have not received formal legal training on the POSH Act and your duties under it, ask your organisation to provide it. If they do not, seek it independently. The investment of time is small relative to the exposure of proceeding without it.
- Know that good faith, documented effort is your strongest protection. A member who follows the process, records their work, and acts with genuine care for those before them occupies a fundamentally different legal position to one who does not.

If you are considering joining an ICC:

- Ask your organisation what formal training and institutional support they provide to ICC members before you assume the role.
- Go in with clarity, not apprehension. The role is serious precisely because it matters. The employee who comes forward to an ICC is placing their trust in a process and in the people who run it. That trust deserves to be honoured.

Continued on page 4

What Organisations Owe to Their ICC Members?

An organisation that nominates employees to an ICC without adequately supporting them is not just creating compliance risk for the business. It is placing individual employees who have taken on a voluntary institutional responsibility in a position where they carry accountability without the tools to discharge it responsibly. That is an institutional failure, and recent judicial developments suggest courts will not be indifferent to it.

ICC members are entitled to expect:

- Formal legal training before assuming the role covering complaint registration, inquiry procedure, evidence handling, timelines, and the member's own legal exposure
- Administrative support and access to legal counsel when proceedings become complex or legally contentious
- A functional escalation protocol clarity on what happens when the ICC's recommendations are not acted upon by the employer

An ICC member who asks their organisation for these things is not being difficult. They are being responsible. And an organisation that refuses to provide them is creating the very conditions that courts have now signalled they will not look upon favourably.

Conclusion

Being an Internal Complaints Committee member is not merely an organisational role—it is a statutory responsibility that demands competence, diligence, and courage. Liability does not arise because an IC member makes a bona fide decision; it arises when statutory duties are ignored, procedural safeguards are compromised, or justice is denied through inaction or deliberate omission. As judicial scrutiny over the functioning of ICs continues to evolve, the strongest protection for every IC member lies not in avoiding difficult decisions, but in acting fairly, independently, and strictly in accordance with the law. Ultimately, a diligent IC not only protects the rights of the parties involved but also protects itself.

NEWS CORNER

Belated POSH Complaints Can't Be Rejected At Threshold Without Considering Reasons For Delay: Allahabad High Court

The Allahabad High Court has reiterated that complaints of sexual harassment at the workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) cannot be rejected solely on the ground of delay without first examining the reasons behind such delay.

The Court emphasized that delayed complaints should not automatically be discarded. Referring to earlier Supreme Court observations, the High Court noted that victims of workplace sexual harassment often hesitate to report incidents immediately, particularly when the alleged perpetrator occupies a position of authority that could affect their academic or professional future.

The Court held that before rejecting a complaint on grounds of delay, the ICC must specifically consider the period of delay, the date of filing of the complaint, and the reasons furnished by the complainants for approaching the committee at a later stage.

NEWS CORNER

Bombay High Court says shared auto not 'workplace' under POSH Act, sets aside ICC order

The Court stated that in the present case, although the petitioner was going to his office, the said transportation had not been provided either by his employer or Respondent 3's employer. The said transportation was accessed by the parties while commuting from railway station to their workplaces independently and not as a regular phenomenon that parties would travel together. In these circumstances, such transportation would not fall within the definition of a "workplace" as defined by Section 2(o)(v), POSH Act. Thus, the Court held that the alleged incident had not taken place at a "workplace". The Court stated that Respondent 2 could not entertain a complaint of an aggrieved woman being subjected to sexual harassment, if the alleged harassment had not taken place at the "workplace". Thus, Internal Complaints Committee had no jurisdiction to entertain Respondent 3's complaint.

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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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