



## **Sexual Harassment at Indian Workplaces: Bridging the Legislative Gap for a Better Tomorrow**

**Employment and Labor**



Despite significant progress for gender rights in the 21st century, sexual harassment at the workplace refuses to subside. While India has made progress from the 1997 Supreme Court decision in [Vishaka v. State of Rajasthan](#) to the enactment of the [Sexual Harassment of Women at the Workplace](#)

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(Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), there are crucial gaps that need to be addressed to have an effective redressal mechanism for all employees at a workplace.

Therefore, it heartened us to know that the Indian government has assembled a Group of Ministers (GoM) to reexamine the POSH Act. Through this column, we will share our experience of working with the POSH Act as employment counsel in India and offer our suggestions on the following topics:

## Gender neutral

Currently, the POSH Act is only restricted to [complaints of sexual harassment](#) of an aggrieved woman. There is no dedicated legislative mechanism available for sexual harassment faced by men and more importantly transgenders, who continue to experience harassment in modern workplaces.

Nowadays, with equality of all genders a rising slogan, it's critical to amend the POSH Act to make it gender neutral. To achieve gender inclusion, the term "aggrieved woman" in the POSH Act should be replaced with "aggrieved person."

## Presiding officer

The POSH Act states that the presiding officer under the Internal Committee (IC) should be a senior woman employee of the organization. However, there are instances where an organization does not have a senior-level women employee or the presiding officer is not available for a particular hearing, due to other commitments.

Therefore, the GoM should consider the provision of having two presiding officers in the IC to ensure ease and timely completion of inquiry. Of course, safeguards should be added to ensure that a complaint is heard only by a particular presiding officer during the entire period of inquiry.

## Conflict of interest

The POSH Act should also specify categories, wherein if the relationship of any member of the IC with the complainant or the respondent falls under a list of specified categories, then that member would be ineligible to be part of the IC for that particular complaint of sexual harassment.

A suitable list of categories can be drawn for the members of the IC from the Seventh Schedule of the Arbitration and Conciliation Act, 1996, which lists such ineligible relationships. Some of the examples include but are not limited to if the IC member has:

1. A past or present business relationship with either the complainant or the respondent;
2. A close family relationship with one of the parties; or
3. Had an involvement in a previous case with either the complainant or the respondent.

## Tenure of IC members

The POSH Act prescribes a tenure of not more than three years for members of the IC and the presiding officer. However, the POSH Act is silent on the reappointment of the members after a three-year term.

Instead, the POSH Act should specifically state that members of the IC and the presiding officer can

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be reappointed by the employer upon the end of their term.

## **Joint internal committee**

Employers face situations where the complainant and the respondent are not working for the same employer but are working in the same workplace. Under Section 11 of the POSH Act, the IC of the respondent inquires into complaints.

Therefore, to ensure a fair and impartial inquiry in these instances, the POSH Act should explicitly permit the constitution of an Interim Joint IC, with an external member appointed mutually by the employer of both the complainant and respondent.

## **Support person**

In Australia, a dismissal could be construed unjust if an employer unreasonably refuses a request of the employee to allow a support person to be present during a dismissal proceeding.

In light of this, we recommend that complainants should be permitted to have a support person during the hearing before the IC. However, the POSH Act can clarify that a support person will not be present to advocate or defend a case on behalf of the complainant.

## **Civil court**

The POSH Act has democratized justice delivery by granting the powers of a civil court to IC, constituted by the employer. However, there is a lack of guidance to IC on how to effectively exercise these powers in carrying out their task.

We suggest that the Indian government prescribe Standard Operating Procedures (SOP) to assist the IC in enforcing its powers as a Civil Court. In fact, having an SOP becomes even more crucial, considering that none of the IC members are mandatorily required to have a legal background.

## **Interim relief**

As per the existing provisions, IC can recommend that the employer provide interim relief to the complainant. However, the POSH Act and the Rules define a limited set of interim reliefs.

We believe that the POSH Act should also provide discretion to the IC to recommend such interim relief as it deems fit. For instance, some employers can arrange accommodations for the complainant.

However, the POSH Act only prescribes interim relief to the complainant, and no measures are provided to grant safety to the witnesses. Therefore, the ambit of protection should also extend to the witnesses. For example, witnesses can be assured that there will be no adverse action that is taken against them for testifying before the IC.

## **Malicious complaint**

Section 14 of the POSH Act states that if the IC decides that the complaint against the respondent is

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malicious, has been filed knowing it to be false, or the complainant has used a forged document in the course of inquiry, then the IC “may recommend” to the employer to take action.

Instead, the POSH Act should mandate taking action against these malicious complaints, by replacing the phrase “may recommend” with “shall recommend.”

## **Confidentiality**

The POSH Act should specifically state that Section 16, which pertains to confidentiality of the complaint and inquiry proceedings, applies to all parties in the inquiry, including the complainant, respondent, witnesses, and members of the IC.

However, for the sake of clarity, the POSH Act should specifically state that Section 16 will not apply to the complainant or the respondent to exercise their rights under Section 18 of the POSH Act, which gives an employee a right to appeal to a court or a tribunal, if they are unsatisfied with the recommendations given by the IC.

## **Appeal**

Currently, the POSH Act provides for an appeal to a court or a tribunal. However, considering that sexual harassment is a human rights violation, we suggest that an appeal should be permitted to the State Human Rights Commission in the first instance, then an appeal can be made to the National Human Rights Commission.

This revision will also decongest other courts and tribunals. As such, suitable amendments should be made to the POSH Act and the Protection of Human Rights Act, 1993.

## **Penalty**

The POSH Act provides for cancelation or withdrawal of registration of license required to run a business, as a penalty for non-compliance with the POSH Act. With India’s focus on ease of doing business, it is imperative that such provisions are repealed.

We suggest that penalty for not complying with the POSH Act be meted out as a monetary fine, specifically as a penalty unit instead of in rupees. The value of a penalty unit can be determined by the government for each case.

## **Conclusion**

We have sent our suggestions to the relevant organizations and hope that our suggestions will be given due consideration so that we can provide all persons working in India a safe and inclusive workplace.

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