

## **PoSH case law references**

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As per the provisions of PoSH legislation, it is mandatory (just not a mere requirement) for every establishments (whether manufacturing or shop or commercial or any other kind of establishments)

- To have Internal Committee, if the head count is 10 or more and
- Ensure conducive atmosphere for women employees to perform their duties, which includes regular awareness programs for employees, Managers, etc.

Many establishments have not constituted the Internal Committee even after 6+ years of notification of Legislation. And no one has any statistics available (though governments are collecting information through annual reports) on number of actual cases reported, inquiry conducted and action taken on the recommendations of Internal Committee.

After such process of Inquiry, either the complainant or the respondent may appeal in the upper courts, for a favourable order. Following are few case references available in the public domain on such appeals under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, with essence and gist of the case.

This may be useful for the Internal committee and Management of an Organization.

I acknowledge all those (individuals, organizations and others, who had published the above details in the public domain. Request everyone to browse and get a copy of Judgment (from the respective Hon'ble courts' web portal) for complete details of the Hon'ble courts' order.

The Order of the Hon'ble courts, does clearly states that the Employer's duty under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, does not end with few Online/physical training programs and filing annual return every year. More conformations are required which will save the Reputation and Financials of the Employer.

<u>Sl.No</u>	<u>Hon'ble Court</u>	<u>Subject Reference</u>
	Delhi High Court	<p><b>Anita Suresh v. Union of India &amp; Ors.,</b></p> <p>A hefty fine (Rs.50,000) was slapped on a woman for filing a frivolous sexual harassment claim against her senior.</p>
	Delhi High Court	<p><b>X vs. District Magistrate (South) and Another, 2019</b></p> <p>Even though the complaint was beyond limitation period, LC should inquire into the complaint and pass a reasoned and speaking order (beyond a period of 3 months from the date of last incident of sexual harassment)</p>
	Delhi High Court	<p><b>S.K. Tanwar v. Union of India</b></p> <p>The Hon'ble court upheld the validity of a preliminary inquiry by an internal committee before conducting a final inquiry by a newly formed internal committee</p> <p>If an Internal Committee ("IC ") has conducted a proper inquiry into allegations of sexual harassment and has found no truth or substance, the prosecution of the respondent for the very same violation based on the very same set of evidence would be an unjust and an abuse of process of Court. Thus, as an afterthought a police complaint cannot be made if a duly conducted inquiry has given a clean chit to a respondent</p>
	Delhi High Court	<p><b>Ruchika Singh Chhabra vs. M/S. Air France India and Anr.,</b></p> <p>External member does not only have to be independent but also must have expertise in issues related to sexual harassment</p> <p><b>Tag: How can IC be constituted</b></p>

	Delhi High Court	<p><b><i>Ms. Pi and Ors. vs. Jawaharlal Nehru University and Ors</i></b></p> <p>Respondent should not interact or interfere with the complainants absolutely and in case the respondent still does so, only then employer should consider removing respondent from the campus</p>
	Delhi High Court	<p><b><i>Manjeet Singh vs. Indrapastha Gas Limited</i></b></p> <p>The person against whom a complaint of sexual harassment has been filed, must be presumed to be innocent until there is evidence to show otherwise. It went on to say that while an internal complaints committee (“ICC”) is a mechanism put in place to assist women who complain of sexual harassment at their workplace, it is equally important that the goodwill, fair name and dignity of an innocent accused be dealt with the utmost care and the dignity of neither party can be trifled with in an inquiry proceedings</p>
	Delhi High Court	<p><b><i>Linda Eastwood vs. Union of India and Ors</i></b></p> <p>Several issues in relation to constitution of an internal complaints committee, conduct of an inquiry and preparation of the inquiry report pursuant to the Act of 2013</p>
	Delhi High Court	<p><b><i>Puja Dubey vs. Union of India and Ors,</i></b></p> <p>Assuring a safe workplace, and signals the willingness of the employer to address such issues with seriousness and promptitude</p>
	Delhi High Court	<p><b><i>Rupesh Hari vs. Union of India and Others.</i></b></p> <p>Case on transfer during pendency of a matter of sexual harassment</p>
	Delhi High Court	<p><b><i>Shanta Kumar v. Council of Scientific and Industrial Research (CDIR) &amp; Ors, Delhi High Court</i></b></p>

		<p>That an altercation in the context of unwelcoming environment prevailing at the workplace is not a case of sexual harassment.</p> <p><b>Tag: What is sexual harassment</b></p>
	Delhi High Court	<p><b><i>Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors.</i></b></p> <p>Hon'ble Court upheld the decision of the employer to terminate the employment of the accused in line with the recommendations of the Internal Committee ("IC"), where the accused was alleged to have sexually harassed a female colleague during an outstation visit for work</p> <p><b>Tag : Workplace</b></p>
	Delhi High Court	<p><b><i>Sarita Verma v. New Delhi Municipal Corporation &amp; Ors</i></b></p> <p>Hon'ble Court held that merely because the petitioner has an alternate remedy to file the given case before another forum, it would not act as a constitutional bar for the Court to adjudicate upon the matter. It also held that the findings of IC should not be ignored on vague and general grounds</p> <p><b>Tag: Filing of Complaint with IC</b></p>
	Delhi High Court	<p><b><i>Tejinder Kaur v. UOI, Delhi High Court</i></b></p> <p>Hon'ble Court held that the IC could extend the time limit for filing a complaint by another 3 months, i.e. up to six months from the date the incident has taken place, by recording reasons in writing, if it is satisfied that circumstances prevented the complainant filing of complaint earlier</p> <p><b>Tag : Powers of IC</b></p>
	Delhi High Court	<p><b><i>Tejinder Kaur v. UOI, Delhi High Court</i></b></p> <p>It was ruled that the inquiry <i>proceedings</i> should be fair and impartial. If there is any allegation of bias against any member of the IC, the inquiry</p>

		<p>proceedings should be stayed or put on hold until the disciplinary authority takes a decision. If the disciplinary authority believes that the allegation of bias is true, then it would invalidate the proceedings, a new committee would be formed and proceedings would need to start afresh</p> <p><b>Tag : Conducting the inquiry proceedings</b></p>
	Delhi High Court	<p><b><i>Ashok Kumar Singh v. University of Delhi and Ors</i></b></p> <p>The IC is empowered to enforce the attendance of any person as per the provisions of the POSH Act</p> <p><b>Powers of the IC</b></p>
	Delhi High Court	<p><b><i>Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors</i></b></p> <p>Hon'ble Court pointed out that strict rules of evidence are not required to be followed in inquiry proceedings and that the IC can adopt its own procedure in conformity with the principles of natural justice and especially in a case of sexual harassment</p> <p><b>Tag: Conducting the inquiry proceedings</b></p>
	Bombay High Court	<p><b><i>Sapana Korde Nee Ketaki A. Ghodinde v. The State of Maharashtra and Ors, 2019</i></b></p> <p>Filing a complaint against a person belonging to Scheduled Caste (“<b>SC</b>”) or Scheduled Tribe (“<b>ST</b>”) does not constitute an atrocity under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“<b>Atrocities Act</b>”) unless such complaint is <i>prima facie</i> proved to be false, malicious or vexatious</p>
	Bombay High Court	<p><b><i>Vidya Akhave vs. Union of India, Department of Women &amp; Children and Ors.,</i></b></p> <p>It is the duty of every employer to ensure that the appropriate safeguards are provided by the men</p>

		<p>in the organization to protect the women from sexual harassment and other types of harassments.</p> <p><b>Tag : Powers of IC</b></p>
	Bombay High Court	<p><b><i>Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University</i></b></p> <p>Hon'ble Court pointed out that the definition of 'workplace' is inclusive and deliberately kept wide by the Parliament to ensure that any area where women may be subjected to sexual harassment is not left unattended or unprovoked for</p> <p><b>Tag : Workplace</b></p>
	Bombay High Court	<p><b><i>Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University,</i></b></p> <p>An IC which does not have at least two members (who are either dedicated to the cause of women or have experience in social work or have legal knowledge), would be illegal and contrary to the provisions of the POSH Act. In that judgement, the court also re-emphasized that it is employer's responsibility to constitute proper IC</p> <p><b>Tag : How can IC be constituted</b></p>
	Bombay High Court	<p><b><i>Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University</i></b></p> <p>Employers need to genuinely be concerned with the safety of women at workplace rather than staging a farce of compliance under the POSH Act</p>
	Karnataka High Court	<p><b><i>Usha Padmini and Ors. vs. State of Karnataka and Ors</i></b></p> <p>If an Internal Committee ("IC ") has conducted a proper inquiry into allegations of sexual harassment and has found no truth or substance, the prosecution of the respondent for the very</p>

		<p>same violation based on the very same set of evidence would be an unjust and an abuse of process of Court. Thus, as an afterthought a police complaint cannot be made if a duly conducted inquiry has given a clean chit to a respondent.</p>
	Kerala High Court	<p><b><i>K.P. Anil Rajagopal v. State of Kerela, Kerela High Court</i></b></p> <p>That the act or behaviour must be connected with sexual harassment including allegations of promise, threat or an offensive or hostile work environment towards female employees. A solitary allegation of intemperate language against a female employee in a report does not constitute an offence under the POSH Act</p> <p><b>Tag : What constitutes sexual harassment</b></p>
	Kerala High Court	<p><b><i>Sibu v. Air India Limited,</i></b></p> <p>It was held that the inquiry as per the POSH Act is not a preliminary inquiry but instead a full-fledged enquiry, which needs to be done in the same manner as is done to prove misconduct in disciplinary proceedings. The court mandated the IC to follow principles of natural justice and give fair opportunity to the respondent to defend himself</p> <p><b>Tag : Conducting the inquiry proceedings</b></p>
	Madras High Court	<p><b><i>Ms. G vs. Isg Nova soft Technologies</i></b></p> <p>The Hon'ble Madras High Court directed the company to pay Rs.1.68 crore as damages for sexual harassment to an aggrieved woman. It reported `that the court said in its order that if the company had set up a committee to inquire into allegations of sexual harassment, the litigation may have been avoided</p>
	Madras High Court	<p><b><i>K. Hema Latha v. State of Tamil Nadu, Madras High Court</i></b></p>

		<p>Court set territorial jurisdiction for conducting the inquiry proceedings - it ruled that the inquiry proceedings should be conducted within 500 kms of the place of the incident. In that case, the Hon'ble Judge opined that requiring the victim to travel more than 500 kms to attend the inquiry proceedings would itself constitute harassment</p> <p><b>Tag : Conducting the inquiry proceedings</b></p>
	Calcutta High Court	<p><b><i>Jishu Sengupta &amp; Others vs. The State of West Bengal &amp; Anr.</i></b></p> <p>Statements with sexual connotations and sexual innuendos are “sexually coloured remarks” and fall within the definition of sexual harassment under Section 354A of the Indian Penal Code (“IPC”). It observed that speaking in metaphors, means the use of words and phrases in an imaginative way to describe something else in order to show that the two things have the same qualities and to make the description more powerful</p>
	Calcutta High Court	<p><b><i>Pradip Mandal vs. Union of India and Ors, 2016</i></b></p> <p>Inquiry Report of ICC binding on Employer &amp; must be provided to Parties</p>
	MP High Court	<p><b><i>Global Health Private Limited Vs. Local Complaints Committee, District Indore and others</i></b></p> <p>A large fine on an employer for failing to comply with mandatory provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</p>
	Gujarat High Court	<p><b><i>Mohini Pessuram Tilwani vs. Union of India and Ors</i></b></p> <p>The Hon'ble Court held that an order for termination cannot be arbitrary or punitive in nature and treatment of employees must be fair. There must be rationality in action and</p>



		<p>proportionality in taking the decision to terminate the services of employees.</p> <p><b>Tag : Validity of termination while sexual harassment is alleged</b></p>
	Patna High Court	<p><b><i>Mohan Kumar Singh v. Chief Manager (HRD) Central Bank of India</i></b></p> <p>The Patna High Court held that the disciplinary authority can dismiss an employee from the services once the sexual harassment charges are proven</p> <p><b>Tag : Employers' rights and territorial jurisdiction of the courts</b></p>
	J & K High Court	<p><b><i>X vs. State of J&amp;K and Anr</i></b></p> <p>The question that arose for consideration was whether a complaint / FIR registered with police simultaneously with a complaint filed with internal committee of an organization will be valid.</p>
	Guwahati High Court	<p><b><i>Biplab Kumar Das v. IDBI Bank Ltd and Others</i></b></p> <p>Court held that the court which shall have the territorial jurisdiction to hear the matter of sexual harassment shall be the place where the act has occurred. Accordingly, if the harassment occurred in Kolkata while the parties were travelling for office work, the court in Kolkata shall have the jurisdiction even if the workplace of the offender is in Guwahati</p> <p><b>Tag : Employers' rights and territorial jurisdiction of the courts</b></p>
	Guwahati High Court	<p><b><i>Tezpur University and Ors. vs. C.S.H.N. Murthy</i></b></p> <p>Since the Inquiry Officer had conducted the proceeding in a fair manner, giving full opportunity to Respondent, the order of penalty</p>

		against Respondent did not suffer from any infirmity.
	Rajasthan High Court	<p><b><i>Shital Prasad Sharma v. State of Rajasthan and Ors</i></b></p> <p>Hon'ble Court held that the aggrieved woman can file a complaint with the IC without having to submit the complaint in person. The complaint could be sent to the IC through another person or by any other media, the main point being that it should be received by the IC.</p> <p><b>Tag : Filing of Complaint with IC</b></p>
	Rajasthan High Court	<p><b><i>Shital Prasad Sharma v. State of Rajasthan and Ors</i></b></p> <p>It was held that the external member need not necessarily have legal background or knowledge in the aspects of sexual harassment against women. Having experience in the social work is sufficient for being a valid member of the IC.</p> <p><b>Tag : How can IC be constituted</b></p>
	Rajasthan High Court	<p><b><i>Shital Prasad Sharma v. State of Rajasthan and Ors</i></b></p> <p>It was observed that the POSH Act and the rules enable a three-member team to conduct the inquiry so long as the Presiding Officer is present. Therefore, the inquiry report does not stand vitiated unless it is shown that there were less than 3 members who conducted the inquiry</p> <p><b>Tag : Conducting the inquiry proceedings</b></p>
	Central Information Commission (CIC)	<p><b><i>Puspanjali Padhy vs. Central Public Information Officer, Indian Overseas Bank</i></b></p> <p>Can a Complainant of Sexual Harassment ask for information on her own complaint through RTI?</p> <p><b><i>(Establishment which is public company)</i></b></p>

	<p>Additional Labour Commissioner, Bangalore</p>	<p><b>Former employee vs. IP Infusion Software India Private Limited</b></p> <p>The state labour department has imposed a monthly penalty Rs.50,000 for five years on a senior manager of a software company who is facing charges of sexual harassment. The Department also directed the company not to promote him or give him any hike for next three years.</p> <p>The appellate authority, has held the company responsible for the violation and asked to pay monetary compensation to the woman</p>
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