

# POSH NEWSLETTER



We are pleased to share the June 2026 edition of our POSH Act (Sexual Harassment of Women at Workplace Act, 2013) Newsletter, bringing to our readers updates and insights with the objective of keeping them abreast with the latest legal developments.

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# Legislations, Amendments and Regulatory Updates

## **Bar Council of India Issues POSH Compliance Guidelines for the Legal Profession [1]**

In a significant step towards strengthening workplace safety within the legal profession, the Bar Council of India (“BCI”) issued comprehensive POSH Compliance Guidelines on March 3, 2026, mandating the adoption of mechanisms compliant with POSH Act across Bar Associations, Law Offices, State Bar Councils and the BCI itself. The initiative follows the Bombay High Court’s ruling in *UNS Women Legal Association v. Bar Council of India*[3], which held that the POSH Act does not apply to complaints by women advocates against other advocates, for want of an employer-employee relationship, and extends only to the Bar Councils’ own employees.

The Supreme Court Women Lawyers Association has challenged the judgment before the Supreme Court, and the BCI’s guidelines seek to bridge the gap in the interim by creating uniform institutional safeguards for women in the profession. The guidelines set out a framework spanning awareness and training, Internal Committees complaint and redressal mechanisms, support and counselling, and monitoring and reporting.

The operative requirement is that every Bar Association and law firms with more than ten members constitute a POSH-compliant Internal Committee within ninety days, headed by a

senior woman advocate as Presiding Officer and including at least one external member from a non-governmental organisation, with inquiries to be completed within the statutory ninety-day timeline.

State Bar Councils may enhance these guidelines to suit their needs, without diluting the minimum standards and subject to the BCI’s approval.

## **Statewide POSH Act Compliance Drive in Maharashtra [2]**

Following the sexual harassment allegations at the Nashik unit of Tata Consultancy Services, in respect of which the National Commission for Women recorded findings of pervasive sexual harassment, systemic bullying and near-total non-compliance with the POSH Act at the workplace, the Government of Maharashtra, through its Women and Child Development (“WCD”) Department, has initiated a statewide drive to enforce the POSH Act. All government, semi-government and private establishments employing ten or more persons have been directed to constitute Internal Complaints Committees (“ICCs”) in accordance with the Act and to register them on the Centre’s She-Box portal, with Local Committees, constituted under the Resolution dated 11 September 2014, serving establishments below that threshold. The WCD Department issued a circular on 14 May 2026 establishing a formal inspection framework under the POSH Act, against which workplaces

[1]<https://economictimes.indiatimes.com/news/india/maharashtra-government-orders-strict-implementation-of-posh-act-after-nashik-tcs-case/articleshow/130961170.cms?from=mdr>

[2]<https://www.barcouncilofindia.org/info/guidelines-b9lkmh>

[3] *UNS Women Legal Association v. Bar Council of India*, 2025 (3) CCC 368

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are to be examined through a thirty-one-point compliance checklist divided into five sections. Sub-Divisional Officers have been designated as District Officers, and the Commissioner, Women and Child Development (Pune), as the State Nodal Officer, while district-level wings have been directed to undertake the inspection drive and submit their reports through the Commissioner. WCD has further stated that non-compliance may attract a penalty of upto Rs. 50,000, and repeated violations may invite double penalties or cancellation of the licence. Further, offences such as sexual harassment, stalking, secret filming and acts insulting the dignity of women would additionally attract criminal action under the Bharatiya Nyaya Sanhita, 2023 (“BNS”).

# Recent Judicial Developments

## **Recommendations of the Internal Complaints Committee under the POSH Act are Mandatory and Binding on the Employer; Members of the Committee Cannot Be Disciplined Merely for an Unfavourable Finding [4]**

The Allahabad High Court has held that the report and recommendations of an ICC under Section 13 of the POSH Act are mandatory in nature and not merely recommendatory or directory. Once the ICC concludes its inquiry, its findings are conclusive, and the Employer is bound to act upon them in accordance with the applicable service rules and cannot order a fresh or parallel inquiry into the same allegations. The Court further held that the members of an ICC, who discharge quasi-judicial functions, cannot be subjected to disciplinary action merely because their findings are unwelcome to the Employer, in the absence of a recorded *prima facie* satisfaction that they acted from an extraneous motive.

**Facts-** A complaint of sexual harassment was made against an officer (“the delinquent”) of the State Tax Department in July 2025, pursuant to which an ICC was constituted under the POSH Act, with the petitioners as its members. The ICC was directed to submit its report on the very day of its constitution, and after recording the statements of the complainant, the delinquent and the witnesses, it submitted a report exonerating the delinquent. The delinquent was thereafter placed under suspension, and shortly

afterwards the petitioners, the members of the ICC themselves were also suspended pending departmental proceedings by the Employer authority, on the allegation that they had deliberately exonerated the delinquent by disregarding material testimony and relying on irrelevant witnesses. The petitioners challenged their suspension under Article 226 of the Constitution.

The issue before the Court was twofold: first, whether the recommendations of the ICC under Section 13(3) of the POSH Act are mandatory or merely directory; and second, whether the suspension of the ICC members was sustainable under Rule 4 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999.

On the first question, the Hon’ble High Court held, on a conjoint reading of Sections 11, 13, 18 and 26 of the POSH Act along with Rules 7 and 9 of the POSH Rules, that the ICC’s inquiry is conclusive in nature and contemplates no further inquiry at the instance of the Employer. The only recourse the Employer has is to treat proven harassment as misconduct and act in accordance with service rules. The Court reasoned that an appeal under Section 18 lies only against the ICC’s recommendations and not against the Employer’s action, while Section 26 penalises an Employer who fails to act upon them, indicating that the recommendations are mandatory.

On the second question, the Hon’ble Allahabad High Court held that an ICC exercises quasi-

[4] *Km. Sunita Devi v. State of UPP thru Addl. Chief Secy. Deptt. State Tax LKO. and Ors.*, 2026:AHC-LKO:29642.

judicial functions, and that a departmental action cannot be taken against such authority merely because its decision is erroneous or unpalatable and there must be prima facie material indicating that the members were actuated by an extraneous motive, as distinct from a bona fide error of judgment. The Court found the suspension orders to be cursory, recording no such prima facie satisfaction, and noted that the one-day timeline imposed on the ICC had itself disregarded the timeframe prescribed under the POSH Rules. It accordingly quashed the suspension of the petitioners, granting the employer authority liberty to pass fresh orders only in accordance with its observations.

### **Workplace Sexual Harassment Complaints Must Be Inquired into by the Internal Complaints Committee under the POSH Act, and Not by a Separately Appointed Inquiry Officer[5]**

The Madhya Pradesh High Court has held that allegations of sexual harassment against an employee can be inquired into only by the ICC or, in its absence, the Local Complaints Committee (“LCC”), constituted under the POSH Act. The disciplinary authority has no power to appoint an independent inquiry officer in such cases, and an inquiry held in breach of this mandate is without jurisdiction.

**Facts-**The petitioner was an Assistant Professor at a State university who faced complaints of sexual harassment made by students in March 2025. The university referred the matter to a Students’ Grievance Redressal Committee (“SGRC”) under the UGC (Redressal of

Grievances of Students) Regulations, 2023, and an FIR was separately registered under Sections 74, 75, 79 and 351(2) of BNS. The petitioner was thereafter transferred, and on his failure to comply with the transfer order, he was placed under suspension. A charge-sheet was also issued to him, and the Vice-Chancellor appointed a retired Principal District Judge as the inquiry officer. Basis the inquiry report, his service was terminated in December 2025, which led to the present challenge under Article 226 of the Constitution.

The issue before the Court was whether a disciplinary authority may appoint an independent inquiry officer to inquire into sexual harassment allegations, or whether such inquiry lies exclusively with the ICC/LCC under the POSH Act.

The Court held that, under the scheme of the POSH Act read with the UGC (Prevention, Prohibition and Redressal of Sexual Harassment) Regulations, 2015 and Rule 14(2) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, the ICC/LCC is deemed to be the inquiring authority in sexual harassment matters. A parallel inquiry would defeat the object of the POSH Act by compromising its safeguards of confidentiality, specialised composition and a fixed inquiry timeline. The Court further clarified that the ICC/LCC acts only as a fact-finding body and cannot recommend a particular punishment, and the choice of penalty rests with the competent authority, which treats the committee’s report as the inquiry report. Further, the Hon’ble High Court held that the SGRC’s remit is confined to

[5] Dr. Sajan Kurien Mathew v. The State of Madhya Pradesh and Ors., Writ Petition No. 1662 of 2026.

to student grievances and is no substitute for a forum dealing with complaints of sexual harassment. Finding the inquiry wholly without jurisdiction, the Court quashed the termination and directed that the complaint be placed before the ICC/LCC for a fresh inquiry under the POSH Act, with the petitioner reinstated in the meantime.

**A POSH Inquiry Must Comply with the Principles of Natural Justice: Failure to Furnish the Respondent a Copy of the Complaint or to Allow Cross-Examination Vitiates the ICC's Report[6]**

The Kerala High Court has held that, beneficial as the POSH Act is in protecting women at the workplace, an inquiry into a complaint of sexual harassment against an employee must nonetheless be conducted as a disciplinary inquiry, in accordance with the applicable service rules and the principles of natural justice. Furnishing the respondent with a copy of the complaint and the supporting material is mandatory under Rule 7 of the POSH Rules, and an inquiry conducted without doing so, or without affording the respondent an opportunity to cross-examine the complainant and the witnesses and to present a defence, is vitiated and liable to be set aside.

Facts-The petitioners, employees of a government institution who had been arrayed as respondents in a complaint of sexual harassment, challenged the termination of the first petitioner and the adverse consequences visited upon the second, both founded on the

reports of the ICC. Their grievance was that the ICC had conducted the inquiry in breach of natural justice as they were supplied neither a copy of the complaint nor the ICC's report and that they obtained the complaint only later through the the ICC/LCC for a fresh inquiry under the POSH Act, with the petitioner reinstated in the meantime.

They also contended that they were summoned for the inquiry without being served the complaint and that they were denied the opportunity to know and cross-examine the complainant and the witnesses, or to examine their own witnesses. On the other hand, the respondents contended that the ICC, as a statutory fact-finding body, had made the petitioners aware of the nature of the allegations and had given them an opportunity to respond.

The issue before the Court was whether the inquiry conducted by the ICC, in which the respondents were not furnished a copy of the complaint and were denied cross-examination, stood vitiated for breach of the principles of natural justice.

The Hon'ble Kerala High Court held that an inquiry under Section 11(1) of the POSH Act against a government employee must take the form of a disciplinary inquiry to establish misconduct, following the procedure prescribed under the applicable civil service rules.

Rule 7 of the POSH Rules makes it mandatory to serve the respondent with a copy of the complaint and the supporting documents and



to conduct the inquiry in accordance with natural justice, including a reasonable opportunity to be heard.

Relying on the Supreme Court's decision in *Aureliano Fernandes v. State of Goa*[7], the Court reiterated that however woman-centric the POSH framework may be, a person accused of misconduct must be informed of the case, supplied the evidence in support of it, and afforded a reasonable opportunity to present a defence before any adverse decision is taken.

**The Status of a Person as Employer or Employee under the POSH Act Turns on Where Actual Management and Control Vests and Not on Designation; the Head of an Institution Whose Functioning Is Subject to the Supervision of Its Governing Body Is an “Employee” against Whom a Complaint Lies before the Internal Complaints Committee [8]**

The Kerala High Court has held that whether the head of an institution is an “employer” or an “employee” under the POSH Act is determined not by his designation but by where the actual management and control of the institution vests. Where such control lies with a governing body and the head's own functioning is subject to its supervision, the head is an “employee,” with the consequence that a complaint of sexual harassment against him is to be inquired into by the Internal Complaints Committee and not the Local Complaints Committee.

Facts- The appellant was the Director of the Integrated Rural Technology Centre (“IRTC”).

A woman employee filed a complaint of sexual harassment against him, and the Presiding Officer of the Internal Complaints Committee (“ICC”) issued a summons notice requiring his appearance. The Director filed a writ petition before a Single Judge of the Kerala High Court seeking to set aside the notice, contending that he was the “employer” under Section 2(g) of the POSH Act and that the complaint therefore lay before the Local Complaints Committee (“LCC”) under Section 6. He relied on IRTC's Memorandum of Association to show that the management of its affairs was vested in the Director, and alleged a conflict of interest on the part of the Presiding Officer. The respondents relied on the same Memorandum to contend that the control, administration and management of IRTC vested in its general body and executive committee, and that the Director was therefore only an employee. The writ petition was dismissed, and the present writ appeal followed.

The issue before the Court was whether the Director fell within the definition of “employee” under Section 2(f) or “employer” under Section 2(g) of the POSH Act, and consequently whether the complaint against him lay before the ICC or the LCC.

The Hon'ble Kerala High Court held that the Director's title alone was not sufficient to determine his status under the Act, and that what mattered was where the actual management and control of the institution vested. On a combined reading of the relevant clauses of IRTC's Memorandum of Association and the provisions of the POSH Act, the Court held that the control, administration and management of IRTC's affairs

[7] *Aureliano Fernandes vs. State of Goa and Ors.*, 2023 INSC 527

[8] *Prof. (Dr.) J. Sundaresan Pillai v. Dr. K.K. Seethalakshmi & Ors.*, WA No. 534 of 2026.

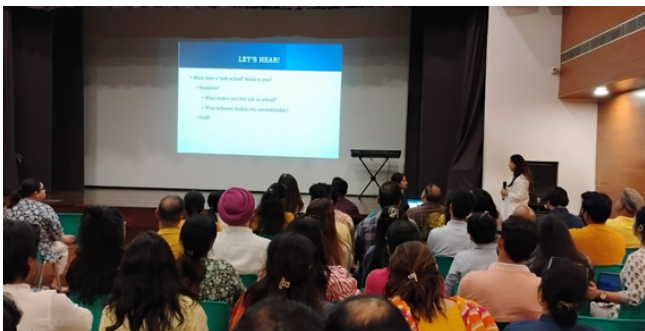
vested in the general body and the executive committee, and not in the Director; the Director's management of those affairs was itself subject to the supervision of the executive committee, by which he had been appointed.



## Glimpses of our Recent POSH Workshop in May 2026

DGS Associates' Founding Partner, Ms. Niti Sudhakar, along with Principal Associate Ms. Aditi Warriar, recently conducted a POSH awareness and training session at Nirmal Bhartiya School, New Delhi.

The session saw enthusiastic participation from over 120 members of the school community, including teaching faculty, administrative staff, support staff, and members of the school's leadership team. The interactive session covered the key provisions of the POSH Act, 2013, the role and responsibilities of the Internal Committee, and real-world scenarios that sparked thoughtful discussions and questions from the participants.





# Thank You for Reading!

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