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POSH Beyond the Payroll: Why Commercial Contracts Must Address Cross-Organisation Workplace Harassment

The Supreme Court's decision in **Dr. Sohail Malik v. Union of India, Civil Appeal No. 404 of 2024, decided on 10 December 2025 (2025 INSC 1415)** has important implications for organisations whose employees routinely interact with personnel of other entities.

The Court held that an **Internal Committee (IC/ICC) at the aggrieved woman's workplace can inquire into a POSH complaint against an employee of another organisation**. The respondent need not be employed by the same organisation or department.

But the judgment must be understood precisely: **the ICC's authority to inquire is distinct from the respondent employer's authority to impose disciplinary consequences**.

1. What the Supreme Court Held

The Court rejected the argument that the words **"where the respondent is an employee"** in Section 11 of the POSH Act restrict the inquiry to the ICC of the respondent's employer.

The expression "where" is a **procedural trigger**, not a territorial or institutional limitation.

The statutory scheme is broader:

- "Workplace" extends beyond the employer's premises and includes places visited during employment.
- "Employee" is defined broadly and includes persons employed directly or through an agent, including contractors.
- The employer's duties under Section 19 include maintaining a safe workplace, assisting the ICC, securing attendance of respondents and witnesses, providing information and taking appropriate action.
- The ICC at the aggrieved woman's workplace can conduct the **fact-finding inquiry**.
- Its report and recommendations are sent to the respondent's employer, which must take appropriate action under the applicable service rules.

The statute determines jurisdiction; the ICC conducts the statutory inquiry; the respondent's employer retains disciplinary responsibility.

The judgment arose from two Central Government employees in different departments. Its statutory reasoning, however, has wider relevance to cross-organisational workplace interactions.

2. The Contractual Lesson for Corporates

Corporates should not assume that POSH responsibility ends at the payroll boundary.

Where employees regularly interact with:

- vendors and outsourced personnel;
- security, housekeeping, facility-management, catering and transport providers;
- consultants and professional advisers;
- recruitment, technology, marketing and other service providers;
- clients and customers;
- secondees and deputed personnel;
- personnel at shared/co-working facilities;
- joint ventures, consortiums and strategic partners; or
- participants in business travel, events and off-sites,

the commercial contract should address POSH cooperation and workplace protection expressly.

The trigger should be the **degree of workplace interaction and access**, not merely the value or nature of the contract.

3. Six Contractual Protections

1. POSH Compliance & Cooperation

Require each party to comply with the POSH Act and applicable policies and to cooperate with the ICC/Local Committee having statutory jurisdiction.

The clause should cover:

- attendance of relevant personnel;
- production of relevant documents and information;
- identification and facilitation of witnesses; and
- prompt and lawful assistance to the inquiry.

2. Evidence Preservation

Require prompt preservation and production, subject to law, of relevant:

- emails and messages;
- CCTV and access records;
- travel and attendance records;
- meeting records; and
- other electronically stored information.

This prevents jurisdictional or organisational boundaries from becoming evidentiary barriers.

3. Interim Protective Measures

Permit reasonable temporary measures where necessary to protect the complainant, witnesses, workplace or investigation, including:

- restricting workplace access;
- changing reporting or interaction arrangements;
- redeployment; or
- substitution/replacement of personnel.

Such measures should expressly **not constitute a finding of guilt or disciplinary punishment** and must remain subject to applicable law.

4. Disciplinary Follow-Through

Require the respondent's employer to:

- receive the ICC's report/recommendations;
- consider them in accordance with applicable law and service rules; and
- take such action as is legally required.

The contract should **not purport to confer disciplinary powers on another organisation's ICC or employer**.

5. Confidentiality & Non-Retaliation

Expressly prohibit:

- retaliation against complainants, witnesses or participants;
- victimisation or adverse treatment for making or supporting a complaint;
- unauthorised disclosure of complaint or inquiry information; and
- destruction or suppression of evidence.

6. Contractual Consequences

Deliberate:

- non-cooperation;
- retaliation;
- confidentiality breaches; or
- evidence destruction

may be defined as **material contractual breaches**, with appropriate contractual remedies.

Indemnities should be narrowly drafted for specified contractual breaches and resulting losses, **to the extent legally permissible**; not as a blanket indemnity for statutory penalties.

4. What Corporates Should Not Draft

Contracts should **not** state that:

- the host ICC has exclusive jurisdiction merely because the contract says so;
- the contract itself creates statutory POSH jurisdiction;
- the host ICC can impose disciplinary punishment on an external employee;
- the ICC's findings are automatically conclusive against the respondent;
- an accused person must be removed within 24 or 48 hours as a statutory requirement; or
- every POSH allegation automatically constitutes a material breach.

These formulations overstate the judgment and may themselves create legal and contractual problems.

5. How This Protects the Corporate

A properly drafted clause can:

- prevent jurisdictional and procedural deadlocks;
- secure timely access to witnesses and evidence;
- enable immediate workplace-protection measures;
- ensure cooperation between organisations;

- reduce operational and reputational exposure; and
- create contractual accountability for deliberate non-cooperation.

It also helps the corporate demonstrate that it has taken **reasonable preventive and protective measures** in relation to persons who come into contact with its workforce.

6. How It Protects Employees

For employees, the contractual framework can ensure:

- access to a meaningful POSH process despite organisational boundaries;
- cooperation in securing witnesses and evidence;
- protection from continued interaction where reasonably necessary;
- protection against retaliation; and
- a process that does not force the complainant to navigate multiple organisations merely because the respondent belongs to another employer.

It should equally protect the respondent by ensuring:

- confidentiality;
- absence of prejudice;
- an opportunity to respond; and
- disciplinary action only by the competent employer under applicable law and service rules.

7. The Critical Distinction

The **Dr. Sohail Malik** judgment does not make the host ICC the disciplinary authority over an external employee.

It establishes a workable two-stage architecture:

Stage 1: ICC at the aggrieved woman's workplace: Statutory fact-finding and report under the POSH Act.

Stage 2: Respondent's employer: Consideration of the report and disciplinary action under applicable law/service rules.

For Central Government employees, the Supreme Court specifically recognised the further procedural framework under the applicable service rules and the Government's **16 July 2015 Office Memorandum**.

That detailed two-stage mechanism should **not be mechanically imported into private-sector contracts**. Private employers must follow their own applicable disciplinary framework.

8. Contract-Drafting Checklist

Every material cross-organisational engagement should consider:

- POSH compliance undertaking
- Recognition of the statutory POSH process
- Cross-organisation cooperation
- Witness attendance assistance
- Evidence preservation and production
- Confidentiality
- Non-retaliation
- Interim protective measures
- Personnel substitution/redeployment where reasonably necessary
- Respondent-employer follow-through
- Material-breach consequences for specified misconduct/non-cooperation
- Appropriately limited indemnity
- Protection of respondent's procedural rights

The Larger Lesson

POSH is no longer safely viewed as an internal HR issue confined to the employer's payroll.

Where organisations share workplaces, projects, personnel, facilities, customers, vendors or business activities, **the contractual architecture should anticipate cross-organisational POSH issues before an allegation arises.**

The right drafting principle is simple: **The contract should not create POSH jurisdiction. It should make statutory cooperation, evidence-sharing, workplace protection and accountability between organisations immediate, structured and enforceable.**

Bottom Line

Payroll boundaries do not necessarily define workplace boundaries.

Corporates should therefore review their vendor, outsourcing, consultancy, MSA, secondment, co-working, JV, consortium, client and strategic-partner agreements and build in appropriate **POSH cooperation, protection, confidentiality, non-retaliation and accountability mechanisms.**

The objective is not to contract around the POSH Act; but to ensure that **commercial relationships do not become procedural barriers to its effective implementation.**

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