

Excerpts on PoSH 2013 amendments and the peril of Non-Compliance

Backdrop

The prevention of Sexual Harassment has been in existence since 1997 through Vishakha Guidelines. The PoSH (Prevention, Prohibition and Redressal) Act 2013, superseding the Vishakha Guidelines came into effect from 9th December 2013. The Act incited organizations having ten or more employee strength to set up an IC (Internal Committee) to fulfil the requirements of the Act. Its only from 2014 that the companies in India started considering the PoSH Act sincerely. It's been around half a decade of the mandate now. However, only handful of organizations have made the efforts to comply with the statutory requirements. With this piece of writing my attempt is to highlight the extended requirements of compliance under the Act and the risks attached to the non-compliance.

Compliance and the peril of Non-Compliance

The Act provides a clear definitions and checklist for fulfilling the requirements for every organization. It also include a proper procedure and process for constituting the IC, capacity building and training for the IC, spreading awareness amongst employees, powers and authorities to the IC, etc. also the penalty clauses for non-compliance, which is a fine of INR 50,000.00 in the first instance of non-compliance which extends to loss of license to conduct business in case of repeated instance.

Extended requirements

With a view to stiffen the compliance norms, the MCA (Ministry of Corporate Affairs) issued an amendment to the Companies (Accounts) Rules, 2014, Rule 8, <http://164.100.117.97/WriteReadData/userfiles/Notification%20Uner%20Companies%20Act.pdf>), mandating all eligible entities to include a statement in the Directors Report about its having been compliant with the provisions regarding constitution of IC under PoSH Act. The notification further spells out the penal clauses in case of failure in compliance. The monetary penalty ranging from INR 50,000.00 to 25 lacs and INR starting from 50 thousand to 5 lacs or imprisonment up to 3 years or both for the defaulter organization and every default officer respectively. The amendment calls for the Directors of every eligible company to take up the matter with utmost seriousness.

Consequences of Non-Compliance

The objective of these mandates is to create safer workplaces for women, which is a positive a step. However, apart from penal clauses, there are other risks involved with Non-Compliance such as... reputational risks, financial risks, etc. Companies, as an impact of these mandates have initiated proactive measures such as developing policy, making employees aware about their rights, ways and platforms that aggrieved persons can voice out their experiences etc. these measures also include educating the employees about appropriate workplace behaviour and conduct and establish zero tolerance towards the sexual harassment.

Equipping IC members

Companies are investing in equipping IC members to understand their responsibilities vis-à-vis powers that of a quasi-judicial institution to deal with sexual harassment cases, if any. The training covers case studies with exercises that help IC members to comprehend as how to investigate and handle the cases.

While the companies are embarking their journey towards PoSH implementation and ensuring a harassment free workplace, the endeavour needs to have an informed, impartial and competent IC apart from a strong policy. Companies are also engaging competent external members who can partner with them in in their journey and add value to their initiative by virtue of sharing their knowledge and experience.

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Disclaimer: please note that I am not an advocate and the views expressed in this paper are my own and do not represent as legal opinion or advice.