
CONTRACTING OUT OF THE POSH ACT? THE ENFORCEABILITY OF IMMEDIATE TERMINATION CLAUSES FOR SEXUAL HARASSMENT ALLEGATIONS

Probeen Khamrui, BA LLB, Rizvi Law College, Mumbai

When an employee is accused of sexual harassment, can an employer legally circumvent the Internal Committee and fire them right away? Although the POSH Act of 2013 provides a thorough legal framework for looking into workplace sexual harassment, there is still much to learn about the enforcement of contractual provisions that provide rapid termination. In light of the Act's required framework and the Supreme Court's rulings in *Dr. Vijayakumaran C.P.V. v. Central University of Kerala* and *Aureliano Fernandes v. State of Goa*, this essay investigates whether such clauses can endure. It contends that conflicting contractual clauses are legally unsustainable because the POSH Act transfers adjudicatory authority from employers to the Internal Committee.

Can an employer create a clause in an employment contract that gives them the right to fire a worker right away if they are accused of sexual harassment without first forwarding the complaint to the Internal Committee established by the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*¹? The question of whether private contractual autonomy can prevail when Parliament has established an exclusive legal mechanism for resolving a specific class of disputes is a deeper constitutional and statutory principle, even though it seems to be a question of contractual interpretation. Employment contracts typically give employers a great deal of disciplinary power. They have the authority to establish grounds for dismissal, control behaviour at work, and decide the repercussions of employee wrongdoing. Contractual freedom, however, has never been unrestricted. It functions within the bounds set by statute law, especially where laws establish obligatory responsibilities in the public interest. One such legislative intervention is the POSH Act. Instead of just outlawing sexual harassment in the workplace, it creates a specific institutional framework intended to guarantee that claims are looked at impartially, independently, and in compliance with standard procedural protections. Therefore, rather than

¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013)

the fundamental principles regulating employer-employee interactions, the validity of contractual clauses authorizing prompt termination must be evaluated against the legislative responsibilities imposed by the Act.

The legislative framework shows that Parliament deliberately eliminated employers' unilateral authority to decide whether to investigate claims of sexual harassment at work. Every workplace with ten or more employees is required by Section 4² and Section 6³ to establish an internal committee by written employer order. Section 6 allows the relevant government to create a Local Committee in cases where a business employs less than 10 people or when the employer is the target of the complaint. A major legislative decision is revealed by these provisions. Rather of permitting businesses to conduct internal investigations using standard disciplinary procedures, Parliament assigned this task to specialized committees with a predetermined makeup meant to ensure impartiality, independence, and knowledge. After a complaint is filed, the procedural framework becomes even more apparent. A woman who has been sexually harassed may file a written complaint with the Internal Committee under Section 9⁴ within the allotted time. Section 11⁵ states that the Internal Committee will investigate the complaint in line with the service rules that apply to the respondent or, in the absence of such rules, in the manner specified by the Act. The usage of the term "shall" by the legislator is very important. It shows that the investigation is required rather than optional, and neither the employer nor the parties are free to choose a different method through a private agreement.

The investigation concludes in Section 13⁶, which mandates that the Internal Committee write a well-reasoned report outlining its conclusions and suggestions. The employer can only carry out the Committee's recommendations—including the imposition of disciplinary sanctions in cases where the charges are proven—after obtaining this report. As a result, the statutory sequence—complaint, investigation, conclusions, suggestion, and employer action—is intentional. The Act does not at any time allow an employer to decide on the merits of a sexual

² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §4, INDIA CODE (2013)

³ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013*, § 6, INDIA CODE (2013).

⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 9, INDIA CODE (2013)

⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 11, INDIA CODE (2013)

⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 13, INDIA CODE (2013)

harassment claim on its own or to impose disciplinary measures prior to the completion of the required procedure.

The POSH Act is more than just a procedural statute, as this legislative design shows. It transfers the employer's adjudicatory power to a separate statutory body that was established especially to handle accusations of sexual harassment at work. As a result, the employer's function is changed from that of an investigator to that of an implementing authority acting on the Internal Committee's conclusions. The carefully crafted statutory system created by Sections 4, 9, 11, and 13 would be essentially obsolete if employers were allowed to rely simply on contractual clauses for prompt dismissal based on an allegation. Therefore, the question is not just whether an employer has contractual ability to terminate employment, but also whether that authority endures after Parliament has purposefully given a specialized statutory authority the authority to look into and decide such charges.

In *Dr. Vijayakumaran C.P.V. v. Central University of Kerala & Ors*⁷, the Supreme Court addressed this same problem when interpreting the POSH Act. It looked at the Internal Committee's legal standing and determined whether employers might act outside of the statutory procedure. The jurisprudential basis for comprehending why contractual clauses cannot supersede the legal framework created by the POSH Act is provided by that ruling. In *Dr. Vijayakumaran C.P.V. v. Central University of Kerala & Ors*, the POSH Act's statutory framework was given authoritative judicial interpretation. In this ruling, the Supreme Court was asked to decide the legal implications of an investigation carried out in accordance with the POSH Act as well as the degree to which disciplinary authorities might evaluate claims of sexual harassment at work on their own. The ruling is important because it makes clear that the Internal Committee is the legislative entity tasked with looking into complaints under the Act, not only an advisory body supporting the employer.

The conflict started when a Central University of Kerala faculty member was accused of sexual harassment. The complaint was sent to the Internal Complaints Committee in accordance with the POSH Act's provisions. The committee conducted an investigation and submitted its conclusions. The ensuing disciplinary action was contested in court, highlighting issues with the investigation's legality, the respondent's procedural protections, and the functions of the disciplinary authority and the Internal Committee. The Supreme Court's reasoning went well

⁷ *Dr. Vijayakumaran C.P.V. v. Central Univ. of Kerala*, (2020) 12 S.C.C. 426.

beyond the specific facts of each case and addressed the institutional framework established by the POSH Act, even though the factual dispute focused on the legitimacy of the proceedings. The Court acknowledged that claims of sexual harassment at work had a special place in employment law. In contrast to typical wrongdoing, these claims often occur in situations when there may be little direct evidence, witnesses may be reluctant to testify, and the repercussions of both false accusations and actual incidences are quite severe. In response to these practical realities, Parliament passed the POSH Act, which substitutes a specialized statutory process that can balance the rights of the complainant and the respondent for informal or employer-controlled inquiries. As a result, the Internal Committee's role is essentially distinct from that of a typical domestic investigation committee established in accordance with service regulations. Rather of coming from the employer's contractual or administrative authorities, its jurisdiction comes directly from statute.

The Supreme Court noted that the Internal Committee serves as the Act's primary fact-finding body in acknowledging this distinction. The Committee is in charge of receiving the complaint, reviewing the evidence, hearing the parties, determining the veracity of the witnesses, and finally deciding whether or not the claims of sexual harassment have been proven. These are legislative responsibilities that Parliament has expressly given to the Committee, not incidental administrative duties. As a result, until the Committee has finished its investigation, the employer lacks parallel authority to independently ascertain if the claims are true. Holding otherwise would essentially allow the employer to replace the evaluation of the specialized body that the statute specifically established for that reason with its own.

The Court's acknowledgment that accusations of sexual harassment have significant effects on each party's dignity, means of subsistence, and professional reputation is equally crucial. An unfavorable conclusion could have a lasting impact on the respondent's career, while a poor investigation could deprive the complainant of justice and erode trust in workplace grievance procedures. The lawmakers insisted on an independent institutional mechanism rather than relying just on administrative discretion because of these conflicting interests. Therefore, the Internal Committee serves as a crucial safeguard to ensure that disciplinary action is based on an unbiased and legally recognized decision of facts, rather than just being an administrative convenience.

The Supreme Court's rationale directly affects the legality of contractual provisions that permit

quick termination based only on sexual harassment charges. These clauses presuppose that the employer is free to decide whether the accusation calls for termination. But according to Dr. Vijayakumaran, the statutory structure disproves that presumption. The employer cannot substitute a contractual procedure of its own devising for the statutory inquiry once a complaint falls under the purview of the POSH Act. First and foremost, the Internal Committee has the authority to look into and decide the complaint. Only once the Committee has finished its investigation and delivered its conclusions in accordance with Section 13 of the Act do the employer's disciplinary powers resurface.

As a result, the ruling exemplifies a more general statutory interpretation theory. Private commercial agreements cannot reclaim jurisdiction when Parliament establishes a specialized adjudicatory process and designates the entity in charge of resolving specific issues. Unquestionably, employment contracts govern the relationship between employers and employees, but they cannot give the employer more authority than is allowed by the applicable legislation. The Committee's adjudicatory role is essentially transferred back to the employer by a contractual provision that permits rapid dismissal without first utilizing the legislative machinery. This outcome is at odds with the POSH Act's purpose and wording. When combined with the Supreme Court's following ruling in *Aureliano Fernandes v. State of Goa & Ors*⁸, the significance of Dr. Vijayakumaran becomes even more evident. Aureliano Fernandes elaborated on the mandatory nature of the POSH Act itself and emphasized that institutional compliance with the statutory procedure is essential to achieving the Act's goal of ensuring a safe and dignified workplace, while Dr. Vijayakumaran established the legal status of the Internal Committee within the statutory framework.

In *Aureliano Fernandes v. State of Goa & Ors.*, the Supreme Court reexamined the POSH Act's institutional architecture. This ruling has grown to be one of the most important authorities on the Act's execution. Aureliano Fernandes addressed a more general issue—the ongoing noncompliance of institutions nationwide with the mandatory requirements of the POSH Act—while Dr. Vijayakumaran clarified the statutory status of the Internal Committee in resolving complaints of workplace sexual harassment. By doing thus, the Court emphasized that the Internal Committee is the cornerstone of the statutory structure established by Parliament, not just a procedural obligation.

⁸ *Aureliano Fernandes v. State of Goa*, A.I.R. 2023 S.C. 2485

The disagreement resulted from disciplinary actions taken against the appellant in response to claims of sexual harassment at work. The Supreme Court noted that the case represented a more significant institutional issue throughout the legal proceedings. Many companies continued to view the POSH Act as an administrative formality rather than a legally binding requirement, even after it was enacted to offer a comprehensive framework for preventing and redressing workplace sexual harassment. Internal committees were either poorly trained, incorrectly constituted, or their suggestions were completely disregarded. Acknowledging the systemic nature of these shortcomings, the Court felt it was important to strengthen the statutory framework's required nature in addition to resolving the dispute at hand. The Court reaffirmed that the POSH Act creates a self-contained rule that controls how accusations of workplace sexual harassment are received, investigated, and decided. Therefore, the requirement to establish an effective internal committee is a statutory obligation placed on all employers rather than a question of organizational policy. Similarly, informal probes or unilateral administrative decisions cannot take the place of the inquiry contemplated under Sections 9, 11, and 13 since doing so would compromise the legislative goal of guaranteeing impartiality, justice, and institutional responsibility. The Supreme Court issued a number of nationwide directives ordering governments, employers, and educational institutions to guarantee strict adherence to the statutory framework in order to ensure the Act's successful implementation. These instructions show that the Court saw compliance with the POSH Act as an essential legal requirement rather than a formality that could be changed through private agreements.

The respondents' defense of the investigation process is a significant part of the ruling. The Supreme Court's ruling in *Hira Nath Mishra v. Principal, Rajendra Medical College*⁹ and the Delhi High Court's ruling in *Avinash Mishra v. Union of India*¹⁰ were cited to bolster their arguments. According to the respondents, cases involving accusations of sexual misbehaviour fall into a unique category where natural justice principles must be accommodated. They argued that because such accusations often involve considerations about privacy, institutional discipline, and the protection of complainants from secondary victimization, traditional procedural safeguards cannot always be implemented in their strictest form. As a result, they contended that deviations from standard disciplinary procedures shouldn't necessarily render

⁹ *Hira Nath Mishra v. Principal, Rajendra Med. Coll.*, (1973) 1 S.C.C. 805

¹⁰ *Avinash Mishra v. Union of India*, 2014 (215) D.L.T. 714 (Delhi High Ct.) (India)

the investigation illegitimate.

When considered in the right context, the dependence on *Hira Nath Mishra* makes sense. In that instance, the Supreme Court examined disciplinary actions brought about by claims of wrongdoing against female pupils in a school. The Court acknowledged that natural justice principles are not contained in strict or unyielding rules that apply in the same way to every case. Rather, how they are applied depends on the type of inquiry, the legal framework, and the context. In order to safeguard complainants and maintain the integrity of the proceedings, the Court concluded that procedural requirements like direct confrontation or cross-examination may, in suitable instances, be reduced. As a result, the ruling established the theory that natural justice might be modified to satisfy the requirements of justice under delicate factual circumstances.

In a similar vein, the Delhi High Court recognized in *Avinash Mishra v. Union of India* that proceedings pertaining to claims of sexual harassment necessitate a careful balancing act between safeguarding the complainant from needless stress and guaranteeing justice to the respondent. The Court acknowledged that it is not always possible to apply standard disciplinary procedures to sexual harassment investigations without undermining the rationale behind the establishment of specialized mechanisms. Therefore, in cases when it serves the legislative goal of offering a sensitive and efficient forum for handling complaints, procedural flexibility may be appropriate.

But in *Aureliano Fernandes*, the Supreme Court did not use these decisions as justification for doing away with the statutory investigation. Conversely, the Court made a crucial distinction between modifying procedural protections within a legitimate investigation and completely abandoning the statutory inquiry. The flexibility acknowledged in *Hira Nath Mishra* and *Avinash Mishra* relates to how natural justice is applied; it does not permit the statutory decision-making process to be entirely excluded. Allowing an employer to circumvent the Internal Committee and impose disciplinary consequences based only on its own assessment is completely different from protective measures like restricting cross-examination, protecting confidentiality, or implementing procedures appropriate to the delicate nature of sexual harassment complaints.

When it comes to contractual provisions that allow for rapid termination, this distinction becomes more important. An employer may contend that prompt termination protects the

workplace from possible harm or supports organizational interests. However, this argument ignores the fact that the proper institutional mechanism for balancing these conflicting interests has already been established by the POSH Act. The legislative answer to the delicate issue of sexual harassment in the workplace is embodied in the Internal Committee itself. Therefore, using unilateral contractual action in place of that statutory procedure cannot be justified by relying on the flexibility of natural justice. Flexibility does not remove the Committee's statutory jurisdiction; rather, it alters the procedure that the Committee has established. The debate thus far raises a more general jurisprudential question that goes beyond the specifics of any one dispute: Is it possible for an employer to restore a power that Parliament has purposefully withdrawn and vested in an independent statutory authority through the exercise of contractual freedom? In other words, can an employment contract legitimately allow the employer to circumvent the POSH Act's explicit delegation of the investigation and decision-making of workplace sexual harassment complaints to the Internal Committee and terminate an employee immediately upon the mere existence of an allegation?

The answer must be negative in terms of both established contract law principles and statutory interpretation.

Without a doubt, employment contracts set norms of behavior, govern service conditions, and specify disciplinary actions. Contractual autonomy is not unqualified, though. Private parties cannot, by mutual consent, substitute an inconsistent process or take on powers that the statute has purposefully withheld when Parliament passes necessary legislation in the public interest and specifies a certain procedure. The law cannot be superseded or defeated by a contract, but it may be supplemented.

Such a mandated legislative approach is embodied in the POSH Act. Together, Sections 4, 9, 11, and 13 mandate that the Internal Committee look into allegations of sexual harassment at work, assess the evidence, and report its conclusions before the employer can take disciplinary action. Therefore, in recognition of the grave repercussions that sexual harassment allegations hold for both the complainant and the respondent, Parliament purposefully transferred the adjudicatory responsibility from the employer to an impartial statutory authority. This legal framework is fundamentally at odds with a contractual provision that allows for prompt termination based only on a sexual harassment complaint. The employer can take on the very adjudicatory role that the Act reserves for the Internal Committee thanks to such a

clause. The mandatory protections found in Sections 4, 9, 11, and 13 would be essentially obsolete if employers could fire workers through contractual clauses without first requesting the statutory inquiry. In contrast to the legal goal of guaranteeing unbiased investigation, procedural justice, and institutional accountability, the Internal Committee would be relegated to a procedural formality.

This finding is supported by the rulings in *Dr. Vijayakumaran C.P.V. v. Central University of Kerala* and *Aureliano Fernandes v. State of Goa*, which acknowledge the Internal Committee as the primary statutory body in charge of evaluating claims of sexual harassment at work. Similarly, *Hira Nath Mishra and Avinash Mishra* oppose contractual circumvention of the legal procedure. These rulings only recognize that natural justice principles can be modified to accommodate the delicate nature of sexual harassment investigations. They do not give employers permission to skip the actual investigation. The distinction is crucial: although legislative compliance is required, natural justice is flexible. Flexibility dictates how an investigation is carried out; it does not allow unilateral contractual action to take its place. Therefore, it is challenging to reconcile the POSH Act's framework with an immediate termination clause based only on a sexual harassment complaint. The legislative goal behind the Act is essentially frustrated by such a clause, which allows an employer to decide guilt before the specialized statutory authority has reviewed the complaint. When the Internal Committee has been granted adjudicatory jurisdiction by Parliament, that authority cannot be recovered through private contractual agreements.

In conclusion the POSH Act is a deliberate legislative choice to replace employer-controlled, unilateral investigations with a separate statutory process that can address workplace sexual harassment through institutional accountability, fairness, and expertise. Together, Sections 4, 9, 11, and 13 stipulate that before disciplinary action is taken, complaints must be looked into by a properly established Internal Committee. While *Hira Nath Mishra and Avinash Mishra* clarify that the principles of natural justice may be modified to suit the delicate nature of such inquiries—not that the inquiry itself may be abandoned—the Supreme Court's rulings in *Dr. Vijayakumaran* and *Aureliano Fernandes* uphold this statutory architecture.

Therefore, it is unlikely that an employment contract that permits quick termination based only on a sexual harassment allegation—without first forwarding the complaint to the Internal Committee—will hold up in court. Because it permits the employer to carry out an adjudicatory

role that Parliament has specifically granted to an independent statutory authority, such a clause is incompatible with the POSH Act's required structure. Therefore, contractual autonomy must submit to statutory command in subjects covered by the POSH Act. To rule differently would reduce the Internal Committee to a meaningless formality and allow private agreements to undermine a legal safeguard put in place to ensure justice, fairness, and decency in the workplace.