

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 9 | Issue 4

---

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact [support@vidhiaagaz.com](mailto:support@vidhiaagaz.com).

---

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Adjudicating Workplace Harassment: Internal Complaints Committees as Quasi- Judicial Bodies under the POSH Framework

---

MEENAKSHI AGARWAL\*

## ABSTRACT

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 places the Internal Committee at the centre of its redressal architecture. This article argues that the Internal Committee satisfies the established markers of quasi-judicial status, namely statutory origin, the powers of a civil court under section 11(3), an express obligation of natural justice under Rule 7(4) of the POSH Rules, and recommendations that the employer is bound to act upon, but that the quasi-judicial label conceals structural pathologies that frustrate genuine adjudication: employer domination of the forum, the absence of any requirement of legal expertise, and under-powered enforcement. Drawing on the decision of the Supreme Court in Aureliano Fernandes v. State of Goa and on the High Court jurisprudence that has followed it, the article identifies five legislative reforms, namely independent district tribunals, a centralised external-member panel, a statutory positive duty on employers, mandatory certification of committee members, and a reasoned-decision requirement, as necessary to honour the constitutional commitments underlying the Act.*

**Keywords:** Internal Committee, POSH Act 2013, quasi-judicial bodies, natural justice, workplace sexual harassment, administrative law

## I. INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>1</sup> is the legislative culmination of the Supreme Court's directions in *Vishaka v. State of Rajasthan*,<sup>2</sup> where guidelines for the redressal of workplace sexual harassment were laid down as law under Article 141 and declared binding and enforceable until Parliament occupied the

---

\* Author is a Ph.D. Scholar at Kalinga University, Naya Raipur, Chhattisgarh, India.

<sup>1</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India) [hereinafter POSH Act].

<sup>2</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, AIR 1997 SC 3011 [hereinafter *Vishaka*].

field.<sup>3</sup> At the institutional core of the Act stands the Internal Committee, an employer-constituted body charged with conducting a quasi-civil inquiry and recommending penalties. Whether a body created by the employer and composed largely of the employer's own employees can properly be classified as a quasi-judicial institution, and whether its structural design adequately supports that classification, is the question this article addresses. A note on terminology is necessary at the outset. The Act as enacted used the expression "Internal Complaints Committee", but the Repealing and Amending Act, 2016 substituted "Internal Committee" throughout.<sup>4</sup> The statutory expression is used here, except where a judgment or other source quoted uses the older form.

The question carries practical consequences. If the Internal Committee is quasi-judicial, its proceedings must observe *audi alteram partem* and the rule against bias; its members discharge a public-law duty that is independent of their employment relationship; and its proceedings are open to challenge, by way of the statutory appeal under section 18 of the Act and, where that remedy is unavailable or inadequate, by writ petition under Article 226 of the Constitution.<sup>5</sup> High Courts have entertained such petitions even where the employer is a private company, on the footing that the Internal Committee discharges a public duty cast on it by the Act.<sup>6</sup> The Supreme Court has progressively confirmed the quasi-judicial characterisation, most fully in *Aureliano Fernandes v. State of Goa*,<sup>7</sup> while acknowledging the structural deficiencies that prevent the Internal Committee from functioning as a genuine adjudicatory institution. This article argues that the doctrinal case for quasi-judicial status is sound, but that the structural design requires legislative reform.

---

<sup>3</sup> *Vishaka*, *supra* note 2 (the guidelines were laid down in exercise of the power under Article 32 and "treated as the law declared by this Court under Article 141 of the Constitution", and were to be "binding and enforceable in law until suitable legislation is enacted to occupy the field").

<sup>4</sup> The Repealing and Amending Act, 2016, No. 23, Acts of Parliament, 2016 (India) (substituting the expression "Internal Committee" for "Internal Complaints Committee" in the POSH Act with effect from 9 May 2016).

<sup>5</sup> POSH Act, *supra* note 1, § 18 (appeal by a person aggrieved by the recommendations made under §§ 13, 14 or 17, or by their non-implementation, to the court or tribunal specified in the applicable service rules or, where none exists, in the prescribed manner; to be preferred within ninety days), read with Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, r. 11 (India) (appeal to the appellate authority notified under section 2(a) of the Industrial Employment (Standing Orders) Act, 1946) [hereinafter POSH Rules].

<sup>6</sup> *Ms. X v. Internal Complaints Committee (ANI Technologies Pvt. Ltd.)*, Karnataka High Court, judgment of 30 September 2024 (the Internal Committee and the company discharge a public duty involving a public law element under the POSH Act and are therefore amenable to the jurisdiction under Article 226, notwithstanding that the employer is a private company).

<sup>7</sup> *Aureliano Fernandes v. State of Goa*, (2024) 1 SCC 632, 2023 SCC OnLine SC 621 (decided 12 May 2023) [hereinafter *Aureliano Fernandes*].

## II. THE IC AS A QUASI-JUDICIAL BODY

Indian administrative law reserves the category of the quasi-judicial body for institutions that hold legal authority to determine questions affecting the rights of subjects and that bear a duty to act judicially, that is, to decide on the basis of evidence and in accordance with law after an inquiry.<sup>8</sup> Where a statute empowers an authority that is not a court in the ordinary sense to decide a claim made by one party and opposed by another, and to determine the respective rights of the contesting parties, there is a *lis*, and in the absence of anything in the statute to the contrary the authority is under a duty to act judicially.<sup>9</sup> *A.K. Kraipak v. Union of India*<sup>10</sup> thinned the line between administrative and quasi-judicial power into a general duty to act fairly, attaching the principles of natural justice to any function bearing the character of an adjudication that affects rights. *Maneka Gandhi v. Union of India*<sup>11</sup> then constitutionalised the principle: a procedure established by law for the purposes of Article 21 must be right, just and fair. The Internal Committee satisfies these criteria on four grounds.

First, it is a statutory body constituted under a mandatory provision of the Act, and the employer has no discretion to dispense with it.<sup>12</sup> Second, section 11(3) invests it with the powers of a civil court under the Code of Civil Procedure, 1908 in respect of summoning persons and examining them on oath and requiring the discovery and production of documents,<sup>13</sup> coercive powers that ordinary law confers only on courts and tribunals. Third, Rule 7(4) of the POSH Rules requires the inquiry into a complaint to be made in accordance with the principles of natural justice.<sup>14</sup> Fourth, the Committee's report carries legally operative consequences: in *Medha Kotwal Lele*

---

<sup>8</sup> *Indian National Congress (I) v. Institute of Social Welfare*, (2002) 5 SCC 685 (a body of persons having legal authority to determine questions affecting the rights of subjects, and a duty to act judicially, is a quasi-judicial body; what distinguishes a quasi-judicial from an administrative act is the requirement of an inquiry before a conclusion is reached).

<sup>9</sup> *Province of Bombay v. Kusaldas S. Advani*, AIR 1950 SC 222, [1950] SCR 621 ("if a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and *prima facie*, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act").

<sup>10</sup> *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262, AIR 1970 SC 150 ("the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated").

<sup>11</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, AIR 1978 SC 597 (procedure established by law under Article 21 must be "right, just and fair" and not arbitrary, fanciful or oppressive).

<sup>12</sup> POSH Act, *supra* note 1, § 4(1) (every employer of a workplace shall, by written order, constitute an Internal Committee).

<sup>13</sup> *Id.* § 11(3) (the Internal Committee or the Local Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of summoning and enforcing the attendance of any person and examining him on oath, and requiring the discovery and production of documents).

<sup>14</sup> POSH Rules, *supra* note 5, r. 7(4) ("The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice").

*v. Union of India* the Supreme Court directed that the Complaints Committee envisaged in *Vishaka* be deemed an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964, and its report deemed an inquiry report under those Rules.<sup>15</sup> On any defensible test the Internal Committee is a quasi-judicial body, and its decisions are open to judicial review under Article 226 on the grounds of illegality, irrationality and procedural impropriety.

### III. NATURAL JUSTICE AND JUDICIAL REVIEW

In *Aureliano Fernandes* the Supreme Court identified *nemo judex in causa sua* and *audi alteram partem* as the twin anchors on which the principles of natural justice rest, and applied them to the proceedings of a complaints committee.<sup>16</sup> Both are routinely compromised in practice. On procedural fairness, the Delhi High Court in *Ruchika Singh Chhabra v. Air France India* held that the procedure adopted by the committee, under which the complainant first cross-examined the respondent and was then cross-examined by him, was "patently illegal".<sup>17</sup> The same judgment treated compliance with the composition requirements of section 4 as a condition of validity: the external member, who was the Secretary of an employers' association and whose association with a non-governmental organisation or experience of sexual harassment matters was nowhere established, did not answer the statutory qualification, and the constitution of the committee together with all its resultant proceedings was declared invalid and set aside.<sup>18</sup> That holding gives substantive content to the requirement in *Vishaka* of a third-party member from outside the organisation, a requirement designed to prevent the possibility of undue pressure or influence from senior levels.<sup>19</sup> On bias, the Madras High Court in *Dr. M. Rajendran v. M. Daisyrani* held that where the committee had been constituted by the very officer against whom

---

<sup>15</sup> *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297, ¶ 6 (recording the direction made by order dated 26 April 2004 that the Complaints Committee envisaged in *Vishaka* "will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 ... and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules").

<sup>16</sup> *Aureliano Fernandes*, *supra* note 7, ¶ 36 ("The twin anchors on which the principles of natural justice rest ... are Nemo Judex In Causa Sua ... and Audi Alteram Partem").

<sup>17</sup> *Ruchika Singh Chhabra v. M/s Air France India*, 2018 SCC OnLine Del 9340, ¶ 12 (Delhi H.C., S. Ravindra Bhat and A.K. Chawla, JJ., decided 30 May 2018) ("The procedure adopted by the ICC whereby the complainant first cross examined the accused person and then was cross examined by the accused, is patently illegal") [hereinafter *Ruchika Singh Chhabra*].

<sup>18</sup> *Ruchika Singh Chhabra*, *supra* note 17, ¶¶ 27-32 (nothing on record established the external member's experience in dealing with cases of sexual harassment or the cause of women, or that he was from a non-governmental organisation; the constitution of the committee and "all its resultant proceedings" were declared invalid and set aside).

<sup>19</sup> *Vishaka*, *supra* note 2, Guideline 7 ("to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment").

the complaint was made, and all its members other than the external member were his subordinates, a reasonable apprehension arose that the inquiry would be vitiated; the court directed that an independent committee be constituted.<sup>20</sup>

The facts of *Aureliano Fernandes* illustrate systemic failure. The committee's proceedings began on 16 April 2009 and closed on 5 June 2009: eighteen meetings in thirty-nine days, twelve of them held back to back in May.<sup>21</sup> Further depositions were forwarded to the respondent with a direction to reply within forty-eight hours, and he was simultaneously required to complete his own deposition and to cross-examine the complainants within the same week; his request to be represented by a lawyer had been refused; and the committee proceeded in his absence notwithstanding his plea of ill health, recommending action that resulted in his dismissal.<sup>22</sup> The Supreme Court quashed the order of dismissal and set aside the judgment of the High Court, holding that the inquiry fell short of the "as far as practicable" norm and that the discretion vested in the committee had been "exercised improperly, defying the principles of natural justice".<sup>23</sup> The Court described the committee as donning the mantle of the inquiring authority, and therefore bound by the procedural obligations attaching to that function.<sup>24</sup> It also issued nationwide compliance directions: a time-bound verification that Internal and Local Committees have been constituted in accordance with the Act, publication of their composition and of complaint procedures on official websites, orientation and skill-building for members, training and awareness modules through the legal services authorities, capacity-building programmes in the annual calendars of the National and State Judicial Academies, and compliance affidavits within eight weeks.<sup>25</sup> The employer-internal structure itself was left

---

<sup>20</sup> *Dr. M. Rajendran v. M. Daisyrani*, W.P. No. 18662 of 2017 (Mad. H.C., S.M. Subramaniam, J., decided 19 January 2018) (where the committee was constituted by the Dean against whom the allegations were made and all its members other than the external member were his subordinates, there was "a reasonable apprehension that the enquiry may be vitiated"; an independent committee directed to be constituted).

<sup>21</sup> *Aureliano Fernandes*, *supra* note 7, ¶¶ 62-63, 71 (proceedings commenced on 16 April 2009 and concluded on 5 June 2009; eighteen meetings conducted; "the entire process was wrapped up in flat 39 days"; twelve hearings, "most of them back-to-back", conducted in May 2009).

<sup>22</sup> *Id.* ¶¶ 63-64, 71 (six further depositions forwarded on 20 May 2009 with a direction to reply within forty-eight hours; simultaneous direction to complete the deposition and to cross-examine the complainants; request for legal representation declined; health grounds urged and rejected).

<sup>23</sup> *Id.* ¶ 72 (the procedure adopted "fell short of the norms prescribed under the service rules and more importantly, fell foul of the cardinal principles of natural justice"; the order of dismissal quashed and the judgment of the High Court set aside).

<sup>24</sup> *Aureliano Fernandes*, *supra* note 7, ¶ 49 (the Complaints Committee constituted to examine a complaint of sexual harassment at the workplace "dons the mantle of the inquiring authority").

<sup>25</sup> *Id.* (concluding directions requiring the Union, the States and the Union Territories, statutory professional bodies, universities, colleges and hospitals to undertake a time-bound verification of the constitution of Internal and Local Committees; publication of committee composition, contact details and complaint procedures on official websites; orientation and skill-building of members; development of training modules and awareness programmes by the

untouched. Subsequent High Court decisions have sharpened the framework: the Allahabad High Court in *Km. Sunita Devi v. State of U.P.* held that the report and recommendations of an Internal Committee are mandatory in nature and not merely recommendatory,<sup>26</sup> and the Bombay High Court in *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University* held the compositional requirements of section 4 to be mandatory rather than directory, so that a committee constituted without a qualified external member is invalidly constituted and its findings cannot stand.<sup>27</sup>

On judicial review the standard is deferential as to findings of fact. The writ court examines the decision-making process rather than the merits, and does not sit in appeal over factual findings that are reasonably supported by evidence unless those findings are perverse or legally untenable.<sup>28</sup> It is considerably more exacting as to procedure: a breach of natural justice attracts interference irrespective of how defensible the substantive finding may appear,<sup>29</sup> as *Aureliano Fernandes* itself demonstrates. Where the recommendation results in dismissal, and a fundamental right is thereby engaged, proportionality rather than bare *Wednesbury* irrationality is the applicable measure of the penalty.<sup>30</sup>

#### IV. STRUCTURAL CRITIQUE

The doctrinal case for quasi-judicial characterisation is convincing. The structural case against the Internal Committee as presently designed is equally strong, and runs across five dimensions.

---

legal services authorities; inclusion of capacity-building programmes in the annual calendars of the National and State Judicial Academies; and the filing of compliance affidavits within eight weeks).

<sup>26</sup> *Km. Sunita Devi v. State of U.P.*, 2026: AHC-LKO:26942 (All. H.C., Lucknow Bench, Manish Mathur, J.) (the report and recommendations of the Internal Complaints Committee under the POSH Act are mandatory in nature and not merely recommendatory or directory; the employer cannot initiate a parallel inquiry into the same allegations).

<sup>27</sup> *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*, 2014 SCC OnLine Bom 570 (Bom. H.C., decided 13 June 2014) (the compositional requirements of § 4 are mandatory; the absence of an external member with the requisite qualifications renders the constitution of the committee and its proceedings void).

<sup>28</sup> *Aureliano Fernandes*, *supra* note 7, ¶¶ 56-57 (in exercise of the power of judicial review the High Court examines the decision-making process and does not sit as an appellate authority over factual findings that are reasonably supported by evidence), citing *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759, AIR 1999 SC 625 (the writ court should not normally interfere with factual findings unless they are based on no evidence or are wholly perverse or legally untenable).

<sup>29</sup> *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 (scope of interference in disciplinary proceedings; procedural illegality and denial of a reasonable opportunity vitiate the inquiry).

<sup>30</sup> *Om Kumar v. Union of India*, (2001) 2 SCC 386 (proportionality, rather than *Wednesbury* irrationality alone, is the applicable standard of review where a fundamental right is engaged and in relation to the quantum of punishment).

**Employer domination.** The employer constitutes the Committee, selects its members, provides its logistical support, and implements or declines to implement its recommendations.<sup>31</sup> A 2015 FICCI-EY study found that about half of the more than 120 companies surveyed admitted that their committee members had no legal training,<sup>32</sup> and a survey by the Indian National Bar Association found that 68 per cent of those who had experienced harassment did not report it to management, citing fear of retaliation.<sup>33</sup> Both figures point to a legitimacy deficit that is traceable to the employer-aligned design of the forum rather than to any deficiency in the substantive law.

**Absence of legal expertise.** No member of an Internal Committee is required to hold a legal qualification or to have any experience of adversarial procedure. Section 4(2)(b) asks only for members "preferably committed to the cause of women or who have had experience in social work or have legal knowledge", a disjunctive formulation further softened by the word "preferably".<sup>34</sup> The obligation in Rule 7(4) to observe the principles of natural justice is not self-executing in the hands of untrained members, as the conduct of the inquiry in *Aureliano Fernandes* demonstrates.

**Bifurcated enforcement.** The Committee recommends; the employer implements, or does not. *Km. Sunita Devi* holds the recommendations mandatory, and the Act itself requires the employer to act upon a recommendation within sixty days of receiving it.<sup>35</sup> The remedy for non-implementation, however, lies with the aggrieved person, who may appeal under section 18 within ninety days to the court or tribunal specified in the service rules applicable to that person or, where no such rules exist, to the appellate authority notified under section 2(a) of the Industrial Employment (Standing Orders) Act, 1946.<sup>36</sup> No public authority is placed under an

---

<sup>31</sup> POSH Act, *supra* note 1, §§ 4, 11, 13 (the employer constitutes the Internal Committee, provides the facilities required for the inquiry, and acts on the recommendation, creating structural dependency across the entire adjudicatory cycle).

<sup>32</sup> FICCI-EY, *Fostering Safe Workplaces* (2015) (approximately fifty per cent of the more than 120 companies surveyed admitted that their committee members had no legal training).

<sup>33</sup> INDIAN NATIONAL BAR ASSOCIATION, *Sexual Harassment at Workplace* (2017) (survey of 6,047 respondents conducted between April and October 2016; 68 per cent of those who experienced harassment did not report it to management, citing fear of retaliation and discrimination).

<sup>34</sup> POSH Act, *supra* note 1, § 4(2)(b) (not less than two members from amongst employees "preferably committed to the cause of women or who have had experience in social work or have legal knowledge").

<sup>35</sup> *Id.* §§ 13(3)-(4) (where the allegation is proved the Internal Committee shall recommend action to the employer, and "the employer shall act upon the recommendation within sixty days of its receipt").

<sup>36</sup> *Id.* § 18; POSH Rules, *supra* note 5, r. 11.

independent duty to enforce a recommendation. The burden falls once again on a complainant who has already accepted the risk of retaliation by coming forward.

**Inadequate enforcement penalties.** A contravention by an employer attracts a fine of up to fifty thousand rupees; a repeat contravention attracts twice that punishment and may result in cancellation of the licence or withdrawal of the registration required to carry on the business.<sup>37</sup> Analysis by the Centre for Economic Data and Analysis at Ashoka University of 300 companies listed on the National Stock Exchange found that 219 of them reported no complaint at all in the financial year 2022-23, and that half of the complaints reported came from just eight companies.<sup>38</sup> A distribution of that shape is difficult to explain except as systematic underreporting, and the sanction available under the Act is too small to alter it.

**External member capture.** Section 4(2)(c) requires one member drawn from a non-governmental organisation or association committed to the cause of women, or a person familiar with the issues relating to sexual harassment, but it supplies no machinery for securing or verifying that person's independence.<sup>39</sup> External members are in practice identified and remunerated by the employer, which is the defect the Delhi High Court found fatal in *Ruchika Singh Chhabra*.<sup>40</sup>

## V. COMPARATIVE PERSPECTIVE

Comparable jurisdictions have resolved the conflict of interest inherent in employer adjudication in the same direction, by externalising the adjudicative function. In the United Kingdom, harassment claims under the Equality Act 2010 are heard by independent employment tribunals, and section 40A of that Act, inserted by the Worker Protection (Amendment of Equality Act 2010) Act 2023, places employers under an anticipatory duty to take reasonable steps to prevent the sexual harassment of their employees; a contravention is enforceable by the Equality and Human Rights Commission, and an employment tribunal may

---

<sup>37</sup> *Id.* § 26 (fine which may extend to fifty thousand rupees for contravention; on a subsequent contravention, twice the punishment and liability to cancellation of the licence or withdrawal or non-renewal of the registration required for carrying on the business).

<sup>38</sup> Akshi Chawla, *A Decade of the POSH Act: What the Data Tells Us About How India Inc. Has Fared*, CENTRE FOR ECONOMIC DATA AND ANALYSIS, ASHOKA UNIVERSITY (16 May 2024) (of 300 NSE-listed companies studied, 219 reported no case under the POSH Act in FY 2022-23, and fifty per cent of the reported cases came from eight companies).

<sup>39</sup> POSH Act, *supra* note 1, § 4(2)(c) (one member from amongst non-governmental organisations or associations committed to the cause of women, or a person familiar with the issues relating to sexual harassment).

<sup>40</sup> *Ruchika Singh Chhabra*, *supra* note 17.

increase compensation in a sexual harassment claim by up to twenty-five per cent where the duty has been breached.<sup>41</sup> In the United States, adjudication rests with the Equal Employment Opportunity Commission and the federal courts under Title VII, and an employer's internal complaint procedure operates only as the foundation of an affirmative defence, which rewards prevention without substituting for independent adjudication.<sup>42</sup> Australia's Respect@Work framework places a positive duty on employers and other persons conducting a business or undertaking under section 47C of the Sex Discrimination Act 1984, enforceable by the Australian Human Rights Commission, while the Fair Work Commission may make orders to stop sexual harassment at work.<sup>43</sup> India's retention of employer-internal adjudication as the primary forum makes it an outlier.

## VI. REFORM RECOMMENDATIONS

Five legislative reforms follow from the analysis.

First, a tiered adjudicatory structure. The Internal Committee would retain its fact-finding and conciliation functions, and a failed conciliation would be referred to an independent District Tribunal constituted under the Act, composed of a retired District Judge, a woman member and a person with demonstrated expertise in gender and workplace law, with an appeal to the High Court. This externalises adjudication while preserving the accessibility of the first-instance forum, and it is consistent with the direction in *Aureliano Fernandes* that the National and State Judicial Academies build capacity in the conduct of inquiries under the Act.<sup>44</sup>

---

<sup>41</sup> Equality Act 2010, c. 15, § 40A (U.K.), inserted by the Worker Protection (Amendment of Equality Act 2010) Act 2023, c. 51, § 1 (U.K.) (duty to take reasonable steps to prevent sexual harassment of employees; contravention enforceable by the Equality and Human Rights Commission under Part 1 of the Equality Act 2006); *id.* § 3 (power of an employment tribunal to increase compensation by up to twenty-five per cent for breach of the duty). The duty came into force on 26 October 2024.

<sup>42</sup> *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) (an employer's internal complaint procedure is the basis of an affirmative defence, not the primary adjudicatory forum; adjudication remains with the Equal Employment Opportunity Commission and the federal courts under Title VII, 42 U.S.C. § 2000e).

<sup>43</sup> AUSTRALIAN HUMAN RIGHTS COMMISSION, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020); Sex Discrimination Act 1984 (Cth) § 47C (Austl.), inserted by the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) (Austl.) (duty to take reasonable and proportionate measures to eliminate relevant unlawful conduct so far as possible, enforceable by the Australian Human Rights Commission); Fair Work Act 2009 (Cth) § 527D (Austl.) (prohibition on sexual harassment in connection with work); *id.* pt. 6-4B, § 789FF (orders of the Fair Work Commission to stop sexual harassment at work).

<sup>44</sup> *Aureliano Fernandes*, *supra* note 7 (direction that the National and State Judicial Academies include orientation programmes, seminars and workshops for capacity-building in their annual calendars).

Second, replace the employer-selected external member with a centralised panel maintained by the Ministry of Women and Child Development, from which employers draw rather than select their external member, that member being remunerated out of a statutory compliance fund rather than by the employer.

Third, introduce a statutory positive duty on employers to take all reasonably practicable steps to prevent sexual harassment, on the model of section 40A of the Equality Act 2010,<sup>45</sup> enforceable by the National Commission for Women through civil penalties that do not depend on an individual complaint having been filed.

Fourth, require the report of an Internal Committee to state its findings of fact, the evidence relied on, the evidence rejected and the reasons for rejecting it, and the basis of the recommendation. A reasoned decision is the precondition of effective judicial review.<sup>46</sup>

Fifth, restructure the penalty under section 26 as a proportion of annual turnover for large employers.<sup>47</sup> A flat maximum of fifty thousand rupees is not a deterrent to an organisation of any significant size, and turnover-linked penalties are already familiar in Indian competition and data protection law.

## VII. CONCLUSION

The Internal Committee under the POSH Act is a quasi-judicial body. Its statutory origin, its civil-court powers, its express obligation of natural justice and the legally operative character of its output satisfy every criterion Indian administrative law has developed from *Province of Bombay v. Kusaldas S. Advani* to *Aureliano Fernandes*. Its decisions are open to supervisory review under Article 226, and the High Courts have steadily raised the procedural standards it must meet.

The structural critique is equally well established. Employer domination, the absence of legal expertise, bifurcated enforcement, external member capture and inadequate penalties combine to produce an institution that deters reporting, invites procedural challenge and generates findings of uncertain reliability. *Aureliano Fernandes* diagnosed the condition; its directions addressed the symptoms. What remains is parliamentary action to reconstitute the adjudicatory

---

<sup>45</sup> Worker Protection (Amendment of Equality Act 2010) Act 2023, c. 51, § 1 (U.K.).

<sup>46</sup> H.W.R. WADE & C.F. FORSYTH, ADMINISTRATIVE LAW (11th ed. 2014) (the duty to give reasons as a requirement of the rule of law and a precondition of effective judicial review).

<sup>47</sup> POSH Act, *supra* note 1, § 26; FICCI-EY, *supra* note 32.

architecture of the Act, through independent tribunals, a statutory positive duty and proportionate enforcement, commensurate with the constitutional commitment under Articles 14, 15, 19 and 21 to the equal and dignified participation of women in the workforce.

\*\*\*\*\*