DISCIPLINE MATTERS!

A Practical Playbook for HR & Legal Professionals in India

A Ready Reference for HR, Legal, IR Practitioners,
and Business Leaders

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About the Author

Narendra Kumar is a seasoned HR professional, consultant, and thought leader with over three decades of experience across global corporations and operational roles in the Indian Army, Coca-Cola, Dubai Port World, and Owens-Brockway. His career has been defined by a commitment to workplace fairness, statutory compliance, and building practical frameworks that balance discipline with equity.

As a former National Head – Employee Relations & Compliance at HCCB and a current Board Member of the Employee State Insurance Corporation (ESIC), he has influenced policy and practice at both corporate and national levels. He has successfully led collective bargaining negotiations, statutory audits, and digital HR transformations and led change initiatives which equally benefitted employees and employers.

His expertise spans labour law, union negotiations, disciplinary processes, and organizational restructuring, making him a trusted advisor to corporates and industry bodies viz CII and EFI.

Beyond his professional achievements, he is deeply invested in mentoring HR professionals, shaping compliance frameworks, and advocating for workplace justice. His work reflects a rare blend of operational rigor, legal insight, and human-centric leadership—qualities that underpin *Discipline Matters*.

About the Author

Narinder Singh Kainth is a distinguished corporate legal professional, practicing Advocate, corporate governance advisor with over **thirty-six years of distinguished experience** in labour and employment laws, industrial relations, workplace discipline, corporate governance, and regulatory compliance. Throughout his career, he has been at the forefront of advising organisations on complex disciplinary proceedings, domestic inquiries, misconduct investigations, and employment disputes, earning recognition for combining sound legal judgment with practical business solutions.

A Law Graduate from the **University of Delhi**, Narinder also holds a **Diploma in Labour Laws (DLL)**, qualifications in **Tax Laws** and **Business Management (AIMA)**, and a **Post Graduate Diploma in EU Competition Law** from **King's College London**. His professional journey reflects a rare blend of academic excellence, strategic leadership, and extensive hands-on experience in resolving workplace challenges.

He has held senior legal leadership positions with several of India's most respected organizations, including **Reliance Industries**, **Shriram Foods & Fertiliser Industries**, **Godfrey Phillips India**, **Bennett Coleman & Co. Ltd. (The Times Group)**, **Reckitt Benckiser India Ltd.**, and **Hindustan Coca-Cola Beverages Pvt. Ltd.**, where he served as **Vice President – Legal**, leading pan-India legal operations. In this role, he advised business leadership on labor law compliance, industrial relations, disciplinary governance, litigation strategy, ethics, and corporate compliance across multiple manufacturing plants and business locations. He also served on the Board of **Hindustan Coca-Cola Marketing Pvt. Ltd.**, reflecting the confidence reposed in his strategic legal and governance capabilities.

His professional expertise extends beyond labour and employment law to include corporate governance, competition law, FSSAI and regulatory compliance, commercial contracts, civil and criminal litigation, ethics and compliance, and enterprise risk management. Earlier in his career, he was associated with the **Supreme Court-constituted Oleum Gas Leakage Settlement** proceedings, contributing to one of India's landmark legal exercises.

As the Proprietor of **Jurishawks**, Narinder continues to advise corporates, senior management, HR leaders, and business organizations on employment law, governance frameworks, investigations, disciplinary systems, and legal risk management. He is also a respected thought leader whose insights on labour laws, corporate governance, and compliance are widely followed by business leaders and legal professionals.

Drawing upon more than three decades of corporate experience, ***Discipline Matters*** reflects Narinder's enduring belief that workplace discipline is not merely about enforcing rules—it is about upholding fairness, accountability, consistency, and organisational integrity. Combining legal principles with practical wisdom gained from real-life corporate experience, this book serves as an authoritative guide for employers, HR professionals, managers, investigators, lawyers, students, and all those committed to building disciplined, ethical, and legally resilient workplaces.

Publisher's Note

Drawing upon over three decades of distinguished corporate and legal experience, Narinder Singh Kainth presents a practical, insightful, and authoritative work that bridges the gap between legal principles and workplace realities. *Discipline Matters* is an indispensable resource for HR professionals, managers, lawyers, investigators, business leaders, and students seeking to navigate disciplinary processes with confidence, fairness, and legal precision.

Few legal professionals have witnessed the evolution of India's workplace discipline framework from the boardroom, the courtroom, and the shop floor alike. Narinder Singh Kainth is one of them.

About the Author

G. V. R. K. Raju

Former Vice President – Human Resources, The Coca-Cola Company
Founder & Principal Consultant, Candid Core

G. V. R. K. Raju is a seasoned HR leader, business consultant, author, and thought leader with over three decades of global experience in helping organisations build leadership capability, strengthen organisational effectiveness, and drive sustainable business performance. As **Former Vice President – Human Resources at The Coca-Cola Company**, he partnered with business leaders across diverse markets to lead strategic people initiatives that enabled business growth, organisational transformation, and cultural excellence.

Today, as the Founder and Principal Consultant of **Candid Core**, Raju advises organisations on organisation design, leadership development, strategic HR, culture transformation, executive coaching, and business-aligned people strategies. His consulting philosophy is rooted in the belief that HR creates its greatest value when it serves as a catalyst for business success rather than merely a support function.

Passionate about shaping the future of the HR profession, Raju actively mentors HR leaders and executives, helping them strengthen business acumen, strategic thinking, and leadership effectiveness. Through the **Candid Core** newsletter, he shares practical insights and thought-provoking perspectives that challenge conventional thinking and inspire HR professionals to create greater business impact.

In *Discipline Matters*, Raju draws upon decades of leadership experience to present discipline not as a tool for enforcing rules, but as a leadership responsibility that nurtures accountability, fairness, trust, and organisational excellence. His contribution reflects a balanced perspective that combines strategic insight with practical wisdom, making the principles of discipline relevant to today's evolving workplace.

Authors’ Note

In the ever-evolving landscape of modern business, the human element remains both the cornerstone and the greatest challenge of organisational success. Discipline, fairness, and legal compliance are pillars that hold the delicate balance of workplace harmony—and yet, managing these facets effectively requires insight, experience, and unwavering commitment.

As seasoned business leaders with decades of collective experience steering large organisations, we understand firsthand the complexities and nuances of managing employee discipline while upholding the principles of legal integrity. From disputes to fostering a culture of accountability, our journey has been marked by lessons learned in the trenches—lessons that have shaped our understanding of what it means to lead with wisdom and purpose.

This playbook is more than a guide; it is a practical resource born from years of hands-on experience and crafted with the intention of empowering HR and legal professionals to face workplace challenges with confidence. We’ve distilled our insights into actionable strategies, bridging theory with practicality to help organisations foster environments where discipline is not merely enforced, but embraced as a tool for growth and collaboration.

We invite you to explore the pages ahead, confident that within them lies the potential to transform challenges into opportunities and complexities into clarity. Whether you’re an HR manager shaping policies or a legal professional navigating the intricacies of workplace law, this playbook offers the tools and perspectives needed to thrive in your role. Also, this comes as a ready reckoner for the small and medium enterprise business leaders who do not have seasoned HR and Legal professionals in their employment but had to look outside for expertise.

It is our hope that this book will not only inform but inspire—a testament to the idea that disciplined leadership, rooted in understanding and fairness, can drive meaningful progress for individuals and organisations alike.

We would be happy to have feedback on this book. You may share your feedback on disciplinematters2026@gmail.com.

Welcome to the journey

Narinder Singh Kainth **Narendra Kumar** **G.V.R.K. Raju**

Acknowledgement

We extend our heartfelt gratitude **to Mrs. Geetika Chopra,** whose insightful contributions greatly enriched this work. Her guidance and support in shaping the chapters on Domestic Inquiry and Prevention of Sexual Harassment (POSH) were invaluable. The clarity she brought to complex statutory processes and her commitment to fairness and compliance have left a lasting imprint on this book.

Foreword

By ***Sougata Roy Choudhury*** *Director General, The Employers' Federation of India (EFI) and Executive Director, Confederation of Indian Industry (CII)*

In the dynamic world of industry, where organizations are constantly balancing growth with responsibility, one factor remains timeless—the management of people. Discipline, fairness, and compliance are not just administrative necessities; they are the bedrock of sustainable industrial relations. For leaders and practitioners alike, mastering these elements is no longer optional—it is essential.

This book, *Discipline Matters,* arrives at a crucial moment. It is not merely a manual, but a **practical playbook** that bridges the gap between statutory requirements and real-world workplace challenges. Drawing from decades of collective experience, the authors have distilled complex issues into actionable strategies that resonate with HR professionals, legal experts, and business leaders across sectors.

Too often disputes, litigation and reputational damage stem not from a lack of good intent, but from a lack of clear, consistent process. What makes this book particularly valuable is its dual relevance - for **industry leaders**, it offers clarity and confidence in shaping policies that foster accountability and fairness. For **IR and HR professionals**, it serves as a ready reckoner—an everyday companion to navigate disputes, compliance obligations, and the nuances of workplace discipline and for **SMEs and emerging businesses**, it provides accessible guidance where in-house expertise may be limited, ensuring that discipline management is not compromised by scale.

I commend the authors- Narendra Kumar, Narinder Singh Kainth and GVRK Raju for creating a resource that is both practical and trustworthy, drawing on their combined decades across corporate HR, legal practice and industry advisory roles. It is a book that industry leaders should not only read but keep within reach and one I would recommend, because discipline management is not a one-time exercise; it is a continuous journey of building trust, fairness, and organizational strength.

I urge professionals across the spectrum—HR, IR, legal, and business leadership—to embrace this book as a trusted reference. and to lead with integrity in an era where people remain the true differentiator of success.

Wishing the authors all the very best.

Sougata Roy Choudhury
Director General, The Employers' Federation of India (EFI) and
Executive Director, Confederation of Indian Industry (CII)

Commendation

By ***Manoj Kumar Sharma****, Chairperson – National Council of HR, IR Policy & Reforms, ASSOCHAM & Group Head – IR, Adani Group*

In the evolving landscape of Indian industry, managing people with fairness, discipline, and compliance is the true differentiator of sustainable success. Industrial Relations today demand not only statutory knowledge but also practical wisdom **-** tools that enable leaders and practitioners to handle challenges with clarity and confidence.

Mastering Discipline Management is a timely and invaluable contribution to this cause. It is not just a book, it is a **ready reference and practical playbook** that every IR professional, HR leader, and business executive should keep within reach. The authors have distilled decades of experience into actionable strategies that bridge law with practice, making this resource indispensable for both large corporations and emerging enterprises.

For IR professionals, this book offers guidance that goes beyond theory, it provides tested approaches to resolving disputes, fostering accountability, and building workplace harmony. For industry leaders, it serves as a trusted companion in shaping policies that strengthen organizational culture and ensure compliance without compromising fairness.

I genuinely commend this work to the fraternity of IR and HR professionals. It is a book to be read, reflected upon, and most importantly, kept as a **regular reference** in your professional journey. By embracing the insights within, you will be better equipped to transform challenges into opportunities and to lead with integrity in an era where disciplined leadership is the cornerstone of progress.

Manoj Kumar Sharma

Chairperson – National Council of HR, IR Policy & Reforms, ASSOCHAM & **Group Head** – IR, Adani Group

Introduction

"Discipline is the foundation upon which all success is built. Lack of discipline inevitably leads to failure." - Brian Tracy

Managing employees' discipline is the foundation for building productivity, harmony, integrity, and ethical conduct of employees. Most organisations set this as a task or job routine for HR or ER teams. The reason for delegation enforcing discipline, which is one that many leaders and managers find daunting, fraught with challenges, and often mismanaged due to a lack of clarity. This book aims to demystify the concept and the actionable aspects of discipline management by providing a clear, practical, and thoughtful approach to what is often perceived as a difficult aspect of leadership.

"Mastering Discipline Management" is more than just a guide; it is a comprehensive resource designed to empower HR professionals, legal experts, and organisational leaders who are bestowed with large teams. In an age where pressures of business can cloud judgement by anticipating the undesirable consequences, and whereas decisions must be made swiftly yet thoughtfully, this book offers the tools and insights needed to navigate the intricacies of employee discipline with confidence and clarity.

Discipline, at its core, is about fostering a culture of accountability and responsibility. To inculcate and sustain a culture that makes the leadership accountable and makes everyone in an organisation responsible is easier said than done.

It is just not about setting standards that are fair and just and ensuring that those standards are upheld consistently, but it is also about understanding the human element—recognising that behind every disciplinary issue lies a person with unique circumstances, motivations, and growth potential. This book aims to balance the need for firm action with the imperative of empathy, further, to guide readers toward decisions that are not only legally sound but also ethically robust.

Throughout these pages, you will find a blend of theory and practice. From the historical evolution of workplace discipline to the latest best practices in policy development, the book covers a wide spectrum of topics, all grounded in real-world experience. Whether you are dealing with minor infractions or more serious breaches of conduct, the strategies outlined here will help you to deal with each situation with a clear mindset, having a blend of legal principles and a deep understanding of organisational dynamics.

One of the key strengths of this book is its focus on simplicity and accessibility. Whilst legal jargon is kept to a minimum, at times it has been retained in lucid language wherever it is imperative to bring clarity to the subject; thus, the aim is to make the complex simple, the abstract tangible, and the daunting manageable.

As you delve into the chapters ahead, you will discover that discipline, when managed well, is not merely about enforcing rules—it is about creating an environment where respect, integrity, and excellence thrive. This book is your guide to achieving that vision, helping you to lead with both strength and compassion in the pursuit of a workplace that is not only productive but also truly harmonious.

Tip on how to use this book: Since it is written in a modular format, with sections and chapters, one can quickly find the relevant sections or chapters for referencing or clarifying issues and for applying tangible solutions. The citations from legal precedence on disputed discipline cases will embolden the disciplinary authority or anyone advising the disciplinary authority to step up their confidence.


Discipline is the bridge between goals and accomplishments.
- JIM ROHN

Contents

Chapter 1

Evolution Of Employee Discipline

"Discipline is choosing between what you want now and what you want most."
Abraham Lincoln

Discipline within an organisation has long been a cornerstone for effective management and operational efficiency. Its relevance is not only rooted in maintaining order but also in ensuring that organisational objectives are met through consistent and predictable behaviour. The concept of discipline in organisations is multifaceted, encompassing both the enforcement of rules and the cultivation of a culture where those rules are inherently respected and followed. This chapter delves into the historical evolution of organisational discipline coupled with the modern corporate context, and also critical factors that influence its effectiveness in current as well as future scenarios.

1.1 Historical Perspectives on Organisational Discipline

The concept of discipline in organisations has deep historical roots, particularly during the Industrial Revolution, a period that fundamentally reshaped the nature of work and labour relations. Before this era, work was often conducted in smaller, more personal settings, such as family-owned businesses or artisanal workshops, where discipline was typically enforced informally and, on a case-by-case basis.

However, with the advent of the Industrial Revolution in the late 18th century, these dynamics changed dramatically. The rise of factories brought about the need for a large, centralised workforce, sometimes drawn from cultures alien to the setup, which in turn led to a more formalised and often harsh approach to discipline. The primary objective was to maintain control over a growing labour force that was essential for sustaining the high levels of productivity required by the new industrial economy.

1.2. Exploitation of Workers and the Absence of Proper Guidelines

During the early stages of the Industrial Revolution, the flooding of manpower towards industrial hubs from rural areas led to factory owners exploiting the situation by lowering wages to the workers, in the absence of clear labour guidelines, resulting in the widespread exploitation of workers. Factory owners, driven by the pursuit of profit, imposed gruelling work hours—often exceeding 12 to 16 hours a day—under perilous conditions. Child labour was rampant, with young children being forced into employment in hazardous activities at minimum wages, *e.g.*, the cleaning of chimneys in the factories by the children and/or adolescents. The lack of regulatory oversight meant that workers had little to no recourse against unfair treatment, leading to a work environment characterised by extreme discipline that was punitive rather than corrective.

The oppressive conditions during this period led to significant social unrest. Workers began to organise and protest against the inhumane treatment they faced. This unrest was a catalyst for the early labour movements, which sought to challenge the status quo and demand better working conditions, fair wages, and reasonable hours. The harsh disciplinary measures that were commonplace during this era—ranging from fines and docked pay to physical punishment—were increasingly viewed as unjust and counterproductive.

1.3. The Role of the International Labour Organisation (ILO) and the Emergence of Human Rights:

The 20th century marked a turning point in the approach to organisational discipline, largely influenced by the growing recognition of workers' rights and the establishment of international labour standards. The founding of the International Labour Organisation (ILO) in 1919 was a critical development in this regard. The ILO was established as part of the Treaty of Versailles, which ended World War I, with the mission to promote social justice and set international labour standards to improve working conditions globally.

The ILO's efforts were instrumental in shifting the focus of discipline from control and punishment to fairness and respect for human dignity. By advocating the adoption of fair labour practices, the ILO helped to establish guidelines that protected workers from exploitation and abuse. These guidelines laid down the foundation for modern labour laws, which require organisations to approach discipline in a manner that is both legal and ethical.

ILO emphasises fairness, transparency, and respect for worker rights in all disciplinary processes. Instead of a single convention, the ILO has established a set of core principles and recommendations that guide how employers should address workplace misconduct:

1. Fair Process: Disciplinary measures must be justified, proportionate, and not discriminatory.
2. Right to Respond: Employees should have an opportunity to explain their side before any action is taken.
3. No Forced Labour: Disciplinary actions must never involve forced or compulsory labour.
4. Appeal Options: Workers should have access to mechanisms for appealing disciplinary decisions.

India, a founding ILO member, has woven many ILO principles into its own labour laws, including the Industrial Employment (Standing Orders) Act, and now such Standing Orders are in the Industrial Relations Code 2020. Key aspects include:

1. Written Procedures: Employers must clearly outline disciplinary rules and ensure employees are aware of them.
2. Right to Representation: Employees can defend themselves and seek representation during disciplinary hearings.
3. Protection for Vulnerable Groups: Laws provide extra safeguards for minors, pregnant women, and those on medical leave.
4. Documented Actions: All disciplinary measures must be recorded in writing.

Despite a strong legal framework, practical enforcement in India remains inconsistent, especially in the informal sector. Issues such as weak penalties, lack of awareness, and limited resources can undermine the effectiveness of these protections.

Adhering to ILO principles helps India foster fair workplaces, reduce conflicts, and build a positive reputation in the global economy. The new Labour Codes (2020) reflect an ongoing effort to modernise and align with international best practices, but effective enforcement and regular review are essential.

Table 1: ILO vis-a-vis India

Aspect	ILO Principle	Indian Practice/Legislation
Disciplinary Procedures	Fair, transparent, right to defence	Required by law, but enforcement varies
Forced Labour as Discipline	Strictly prohibited	Prohibited by law
Appeal Mechanisms	Recommended	Available, but access can be inconsistent
Protection for Vulnerable	Emphasised	Included in law, gaps in practice
Ratification of Conventions	Binding if ratified	Selective, only when laws already conform
Implementation	Monitored, moral persuasion	Dependent on national enforcement

Table 2: ILO Principles & Indian Context

Aspect	ILO Guidelines	Indian Laws & Practice	Practical Steps for Employers	Tips for Employees
Fair Process	Disciplinary actions must be fair, justified, and non-discriminatory	Required by law (Standing Orders Act, Labour Codes)	Follow written procedures; document every step	Know your rights and request explanations

Aspect	ILO Guidelines	Indian Laws & Practice	Practical Steps for Employers	Tips for Employees
Right to Respond	Employees must be allowed to explain or defend themselves	Employees have the right to a hearing and representation	Hold hearings; allow representation	Participate in hearings; seek union support
No Forced Labour	Forced labour is strictly prohibited as a disciplinary measure	Prohibited by law	Never use forced or bonded labour	Report any coercion or threats
Warnings & Documentation	Progressive discipline is encouraged (warnings before severe action)	Written warnings and documentation are required	Issue warnings in writing; keep records	Keep copies of warnings and responses
Appeal Mechanisms	Right to appeal or review disciplinary decisions	Appeals allowed, though access can vary	Offer an appeal process; inform employees of their options	Appeal if you believe the action was unfair
Protection for Vulnerable Groups	Extra safeguards for minors, pregnant women, and those on leave	Special protections are included in the law	Apply rules fairly; avoid disciplinary action against protected groups	Know if you qualify for extra protections
Termination	Must be for valid reasons and follow due process	Valid reason and procedure required for dismissal	Terminate only after due process and documentation	Challenge unfair dismissal through legal channels
Social Dialogue	Encourage negotiation and dialogue to resolve disputes	Tripartite mechanisms (govt, employer, worker) exist	Involve unions/worker reps in policy and dispute resolution	Engage in dialogue and collective bargaining
Enforcement	ILO monitors, but relies on national enforcement	Enforcement can be inconsistent, especially in the informal sector	Regularly review compliance; train HR and managers	Report violations to authorities or unions

The mid-20th century also saw the broader emergence of human rights as the key factor in shaping workplace discipline. The adoption of the Universal Declaration of Human Rights by the United Nations in 1948 further reinforced the idea/s that workers are entitled to fair treatment and respect, irrespective of their role or status within an organisation. This period marked the beginning of a more humane and balanced approach to discipline, where the rights of workers were increasingly recognised and protected.

1.4 Transition to a Humanistic Approach to Discipline

As labour laws evolved and organisations began to recognise the importance of treating employees with respect, the approach to discipline gradually shifted from one of authoritarian control to one that emphasised guidance, support, and mutual respect. The post-World War II era, in particular, saw the rise of humanistic management theories, which prioritised the well-being of employees as a critical component of organisational success.

We have to appreciate that the evolution of management philosophy in the 20th century was significantly shaped by thinkers like Douglas McGregor and Abraham Maslow, who challenged traditional, mechanistic views of workers. Earlier management models, such as Taylorism, treated employees as interchangeable parts in an industrial machine—valued primarily for efficiency and obedience. McGregor and Maslow disrupted this paradigm by introducing humanistic approaches that emphasised motivation, dignity, and personal growth.

Douglas McGregor’s Theory X and Theory Y reframed managerial assumptions about employee behaviour. Theory X assumed workers were inherently lazy and required strict supervision, while Theory Y proposed that employees are self-motivated, capable of responsibility, and thrive under supportive leadership. McGregor argued that managers who embraced Theory Y would foster more innovative, committed, and productive teams.

Abraham Maslow, meanwhile, introduced the hierarchy of needs, which suggested that individuals are driven by a progression of psychological and self-fulfilment needs. In the workplace, this meant recognising that employees seek more than just wages—they desire belonging, esteem, and opportunities for self-actualisation. Maslow's ideas encouraged organisations to create environments that nurture these deeper motivations.

Together, McGregor and Maslow helped shift management thinking from control and compliance to engagement and empowerment. Their contributions laid the foundation for modern HR practices, organisational development, and leadership models that treat employees as strategic partners in achieving business success. The psychology of human behaviour of both thought leaders evolved into the HR practice called ***employee engagement***, which we all breathe in HR today.

This transition was further supported by the growing influence of labour unions and collective bargaining, which empowered workers to negotiate for better conditions and fair treatment. The result was a more balanced and collaborative approach to discipline, where the focus shifted from enforcing compliance to fostering a positive and productive work environment.

In a nutshell, the transformation of the approach to managing discipline among employees has changed into a new trajectory as given below:

Table 3: Summary of Approaching Discipline

Era	Approach	Key Features
Pre-20th Century	Authoritarian	Punitive, control-focused, exploitative
Today in the 21st Century	Humanistic	Fairness, rights-based, collaborative

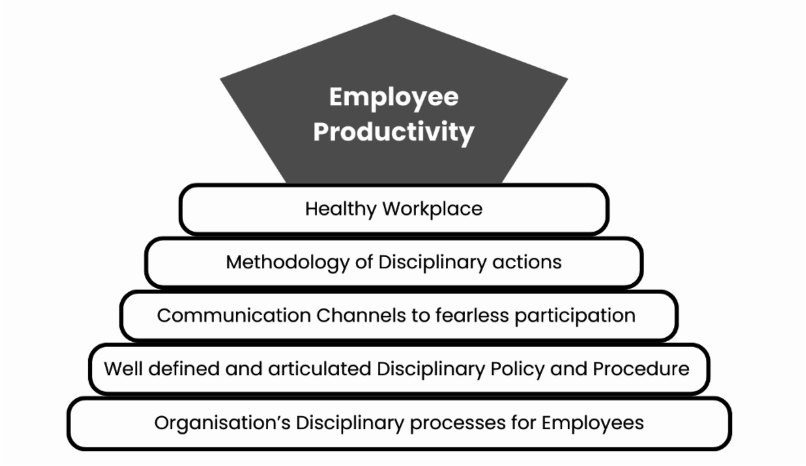
1.5. Employee Discipline in the Context of Organisation

In today's organisational landscape, discipline is defined not merely as the enforcement of rules but as adherence to a set of behavioural standards that align with the organisation's values, goals, and legal obligations. Discipline in this context is both a preventive and corrective measure, aimed at ensuring that employees act in ways that are conducive to the overall success of the organisation.

1.6. Relevance of Discipline in Today's Organisations

In the modern workplace, discipline is more relevant than ever, due to a diverse workforce and diversity of work methodologies, which have accentuated the complexities of management. Workplace discipline serves as a crucial mechanism for maintaining order, protecting the organisation's interests, and fostering a positive work environment. However, the approach to discipline has shifted from one of control and punishment to one of guidance and support.

Fig 1: Leveraging Employee Productivity



Establishing clear policies and procedures related to employee discipline is fundamental to the successful management of any organisation. These guidelines serve as a blueprint for expected behaviour and outline consequences of non-compliance, ensuring that both management and employees are aligned in their understanding of workplace standards. Without such clarity, organisations risk fostering an environment of inconsistency and confusion, where disciplinary actions may be perceived as arbitrary or unfair. This can lead to a breakdown in trust between employees and management, ultimately undermining morale and productivity. Even if the organisation's business results heavily rely upon unleashing creative forces, having a framework of discipline will help to define the conduct of employees. Over a period, the framework becomes a strong pillar of the culture of the organisation.

Clear disciplinary policies and procedures provide several critical benefits. Firstly, they create a framework that ensures fairness and consistency in the application of disciplinary actions. When employees understand the rules and consequences of violating them, it reduces the likelihood of disputes and grievances, as the process is transparent and predictable. Moreover, these policies help in mitigating the legal risks of the organisation by ensuring that all disciplinary measures follow labour laws and regulations. This not only safeguards the rights of employees but also minimises the potential for expensive litigation and reputational damage. Ultimately, well-defined disciplinary procedures contribute to a positive organisational culture, where respect for the rules is balanced with respect for the individual, fostering an environment conducive to both personal and organisational growth. Thus, we can summarise the benefits of fostering discipline in the following manner.

- **Enhancing Organisational Performance:** Discipline helps in maintaining a high standard of performance across the organisation. By ensuring that employees follow established protocols and adhere to quality standards, discipline contributes to the overall efficiency and effectiveness of the organisation.
- **Building a Respectful Work Environment:** A well-managed disciplinary process promotes mutual respect among employees and between employees and management. When discipline is handled fairly and consistently, it helps to prevent conflicts and fosters a culture of accountability.
- **Mitigating Legal Risks**: Proper discipline management is essential in protecting the organisation from legal risks. By ensuring compliance with labour laws and addressing issues such as harassment, discrimination, and misconduct promptly, organisations can avoid expensive legal disputes and reputational damage.
- **Supporting Employee Development:** Discipline, when applied constructively, can be a tool for employee development. The employees grown through the ranks to leadership roles in such organisations tend to look and develop a similar disciplined approach in the employees placed under them. Their conduct will become a role model for others to emulate in the organisation. Instead of passing the responsibility to HR, the line managers tend to provide feedback and opportunities for improvement to their reports and the next level of subordinates, since they hold themselves accountable as

managers. This will have a cascading effect on the ranks and files, which can help them grow and succeed in their roles through a disciplined approach to their work. This approach not only benefits the individual but also enhances the overall talent pool within the organisation.

- **Future-Proofing the Organisation:** As organisations continue to evolve in response to technological advancements and changing workforce dynamics, the need for a disciplined approach to management will remain critical. Already, the mundane tasks are being handed over to Artificial Intelligence (AI) bots and engines. The employees having a requirement to resolve their routine issues approach the AI tools, and which is not in routines get escalated to human employees. The disciplined organisation will set SLA (Service Level Agreement) standards to provide resolution to needy employees. Whether dealing with remote work, digital interventions, or the integration of AI in decision-making processes, discipline will be key to navigating these challenges effectively. The support of AI is an added advantage in quick and fair decision-making processes for the HR teams.

In the next topic, let us spend some time on the first step of discipline, which is framework development. As seen above, the policy framework and procedure relevant to an organisation at a given period are the basic requirements to evolve after being agreed upon by the stakeholders and communicated across the board.

1.7. Discipline Matters!

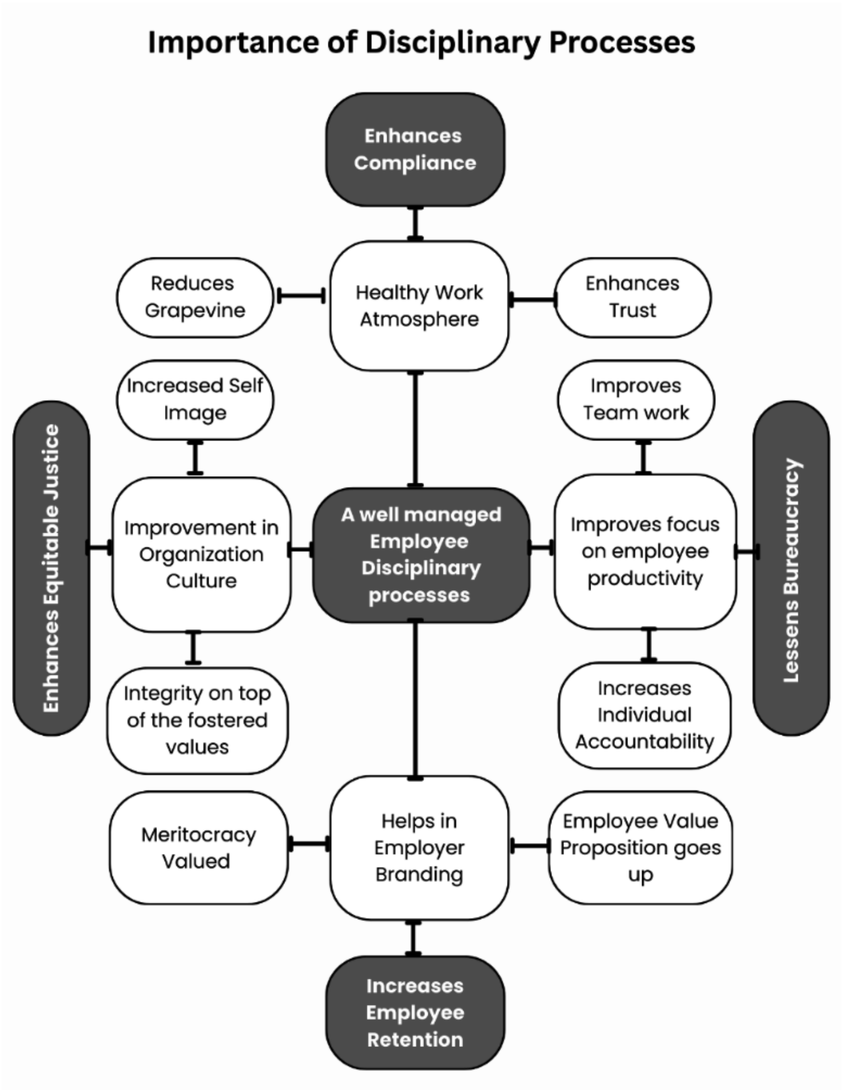
Now we come to the brass tacks: why it matters? Discipline is both preventive and corrective, supporting order, protecting interests, and fostering a positive environment.

1. Enhances performance and accountability
2. Builds a respectful work environment
3. Mitigates legal risks
4. Supports employee development
5. Future-proofs the organisation amid technological change

Key Takeaway:

Discipline is not just about enforcement—it is about building a culture where respect, integrity, and excellence thrive. The ensuing flow chart gives a bird's eye view of how it operates in an organisation's context with its invisible spread!

Fig 2:



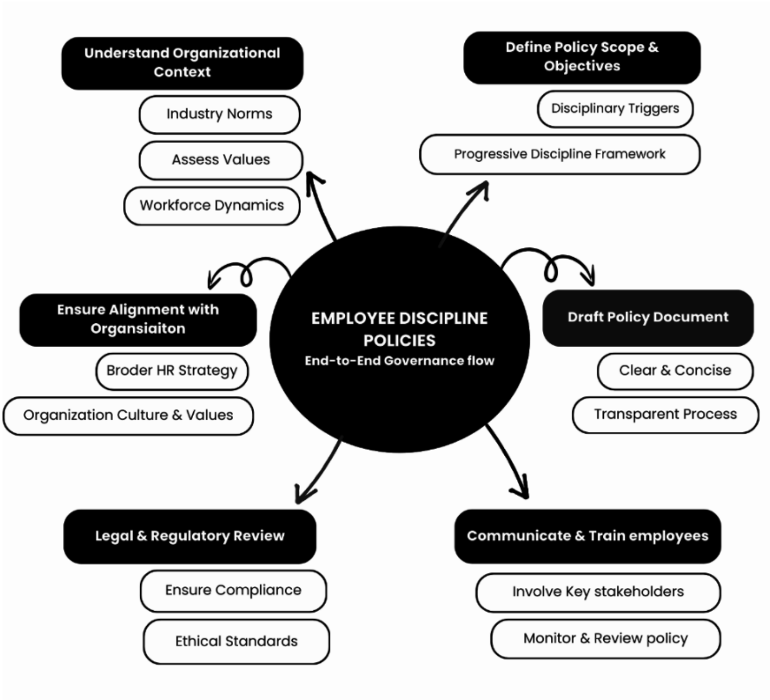
1.8. Developing Policies on Employee Discipline A Step-by-Step approach

1.8.1. Introduction

Developing comprehensive and effective policies on employee discipline is a basic and critical task for HR Directors. These policies not only serve as a guide for managing employee behaviour but also protect the organisation by ensuring that disciplinary actions are fair, consistent, and legally compliant. A well-crafted disciplinary policy can enhance the work environment by setting clear expectations and providing a structured approach to addressing infractions.

This chapter outlines a step-by-step approach to employee discipline policies, tailored for HR leaders who aim to create a balanced, fair, and legally sound framework.

Fig 3:



1.8.2. Understanding the Organisational Context

The first step in developing disciplinary policies is to thoroughly understand the organisation's context. This involves evaluating the company's culture, values, industry standards, and the specific challenges faced by the workforce. A policy that works well in a highly regulated industry may not work well for a creative or innovative company with a more flexible work culture.

A. **Assess Organisational Culture**: Determine the organisation's values and the type of behaviour that aligns with these values. This will help define what constitutes acceptable and unacceptable behaviour.

B. ***Identify Industry-Specific Considerations***: Research any industry-specific regulations or norms that may impact the development of disciplinary policies. For instance, the healthcare or financial services industries may require more stringent policies due to regulatory compliance requirements. Their logs and e-mails get reviewed by their supervisors to alleviate the risk to their patients ' lives or financial losses to their customers. Whereas in other industries, the routine review may be an intrusion on personal space.

C. ***Understand Workforce Dynamics***: Analyse the demographic, geographic, and psychographic characteristics of the workforce. Consider how different employee groups (e.g., remote workers, unionised employees) may require different approaches to discipline.

1.8.3. Conducting a Legal and Regulatory Review

Before drafting any policies, it is essential to conduct a thorough review of relevant labour laws and regulations at local, national, and, if applicable, international levels as well. For example, if an organisation is a subsidiary of a global organisation, it is worth checking the parent company's status as a signatory of ILO conventions or UN Global Compact, etc., This ensures that policies one develops are legally compliant and protect both the organisation and its employees from potential legal risk/disputes. Any gap between global Headquarters policies vis-à-vis local policy (even though it complies with local regulations) may attract the attention of the media and malice be made by picking the gaps created between the global policy vis- a- vis the local policy. For example, Global HQ holds below 18 years of age as unemployable by treating them as child Labour, the local young person employability as a policy will be an easy target for the media to malign.

A. ***Review of Labour Laws***: Familiarise yourself with applicable labour laws, including those related to employee rights, wrongful termination, anti-discrimination, and collective bargaining agreements. Engage with capable legal counsel, if necessary, to ensure compliance. Further, one should keep abreast with the latest changes, notifications, and rulings, which may impact the organisation, and with the support of experts to align the organisation accordingly.
B. ***Benchmark Against Best Practices*****:** Examine the disciplinary policies of other organisations, particularly those in the same industry, to identify best practices and common pitfalls. This can provide valuable insights into what works well and what doesn't work.
C. ***Consider Ethical Standards*****:** Beyond legal compliance, ensure that the policies adhere to high ethical standards, reflecting the organisation's commitment to fairness, respect, and integrity. This is more applicable to a global subsidiary of a business operating in India.

1.8.4. Defining the Scope and Objectives of the Policy

Once the legal framework is understood, the next step is to clearly define the scope and objectives of the disciplinary policy. This involves outlining the purpose of the policy, whom it applies to, and what behaviours or actions are subject to discipline.

A. ***Articulate the Policy's Purpose:*** Clearly state why the policy is being implemented, such as to maintain a respectful and productive work environment or to ensure compliance with legal standards.

B. ***Identify Whom the Policy Applies:*** Define the scope of the policy, including whether it applies to all employees, contractors, and even vendors, or whether certain groups are subject to different rules.

C. ***Outline Disciplinary Triggers***: Identify the specific behaviours, actions, or omissions that will trigger disciplinary action. These should align with the organisation's values and legal requirements and include clear examples to avoid ambiguity. For example, in the hotel industry, the customer-facing roles such as waiters, lobby workers, and room service employees are expected to be well-mannered and polite, despite the customers throwing tantrums. They can report the incident to supervisors to handle the situation, but not themselves. Any infringement on the part of an employee triggers an appropriate disciplinary process, which has to be contextualised and written as standard operating procedure for all those involved. Similarly, the feedback of customers about any employee’s conduct should be dealt with appropriate seriousness.

1.8.5. Developing a Progressive Discipline Framework

A progressive discipline framework is essential for ensuring that disciplinary actions are consistent, fair, and effective in addressing behavioural issues. This framework should outline the steps that will be taken when an employee violates company policies, starting with the least severe measures and escalating as necessary.

A. **Establish Levels of Discipline**: Define the various levels of disciplinary action, such as verbal warnings, written warnings, suspension, and termination. Ensure that each level is appropriate to the severity of the infraction.

B. **Incorporate Corrective Measures**: Emphasise the importance of corrective action, rather than punishment. This could include additional training, counselling, or a performance improvement plan to help the employee correct their behaviour.

C. **Ensure Flexibility**: While consistency is crucial, the policy should also allow for flexibility in addressing unique or complex situations. This might involve considering mitigating circumstances or the employee's past performance and behaviour. The same is to be reviewed at a level above the manager, if not by a disciplinary high committee.

1.8.6. Drafting the Policy

With the framework in place, the next step is to draft the policy. The policy document should be clear, concise, and written in plain language that is easily understood by all employees. It should also be structured in a way that makes it easy to navigate.

A. **Use Clear and Unambiguous Language:** Avoid legal jargon and ensure that the language used is straightforward. This helps to prevent misinterpretations and ensures that all employees understand the policy.

B. **Include Definitions**: Provide definitions for any terms that may be unclear or subject to different interpretations, such as "gross misconduct," "insubordination," or "harassment."

C. **Outline the Disciplinary Process**: Clearly describe the process for addressing disciplinary issues, including how investigations will be conducted, how decisions will be made, and how employees will be informed of any disciplinary action.

1.8.7. Involving Key Stakeholders

Involving key stakeholders in the development process is critical to ensuring that the policy is comprehensive and aligned with the organisation's needs. This includes obtaining input from legal counsel, senior management, and, where appropriate, employee representatives.

A. **Consult Legal and Compliance Teams:** Work closely with the legal and compliance teams to ensure that the policy is legally sound and that any potential risks are mitigated.

B. **Engage Senior Management:** Ensure that senior management is on board with the policy and understands its implications. Their buy-in is essential for the successful implementation of the policy.

C. **Involve Employee Representatives:** If applicable, engage with employee representatives or union leaders to obtain their feedback and ensure that the policy is fair and considers the interests of the workforce.

1.8.8. Communicating and Training Employees

Once the policy is finalised, it is essential to communicate it effectively to all employees and provide the necessary training to ensure understanding and compliance.

A. **Launch a Communication Campaign:** Use multiple channels, such as email, intranet, and face-to-face meetings, to announce the new policy. Clearly explain the purpose of the policy, what it entails, and how it will be enforced.

B. **Provide Training:** Offer training sessions to help employees understand the policy and their responsibilities. This should include specific guidance for managers on how to apply the policy consistently and fairly. Especially, at the time of induction of new joiners, and as and when the policy is updated about the training to be carried out.

C. **Make the Policy Accessible:** Ensure that the policy is easily accessible to all employees, whether through the employee handbook, the company intranet, or printed materials available on notice-boards and common areas.

1.8.9. Monitoring and Reviewing the Policy

Developing a policy is not a one-time task; it requires ongoing monitoring and periodic reviews to ensure its effectiveness and relevance in a changing work environment.

A. **Establish Monitoring Mechanisms:** Set up mechanisms to monitor how the policy is being applied, including tracking disciplinary actions and gathering feedback from managers and employees.

B. **Conduct Regular Reviews:** Periodically review the policy to ensure it remains up-to-date with changes in laws, regulations, and organisational needs. This may involve revising the policy as necessary to address emerging issues or challenges.

C. **Solicit Feedback:** Encourage feedback from employees and managers on the policy's effectiveness and any areas for improvement. This can be done through surveys, focus groups, or regular meetings.

1.8.10. Ensuring Alignment with Organisational Culture

Finally, it's important to ensure that the disciplinary policy aligns with the organisation's culture and values. A policy that reflects the company's ethos will be more effective and more readily accepted by employees.

A. **Reflect Organisational Values**: Ensure that the policy reflects the core values of the organisation, whether that's innovation, respect, integrity, or collaboration. The disciplinary process should reinforce these values.

B. **Promote a Positive Work Environment**: The policy should contribute to a positive work environment by promoting fairness, respect, and accountability. Employees should perceive that the policy is there to support them in achieving their best, rather than simply to punish wrongdoing. Every year, the best performance awards are given outlet the adherence to a set of discipline standards to be a qualifier.

C. **Align with Broader HR Strategies**: The disciplinary policy should be aligned with other HR strategies, such as performance management, employee engagement, and diversity and inclusion. This ensures a cohesive approach to managing people and fostering a healthy organisational culture.

Conclusion

Developing effective policies on employee discipline requires a thoughtful, comprehensive approach that balances the needs of the organisation with the rights and expectations of employees. The HR Director's role is to ensure that these policies not only comply with legal standards but also reflect the organisation's culture and values, fostering a fair, respectful, and productive work environment. By following the steps outlined in this chapter, you can create a disciplinary policy that supports the long-term success of both the organisation and its employees.

Table 4: Quick Reference Table: Policy Development Steps

Step	Action
Context	Assess culture, values, and workforce
Legal Review	Ensure compliance, benchmark practices
Scope & Objectives	Define purpose, applicability, and triggers
Framework	Set progressive discipline levels
Drafting	Use plain language, define terms
Stakeholder Involvement	Consult legal, management, and employees
Communication & Training	Multi-channel rollout, train managers
Monitoring & Review	Track, review, and update as needed
Cultural Alignment	Reinforce values, integrate with HR

Key Takeaway:

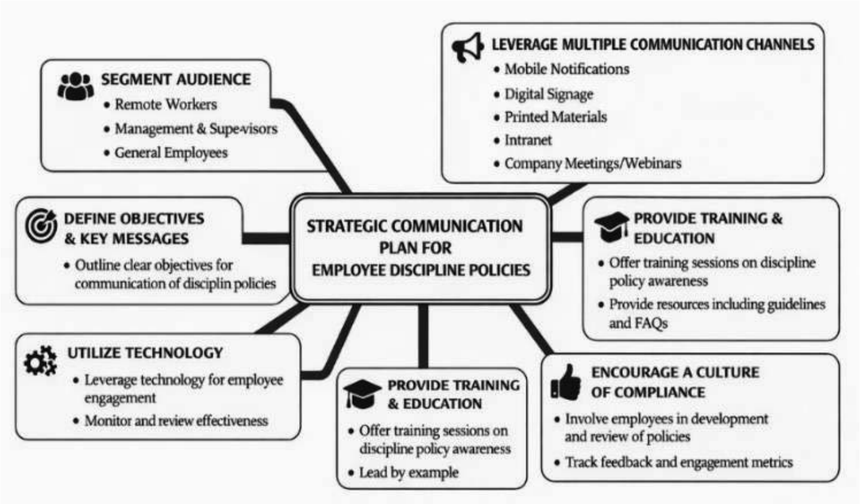
A well-crafted disciplinary policy is a living document—clear, fair, and aligned with both law and culture.

Fig 4:

Employee Discipline Policies
Comprehensive Guidelines for Organizational Conduct
Conduct
• Workplace Conduct
• Code of Ethics
• Anti-Harassment
• Workplace Violence
• Workplace Relationships
CONDUCT
Set expectations for behavior
Safety & Security
• Health & Safety
• Substance Abuse
• Workplace Hygiene
• Remote Working
SAFETY & SECURITY
Ensure workplace safety
EMPLOYEE DISCIPLINE POLICIES
Comprehensive Guidelines for Organizational Conduct
Compliance
• Legal & Regulatory Compliance
• Theft, Fraud, Dishonesty
• Non-Compete & Conflict of Interest
• Whistleblower Policy
USE OF RESOURCES
Adhere to laws and policies
Workforce Management
• Attendance & Punctuality
• Performance Management
• Dress Code
• Dispute Resolution
• Grievance Procedures
USE OF RESOURCES
Manage company assets
Use of Resources
• Technology & Cybersecurity
• Use of Company Property
• Social Media & Public Comm.
• Confidentiality
• Travel & Expense Reporting
USE OF RESOURCES
Manage company assets

1.9. Communication Strategy and Execution Plan for Employee Discipline Policies

Fig 5:



Effectively communicating discipline policies is crucial for ensuring that all employees understand the expectations and consequences related to their behaviour at work. A strategic communication plan should be clear, consistent, and leverage technology to reach the entire workforce. Below is a suggested communication strategy and execution plan:

1.9.1. Define Objectives and Key Messages

Objective: Ensure all employees are informed about the new or updated discipline policies, understand their responsibilities, and are aware of the consequences of non-compliance.

Key Messages:

- Importance of discipline in maintaining a productive and respectful workplace.
- Summary of key policies (e.g., attendance, conduct, use of company property).
- Emphasis on fairness, consistency, and legal compliance.
- Assurance that the policies support both organisational goals and employee well-being.

1.9.2. Segment Your Audience

- Tailor Communication: Different segments of the workforce may require different communication methods. For example:
- Management and Supervisors: Focus on their role in enforcing policies and guiding their teams.
- General Employees: Focus on understanding the policies and the importance of adherence.
- Remote Workers: Ensure communication methods are accessible, and policies related to remote work are emphasised.

1.9.3. Leverage Multiple Communication Channels

Email Announcements: Send a company-wide email introducing the new or updated discipline policies, which should include:

- A brief overview of the key changes.
- Links to detailed policy documents.
- Contact information for questions or clarifications.

Intranet Updates:

- Post the full policies on the company's intranet or HR portal.
- Create a dedicated section for discipline policies where employees can easily access them.

Company Meetings/Webinars: This will signal to the employees the importance of adhering to the policies being unveiled.

Kick-off Meeting: Host a company-wide virtual meeting or webinar to introduce the policies, led by a senior management team, with the HR Director as the point person.

Q&A Sessions: Follow up with smaller, interactive sessions where employees can ask questions and discuss the policies.

Digital Signage: If applicable, use digital signage in common areas (e.g., break rooms, cafeterias) to display key messages about the policies. You can also print a QR code in such a poster, by scanning it, one can reach the detailed policy on the intranet site.

Mobile Notifications: Use the company’s mobile app (if available) to push notifications or updates about the policies, especially for remote or field workers. Or send SMS with a hyperlinked policy page to reach and read.

Printed Materials: Provide hard copies of the policies or summary brochures, especially in locations where digital access may be limited.

1.9.4. Provide Training and Educational Resources

Interactive Training Modules:

Develop online training modules that employees can complete at their own pace. Gamification can increase the interest among the learners and quizzes or assessments to ensure understanding of key policies. A percentage of behavioural aspects being assessed for employees in annual performance appraisals or promotion assessments, drawn from the learning modules' scores, will send out a serious message.

Workshops for Managers:

Organise workshops for managers and supervisors to equip them with the skills to enforce policies consistently. Use case studies and role-playing scenarios to demonstrate how to handle various disciplinary situations.

Policy Briefs: Create short, digestible video briefs or infographics that explain each policy area.

1.9.5. Leverage Technology for Continuous Engagement

Employee Self-Service Portals: Enable employees to access policy documents, FAQs, and training resources via a self-service HR portal.

Chatbots: Implement AI-powered chatbots that can answer employee questions about the policies 24/7.

Use AI to augment, not replace, human decision-making, especially in sensitive areas like discipline or exits. Communication in regional languages and factor strategies to accommodate low digital literacy.

Surveys and Feedback Mechanisms: Use online surveys to gather employee feedback on the clarity and effectiveness of communication.

Regularly update policies based on this feedback to ensure they remain relevant and effective.

Tracking and Analytics: Utilise HR software to track employee engagement with communication materials (e.g., who has completed the training, opened the emails, etc.). Use this data to identify gaps and target follow-up communications.

1.9.6. Reinforce Policies Through Leadership

Leadership Messaging: Must be driven from the top with utmost seriousness for the implementation of policies in their communications with employees.

Ensure consistency in the message across all levels of leadership. If any infractions are frequent in the organisation, HR can make it a case study for leadership and use it appropriately for messaging in events like Town Halls.

Strong leadership plays a pivotal role in embedding organisational policies into the workplace culture. By fostering a compliance-driven yet ethically guided environment, leaders ensure that policies are not merely directives but integral to daily operations and decision-making.

Key Strategies for Policy Reinforcement

1. **Communication & Awareness** – Leaders should articulate policies in clear, accessible language and provide regular updates.
2. **Training & Workshops** – Continuous education on policies ensures employees remain informed and engaged.
3. **Leading by Example** – Leadership's adherence to policies sets a benchmark for the entire workforce.
4. **Monitoring & Feedback Mechanisms** – Regular assessments help identify gaps and refine policy implementation.
5. **Incentivisation & Recognition** – Encouraging compliance through positive reinforcement boosts adherence and morale.

Table 5: Summarisation in tabular format

Leadership Action	Purpose	Outcome
Clear Communication	Ensures policy understanding and awareness	Employees grasp policy intent effectively
Training Sessions	Builds knowledge and practical application	Workforce remains educated and engaged
Leading by Example	Encourages adherence through role modelling	Strengthens ethical workplace culture
Performance Monitoring	Identifies policy adherence levels	Allows timely improvements
Feedback & Recognition	Encourages continuous engagement and compliance	Increases motivation and accountability

1.9.7. Monitor and Review Effectiveness

Ongoing Communication:

Regularly update employees on any changes to policies or procedures. Send periodic reminders or highlights of specific policies that are particularly relevant at certain times (e.g., holiday seasons, remote work trends).

Feedback Loops:

Set up a system for continuous feedback, such as suggestion boxes (physical or digital) or regular check-ins with teams. Example: POSH policy effectiveness can be checked by organising a survey quiz for women employees.

Policy Audits:

An effective audit ensures that disciplinary policies are fair, transparent, and legally compliant. Regular reviews help maintain accountability and consistency in enforcement.

Regular audits strengthen disciplinary management by reinforcing fairness, trust, and compliance. Would you like me to expand on any section?

Table: 6

Audit Component	Objective	Action
Policy Clarity	Ensures rules are clear and accessible	Review wording and dissemination methods
Legal Compliance	Aligns policies with labour laws	Verify regulations and update as needed
Fair Implementation	Prevents bias in disciplinary actions	Assess case records and manager decisions
Employee Awareness	Confirms staff understanding of policies	Conduct surveys and training refreshers
Feedback & Improvement	Identifies gaps for refinement	Collect input and update procedures

1.9.8. Encourage a Culture of Compliance

Recognition Programs:

Recognise and reward teams or individuals who consistently adhere to and promote policies. Treat such recognised employees as icons who can be role models or influencers for others.

Peer Support Systems:

Create peer mentoring or support groups where employees can discuss how they implement policies in their daily work.

Employee Involvement: Involve employees in the development and review process of policies to increase buy-in and understanding.

An effective communication strategy for discipline policies must be multifaceted, utilising a variety of channels and technological tools to reach all employees. By engaging in leadership, providing training, and ensuring ongoing support and feedback, you can foster a culture where discipline policies are understood, respected, and adhered to across the organisation.

Note:

Navigating the disciplinary process can be complex. While the information shared here proves helpful, this book may not address every situation one might encounter during handling disciplinary matters.

Given the challenges often posed by employees during such processes, it is strongly recommended to seek professional assistance before initiating any disciplinary action, for certain critical issues

FORMAT 1: EMPLOYEE CODE OF CONDUCT ACKNOWLEDGEMENT & UNDERSTANDING NOTE

Context

As organizations evolve, discipline is no longer seen purely as enforcement of rules, but as a shared understanding of expected conduct. A clear and well-communicated Code of Conduct forms the foundation of any fair disciplinary framework.

This format can be used to formally acknowledge that employees:

- Have received the Code of Conduct
- Understand key expectations
- Are aware of the consequences of non-compliance

Sample Format

[On Company Letterhead / HR Communication Format]

Subject: Acknowledgement of Code of Conduct

Dear [Employee Name],

As part of our commitment to maintaining a fair, respectful, and accountable workplace, we have shared with you the Company's Code of Conduct.

The Code outlines the standards of behaviour expected from all employees and is intended to guide day-to-day actions, decisions, and interactions at work.

You are requested to confirm the following:

a. That you have received a copy of the Company's Code of Conduct.
b. That you have read and understood the contents of the document.
c. That you agree to adhere to the standards and expectations outlined therein.
d. That you understand any violation of the Code may lead to disciplinary action, in line with Company policy and applicable law.

If you have any questions or require clarification on any aspect of the Code, you are encouraged to reach out to your reporting manager or the HR team.

Please sign and return this acknowledgement as confirmation.

Employee Name: ____________________
Employee ID: ______________________
Signature: ________________________
Date: _____________________________

Key Considerations

- The language of the Code itself should be clear, practical, and relatable, not overly legalistic
- Employees should be given a reasonable opportunity to understand and ask questions
- Acknowledgement should not be treated as a formality—it should be part of induction and periodic reinforcement
- Ensure uniform application across all employees, including senior leadership
- Keep records of acknowledgements for future reference, especially in disciplinary matters

Disclaimer

This format is illustrative and intended as a general guide. Organizations should adapt the content based on their internal policies, industry practices,

Annexure (Draft policy on Employee Attendance and Punctuality)

This draft policy outlines a structured approach to managing attendance and punctuality, ensuring that expectations are clearly defined and a consistent procedure is followed for addressing violations. You can adapt this format to develop other employee discipline policies, ensuring that each one is tailored to the specific needs and context of your organisation.

Policy on Employee Attendance and Punctuality

1. Purpose

The purpose of this policy is to establish clear guidelines regarding attendance and punctuality, ensuring that all employees understand the importance of being present and on time for their scheduled work hours. Consistent attendance and punctuality are essential to maintaining a productive and efficient work environment.

2. Scope

This policy applies to all employees of [Company Name], including full-time, part-time, temporary, and contract workers. It is intended to provide a framework for addressing issues related to tardiness, absenteeism, and leaving work early.

3. Definitions

- Attendance: The act of being physically present at the workplace during scheduled work hours.
- Punctuality: The act of arriving at the workplace on time, as per the employee’s scheduled start time.
- Absenteeism: Failure to report to work as scheduled, including arriving late, leaving early, or missing an entire workday without prior authorisation.
- Tardiness: Arriving at the workplace after the scheduled start time.

- Authorised Absence: An absence that has been approved in advance by a supervisor or manager, such as vacation, personal leave, or sick leave.
- Unexcused Absence: An absence that is not authorised or approved by the employer

4. Attendance and Punctuality Expectations

All employees are expected to:

- Report to work on time and be ready to begin their duties at the start of their scheduled work hours.
- Notify their supervisor as soon as possible if they are unable to report to work or will be late.
- Adhere to their designated work schedule, including start times, break times, and end times.
- Request and obtain approval for any planned absences in advance, where possible.
- Provide proper documentation for absences due to illness or other emergencies, if required.

5. Procedures for Reporting Absences

- Notification: Employees who are unable to report to work or will be late must notify their supervisor as soon as possible, preferably before their scheduled start time. Failure to notify the supervisor may result in the absence being recorded as unexcused.
- Approval for Planned Absences: Employees must request approval for planned absences, such as vacation or personal leave, at least [XXX days] in advance. Approval is subject to management discretion based on operational needs.
- Documentation for Unplanned Absences: Employees who are absent due to illness or other emergencies may be required to provide documentation, such as a doctor’s note, to verify the reason for the absence.

6. Disciplinary Action for Attendance and Punctuality Violations

Violations of the attendance and punctuality policy may result in disciplinary action, which may include:

- Verbal Warning: For the first instance of tardiness or an unexcused absence.
- Written Warning: For repeated tardiness or unexcused absences after a verbal warning has been issued.
- Final Written Warning: For continued violations after a written warning has been issued.
- Suspension: For serious or repeated violations that have not been corrected despite previous warnings.
- Termination of Employment: For chronic absenteeism, repeated tardiness, or other serious violations that disrupt the workplace or affect productivity.

7. Special Considerations

- Reasonable Accommodations: The company will provide reasonable accommodations for employees with disabilities or other legitimate reasons that may affect their attendance or punctuality, in compliance with applicable laws.
- Family and Medical Leave: Employees may be entitled to take leave under the Family and Medical Leave as per applicable leave Rules. Such leave will be granted in accordance with company policy. (refer to Leave policy and procedure and its latest amendments)

8. Review and Amendment

This policy will be reviewed periodically and may be amended as necessary to ensure it remains current and effective. Employees will be notified of any changes to the policy.

9. Compliance and Acknowledgment

All employees are expected to comply with this policy.

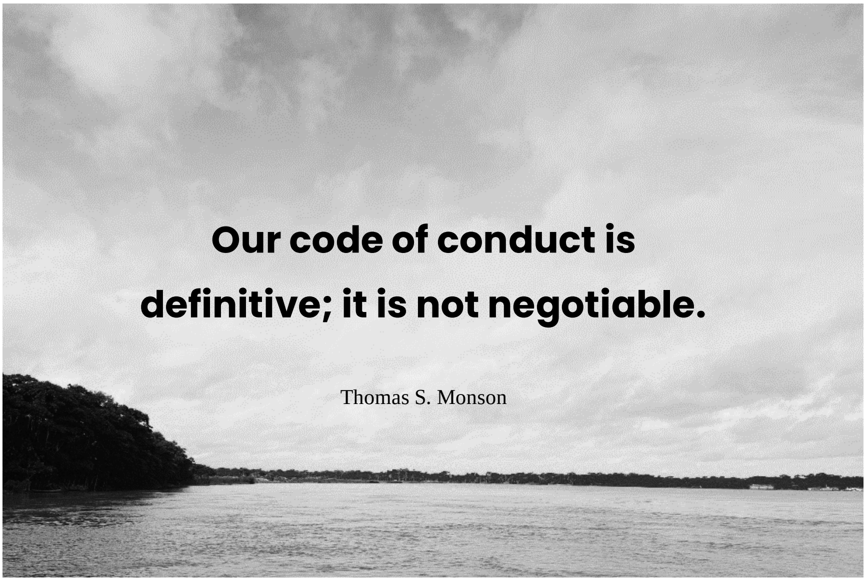
By continuing their employment with the organization, employees are deemed to have read, understood, and agreed to comply with the terms of the Attendance and Punctuality Policy.

Authorized Signatory

Name & Designation

Date: ________________

Reviewed on ______________________


Our code of conduct is
definitive; it is not negotiable.
Thomas S. Monson

Chapter 2

Misconduct

"When a wise man is advised of his errors, he will reflect on and improve his conduct. When his misconduct is pointed out, a foolish man will not only disregard the advice but rather repeat the same error" ...
Gautama Buddha

2.1 What is Misconduct?

2.1.1. Introduction to Misconduct:

In the ever-evolving landscape of workplace dynamics, the concept of misconduct stands at a fascinating crossroads between ethical responsibility and behavioural deviation. What constitutes misconduct? Is it a fleeting lapse in judgment, a momentary misstep, or a calculated breach of trust that erodes the very fabric of professional integrity? An enigma of Workplace Dynamics … "What truly defines misconduct?"

Misconduct is one of the most complex and consequential issues that HR and legal professionals encounter. It sits at the intersection of behaviour, intent, policy, and consequences – and yet, its boundaries are often blurred. Multifaceted concept not only challenges workplace norms but also raises profound questions about ethics and integrity. Whether stemming from negligence or deliberate intent, these actions carry significant implications for both employees and employers.

The term itself is a fusion of "mis" (bad or missing) and "conduct" (behaviour), hinting at its multifaceted nature. As per the Oxford Dictionary, misconduct refers to unacceptable or bad behaviour, especially by individuals in positions of responsibility. But can a single definition capture its ever-evolving dimensions?

From insubordination and negligence to breaches of workplace rules, misconduct takes many forms. Black’s Law Dictionary describes it as a violation of established rules, often marked by unlawful or improper conduct. It’s not just about errors—it's about intent. While the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946 (The Industrial Disputes Act 1947, has been repealed, and also the Industrial Employment (Standing Orders) Act. These have been merged into the Industrial Relations Code 2020), offer frameworks for understanding workplace dynamics, they leave misconduct intriguingly undefined, inviting us to explore its depths.

Gone are the days when employers could exercise unchecked authority. Today, disciplinary measures against misconduct are shaped by statutory provisions and organisational nuances. But what lies at the heart of these rules? How do we navigate the grey areas between negligence and defiance, between discipline and freedom?

Misconduct defies simple classification, manifesting in various forms that challenge established norms and raise deeper questions about accountability. Whether it stems from negligence or intentional wrongdoing, its repercussions extend beyond individual actions, influencing organisational policies and legal frameworks. From insubordination and ethical violations to outright fraud, the complexities surrounding misconduct demand a nuanced exploration.

Join us as we delve into the intricacies of misconduct, unravelling its implications and uncovering the delicate balance between employee rights and organisational responsibilities. This discussion delves into the multifaceted nature of misconduct, examining its implications while navigating the fine line between discipline and freedom, negligence, and defiance.

2.1.2. Understanding of Misconduct- What, Why & How?

A. What constitutes Misconduct (Employees & Organisation)

Misconduct is viewed as inappropriate behaviour. The range of misbehaviours is in nature and/or deliberate for achieving an ulterior motive. During employment, it is the duty of the employee to obey the rules and regulations, terms, and conditions of the employment.

Misconduct at the workplace is more than a single act of wrongdoing. It is a breach of trust – of policies, ethics, and often, the very culture an organisation claims to stand for. Absolutely, breaches can strike at the heart of what an organisation represents. They often lead to a ripple effect, eroding trust not only within the organisation but also with external stakeholders like customers, partners, and the public. It undermines the principles and values that are meant to define the organisation's identity and culture. There are some examples relating thereto as under:

- **Oxfam Sexual Misconduct Scandal (2018)**

  Senior staff in Haiti were found to have hired sex workers while on humanitarian missions, which impacted massive donor backlash, loss of funding, and reputational damage across the NGO sector.

  Ripple effect: Undermined public trust in humanitarian organisations and raised questions about ethical oversight and accountability.

- **Volkswagen Dieselgate (2015)**

  VW admitted to installing software that cheated emissions tests in over 11 million vehicles, which impacted billions in fines, executive resignations, and a long-term dent in brand credibility.

  - Ripple effect: Shook consumer confidence in the auto industry’s environmental claims and corporate ethics.

- **Facebook–Cambridge Analytica Data Breach (2018)**

  Personal data of over 87 million users was harvested without consent for political profiling, which had caused congressional hearings, regulatory scrutiny, and a global conversation on data privacy.

- Ripple effect: Eroded user trust in digital platforms and forced a reckoning on tech governance and transparency.

Such breaches can have serious implications—from legal consequences to reputational damage. And perhaps even more crucially, they can harm the morale of employees, who may feel betrayed or disillusioned when the organisation's actions fail to align with its professed ethics or values.

a. Employee misconduct:

There are different types of misconduct, some of which the HR and line managers confront are:

1. Theft or Fraud: Ajay worked in the accounts department of XY Organisation. During employment, he began transferring small amounts of money to his personal account, thinking that it would go unnoticed, but during the routine audit, the discrepancies were traced out, and Ajay was charged with fraud and later terminated in the process of disciplining.
2. Harassment or Discrimination: Shilpa, a junior employee, felt uncomfortable as her supervisor was cracking inappropriate jokes and making inappropriate comments. On reporting, the issue was confirmed during the internal investigation. The supervisor was found guilty of gross misconduct and later dismissed. Though it is an example of misconduct, this issue is also covered under the POSH Act.
3. Violation of Company Policies: An example of breach of conduct is that during a company’s event, Ramesh, an employee intoxicated and behaved aggressively toward colleagues. His action breached the company’s rules/conduct. The incident was reviewed by HR, and reprimanded with a stern warning letter and mandatory training on conduct.

4. Conflict of Interest: Govind, a procurement manager, awarded a contract to his cousin without disclosing the relationship. When the reality surfaced during the investigation, he was demoted, and the contract was cancelled. Severe punishment, including termination, is possible depending upon the gravity of misconduct.
5. Absenteeism & Short timings: Himanshu regularly clocked in and left the office shortly after spending working hours elsewhere. Security reported it to HR, who in turn warned him and put him under strict supervision to improve his sneaking nature.

b. What is actual Misconduct?

There are no fixed parameters for determining the level of misconduct. It literally means to conduct oneself amiss, wrong, and/or improperly, or to engage in bad or unlawful behaviour. The synonyms are misbehaviour, misdeed, delinquency, and mismanagement. It refers to **wrong intention not a mere error of judgment.** Thus, 'misconduct' is a generic word meaning, whereas insubordination, neglect of work, negligence, etc., are the species related thereto.

Misconduct is an intentional wrong or deliberate act/ behaviour to violate the standards or rules set out by employers for employees to adhere to while in the workplace.

Just think up a situation where a new employee submits his mobile bill for Rs. 500/- per month for reimbursement, whereas the company's expense policy is to reimburse up to 250/-per month. Further, the employee successfully reimbursed Rs. 500/- and continues to submit subsequent monthly phone bills for reimbursement. This may or may not be construed as deliberate wrongdoing since the employee is new, and he submitted his mobile bill either by knowing or not knowing the limit.

Employee misconduct can sometimes just be an honest mistake. Yes, there are instances when it is intentional and continuous repetition thereof, which is certainly misconduct. Therefore, misconduct can be both deliberate and accidental, depending on the context and severity, with serious misconduct often involving a deliberate disregard of rules or standards, while ordinary misconduct may result from unintentional errors or mistakes.

There were times when the employer was virtually free to hire and fire employees at will. Over a period, this common law notion has gradually become extinct with the evolution of employment laws and regulations. Presently, an employer can inflict punishment on an employee following some statutory provisions, depending upon the nature of the organisation. Before dealing with the types of misconduct, level of punishment, and procedure for disciplinary actions against the perpetrator, it is imperative to know the nuances of misconduct and the roles & responsibilities of the employer.

The word 'misconduct' has not been defined either in the Industrial Disputes Act,1947, or in the Industrial Employment (Standing Orders) Act 1946, under which most of the standing orders governing conditions of service are framed. However, the Industrial Relations Code 2020 has explicit coverage of "Misconduct" related provisions. It is extremely difficult to provide a précised definition of 'misconduct'. Misconduct is primarily related to violation of discipline, such as subordination or disobedience of lawful instructions of the superior, strike, or go slow. Further, it could be a breach of rules & regulations set out by the employer, relating to work *i.e.*, non-performance or negligence of duty, absence without leave, or exceeding sanctioned leave without permission, unauthorised absence from work, indiscipline regarding safety and processes related thereto. Misconduct is also related to integrity, which includes theft, fraud, misappropriation of money, cheating, etc.

One place where you will see the listed-out misconduct is "The Industrial Employment Standing Orders", whether Model or Certified Standing Orders. Some misconduct that is generic from the time it was enacted are:

a. Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior
b. Wilful damage or loss of goods and/or property of the employer
c. Theft, fraud, or dishonesty in connection with the employer's business
d. Giving or accepting bribes or illegal gratification
e. Habitual absence without leave or absent for more than 9 working days
f. Habitual late coming to the workplace
g. Habitual offender, and breaking rules and regulations
h. Breach of law
i. Riotous behaviour during working hours at the workplace
j. Negligence of work
k. Repeated act of omission etc.,
l. Strikes or inciting others for the same

The above illustrations of the types of misconduct provide clarity on the subject, though the word 'misconduct' cannot be confined to a precise definition. This has been dealt with at length in the latter part of this chapter.

Recognising the Symptoms of Misconduct: Unveiling the Telltale Signs; What are the warning signs of employee misconduct, and how do they disrupt the fabric of workplace harmony? Misconduct often begins subtly, revealing itself through behaviour like lack of commitment, deliberate slackness, or deviation from assigned duties. Over time, it escalates into more noticeable disruptions—decreased productivity, offensive behaviour, harm to colleagues, vandalism, property damage, or blatant violations of company policies.

In industrial law, the term "misconduct" carries weight and significance, extending far beyond mere inefficiency or unintentional errors. It refers to deliberate actions and breaches of duty—explicit or implicit—that jeopardise the trust and responsibility inherent in the employer-employee relationship. But how do we determine what qualifies as misconduct, given the diverse circumstances that surround each case? This question invites exploration into the nuanced criteria developed by labour tribunals to define and address such behaviour.

Misconduct is not a blanket term for any deviation; rather, it applies when the employee's actions are inconsistent with the terms of service, directly affect workplace relationships, disrupt the comfort and cohesion of the workforce, or hinder the operational efficiency of the establishment. When misconduct stems from an intentional breach of trust such as theft, fraud, or misappropriation, the consequences extend well beyond workplace discipline, entering the realm of criminal liability and legal action.

Employers have various tools at their disposal to address misconduct. Measures range from counselling and warnings for milder cases to severe penalties, such as termination of employment, for egregious violations. In instances involving criminal misconduct, legal proceedings may complement internal disciplinary action. However, navigating these processes requires precision, evidence, and the effective functioning of disciplinary authorities.

As we delve deeper into this topic, we uncover the delicate interplay between protecting workplace integrity, ensuring due process, and maintaining a fair and functional disciplinary system. What strategies can employers adopt to tackle misconduct effectively? How can organisations strike a balance between enforcing rules and fostering a supportive work environment? The answer awaits.

Causes of Misconduct: Beneath the Surface of Workplace Dynamics. Misconduct often stems from underlying issues that are more complex than they appear on the surface. A lacklustre workplace environment, poor management practices, or an absence of formal disciplinary systems can create the perfect storm for undesirable behaviour to flourish. Cultural and socio-economic factors can add another layer of complexity, further influencing an employee’s actions. But what do these causes look like in action?

Imagine this: In a small manufacturing unit, tensions have been simmering for months. The management team rarely interacts with the workforce, and there is no structured feedback mechanism to address grievances. The workspace is cramped and poorly lit, and safety protocols are inconsistently enforced. Amid this environment, Ravi, a dedicated line worker, starts arriving late and skipping tasks. What begins as minor misconduct—a delayed clock-in here, a missed step in the production line there—soon escalates. Frustrated by his manager's indifference to his concerns about wages and working conditions, Ravi takes it a step further. One day, in a moment of desperation, he damages a piece of equipment to make his voice heard.

Ravi’s story highlights how misconduct is often rooted in poor organisational culture and weak management practices. While his actions were his own, they were undoubtedly influenced by the environment in which he worked. Weak management and deplorable working conditions not only affect individual behaviour but also disrupt the cohesion and efficiency of the entire workforce.

Broadly, misconduct can range from occasional tardiness or lack of focus to significant breaches such as insubordination or repeated absenteeism to severe offences such as theft, fraud, or physical harm to colleagues. Each category of misconduct stems from unique triggers, often shaped by the specific facts and circumstances of the situation. A lack of trust, unresolved grievances, or a toxic work culture can push employees toward actions they might not otherwise consider. Employers, therefore, have a pivotal role to play. By fostering open communication, improving working conditions, and implementing clear disciplinary frameworks, organisations can address the root causes of misconduct and create a supportive, productive workplace.

c. Common Indicators of Misconduct by an Employee

The common pointers of misconduct of the employee include lack of commitment, deliberate slackness, dereliction of or deviation from duty, decreased productivity, offensive behaviour, harming colleagues, damaging the company’s property, vandalism, and violation of the rules and regulations of the company.

In industrial law, the word ‘misconduct has significant connotations; it is a deliberate act/s, further, what constitutes misconduct depends upon the facts and circumstances of each case. Therefore, any breach of express or implied duty on the part of an employee, unless it is very insignificant in nature, would be tantamount to misconduct.

The basic duty of the employee is to work and perform in the establishment with due care, efficiently and diligently; any breach thereof, whether expressed or implied, barring trivial in nature, needs investigation. The first step is to see the relationship between employer and employee; there is an implied condition that the employee will work faithfully. If he does not work faithfully, the employer is well within its rights to terminate the employment contract.

There are certain criteria for determining the misconduct that have been laid down by the Labour Tribunal and are summarised hereunder:

a) It is inconsistent with the fulfilment of express or implied conditions of service;

b) It is directly connected with the general relationship of employer and employee;

c) It is also directly associated with the contentment and/or comfort of men at work

d) It has a direct impact on the working & efficiency of the establishment.

e) In the event of affirmation to anyone above stipulated conditions, then the act would definitely be tantamount to misconduct, and such an act should have some relation with the employee's duties to the employer.

B. Why does misconduct occur?

Misconduct is not just the effect of "*bad apples*". Invariably, it indicates deeper systemic cracks in the culture, leadership, or structure of an organisation. *Misconduct tends to arise when there is* ***a mix of pressure****,* ***opportunity,*** *and* ***lack of accountability****.*

There are several reasons attributed to misconduct. The primary reason is the
environment at the workplace, it could be a lacklustre attitude and no formalise structural
Management disciplinary systems are present; it may be due to cultural or socio-economic reasons.

Most of the misconduct can be associated with weak management and deplorable working conditions. All instances of misconduct can be divided into three categories: minor, major, and grave(heinous) ones. The cause of each misconduct varies and depends upon the facts and circumstances in each case. Some of the causes are enumerated herein below, these are inclusive ones:

a) **Weak Management** – Discipline is required to be driven from the top when the leadership fails to model ethical behaviour or ignores misconduct, indicative of the fact "this is acceptable here". The weak & inconsistent management is one of the major factors since it tolerates shortcuts, favouritism, or rule-breaking, and employees follow suit. e.g., a manager repeatedly ignores insensitive behaviour because of their high performance. Over time, other malpractices result in outweighing ethics.

b) **Unhygienic working environment** – one of the reasons for misconduct in the workplace is intolerable working conditions, and thereby, there is no way one can perform or yield any productivity.

c) **Prejudice** – Prejudice is in the form of discrimination in terms of promotion, salary increase, and behaving differently amongst employees/colleagues; these are some illustrative factors that cause disruptiveness among employees. Though the discrimination in the name of religion, caste, and creed is per se not acceptable in any form of the organisation, yet there are some bad elements creates such disturbances in the system.

d) **No rules and regulations**– Are important for establishments to have a policy document pertaining to rules and regulations in place beside structured disciplinary mechanism and action plan, which should be duly supported with training to the employees and refreshing training after equal intervals. In the event of ambiguity in the rules/ policies of the company, or if they believe rules are flexible depending on who's involved, employees may take liberties. This is quite apparent in fact, moving or high-growth environments, where structure is lacking. *e.g.,* In most newly established companies or start-ups, the pressure to secure funding often outweighs adherence to processes, leading teams to bypass protocols in order to accelerate work, without realising the consequences and legal risks.

e) **Communication** – Good employers invariably keep formal as well as informal channels open for their employees. One should listen to the grievance/ concern of the employee/s with an open mind and free from any biases. The bad or controlled channel of communication leads to uncertainty in the system, which is counter-productive and may lead to indiscipline in the organisation. Every individual wants to be heard and understood, the point of view of employees is usually the source of innovative ideas; the managers must pay attention to their employees. Without communication, there is no mutual understanding. In companies, where a lack of discipline is observed, the communication channels are usually broken or non-existent.

f) **Pressure to Perform -**Targets, deadlines, and bonuses may sometimes prompt employees to adopt shortcuts, unethical methods, such as rewards that are tied strictly to outcomes and not ethics and/or behaviours.

g) **Nonseriousness to critical issues** – The good organisation must have a crisis management structure in place and should not ignore critical/big ticket items about their employees. The organisations suffer those who do not care about the crisis management situation or have no effective plans to deal with the people crisis management.

h) **Lack of supervision** –The supervision here does not mean strict surveillance, but has an effective supervision and the ability to deal with minor issues on the spot. In the absence of supervision, the system may descend into chaos, and productivity may suffer. This lack of oversight is also a contributing factor to indiscipline and misconduct.

Table: 7

Cause of Misconduct	Description	Illustration / Impact
Weak Management	Leadership fails to model ethical conduct or ignores misconduct, setting a permissive tone.	Favours high performers despite poor behaviour; normalizes rule-breaking.
Unhygienic Working Conditions	Poor, intolerable work environment hampers productivity and morale, leading to frustration and misconduct.	Physically or mentally unhealthy spaces drive disengagement and deviance.
Prejudice	Discriminatory behaviours or unfair treatment based on identity, rank, or personal bias.	Unequal pay, promotion delays, and religious or caste-based favouritism trigger discontent and disrupt unity.
Absence of Rules & Policies	Lack of clear, enforced policies and disciplinary mechanisms is often worsened by poor onboarding or inadequate training.	Start-ups or growth-driven firms bypass processes for speed, ignoring legal risks and creating inconsistent expectations.
Communication Breakdown	Closed or biased communication channels prevent grievances from being raised or resolved, creating distrust.	Employees feel unheard; innovation suffers; the workplace becomes siloed and reactive rather than collaborative.
Performance Pressure	Overemphasis on targets and output over ethics or values may incentivise unethical shortcuts.	Rewarding only results can foster misconduct like falsification or corner-cutting.
Neglect of Critical Issues	Organisational apathy toward crises or people-related problems weakens employee trust and morale.	No crisis response plan leads to delayed or poor handling of sensitive issues, triggering further erosion of discipline.
Lack of Supervision	Inadequate oversight results in disorder, poor issue resolution, and productivity loss.	Minor concerns escalate due to the absence of real-time managerial support or feedback loops.

It is the duty of the employer as well as of the HR department to be fully equipped and prepared to deal with misconduct in order to maintain discipline and a conducive environment at the workplace. The erring employee is required to deal strictly under the realm of disciplinary action and thereby set examples for the working employees.

2.2. Misconduct vs. Misconception

Misconduct, as understood above, is an actual wrongdoing, which is a deliberate violation of rules, ethics, or behaviour that harms the organisation or individuals, *e.g.*, Asha was caught using company funds to pay for personal expenses. This is a per se violation of the financial conduct policy. Post-investigation, she was terminated for *gross misconduct*.

Misconception: Incorrect beliefs are not misconduct. It could be misunderstandings or incorrect assumptions about workplace norms, but not necessarily harmful or punishable, *e.g.*, an employee, Sumeet, believed that he could not take a day off without weeks' notice, so he reached the office looking sick. In reality, the policy permitted emergency leave. He could not be punished- it was just a misconception about the rules.

Misconduct: Intentional or harmful rule-breaking

Misconception: misunderstanding about the rules, usually believed or correctable through guidance.

2.2.1. Concept

Table: 8

Misconduct	Misconception
A wilful act or omission by an employee violating organisation's norm or causing harm. *Example: Periodic maintenance schedule with downtime given for the activity for a machine operator is idling and not carrying out maintenance. This may lead to breakdown and loss of production. It is an act of negligence!*	Misunderstanding or incorrect belief not rooted in malice or wilful disobedience. *Example: Periodic maintenance schedule is not given along with downtime by the supervisor but when an operator out of experience, does maintenance at break time but due to some error machine malfunctions. The supervisor wants to fix him by blaming the operator. The operator with a good intention tried to maintain, but cannot be called as acted in malice!*

Nature:	
Disciplinary in nature, often involves intent or negligence.	Cognitive or interpretive error, lacks the intent to violate
Legal Consequence	
Can lead to disciplinary action, including dismissal	Generally, not punishable unless repeated or leads to serious consequences
Case reference	
Baldev Singh Gandhi v. State of Punjab[1]	**Union of India v. J. Ahmed**[2]

2.2.2. Comparative Analysis

Table: 9

Factor	Misconduct	Misconception
Intent	Present	Absent
Punishable	Yes	No
Lead to disciplinary action, including dismissal	Yes, if proven in the Inquiry /investigation	Not usually Contextual; for example, a machine is operated at a lesser speed citing safety as a reason, whereas it a part of "Go-Slow" tactics adopted by the union
Examples	Theft, fraud, and sexual harassment	Misunderstanding of policies, rules, mis-communication

2.2.3. Comparison table with examples

Table: 10

Issue	Misconduct examples	Misconception examples
Use of office property	Taking the company's laptop home and sold it	Presuming the use of office Wi-fi for personal browsing
Attendance	Falsifying attendance records, i.e., quoting false timings	Assuming late coming occasionally leads to automatic suspension
Professional behaviour	Abusing or harassing a colleague	Believing one must agree with the manager to avoid conflict
Policy undertaking	Ignoring safety norms and/or not following guidelines	Not aware of the safety norms of the company.

[1] 2002 AIR (SC)1124
[2] 1979 AIR(SC) 1022

In the realm of workplace behaviour, the distinction between misconduct and misconception plays a vital role in determining whether the employee should face disciplinary action.

In the matter of Union of India v. J. Ahmed: a senior officer was charged with inefficiency and lack of supervision; it was held that inefficiency or error in judgment does not amount to misconduct unless it is deliberate or grossly negligent.

The term 'misconduct', though not capable of precise definition, includes acts that are improper and blameworthy. It is evident from the fact that a police constable was found in a compromising position. The misconduct includes outside duty that tarnishes image of the service. State of Punjab v. Ram Singh, ex-constable[3]. The Hon'ble Supreme Court held that misconduct encompasses acts that, while not necessarily criminal, are conduct unbecoming of a public servant.

By contrast, a misconception arises from an honest misunderstanding, lack of clarity, or cognitive error. The employee failed to report for duty due to a misunderstanding. It was held in the matter of Krushkant B. Parmar v. Union of India[4]. The court emphasised that if an employee genuinely misunderstands instructions or circumstances, it would be unjust to penalise them without first proving a wilful intention to disobey.

In brief*: under the Indian employment law, misconduct implies a culpable act or omission, which attracts disciplinary proceedings. Whereas, a misconception is an innocent misunderstanding, which may warrant correction or clarification but hardly leads to punitive consequences*. Intent is important in the factor being dividing line between the two.

The jurisprudential approach reflects a **balanced recognition** of human error in the complex organisational setup. Misconducts warrant disciplinary proceedings, whereas misconceptions often call for corrective training, dialogues, or policy clarity. *Therefore, employers are advised to investigate not only the act itself but also introspect on the intent and context behind it*.

3 1992 AIR (SC)2188
4 2012(3) SCC 178

2.2.4. Impact on Organisation

The misconduct in any organisation does not affect the employee/s, it has wide -reaching implications on the business as well on culture of the organisation. It impacts productivity, reputation of the business, as well as image perspective, and also risk of attrition.

A. Business Perspective

Time spent on investigation, disciplinary action, and replacing staff reduces focus on goals; lowering the morale of employees results in decreasing productivity, reputation and engagement. ***i.e.*** if a manager is involved in harassment, it distracts the team, slows progress, and may cause others to avoid collaboration or even quit.

- **Culture-wise:** A toxic environment where misconduct is either ignored or mishandled.

B. Impact of misconduct in the workplace

- **Loss of confidence**: major misconduct, insubordination, or fraud shakes the confidence level of the team as well as demotivates the organisation. It also raises an alarming situation for the leadership in the organisation. It puts the work culture and environment of the organisation in jeopardy.

- **Lowering morale:** This significantly affects the victim and directly impacts the organisation's productivity. The low esteem in the organisation not only lowers the morale of the employees but also erodes the organisation gradually. Lower morale is counterproductive for retaining talent and for attracting good employees.

- **Psychological fear:** The cases of major and gross misconduct such as physical violence or sexual harassment and/ or vandalism, etc., mount the tension at the workplace, nobody desires to have continuity in the organisation due to fear, tension, or trauma, which ultimately results in a hollow organisation. People's talent is a big asset for a good organisation, and retention thereof requires a safe and conducive environment.

2.2.5. Consequences for employee and employer

- **Termination:** Gross misconduct is a serious & heinous crime and can lead to immediate termination of the employee . Termination is a punishment and thereby deprives one of severance benefits such as notice period and/ or compensation, besides loss of earnings. It diminishes the employee's image and finds difficulty in finding good employment. The employer has the option to register a complaint against the employee at the jurisdictional police station to initiate criminal proceedings. Theft, sexual Harassment, violence and/or damaging the company's property deliberately are not only gross misconduct but public wrongs as well.

- **Company's liability:** In the event of gross misconduct involving illegal activities like fraud or harassment, the company cannot brush aside its vicarious liability. The company is equally responsible for the fault of its employees since it is the duty of the employer to provide safety to its employees and business partners at its workplace.

2.2.6. Reputational risk and disruption of operation

- **Spoiled Company's image:** Gross misconduct spoils the reputation of the company & brand image. A ruptured reputation cannot attract talent and ultimately lead to disaster for the organisation.

- **Financial crunch & disrupted operations:** Major /Gross misconduct, especially involving company employees, may disrupt operations and thereby cause a financial crisis. The above-given reason is interconnected with it.

- **Attrition:** Another major consequence is the high attrition rate of employees; it does not provide stability in the organisation. As a result, the company needs to incur substantial costs in attracting talent and in Training & Development thereof, although it does not provide assurance to its long-term sustainability.

2.2.7. Legal & Financial Risk

From a business perspective, litigation, fines, and non- compliance penal consequences are quite common post-misconduct. i.e. an organisation that mishandles harassment complaints could face major litigation or penal consequences, including compensation.

Summary

Table: 11

Business Impact	Cultural Impact
Delays, absenteeism, turnover	Low morale, lack of trust
Loss of clients, bad press	Damaged employer's brand image,
Litigation, regulatory fines	Fearful or silent culture, lack of confidence

2.3. Misconduct, performance, and conflict

- **Misconduct:** It is now clear that misconduct is deliberate behaviour that breaks the rules, policies, or ethical standards. It is certainly vitiating the decorum of the organisation. Thus, it is intentional, which warrants disciplinary action and may lead to termination. *Anju*, an HR Assistant, was found leaking confidential employee data to outsiders. This is a violation of the Company's policy and was eventually terminated. Since it was an unethical and deliberate act on her part.

- **Performance Issue:** It pertains to non-performance of the job as the employee is not able to meet job expectations, but not due to bad intent. It could be a lack of understanding, not having the acumen to perform the assigned task despite guidance, and/or maybe a lack of interest. *i.e.*, Ramesh was struggling to meet sales targets for three months. It was not that he was lazy, but due to a lack of knowledge about the product. His performance improved post-coaching and training sessions arranged by his supervisor. Therefore, it is a performance issue and not misconduct. If he failed to improve despite the employer's efforts, his termination from the organisation was attributed to his non-performance and not to any misconduct.

- **Conflict:** A disagreement or clash between people, invariably due to personality differences, communication styles, or misunderstandings. Another way could be ego clashes between colleagues and superiors. It is emotional but not necessarily unethical or harmful. *i.e.,* in the marketing department, Meena and Karan both overreacted on a project pertaining to the new launch of the dish, and kept arguing over deadlines and responsibilities. Their constant and ceaseless arguments are neither misconduct nor performance issues, but certainly a clash of egos or supremacy. Healthy arguments are always good for the organisation, provided it should not be beyond the requisite level. In serious situations, HR is to intervene to resolve the issue. Frequent disagreements affect team morale.

Table 12: Misconduct, performance, and conflict are summarised in the table below

Misconduct	Performance Issues	Conflict
Intentional and per se wrong	Unintentional	Often emotional or reactive
Stealing Data, harassment	Failure in meeting targets, poor time management	Arguments and personality clashes
Disciplinary action, termination	Coaching, training, PIP	Mediation, communication coaches
Violates rules/ethics	Affects output	Affects teamwork/relations

2.4. Business and Cultural Impact of Misconduct

Misconduct within an organisation—whether by employees or leadership—can have profound effects on productivity, reputation, and risk exposure. One needs to understand that these impacts are crucial for cultivating a resilient and ethical workplace culture.

2.4.1. Productivity: The Hidden Costs of Misconduct

Misconduct disrupts workflow and reduces overall efficiency. Key impacts include:

- Absenteeism and Presenteeism: Employees who experience or witness misconduct often take more sick days. The additional on average, 6-12 leaves /absenteeism of employees is counterproductive for the organisation.
- Decreased Morale: A toxic work environment resulting from misconduct can demotivate employees, resulting in reduced engagement and productivity.
- Attrition: High turnover rates due to misconduct-related dissatisfaction led to increased recruitment and training costs, as well as loss of institutional knowledge.

2.4.2. Reputation: The Fragile Nature of Public Trust

A company's reputation is a valuable asset that can be quickly tarnished by misconduct:

- Customer Trust: Unethical behaviour erodes consumer confidence. For instance, around 88% of global consumers prioritise buying from companies with ethical sourcing strategies, and similarly, plus 83% are willing to spend more on ethically sourced products.
- Investor Confidence: Major misconducts/scandals can lead to an impact on the stock prices of limited companies and loss of investor trust as well. i.e., the Volkswagen emissions scandal resulted in billions of dollars in fines and a significant blow to its reputation. Another major fraud in M/s. Satyam Computers resulted in the bankruptcy of the Company and its name was wiped out from the listed companies.
- Talent Acquisition: Companies with tarnished reputations struggle to attract and retain top talent. A survey found that around 70% of adults consider a company's culture before applying for a job, and around the same percentage would not apply to a company unless its values aligned with their own.

2.4.3. Risk: Legal and Financial Repercussions

Misconduct exposes organisations to various risks:

- Legal Consequences: Misconduct can lead to litigation, fines, and regulatory sanctions.
- Financial Losses: Beyond legal fees, companies may suffer from lost sales, increased insurance premiums, and costs associated with crisis management.
- Operational Disruptions: Reputational damage can disrupt day-to-day operations. Negative media coverage, boycotts, or protests can hinder production, supply chains, and employee productivity.

2.5. Types of Misconduct - Categorised with Real-life Examples

In any organisation, maintaining discipline requires a clear understanding of what constitutes misconduct. Categorising types of misconduct not only aids in the consistent application of disciplinary action but also supports a fair and transparent work environment.

This section serves as a quick-reference guide for practising professionals to recognise, assess, and respond to various forms of misconduct. Each type is presented with the practical definition, a real-world scenario, and suggested response strategy. The aim is to support timely, lawful, and proportionate handling of disciplinary issues.

2.5.1. Behavioural Misconduct

Definition: Unacceptable behaviour that disrupts workplace harmony, including disrespect toward colleagues or superiors, insubordination, use of abusive language, or aggressive conduct.

Example: An employee repeatedly disregards managerial instructions during meetings, uses hostile language, and undermines team morale.

Indicative Response:

- Immediate counselling and a formal verbal or written warning.
- Escalation to disciplinary proceedings if behaviour persists or escalates.
- Consistent documentation of all interactions for record-keeping and future reference.

2.5.2. Time and Attendance Misconduct

Definition: Violation of organisational policies related to attendance, including habitual absenteeism, frequent tardiness, early departures without approval, and falsification of attendance records.

Example: An employee regularly marks themselves present remotely while not engaging in any work activities and frequently fails to provide explanations for absences.

Indicative Response:

- Investigation into attendance records and employee explanation.
- Issuance of a warning or show-cause notice.
- Progressive disciplinary action, including salary deduction, suspension, or termination in cases of deliberate falsification.

2.5.3. Integrity-related Misconduct

Definition: Acts that breach organisational trust and ethical standards, such as fraud, falsification of documents, theft, misappropriation of assets, or conflict of interest.

Example: A procurement officer inflates vendor invoices in collusion with suppliers, resulting in financial loss to the organisation.

Indicative Response:

- Immediate suspension pending inquiry.
- Comprehensive internal investigation following due process.
- Disciplinary action, including termination and legal proceedings, if misconduct is established.

2.5.4. Sexual Harassment and Discrimination (POSH Context)

Definition: Unwelcome behaviour of a sexual nature, or discriminatory treatment based on gender, race, religion, disability, or other protected attributes, in violation of workplace equality standards and applicable laws (e.g., POSH Act).

Example: A manager sends persistent unwelcome messages to a subordinate and makes suggestive remarks during meetings.

Indicative Response:

- Prompt referral to the Internal Committee (IC).
- Conduct a confidential and impartial inquiry.
- Implementation of disciplinary action in accordance with inquiry findings, ensuring protection of the complainant's rights.

2.5.5. Substance Abuse and Safety Violations

Definition: Consumption, possession, or influence of drugs or alcohol in the workplace, or breach of established safety protocols that endanger life, property, or operations.

Example: A worker operates heavy machinery under the influence of alcohol, narrowly avoiding a major accident.

Indicative Response:

- Immediate suspension from duty to ensure safety.
- Investigation supported by medical testing (where permitted).
- Disciplinary action ranging from mandatory counselling and rehabilitation (first offence) to termination (repeat or serious offences).

2.5.6. Digital Misconduct

Definition: Unauthorised access, misuse, or theft of organisational data, systems, or digital resources, including inappropriate use of social media that compromises the organisation's reputation or data security.

Example: An employee downloads confidential client information and shares it with a competing firm.

Indicative Response:

- Immediate revocation of system access and preservation of digital evidence.
- Internal investigation in coordination with IT security teams.
- Disciplinary action, including termination and initiation of civil/criminal proceedings if required.

Note for Practitioners:

While the examples and responses outlined provide a practical guide, it is essential to align actions with organisational policies, employment contracts, applicable laws, and principles of natural justice. Consistency, documentation, and proportionality are key to maintaining credibility and minimising risks of legal challenge.

Table 13: Quick Reference: Types of Misconduct-Examples and Indicative Responses

Type of Misconduct	Real-life Example	Indicative Response
Behavioural Misconduct	Employee uses abusive language and defies the manager's instructions in a team meeting.	Counselling, formal warning, progressive disciplinary action if repeated.
Time & Attendance Misconduct	Employees mark themselves present remotely without actually working.	Investigation; warning/show-cause notice; salary deduction; termination for falsification.
Integrity-related Misconduct	Procurement officer colludes with the vendor to inflate invoices.	Immediate suspension; inquiry; termination, and legal action if proven.
Sexual Harassment & Discrimination (POSH Context)	Manager sends unwelcome messages and makes suggestive comments to the subordinate.	Refer to IC; confidential inquiry; disciplinary action per findings.
Substance Abuse & Safety Violations	Worker operates machinery under the influence of alcohol.	Immediate suspension; investigation; mandatory counselling or termination.
Digital Misconduct	Employee shares confidential client data with a competitor.	Revoke system access; internal investigation; termination; legal proceedings if required.

Table 14: Distinguishing Misconduct, Performance, and Conflict:

Category	Intentional?	Example	Response
Misconduct	Yes	Data leak	Disciplinary action
Performance	No	Missed targets	Coaching, training
Conflict	No	Team disagreement	Mediation, HR support

2.6. Addressing Misconduct — A Practical Approach

Maintaining discipline requires not just reacting to misconduct but proactively identifying and addressing it with fairness, consistency, and professionalism. This section outlines a practical, real-world approach that organisations and managers can apply when dealing with misconduct.

2.6.1. Spotting Early Signs

Description: Misconduct rarely happens out of nowhere. Often, there are early indicators — subtle changes in behaviour, work patterns, or attitudes — that alert attentive managers or colleagues.

Practical Scenarios:

- An employee becomes increasingly disrespectful in meetings, rolls their eyes, or publicly challenges instructions.
- A usually punctual employee starts arriving late without informing anyone.
- You notice unexplained inconsistencies between work reports and actual outcomes.

Key Actions:

- Stay observant and document early patterns without immediately confronting.
- Have informal check-ins or coaching conversations at early stages to understand if something deeper is causing the change.

2.6.2. Preliminary Fact-Finding

Description: Once a concern is noticed, gathering initial facts discreetly is essential before jumping to conclusions or initiating formal action.

Practical Scenarios:

- A manager hears that an employee may have falsified expense claims.
- HR receives an anonymous complaint about inappropriate comments made by a team leader.

Key Actions:

- Interview witnesses or involved parties informally, sticking to facts (who, what, when, where, how).
- Review available documents, emails, CCTV footage, system logs, etc., wherever applicable.
- Avoid making assumptions — focus purely on gathering information to assess if a formal investigation is warranted.

2.6.3. Ensuring Confidentiality & Fairness

Description: Misconduct investigations must protect the dignity of all involved — complainant, respondent, and witnesses — while ensuring a fair process free from bias or undue influence.

Practical Scenarios:

- Gossip spreads about a sexual harassment complaint even before the inquiry starts, leading to reputational harm.
- An accused employee is treated coldly by managers based on hearsay.

Key Actions:

- Limit discussions to only those who need to know.
- Caution witnesses and participants against sharing case details.
- Maintain neutrality until fact-finding and inquiry are complete.
- Offer support resources (e.g., counselling, EAP) to both parties during the process.

2.6.4. Stakeholders: HR, Legal, Managers, Compliance

Description: Addressing misconduct is a multi-stakeholder responsibility. Each function brings a different expertise to ensure the process is lawful, fair, and aligned with company policies.

Stakeholder Roles:

- **HR:** Owner of employee relations; advises managers; ensures fair disciplinary processes; supports communication and documentation.
- **Legal:** Ensures compliance with laws (e.g., labour laws, POSH Act), protects the organisation from liability, drafts or reviews notices, and termination letters.
- **Managers:** First line of defence; observe behaviour, raise concerns promptly, participate in inquiries as witnesses or reporting officers.
- **Compliance (where applicable):** Especially for fraud, corruption, and data security breaches — ensures that internal codes and external regulations are followed.

2.7. Common Pitfalls to Avoid in Addressing Misconduct

Table: 15

Pitfall	Why It's a Problem
Delaying Action	Allows issues to worsen; creates a perception of tolerance.
Jumping to Conclusions	Risk of unfairness; damages trust and credibility.
Ignoring Early Signs	Misses opportunity for early correction; escalates risk.
Breach of Confidentiality	Leads to gossip, bias, and reputational harm for all parties.
Inconsistent Treatment	Damages fairness perception; exposes the company to legal risks.
Bypassing Fact-Finding	Weakens case; increases chances of flawed inquiry outcomes.
Overdependence on Verbal Complaints	Without documentation, harder to prove and defend actions.
Not Involving the Right Stakeholders	Leads to flawed process; risks of non-compliance with laws.

Handling misconduct is not just about enforcing discipline — it's about building a culture of fairness, trust, and accountability. A structured, timely, and respectful approach strengthens both the organisation and its people.

2.8. Common Misconduct Behaviours in Work from Home (WFH)

Prior to 2020, Work from home for employees was not very prevalent despite organisations having a policy on WFM. WFM policies are used as an exception by many organisations to handle employees' personal requirements to retain them from leaving the job. Whereas, post -COVID-19, organisations were pushed to get the work from employees, which does not necessitate physical presence in the workplace. Due to various reasons, such as commuting hassles for employees in big cities to the real cost of having more desk space, organisations continue to encourage work from home even after the pandemic threat is over. Though it has given benefits to employers and employees, it also sprung up new challenges with the behaviour patterns of employees. The behaviour patterns be termed as misconduct that may not be as prevalent or visible in traditional office environments. The most common types of misconduct in home office settings include:

2.8.1. Time Fraud (Faking Work):

Employees may misrepresent their working hours, such as logging into systems but not actually working, or providing false information in time tracking tools. This behaviour, known as time fraud, seriously undermines trust and can justify disciplinary action or dismissal.

2.8.2. Inappropriate Digital Communication:

The use of unmonitored channels (chat, email, video calls) can lead to misconduct such as sending offensive messages, making inappropriate jokes, or displaying unprofessional video backgrounds during calls.

2.8.3. Cyber Bullying and Harassment:

Bullying, sexual harassment, and discrimination can occur virtually, including through emails, instant messages, or video meetings. These behaviours remain common and can be just as damaging as in-person incidents

2.8.4. Misuse of Company Time and Resources:

Engaging in personal business during work hours, excessive internet browsing for non-work purposes, or using company equipment for personal gain are frequent issues in remote settings.

2.8.5. Conflicts of Interest:

Employees may run side businesses or work for competitors during company time, which is a breach of trust and contract. Moonlighting came to the limelight during COVID 19 times, which is nothing but an employee acting in conflicting to that of interest for which he/she is hired and paid a salary.

2.8.6. Breach of Confidentiality:

Sharing sensitive company or client information without authorisation, whether intentionally or accidentally, is a serious concern, especially when employees work from less secure home networks.

2.8.7. Dishonesty and Misrepresentation:

Providing false information about work progress, qualifications, or experience can occur more easily when supervision is remote.

2.8.8. Withdrawal and Disengagement:

Employees may become disengaged, neglect responsibilities, or fail to meet deadlines due to a lack of supervision or motivation in a home setting. It is more visible in so-called Hybrid mode, employees are expected to work from the office for a couple of days each week and spend the remaining weekdays working from home.10. Abuse of Company Equipment:

Using company-provided devices for unauthorised personal activities or sharing them with family members risks data security.

2.8.9. Unprofessional Conduct:

Overly casual or disrespectful behaviour in virtual meetings, or failure to maintain professional standards, can disrupt team dynamics and productivity. In a hybrid working environment, the employees, instead of being present at the workplace, often seek permission from their managers, to work from home. Disconnecting calls on the pretext of a line drop or keeping some on a call blacklist during work hours.

Table 16: Summary Table: Common Home Office Misconduct

Misconduct Type	Description/Examples
Time Fraud	Logging hours not worked, faking productivity
Inappropriate Communication	Offensive messages, unprofessional video backgrounds
Bullying & Harassment	Virtual harassment, discrimination, or sexual harassment
Misuse of Time/Resources	Personal tasks during work hours, excessive non-work internet use
Conflict of Interest	Running side businesses, working for competitors
Breach of Confidentiality	Sharing sensitive data, insecure handling of information
Dishonesty/Misrepresentation	Lying about qualifications, progress, or work performed
Withdrawal/Disengagement	Neglecting duties, failing to meet deadlines
Abuse of Company Equipment	Unauthorised use of company devices
Unprofessional Conduct	Disrespectful or overly casual behaviour in virtual settings

In India, while specific case law on remote work misconduct is still evolving, general principles of employee misconduct and disciplinary action apply to remote employees as well. Remote work environments require updated policies and proactive management to address these evolving forms of misconduct effectively.

When organisations offer a remote working option to employees, an elaborate agreement in writing can be executed between the authorised signatory and the employee based on the Remote Working Policy. Work from Home and Remote Working are not one and the same to be understood. Employees who prefer remote working tend to move to vacation places either single or as a group. They work and enjoy part of it as a vacation. Behavioural concerns become even more complicated in POSH matters, where

misconduct often lies in grey zones. The past relationship between victim and aggressor can resemble a 'hand-in-glove' fit, leaving investigators struggling to sift the grain from the chaff. *The handling of such misconduct, through disciplinary procedures and pertinent case laws, will be discussed in the later part of the chapter.*

2.9. Organisational Misconduct

Organisational misconduct is not confined to high-profile corporate scandals that are widely publicised in the media with catchy headlines. It is quite often a quieter, more pervasive issue embedded in daily practices, overlooked behaviours, and unspoken norms. Whether subtle or severe, misconduct undermines trust, vitiates the decorum of the workplace, and undermines integrity, and may finally be a deterrent to the sustainability of an organisation.

2.9.1. Non-compliance with labour laws

In the simplest form, misconduct refers to actions that breach rules, ethical codes, or professional standards. Breaches of laws or regulations, including fraud, harassment, corruption and/or safety violations.

The most common & significant yet often overlooked forms of organisational misconduct are the deliberate or negligent failure to comply with labour laws. The labour laws are meant for the protection of workers' rights, to promote fair treatment, and to ensure safe and equitable working conditions. When any organisation flouts the legal provisions, it not only violates statutory requirements but also undermines trust and organisational integrity. When the organisation fails to comply with labour laws – whether knowingly or unknowingly – it engages in a serious form of misconduct that can result in legal, financial, and cultural loss.

Noncompliance can take many forms –ranging from unpaid overtime, denial of minimum wages, discrimination, exploitation, unhygienic conditions (utter disregard of the Factory Act provisions) and misclassification of workers' roles, etc., which is not in accordance with the laws. In other words, it is very short-sighted for intentional cost-cutting, driven by profit motives, and enables a weak enforcement mechanism. *i.e., an established company's chemical plant in Delhi suffered from poor maintenance and worker exploitation, leading to a major accident that necessitated the factory's closure.*

Intent: the impact is profound; the violation of labour laws only harms employees but also creates a ripple effect across the workmen, lowering their morale, reducing productivity, and increasing the legal risks and reputational consequences.

Table 17: Commonly observed labour laws non-compliances:

Failing to pay employees the legal minimum wage or overtime	Violation of the Minimum Wages Act
Misclassifying full-time workers as independent contractors to avoid providing benefits	Violation of The Contract Labour & Abolished Act
Ignoring workplace safety standards	Violation of The Factories Act
Excessive and long working hours	Violation of "the Factories Act"
Disregarding anti-discrimination or harassment protections	Violation of POSH in the case of a woman
Denying employees the right to unionise or collective bargaining	Violation of the Trade Union Act and ID Act

In some organisations, the above violations are primarily attributed to poor oversight or outdated HR practices, whereas some organisations believe in taking calculated risks by reducing cost, maintaining control, especially in industries reliant on vulnerable or low-wage labour.

Table 18: Impact of Labour Law Violations

The non-compliance might bring short-term financial gains; it carries significant long –term risks:

Legal Exposure	*Litigation, fines, and regulatory sanctions can result in financial and reputational loss*
Attrition	*Unfair and unsafe conditions often lead to high attrition and poor morale*
Reputational damage	*In the Digital age, it goes viral and is susceptible to media exposure, resulting in lowering brand credibility and increasing regulatory bodies' scrutiny on the organisation*
Cultural breakdown	*A workplace that builds on exploitation fosters distrust, disengagement and resistance as its culture*

2.9.2. POSH or ESG failure

In today's evolving business landscape, organisations often express a formal commitment to workplace equity and safety through policies like Prevention of Sexual Harassment (POSH) and Environmental, Social and Governance (ESG). These are no longer options but have become mandatory for the formal organisation set up. These frameworks guide organisations in operating responsibly, ethically, and sustainably, not just for profit but for people and the planet. A recurring form of organisational misconduct lies not in the absence of such policies, but in their poor implementation and deliberate ignorance.

When organisations fail to enforce these critical protections, the results are not only legal non-compliance but deep erosion of employee trust and psychological safety. POSH, for instance, is designed to prevent, prohibit, and redress sexual harassment in the workplace. Yet in many cases, it exists merely on paper- unsupported by awareness programs, inadequate internal committees or a lack of leadership's willingness to implement. Similarly, Equal Opportunity Policies lose their sheen when hiring, promotion, or disciplinary practices are influenced by bias, favouritism, or systemic exclusion. When the book was being written, the Government of Karnataka promulgated an ordinance to protect Gig workers called the Platform-based Gig Workers (Social Security and Welfare) Ordinance, 2025. The Act is the first of its kind in India, however, the exploitation of Gig workers has continued unabated for a decade, while the e-commerce industry has mushroomed. Many states and the Union Government have yet to take action to address the exploitation of workers through a regulatory framework.

These failures often stem from a combination of factors, such as lack of training, insufficient leadership commitment, and a fear of reputational harm that discourages reporting. In environments where the complaints are ignored or met with retaliation, employees learn to remain silent, and allowing a culture of misconduct to persist.

Beyond the legal risks and compliance failures, the absence of genuine enforcement of POSH or ESG frameworks conveys that the organisation does not truly respect values, safety, or fairness. True accountability requires more than policies; it demands consistent action, clear processes, and a culture where employees feel protected, heard, and respected. No regulations can bring equitable justice to workers unless the organisation genuinely thinks of factoring in the well-being of the employees and the customers.

2.9.3. Environment, Social Governance (ESG)

Misconduct becomes organisational when unethical practices are not just isolated, incidental, but systemic behaviours enabled or ignored by the leadership of the company. This is a true reflection of the values behind the brand. Some organisations tend to hoodwink innocent customers through their tall, scientifically unproven claims called “Greenwashing”. However, that category of misclaims may not fall under typical misconduct until it is proved by a regulatory body, and let’s leave it aside. Let’s bring out the brief of some notable cases, that clarify the misconduct about ESG, as under:

- **Orissa Mining Corporation v. Ministry of Environment & Forest & Others (2013)**[5]

  The Hon’ble Supreme Court ruled that the rights of tribal communities under the Forest Rights Act, 2006, must be upheld. The case centered on the proposed bauxite mining in the Niyamgiri Hills by Vedanta Resources. The Court emphasised the role of Gram Sabhas (village assemblies) in safeguarding the customary and religious rights of Scheduled Tribes and other Traditional Forest Dwellers. The decision highlighted the importance of community consent in projects affecting indigenous lands.

[5] WRIT PETITION (CIVIL) NO. 180 OF 2011

- **M.C. Mehta v. Kamal Nath (1997)**[6]

  This case established the "Public Trust Doctrine" in Indian environmental law. The Court held that natural resources like rivers and forests are held by the government in trust for the public and cannot be leased or sold for private use if it harms the environment. The case involved the leasing of forest land to a private motel, which led to ecological damage. The Court ordered the lease to be cancelled and the area to be restored.

- **Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1988)**[7]

  First environmental case heard by the Supreme Court of India. The Court ordered the closure of limestone quarries in the Doon Valley, recognising the environmental degradation caused by unregulated mining. The judgment emphasised the need to balance ecological preservation with industrial development.

- **Hanuman Laxman Aroskar v. Union of India (2019[8])**

  The Hon'ble Supreme Court suspended the environmental clearance granted for the Mopa Airport project in Goa, citing deficiencies in the Environmental Impact Assessment (EIA) process. The judgment underscored the necessity for transparency and thorough environmental assessments in large infrastructure projects.

2.10. Unfair Labour Practices

When management misuses its authority to intimidate, suppress, or retaliate against workers who exercise their legal rights, the misconduct is not individual, but it is an organisational misconduct. Such a type of authoritative malpractice not only erodes the trust & confidence within the workforce but also reflects systemic failures in governance, ethics, and culture as well.

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[6] (1997)1SCC 388
[7] Writ Petition no. 8209
[8] (2019)15 SCC 401

Unfair labour practices by the management of the organisation reflect deeper issues within an organisation's culture and leadership. These are not just isolated HR issues—they are indicative of a deep-rooted problem which violates legal protections and undermines workers' rights. When such practices are tolerated, encouraged, or institutionalised, they amount to organisational failure in governance and ethical responsibility.

"Labour rights are not a privilege- they are a legal and ethical foundation of any organisation, when ignored, the cost is paid in lawsuits, strikes and broken cultures."

Indian law—specifically the Industrial Disputes Act, 1947 (Schedule V)—unfair labour practices by employers may include:

- Interfering with employees' right to unionise
- Discriminating against workers for union activity
- Terminating or demoting employees for raising grievances
- Creating an atmosphere of fear or retaliation in the workplace
- Deliberately withholding wages or benefits

These actions, especially when repeated or unaddressed, move beyond poor management and enter the realm of deliberate misconduct.

Unfair Labour Practices by Employers: Some Reflections through Case Laws

- **Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union (1999[9])**

  The Hon'ble Supreme Court held that the employer's refusal to negotiate with a registered union, while favouring a non-recognised one, constituted an unfair labour practice. The judgment emphasised that bypassing legitimate worker representation is a breach of industrial democracy and fairness. It is a typical example of union suppression and silencing the collective voice.

[9] AIR 1999 SUPREME COURT 401

- **Cipla Ltd. v. Maharashtra General Kamgar Union (2001[10])**

  "Cipla" a Pharmaceutical Company, was found guilty of unfair labour practices by transferring union leaders to remote locations to break union strength. The Court ruled that transfers intended to weaken collective bargaining were a violation of worker rights. This is a glaring example of how employers use structural power to silence organised efforts. In fact, such types of malpractices are not only a violation of labour rights but raises red flag for governance failure.

- **Hindustan Lever Ltd. v. Maharashtra General Kamgar Union (1994)**

  HLL was found to have intentionally sidelined union-affiliated employees in promotions and transfers. The Bombay High Court stated that such specific targeting is discriminatory and violates both natural justice and labour law.

- **Transport & Dock Workers' Union v. Mumbai Port Trust (2011[11])**

  The employer was accused of avoiding negotiation and delaying recognition of the workers' union. The Bombay High Court held that such conduct delayed justice and violated the principles of fair representation under labour laws.

- **Wage Denial and Contract Exploitation Case Example LIC v. DJ Bahadur (1981[12])**

  In this case unilateral withdrawal of negotiated benefits, and the Hon'ble Supreme Court upheld the workers' rights and struck down the orders of the management.

The above practices are clearly a reflection of both legal violations and ethical failures.

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[10] AIR 2001 SUPREME COURT 1165
11 S.L.P.(C) No.4391 of 2010)
[12] 1981 SCR (1)1083

2.11. Retaliatory actions and gagging dissent

"If people are afraid to speak, the culture is already broken. Retaliation does not protect leadership- it protects wrongdoing."

*Retaliation: "*A Strategy masquerading as Policy". The retaliation against employees for speaking up is one of the most corrosive forms of misconduct. It is not always loud or known to a wider section. It often wears the disguise of policy, HR decisions or sudden restructuring. The impact thereof is silent and broken trust.

The Legal Lens: A Subtle Breach of Rights

While India's labour laws (including the Industrial Disputes Act and Whistleblowers Protection Act) offer some protections, retaliatory practices often slip through procedural cracks. Internal Committees (IC), Grievance Redressal Officers, and Labour Commissioners are only as effective as the organisation's intent.

When retaliation becomes normalised, it signals not just a breach of individual rights, but an institutional betrayal of law and ethics.

2.12. Organisational Culture and ESG Failure

Suppressing dissent doesn't just break laws, but also breaks the culture. It tells employees: "Compliance matters more than conscience."

For investors, regulators, and society, a gagged workforce is a red flag. It indicates governance failures and potential ESG (Environmental, Social, Governance) risks.

"The real scandal isn't just the incident—it's the retaliation that follows."

Gagging dissent is not limited to firing while blowers. Its inter-alia includes:

- Demoting or transferring employees who stand against the unethical practices
- Excluding individuals from key projects or promotions;
- Issuing legal threats or defamation notices against internal critics;

- Forcing confidentiality agreements to suppress workplace realities- greenwashing organisations tend to do it brazenly.
- **Weak Whistleblower Protection:** While Indian law (Companies Act, 2013, and SEBI regulations) mandates a vigil mechanism for reporting concerns, the implementation is often left to the company's discretion, leading to inconsistent protection for whistleblowers. Definitions of "victimisation" and procedures for complaint handling are vague, making employees wary of retaliation.
- **Fear of Retaliation:** Employees exposing greenwashing risk face professional consequences such as discrimination, harassment, or termination. Notable whistleblowers in India have faced severe repercussions, including being maligned, harassed, or even facing threats to their safety.
- **Lack of Anonymity:** Existing frameworks do not ensure anonymity. Whistleblowers must often reveal their identity when lodging complaints, exposing them to further risk.

2.13. Cultural and Organisational Pressure:

Many companies emphasise compliance on paper but discourage dissent in practice. Employees may be pressured to remain silent or complicit, especially if senior management is involved in greenwashing or if the company's reputation is at stake. ***Why is it a red flag?***

When dissent is gagged, it sends one message across the violence: ***"Speak up, and you are out".***

This kills innovation, trust, and ethical behaviour. It signals a toxic culture that prioritises obedience over accountability. This limits the growth of the organisation through its employees' contributions in terms of innovations!

2.13.1 Legal Risk Snapshots

Under Indian law**:**

- Retaliation against whistleblowers may fall under the **Whistleblowers Protection Act,** which is meant for public servants, but there is a provision in **Section 177 of the Companies Act, 2013**, which mandates certain companies to establish a **vigil mechanism** or **whistleblower policy.**

- Punitive actions for union involvement or grievance redressal are unfair labour practices (**Industrial Disputes Ac**t, Schedule V).
- Courts have held that transfers or demotions intended to suppress voice or union activity are illegal.

2.13.2. Steps to be taken by Organisations

- Build real feedback channels – it should be real and not formal under the supervision of an independent person and protection.
- Train leaders on retaliation impacts- many organisations do not realise how subtle actions can be
- Audit grievance outcomes- analyse patterns of demotions, exits or transfers post-complaints.
- Protection of whistleblowers' activity – Not just on paper, but it must be in actual practice
- Make dissent normal- the goal is not silence. It is a safe and conducive environment to speak.

2.14. Lack of internal escalation mechanisms

Misconduct within organisations often stems from the absence of robust internal escalation mechanisms. Without clear pathways for reporting and resolving issues, unethical behaviour can persist, eroding trust and organisational integrity

Symptoms of a missing or broken escalation mechanism:

- No independent grievance set up or ombudsperson in the organisation;
- HR routes every complaint back to the same manager; violation of principles of natural justice
- Policies exist on paper, but nothing in actual practice, and a lack of commitment by the organisation
- Employees don’t know how or where to escalate
- Escalations are quietly buried or redirected without resolution

2.14.1. Addressing Misconduct Through Effective Escalation Mechanisms

Effective escalation systems are essential for fostering accountability and transparency. These mechanisms should include:

1. **Clear Reporting Channels**: Employees must have access to straightforward and confidential ways to report concerns.
2. **Impartial Investigations**: Ensuring that all reports are handled objectively and without bias.
3. **Defined Consequences**: Establishing consistent and fair repercussions for misconduct.
4. **Supportive Culture**: Encouraging open communication and protecting whistleblowers from retaliation.

By implementing these elements, organisations can create an environment where misconduct is addressed promptly and effectively, safeguarding their reputation and fostering a culture of trust.

2.14.2. Action Points for Organisations

1. Define escalation paths clearly and a roadmap, right from team-level issues to board-level ethics complaints
2. Create independent oversight – Involve legal, ethics, or external advisers
3. Set timelines – Every grievance should have SLAs for investigation and closure
4. Train employees – Not just what to report, but how and where to escalate
5. Track and audit outcomes – Escalation isn’t the end—resolution is
6. It should be in the form of a docket readily available to the employees

2.14.3. Red Flags You Can Spot

1. The same manager or HR head handles all complaints—no escalation possible (no one can be a judge for their own cause)
2. Escalations disappear without a written response or investigation
3. Employees are unaware of reporting channels or don’t trust them
4. No documentation or transparency in outcomes

Fig: 6: Managing Employees' Indiscipline

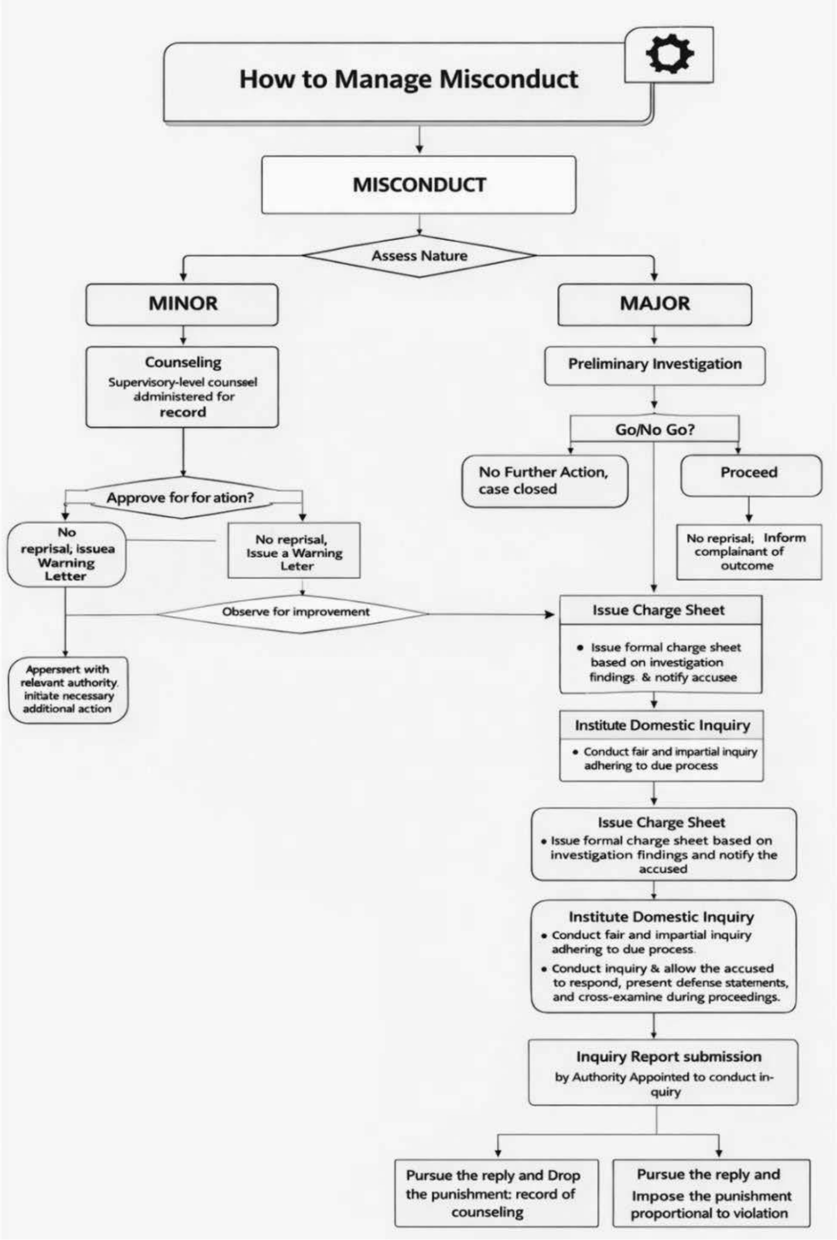


Table 19: Addressing Misconduct – Practical Approach

Step	Description	Key Actions/Tools	Stakeholders Involved	Legal/Best Practice Reference
1. Spotting Early Signs	Identify subtle behavioural changes or policy deviations that may signal misconduct.	- Observe and document patterns - Conduct informal check-ins - Early coaching conversations	Managers, HR	Standing Orders, under the Industrial Relation Code 2020
2. Preliminary Fact-Finding	Gather initial facts discreetly before any formal action.	- Interview witnesses informally - Review documents, emails, logs - Avoid assumptions	HR, Managers	Principles of Natural Justice
3. Ensuring Confidentiality & Fairness	Maintain privacy and impartiality for all parties during the process.	- Limit info to need-to-know - Caution against gossip - Offer support resources	HR, Legal	POSH Act, ID Act, Company Policy
4. Formal Investigation	Initiate a formal inquiry if facts warrant further action.	- Issue a show-cause notice - Appoint an inquiry officer/committee - Collect and preserve evidence	HR, Legal, Inquiry Officer	Domestic Inquiry Guidelines, ID Act
5. Multi-Stakeholder Involvement	Ensure all relevant functions contribute to a lawful and fair process.	- Form a working group (HR, Legal, Compliance, Manager) - Clarify roles and responsibilities	HR, Legal, Compliance, Manager	Company Policy, Labour Law

Step	Description	Key Actions/Tools	Stakeholders Involved	Legal/Best Practice Reference
6. Conducting Domestic Inquiry	Follow due process as per principles of natural justice and organisational rules.	- Provide a charge sheet to the employee - Allow opportunity to respond - Conduct an unbiased hearing	Inquiry Officer, HR, Legal	Supreme Court Guidelines, ID Act
7. Decision and Disciplinary Action	Decide on proportionate action based on findings and policy.	- Document findings - Apply progressive discipline - Communicate the decision formally	Disciplinary Authority, HR	Standing Orders/ Company Policy
8. Communication & Documentation	Ensure transparent, timely, and clear communication; maintain records.	- Issue formal letters - Update personnel files - Record all proceedings	HR, Legal	Best HR/Labour Law Practices
9. Appeal and Review	Allow for employee appeal or review as per policy and law.	Provide an appeal mechanism Review by the higher authority if requested	Appellate Authority, HR, Legal	ID Act, Company Policy
10. Post-Action Monitoring & Support	Monitor for retaliation, recurrence, or morale impact; support involved parties.	Follow up with teams Offer counselling Re-train as needed	HR, Managers	Best HR Practice, POSH Act

1. At every stage, ensure adherence to the principles of natural justice: no bias, fair hearing, and reasoned decision-making.
2. Align actions with the Industrial Relations Code2020, Standing Orders, POSH Act, and company-specific policies.

   Documentation and consistency are critical to withstand legal scrutiny and build organisational trust.

Key Takeaway:
Addressing misconduct requires proactive identification, fair investigation, and a multi-stakeholder approach involving HR, legal, and management.

Reflective Questions:

- What early warning signs of misconduct are present in your organisation?
- How does your organisation distinguish between misconduct and performance issues?

MISCOUDUCT – FREQUENTLY ASKED QUESTIONS (FAQS)

1. What should we do if an employee is arrested and in police custody?
   A. Place the employee under suspension (if applicable), verify facts, and await legal developments. Internal action can proceed based on misconduct and company policy.
2. What if an employee is involved in a civil case (personal dispute)?
   A. No action is required unless it affects work, company reputation, or creates a conflict of interest.
3. What if two employees fight outside the office premises after working hours?
   A. If it impacts workplace harmony or safety, it can still be treated as misconduct and investigated.
4. What if an employee comes to work under the influence of alcohol?
   A. Remove from duty immediately for safety. Proceed with disciplinary action after due process.

5. What kind of misconduct justifies suspension pending inquiry?
   A. Serious cases like violence, fraud, harassment, theft, or risk of influencing witnesses/evidence.
6. What if misconduct is not listed in Standing Orders or policy?
   A. Action can still be taken if it is a serious breach of trust, integrity, or discipline—but must be justified carefully.
7. What if an employee uses abusive language against a manager?
   A. Treat as misconduct, document the incident, and proceed with appropriate disciplinary action.
8. What if an employee is found working elsewhere while on leave?

   A. Investigate. If proven, it may amount to misconduct or breach of trust.
9. What if an employee misrepresents qualifications or experience?
   A. If established, it is serious misconduct and may lead to termination.
10. What if an employee posts negative comments about the company on social media?

    A. Review impact. If it damages reputation or violates policy, disciplinary action may be taken.
11. Is breach of confidentiality misconduct?

    A. Yes. Sharing trade secrets or sensitive data without authorization justifies disciplinary action.
12. Is political activity at the workplace misconduct?

    A. Engaging in disruptive political activity during duty hours or using company resources for it is misconduct.
13. Can refusal to work overtime be misconduct?

    A. If overtime is lawful and contractually required/ reference in certified standing orders, refusal may be misconduct; otherwise, not.
14. Whether the Standing Order will apply to MSME or where the workmen are less than 300?

    Answer: **MSMEs below 300 workers are exempt** from process of certifying own standing orders under the Code.

2.15. FAQs on Charge-sheet

1. What is the purpose of a charge-sheet?

   A. To inform the employee of specific allegations and give an adequate opportunity to defend. Charges must be clear, precise, and easy to understand.

2. What should be the language of a charge-sheet?

   A. It must be in a language the employee understands. If issued in English, a vernacular translation should be provided along with it or on request.

3. What if the charge sheet is already issued in English and the employee later requests a translation?

   A. Provide a translated version and allow reasonable additional time for the employee to respond.

4. Is it mandatory to issue the charge sheet only in the local language?

   A. Not necessarily. However, it must be in a language understood by the employee. Providing a translation is a good practice where needed.

5. What if the employee claims they do not understand the language after receiving the charge sheet?

   A. Assess the genuineness. If reasonable, provide translation to avoid procedural challenges later.

6. What if translation causes delay in the process?

   A. Reasonable delay is acceptable to ensure fairness. Document the reason for delay.

7. What if the employee refuses to acknowledge even after translation is provided?

   A. Record the refusal and proceed. The obligation is to provide a fair opportunity, not to ensure acceptance.

A. MISCONDUCT - GEN Z AND SOCIAL MEDIA ERA - FAQs

1. What if the employee is earning significant income through Social media activities? viz YouTube, Insta, Facebook reels,
   A. Income level alone is not the issue. Focus on conflict of interest, performance, and policy compliance. Disclosure by the employee is mandatory.

2. What if the employee runs the channel during working hours?
   A. This can be treated as misconduct due to misuse of time and possible neglect of duties.

3. What if company premises or assets are used for content creation?
   A. This may amount to misuse of company property unless prior approval is taken.

4. What if the content indirectly refers to the company or workplace?
   A. Assess reputational risk. If it affects the organization negatively, it may require intervention.

5. What if the employee shares work-related experiences online?
   A. If no confidential or sensitive information is disclosed, it may be acceptable. Otherwise, it is a serious concern.

6. What if the employee promotes competing products or services?
   A. This may amount to a conflict of interest and should be reviewed carefully.

7. What if the employee becomes popular and it starts affecting team dynamics or work focus?
   A. Address from a performance and workplace conduct perspective, not popularity.

8. Should all such cases lead to disciplinary action?
   A. No. Many can be resolved through guidance, policy clarity, and setting expectations.

9. What if an employee openly criticizes the company on social media?
   A. Any disrepute to the company is tantamount to a violation of policy and warrants disciplinary action.

10. What if an employee discloses himself/herself as working for the company in their online content?
    A. Ensure that one should not misrepresent the organization or share confidential information.

11. What if workplace incidents are shared online (videos, reels, etc.)?
    A. This can be a serious concern, especially if it exposes internal matters. Investigate and take action if policies are breached.

B. SIDE HUSTLES & MULTIPLE INCOME SOURCES

12. What if an employee is running a side business or freelancing?
    A. Check for conflict of interest, impact on performance, and policy compliance. Not all side activities are misconduct. Disclosure is mandatory.

13. What if the employee is working for another employer simultaneously (moonlighting)?
    A. If not permitted by policy or contract, it may amount to misconduct.

C. AI & USE OF TECHNOLOGY

14. What if an employee uses AI tools (like ChatGPT) to complete work?

    A. Generally acceptable, provided confidentiality is maintained and output is reviewed responsibly.

15. What if confidential company data is shared with AI tools?

    A. This is a serious breach of confidentiality and should be treated as misconduct.

16. What if employees rely heavily on AI without applying judgment?

    A. Guide and train employees on responsible use rather than treating it immediately as misconduct.

17. What if employees use company devices for personal content creation?

    A. This may amount to misuse of company resources and warrant disciplinary action.

18. What if internal chats or emails are shared externally?

    A. This is a breach of confidentiality and warrants strict action post-investigation.

MISCONDUCT – Suggested Sample Formats

FORMAT 1: PRELIMINARY FACT-FINDING NOTE (INTERNAL)

Context

Before initiating formal disciplinary action, it is important to conduct a basic fact-finding exercise to understand the situation. This helps avoid premature conclusions and ensures that any action taken is based on reasonable grounds.

This note is for internal use only and should remain objective, factual, and free from conclusions of guilt.

Sample Format - Preliminary Fact-Finding Note

Date:
Prepared by:

1. Background of the Matter
   Brief description of how the issue came to notice (complaint, observation, escalation, etc.)

2. Persons Involved
   Names and roles of individuals connected to the matter

3. Summary of Facts Gathered
   Objective summary of information available at this stage (e.g., documents reviewed, initial discussions, timelines)

4. Documents / Inputs Reviewed
   List any relevant records (emails, attendance logs, reports, etc.)

5. Observations (Without Conclusion)
   Highlight any inconsistencies or concerns noted, without arriving at a finding

6. Recommended Next Steps

- No action required / Monitor
- Seek clarification from the employee
- Issue Show Cause Notice
- Initiate formal disciplinary process

Key Considerations

- Avoid language that suggests guilt or misconduct is established
- Focus only on facts available at the time, not assumptions
- Keep the note confidential and limited in circulation
- Ensure consistency in approach across similar cases

Disclaimer

This format is illustrative and intended for internal guidance. The scope and depth of fact-finding may vary depending on the nature and seriousness of the matter.

FORMAT 2: SHOW CAUSE NOTICE

Context

A Show Cause Notice is issued when there is a need to seek an explanation from an employee regarding specific actions or behaviour. It is a critical step to ensure principles of natural justice, giving the employee an opportunity to respond before any decision is taken.

Sample Format
[On Company Letterhead]

Date:

To,
[Employee Name]
[Designation]

Subject: Show Cause Notice

Dear [Employee Name],

It has been observed that on [date / period], you were involved in the following matter:

[Clearly describe the incident with specific details—what happened, when, and where. Avoid vague or general statements.]

The above, if established, may be inconsistent with the expected standards of conduct as outlined in the Company's policies.

You are hereby requested to submit your explanation on the above matter within [X] days from receipt of this notice, explaining why appropriate action should not be taken.

Your response will be considered before any further decision is made.

In case we do not receive your response within the stipulated time, the matter may be reviewed based on available information.

If you require any clarification, you may reach out to the HR department.

For [Company Name]
[Name]
[Designation]

Key Considerations

- Clearly state facts, not conclusions
- Avoid accusatory or emotional language
- Provide a reasonable time for response
- Ensure the issue is described with sufficient clarity and specificity
- Maintain consistency in tone across cases

✓ (The delinquent employee is expected to provide detailed explanations to your show cause letter. However, if the employee approaches HR dept for any guidance to respond, as a guidance format extend the FORMAT 3 for assistance.)

FORMAT 3: EMPLOYEE RESPONSE TO SHOW CAUSE (GUIDANCE FORMAT)

Context

Employees are often unsure how to respond to a Show Cause Notice. Providing a simple structure (without prescribing content) can help ensure responses are clear, relevant, and respectful, aiding fair evaluation.

Sample Format (Guidance Only)

Date:

To,
[Authority / HR]

Subject: Response to Show Cause Notice dated [Date]

Dear [Name],

I refer to the Show Cause Notice issued to me dated [date].

I would like to submit the following in response:

1. My Understanding of the Matter
   [Briefly restate the issue as understood]
2. My Explanation
   [Provide explanation, context, or clarification]
3. Supporting Information (if any)
   [Mention any documents or facts supporting the explanation]
4. Closing Statement
   I request that my response be considered, and I remain available for any further clarification.

Employee Name
Signature (if applicable)

Key Considerations

- Encourage clarity and honesty in responses
- Avoid overly defensive or irrelevant content
- Ensure employees feel safe to present their version
- HR should evaluate responses objectively and without bias

FORMAT 1: CHARGE SHEET

Context

A Charge Sheet is a formal document issued to an employee outlining the specific allegations of misconduct. It marks the beginning of formal disciplinary proceedings and must clearly state the charges without ambiguity or pre-judgment.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]
[Designation]

Subject: Charge Sheet

Dear [Employee Name],

It has been reported that you were involved in the following acts:

Charge 1:
[Clearly describe the incident with date, time, place, and specific actions]

Charge 2 (if applicable):
[Details]

The above actions, if established, would constitute misconduct under the Company's policies, including but not limited to [mention relevant clause/policy].

You are hereby required to submit your written explanation within [X] days from receipt of this Charge Sheet.

If your explanation is not found satisfactory, the Company may initiate a Domestic Inquiry, where you will be given an opportunity to present your case.

In case no response is received within the stipulated time, the matter may be proceeded with based on available information.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Charges must be specific and fact-based, not vague
- Avoid combining multiple issues into a single charge
- Do not indicate guilt or conclusion
- Ensure alignment with company policy definitions of misconduct
- Maintain a neutral and formal tone

FORMAT 2: SUSPENSION PENDING INQUIRY

Context

Suspension is not a punishment but a temporary measure used when the presence of the employee may affect the inquiry process. It should be used cautiously and only when necessary.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Suspension Pending Inquiry

Dear [Employee Name],

In connection with the disciplinary proceedings initiated against you vide Charge Sheet dated [date], the Company is of the view that your presence at the workplace may not be appropriate during the course of the inquiry.

Accordingly, you are hereby placed under suspension with effect from [date], pending completion of the inquiry.

During this period:

- You are required to be available for the inquiry proceedings as and when called upon
- You shall not enter the workplace premises without prior approval
- You will be entitled to a subsistence allowance as per applicable rules/policy

This suspension is a temporary measure and does not imply any conclusion regarding the charges.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Use suspension only when justified (risk of influence, tampering, etc.)
- Clearly state that it is not punitive
- Follow applicable laws regarding subsistence allowance
- Avoid prolonged suspension without progress in inquiry

In government services suspending an employee on the last day of his service especially on the day of superannuation is a trend. All along decades his/ her work the superiors do not find any reason to question the conduct, whereas hours before the employee being felicitated by colleagues a terse message handed over saying that you are being suspended forthwith for alleged violations; a detailed charge memo will be served to you in the due course and on seeking your explanation, a proper departmental enquiry will be held.

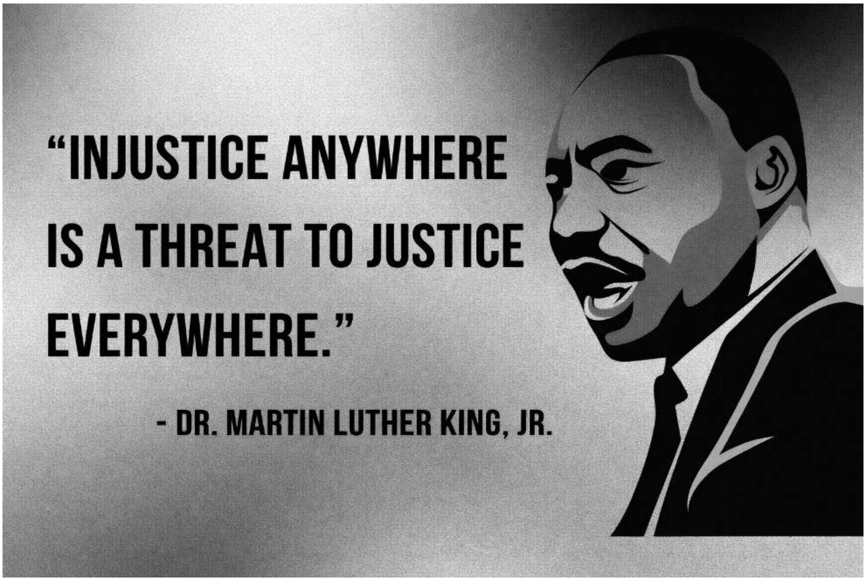
Refer the case of **K Saravanan Vs The joint director of school education (Personnel) (W.P (MD) No.26571 of 2022 decided on April 26, 2024, The Madras High Court** Held that placing an employee Under suspension on exact date of Superannuation Or on the verge of retirement and withholding the retirement is invalid And Impermissible when based on delayed or long-standing allegations.

Indian Courts have repeatedly held once an employee's resignation is accepted and the Employer- Employee relationship has come to an end; the employer cannot initiate new discipline proceedings or show cause Notice / charge memo unless specific statutory rules permit.

If an employer receives a resignation, they have two Choices: Accept it or withhold / Refuse acceptance if there an intend initiate disciplinary action. (Both in writing within the notice period)

Having accepted the resignation without reserving the right to take action under relevant service rules, the employer cannot later turn around and show Notice or charge it for alleged pass misconduct.

A large organization should have a NOC or clearance before relieving a resigned employee procedure should speak about it to avoid any pitfalls!


"INJUSTICE ANYWHERE
IS A THREAT TO JUSTICE
EVERYWHERE."
- DR. MARTIN LUTHER KING, JR.

Chapter 3

Domestic Inquiry

"Vocate, Interrogate, and then adjudicate". Justice Krishna Iyer

3.1. Domestic Inquiry – A Practical Guide to Fair Disciplinary Investigation

3.1.1 Discipline is the foundation of a productive workplace.

It's not about punishment—it's about building self-control, responsibility, and professionalism. A disciplined team works efficiently, collaborates smoothly, and drives success.

Discipline sets clear standards for behaviour and performance. Without it, organisations face confusion, delays, and lost trust. It's more than rules—it's what keeps order and integrity intact.

Managers play a key role in maintaining discipline. Their goal isn't just to enforce consequences but to foster a culture of respect, accountability, and shared values. When applied fairly, discipline prevents misconduct and strengthens the organisation**.**

No organisation can succeed without discipline:

When discipline is lacking, problems like absenteeism, low productivity, strikes, and disruptions can arise, threatening stability. Dealing with such issues needs careful planning, as each case is different. A clear and fair disciplinary process helps maintain order, ensures consistency, and supports long-term success.

3.2. Domestic Inquiry in Handling Misconduct

3.2.1. Definition of Domestic Inquiry

The word "**Domestic**" is a construct from the Latin word "**Domus,**" which means **"in-house"** and "Inquiry" means investigation/ examination of facts or ascertaining and/or asking, "search for truth" by asking questions like how, why, where, etc.

It is an Inquiry held by an employer against its delinquent employee for certain allegations of misconduct, which is called "**Domestic Inquiry**" or "**Departmental Inquiry**", which is an internal investigation.

In a catena of cases, the Hon'ble Supreme Court has emphasised the importance of proper Inquiry. **It should not be an empty formality** and an *employer cannot punish its employee for the act(s) of misconduct without proving the charges levelled against him and also without affording him an opportunity to defend himself in the domestic Inquiry process.*

'Domestic Inquiry' has no relevance to the master and servant, in the context of the philosophy of laissez-faire, which was holding the field before the industrial revolution; then the master had absolute unregulated power of 'hire and fire'. The master was the absolute judge, and he was answerable to the courts under common law. In the event of any action for damages brought against him by the employee, and that scanned under the law of contract only.

Post Industrial Revolution, and with the emergence of Trade Union movements & social welfare, the employer-employee relations have surfaced. Therefore, the employer's right to hold the Domestic Inquiry against the delinquent employee for committing misconduct still exists. Gradually, through courts' precedents and guidelines for the process of disciplinary action developed, which requires that the *employer shall conduct a domestic Inquiry in compliance with the* **"principles of natural justice".**

3.2.2. Purpose of Domestic Inquiry

The Hon'ble Supreme Court of India has held that '**Conducting of domestic Inquiry is mandatory**' before taking disciplinary action against a workman in the matter of *Chamoli District Co-operative Bank Ltd vs. Raghunath Singh Rana & Ors*[13]

A domestic Inquiry is an in-house process conducted to investigate and determine the veracity of the allegations against an employee. Domestic Inquiry ensures that both the employer and the employee be given a fair opportunity to present their case. *Holding a domestic inquiry is not in accordance with the court of law* and therefore *is not bound by the*

[13] AIR 2016 SC2510

technical rules of procedure as laid down in the Standard of Business Conduct of the organisation, the Evidence Act, and the Limitation Act.

Even though **there is no prescribed procedure laid down in labour legislation**, *it is mandatory to meet principles of natural justice,* i.e., the authority who is holding an Inquiry is expected to *act fairly and to follow well-established principles of natural justice* & *ensure fair play* in the process. The mandate to conduct a 'Domestic Inquiry' has *evolved through judicial precedents, and courts have affirmed the guidelines* surrounding the compliance of natural justice, yet it is an evolving & progressing process, and new case laws are bound to come in consonance with the advent of new laws & techniques.

Under the Industrial Relations Code 2020 workplaces processes are governed by the provisions on the Model Standing Orders (Section 28-39) and grievance redressal mechanisms (Section 4). There is also the mechanism of handling disciplinary action, not defined separately but must follow statutory procedures and natural justice principles to be legally valid. Therefore, under the Industrial Relations Code, 2020, disciplinary proceedings are not separately defined as a standalone concept, but they are embedded within statutory provisions governing grievance redressal, standing orders, and conditions of service. The Code mandates that disciplinary actions must comply with certified standing orders and principles of natural justice, ensuring fair inquiry before imposing penalties.

Domestic Inquiry is an in-house investigation initiated against the workman who committed an act(s) of indiscipline and violated the rules and regulations of the employer, thus committed misconduct during the course of employment, which needs investigation. The process of investigation is initiated by the management within the framework of procedures and guidelines developed over the period of time by the courts to ensure fair play and impartiality.

In case the Domestic Inquiry is not held in accordance with the principles of natural justice, it provides a valid ground for an employee to move before the labour tribunal for setting aside the findings of the Domestic Inquiry under the Industrial Disputes Act, 1947 (ID Act).

Under the ID Act, "industrial dispute means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Although the provisions about the Domestic Inquiry and remedial measures relating thereto are not specifically stipulated in the ID Act. However, the ID Act requires that the worker has the right to be heard impartially before initiating the action of dismissal against him. Therefore, in case of an improper domestic inquiry, a workman may move an application to the labour court/tribunal for adjudication of the dispute. The said application must be submitted to the appropriate authority within a period of three years from the date of termination of employment.

Section 11A was incorporated in the ID Act in 1971, which provides broad powers to labour courts, tribunals, and national tribunals to adjudicate over the discharge or dismissal of workmen, if it is satisfied that the order was not justified. In case the worker is dismissed without a proper inquiry, then Section 11A of the ID Act empowers the Labour Courts and Tribunals to provide appropriate relief in case a workman is discharged or dismissed from service. In this context, the Hon'ble Supreme Court in the matter of Workmen of M/s. Firestone Tyre and Rubber Co. of India v. Management & Ors.14 had whilst explaining the Section 11A held inter alia as under:

> If a domestic Inquiry has been held and a finding of misconduct is recorded, the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. However, where the Inquiry is found to be defective, *the employer can lead evidence to prove misconduct* before the authority.
>
> If an employer has not conducted an inquiry or if the inquiry conducted is deficient, the Tribunal can only be *satisfied that the order is legitimate if it allows the employer and employee to bring evidence before it.* It is the employer's responsibility to adduce/present evidence for the first time explaining his action, and it is the employee's responsibility to adduce evidence in opposition.

[14] 1976 (3) SCC 819

The Court further stated that if an employer does not hold an investigation, *the Tribunal will not be required to consider anything other than whether there is a prima facie case. The Court will render an opinion on the merits of the contested dismissal order and the evidence presented before it*, determining whether the alleged misbehaviour is proven or not.

If no inquiry has been held or if the employer's investigation is determined to be deficient in justifying the action, the Tribunal can obtain jurisdiction to review the evidence presented to it for the first time only.

An improper or defective or even no inquiry into the alleged misconduct of a workman does not per se render adverse action against the workman illegal, but a properly conducted domestic inquiry justifies the action of the employer. The Hon'ble Supreme Court, on various occasions, insisted on a proper Inquiry in accordance with the standing orders and the compliance of principles of natural justice in the Inquiry process; it mitigates the risks of being called an arbitrary or mala fide action by the employer. Domestic Inquiry is a very serious affair as the reputation, livelihood, and social value of the employee are at stake, therefore, it must not be a mere formality, which means that the employee must not be prejudged and his sentence pre-determined with the inquiry, else it raises aspersion on the employer.

Let us remember that the process of disciplining is not to go with canon to kill a mosquito, but to be benign with thoughtfulness to make an employee realise how his conduct affects others and the organisation.

3.2.3. Legal & ethical importance (natural justice, employee rights)

Natural Justice is a fundamental concept in legal and administrative systems across the universe, embedded with the idea of fairness, equity, and reasonableness. The Rules of Natural Justice have developed with the growth of civilisation, and the content thereof is often considered as an appropriate measure of the level of civilisation and the Rule of Law prevailing in the community.

The natural justice is of 'higher law of nature' where lion and lamb lie down together and the tiger frisks with antelope[2]. Thus, it implies fairness, reasonableness, equity, and equality, which are free from biases.

The "Principle" means a rule for good "norm or standard" based on what a person believes is right, and the word "Natural" denotes discovered in nature, but compilation of ideas naturally (by virtue of common sense) in a peculiar situation or circumstances. "Justice" connotes just and reasonable, which means righteousness/ fairness/ integrity and logical acceptability in a particular situation.

The principles of natural justice relate to reasonable judgment, irrespective of whether part of any regulation or not. Natural Justice is a common law concept that provides minimum requirements of procedural fairness, and it is the common law counterpart of the American "procedural due process". It has different connotations in different contexts. ***Natural justice*** *is a humanising principle envisioned* ***to prevent mischievousness and unfairness*** *to someone by the managing authorities.*

One of the prominent rules of natural justice is the rule against bias, whereas **"bias"** *is the predetermination of mind against someone for deciding an issue illogically and simply brushing aside all the logic and evidence irrationally.* **"Bias"** also means an *operative prejudice, whether conscious or unconscious, in relation to an issue or party.* As per Black's Dictionary*, bias is a condition of mind, that influences judgment* and *renders a judge unable to exercise his function impartially in the given case*. Therefore, if a person, for whatever reason, cannot take an objective decision based on evidence on record, he shall be said to be biased.

The very concise and yet powerful golden line of Lord Evershed M.R. is appropriate to the concept of natural justice as "*the Principles of Natural Justice are easy to proclaim, but their precise extent is far less easy to define*". It has been stated that there is **no single definition of Natural Justice, and it is only possible to enumerate with some firmness of the main principles**.

A. Constitutional concept & Natural Justice

Natural Justice is not defined anywhere, yet the exercise of jurisdiction by the courts in India is not something extra-constitutional. *The principle of natural justice is firmly grounded in Articles 14 and 21 of the Constitution.*

The concept of substantive and procedural due process is embedded in Article 21 of the Constitution, as all fairness, which is included in the principles of natural justice, can be read into Article 21 when a person is deprived of his life and personal liberty. Article 14 applies not only to discriminatory class legislation but also to arbitrary or discriminatory actions. Therefore, the principles of natural justice cannot be wholly disregarded by law and are grounded in the Constitution. The Hon'ble Justice Krishna Iyer has defined in the case of a departmental inquiry as **"*Vocate, Interrogate, and then adjudicate*"**. It is a cardinal principle of law that no person can be held guilty unless the charges levelled against him are proved **after providing the person an opportunity to defend himself.** Though the concept of natural justice is not provided in the Indian Constitution, it is considered vital for administering justice.

The rules are neither equivalent to fundamental rights nor are they subordinate to contractual and statutory laws of the country; however, principles somewhat correlate to Articles 14 and 21 of the Constitution. The concept of substantive and procedural due process was introduced in Article 21 of the Constitution. The concept of "due process of law" embraces the fundamental conception of a fair trial with an opportunity to be heard.

The right to a fair hearing is a fundamental principle of natural justice. The principles of natural justice are, however applied when the law itself is silent and not inconsistent with what they provide. Nevertheless, the concept of natural justice cannot be limited to any precise definition. It is a natural, common instinct to decide right or wrong in a specific situation. It is not justice in the abstract or moral sense and is not even justice according to natural law.

B. Principles of Natural Justice

The principle of natural justice is an essential ingredient of fair-mindedness, integrity, reasonableness, neutrality, and equality in the proceedings. In the matter of *Siemens Engineering &*

Manufacturing Co. of India v. Union of India[15] the Hon'ble Supreme Court held that the necessity of giving reasons is an important & essential characteristic of natural justice, which is not only concerning quasi-judicial orders but also in relation to administrative orders, which affect the rights of the parties.

In other words, it may be termed as justice in natural form based on common sense, which has an innate quality of fairness. Its fundamental quality is to act in good faith without bias and provide a fair hearing whose interest may be affected by a decision before the decision is made, which means justice is not only done but seems to be done. Thus, the principles of *natural justice are essential for ensuring fairness and impartiality*.

These principles, which include the right to a fair hearing and the rule against bias, do not supplant the law but supplement it. In the famous case of Maneka Gandhi v. Union of India the Hon'ble Supreme Court of India broadened the scope of natural justice, stating that the principles of natural justice are party of Article 21 (Right to life and Personal liberty) of the constitution, in this case, the government impounded Maneka Gandhi's passport without providing an opportunity to be heard or reason, which was held to be against natural justice, in the said case the then Hon'ble Justice P.N. Bhagwati stated, "natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years, it has grown widely pervasive rule affecting large area of administration action".

C. The rules of natural justice 'are not cut and dried'. They vary infinitely.

The significance of "natural justice" came up for consideration before the Hon'ble Supreme Court in the matter of Swadeshi Cotton Mills v. UOI,[16] wherein the then Hon'ble Justice R S Sarkaria opined, "*The phrase is not capable of static and precise definition. It cannot be imprisoned in the straitjacket of cast-iron formulae. Historically, natural justice has been used in a way that*

[15] 1976 AIR 1785
[16] 1981 SCR (2) 533

implies the existence of moral principles of self-evident and unarguable truth." Therefore, it is flexible, which can be adopted, modified, or even excluded by statute and statutory rules as construed by the courts, which decide the matters based on the facts and circumstances of each case and in accordance to the rules applicable thereto.

D. Necessity of Principle of Natural Justice

The basic objective is to prevent the miscarriage of justice, and observance thereof is a logical requirement of fair play in action. Rules are formulated for ensuring fairness in decision-making, though it may be time-consuming, but mandatory procedural requirement; its non-observance nullifies the exercise of power. The doctrine of necessity is often invoked when a judge or other decision-maker has a conflict of interest or bias that would normally disqualify them from making a fair and impartial decision.

The doctrine of necessity is a narrow exception to the principles of natural justice. It is only applied in very limited circumstances with no other reasonable option available. The decision-maker must also ensure that the action taken is the least inquisitive and that the principles of natural justice are otherwise respected as far as possible.

The essence of justice lies in a fair hearing that is free from bias. It is not necessary to demonstrate the actual bias that existed; the mere appearance or possibility of bias will suffice. Justice should not be done, but should manifestly and undoubtedly be seen to be done.

The application of natural justice rules depends upon the facts and circumstances of the case. Whenever adherence to the principle of natural justice is contravened in a case, the court has to decide whether the process of natural justice was followed, and if the answer is affirmative, whether the exercise has been done truthfully whilst deciding the case.

The time and again through judicial pronouncements of various courts, including the Apex Court, stressed the compliance of the principle of natural justice with all fairness and have not given much tenacity to act judiciously. In the matter of D.K. Yadav v. J.M.A. Industries Limited[17] the Hon'ble Supreme Court stressed that the procedure must be just, fair, and reasonable for arriving at judicial pronouncements.

E. Practice of natural justice

The principles of natural justice are integral to both judicial and quasi-judicial proceedings. The principles of natural justice are applied in various contexts, including disciplinary actions and/or judicial reviews. They ensure that decisions affecting individuals' interests, rights or legitimate expectations are fairly met without any biases.

The essential principles of natural justice are that:

(1) The persons whose rights are to be affected must be given notice of the case of the charges which he is to meet

(2) he must be given an opportunity to make a representation and to explain the allegation made against him and to have his say in the matter; and

(3) the authority conducting the proceedings must not be biased and should act in good faith.

In concise, one **must know the charges**/allegations levelled against him and must provide **an opportunity for leading the defence against said allegations**. Nobody should be condemned unheard. The deciding authority must be impartial and must provide reasons whilst inflicting the judgment.

[17] 1993 SCR (3) 930

The rules of natural justice have been laid down by various courts & fora in order to protect the rights of the individual against arbitrary procedures which may be comprised by judicial, quasi-judicial and administrative authorities whilst affecting orders. The Frank Committee, or the Committee on Ministers' Power, has laid down the following norms of natural justice:

1. ***No man should be condemned unheard,***
2. ***No man shall be judge in his own cause,***
3. ***A party is entitled to know the reasons for the decision.***
4. ***Making available a copy of the statutory report.***

The English law recognises two principles of natural justice, *i.e.*, (a*) one cannot be the judge of one's own cause; and (b) one should not be condemned unheard*. Therefore, "*The rule against bias is one thing; the right to be unheard another. These are twin pillars supporting it*. These are two basic minimum requirements of fair play and are directly from a good conscience, without which justice cannot be done in its true sense.

These rules of natural justice are obligatory in the quasi-judicial proceedings, and in matters having civil consequences, must comply with these principles, which means any authority, whether quasi-judicial, administrative, or executive, should perform fairly and reasonably in accordance with said principles of natural justice. If such essentials are ignored and prejudice is caused, then the order made is a nullity. There is a plethora of judgments of various courts outlining the legal position to the effect that any order passed in violation of principles of natural justice is a nullity & void. The concept of quasi-judicial act signifies that the act is not wholly judicial; it describes a duty cast upon the executive authority to adapt the norms of judicial procedure in performing some act in exercising the executive power.

Table 20:

Principle of Natural Justice	Description	Constitutional Provision
Nemo Judex in Causa Sua (No one should be a judge in their own case)	Ensures impartiality by preventing bias in decision-making.	Article 14 (Equality before law)
Audi Alteram Partem (Hear the other side)	Guarantees the right to a fair hearing before any adverse action is taken.	Article 21 (Right to life and personal liberty)
Reasoned Decision	Requires authorities to provide reasons for their decisions to ensure transparency.	Article 311 (Protection of civil servants)
Fair Procedure	Ensures that legal and administrative actions follow a just and reasonable process.	Article 39A (Equal justice and free legal aid)
Non-Arbitrariness	Prevents arbitrary actions by the state or authorities.	Article 14 (Prohibition of arbitrariness)

These principles are deeply embedded in Indian jurisprudence and have been reinforced through various judicial interpretations as listed above.

- Applicability under Indian laws (ID Act, Standing Orders, etc.)

  Now the provisions of the Standing Order have been embedded under the Industrial Relations Code 2020, especially under the section of 'Disciplinary action'. The Standing Order is the backbone.
- When is a domestic inquiry mandatory vs. recommended?

The Romans concise them into two maxims:

1. Nemo judex in causa Sua;
2. Audi alteram partem

- **Nemo judex in causa Sua**

  The Roman maxim *"nemo judex in causa Sua" means that no one should be a judge in their own cause.* This principle emphasises that the decision-maker must be impartial and not have any personal interest in the outcome of a case.

Strictly speaking, this principle is not restricted to the case where the judge is an actual party to a cause, but it also applies to the cause in which he is interested. In the interest of justice, fair play, and equity, such an interested person should vacate the seat of a judge, as he cannot take an impartial and/or transparent decision when his interest is involved. This principle is also known as the Doctrine of Bias. The deciding authority should be impartial, free from all kinds of biases. It is the first rule, which is antithetical to bias, and ensures that the judge be impartial, render a decision based on the evidence recorded in the case, and maintain the integrity and credibility of the judicial process.

The rule against bias is crucial for ensuring that justice is not only done but also seen to be done. It prevents conflicts of interest and restores the integrity of the decision-making process. Bias can be actual or apparent. Actual bias affects the outcome of the case, whereas apparent bias exists when there is a reasonable apprehension that the decision maker might be prejudiced. In both scenarios, bias undermines public confidence in the fairness of the process. Bias can be categorised into three categories: (1) Pecuniary (2) Personal, and (3) Official

- **Pecuniary Bias**

  It is quite apparent that a decision would not be impartial in case the adjudicating authority has a pecuniary interest in the subject matter of the proceedings. In the case of Mohapatra vs. State of Orissa[18] it was held that when the author of a book was

[18] AIR 1984 SC 1572

a member of the committee set up for the selection of books, and his book was also under consideration by that committee, the possibility of bias could not be ruled out, and the selection by that committee cannot be upheld. Therefore, in addition to the direct personal interest, the test laid down by the court is to consider the real likelihood of bias. In concise, the probability of bias is more than sufficient to invalidate the right to sit in judgment, and there is no need to have the proof of actual bias.

In the matter of **M/S Builders Supply Corporation v. The Union of India and others**[19] , the Hon'ble Justice Gajendragadkar stated, "It is obvious that pecuniary interest, howsoever small it may be, in a subject matter of the proceedings, would wholly disqualify a member from acting as a judge".

- **Personal Bias**

Personal bias may be possible because of any reason/s, which may be inclusive but not limited to the arising of friendship, relationship, professional grudge or even enmity, etc. Here again, the likelihood of bias is to be given more credence than the actual bias. It is difficult to prove the state of mind of the deciding authority. Therefore, one must explore the possibility of seeing whether there is reasonable ground for believing that he was likely to have been biased. There are several examples witnessed before the Courts, when judges themselves refused to decide the cases, where they were either engaged earlier before their elevation or may have some connection with the parties and/ or interest.

The Hon'ble Supreme Court has exposed new standards of bias. It was founded as a result of an

[19] AIR1965 SC 1061

appeal in which a judge from the Calcutta High Court upheld his own decision. No judge can sit in an appeal against his own case, which is a clear violation of the bias rules. In the case of Tata Motor Challenge vs. Government of West Bengal, on the constitutional validity of the Singur Land Rehabilitation and Development Act, Justice Saumitra Pal recused himself from the case, citing that he knew some of the people in relation with the case personally. Therefore, decision-makers are required to rescue themselves from cases where impartiality could be questioned.

The reasonable suspicion amongst the prudent persons is enough for determining personal bias. The principle is of great Importance. It ensures hearing or consideration of a matter by an unbiased and impartial authority.

- **Official Bias**

Official bias may arise in cases where an administrator who articulates, and then thereafter, must carry out an official policy, is vested with the duty of hearing objections from the concerned persons to enable implementation of the policy.

The general rule is that the bias that may be said to be likely to arise because the adjudicator has a general interest in the subject matter and administration of the policy in his official capacity would not operate as a disqualification. In the matter of Viraj v. State of Orrisa[20] it was held that the Registrar of Cooperative Societies has a power of general supervision over all Co-operative Societies, which does not amount to inherent bias in him to disqualify him to act as an arbitrator or judge under Section 18 of the Rules made under the Co-operative Societies Act 1912 to decide disputes between members of a Society.

[20] AIR 1967 SC 158

The principle that no man can be a judge of his cause is confined not only to judicial function, but it applies equally to the decision-making process in other areas as well, with equal force and Vigor.

There is another addition to the above principles, *i.e.*, a party is entitled to know the reasons for the decision. The three elements of natural justice are the *absence of bias,a fair hearing*, and a *speaking (reasoned) order*. In India, there are divergent views on speaking order in administrative decisions, whereas it is an important aspect of natural justice. Thus, **"*giving reasons is one of the fundamentals of good administration,";*** *whereas this practice is almost extinct.* The ***recording of reasons for arriving at a decision*** provides clarity of analytical thought and removes arbitrariness, which provides satisfaction to the party concerned against whom the order is made.

- **Audi Alteram Partem**

This *Roman maxim connotes hearing the other side, which means both parties should be given opportunities to be heard before deciding the issue.* In the case of Union of India v. Tulsiram Patel[21] the meaning of this maxim has been elaborated as under:

"...Audi alteram partem rule, it its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of allegations and charges against him, be given an opportunity of submitting explanation thereto, have the right to know evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon to be used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross- examine them and to lead his evidence, both oral and documentary, in his defence....."

[21] (1985)3 SCC 398

In the said case, the Hon'ble Court lucidly explained the concept and process to be followed for keeping any kind of controversy at rest. Duty has been cast upon the adjudicator to provide a fair opportunity to defend and be free from bias. The right to be heard is an accepted principle by all civilised countries. No man should be condemned unheard is a basic tenet of natural justice and an inevitable requirement of justice. The court should not proceed in a case where there is a violation of principles of natural justice is alleged; it is duty-bound to consider all the relevant facts, documents, and circumstances of the issue involved in the case before deciding further in the matter.

Over the period with continuum practice, the law has been well established that in all cases of prejudice resulting from alleged misconduct, a duty is paramount upon the decision-making authority to hear the aggrieved party, and in all such cases, the responsibility should be discharged firmly.

Audi alteram partem does not merely envisage a fair and reasonable opportunity of being heard. It would encompass within itself the obligation to share material collected with the person/accused concerned.

Since the Audi alteram partem rule is intended to inject justice into law, it cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying, self-defeating, or plainly contrary to the common sense of the situation[22]. In the same case, the then Hon'ble Justice P N Bhagwati quoted "*what opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation*. It may be a sophisticated, full-fledged hearing, or it may be a brief and minimal hearing: it may be a hearing before the decision or even a post-decisional remedial hearing. The **Audi Alteram Partem** *rule is sufficiently*

[22] Maneka Gandhi V. Union of India (1978)1SCC248

flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise."

Thus, natural justice in all likelihood will always be customised to the situation.

In the matter of Canara Bank and others vs. Sri Debasis Das and others[23] the Hon'ble Supreme Court, whilst considering the scope and ambit of the Canara Bank Officers Employees (Conduct) Regulations 1976 ceased the opportunity to have in-depth analyses of "Natural Justice" and "Audi Alteram Partem", and observations were summarised hereunder:

1. *Natural Justice is another name for commonsense Justice.*
2. *Rules of Natural Justice are not codified canons.*
3. *But they are principles ingrained into the conscience of man.*
4. *Natural Justice is the administration of Justice in a commonsense liberal way.*
5. *Justice is based substantially on natural Justice is based substantially on natural ideals and human values.*
6. *The administration of Justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.*
7. *It is the substance of Justice that has to determine its form.*
8. *The expressions "Natural Justice" and "Legal Justice" do not present a water-tight classification.*
9. *It is the substance of Justice which is to be secured by both, and whenever legal*
10. *Justice fails to achieve this solemn purpose; natural Justice is called in aid of legal Justice.*

[23] AIR (2003) SC 2041

11. *Natural Justice relieves legal Justice from unnecessary technicality, grammatical pedantry, or logical prevarication.*
12. *It supplies the omissions of a formulated law.*

The adherence to principles of Natural Justice has Supreme importance when a quasi – judicial body explores the possibility of resolving disputes between the parties, or any administrative action involving civil consequences. There is no defined pattern for adherence:

- Notice it is the first limb of the principle of Audi Alteram Partem.
- Notice should apprise the party of the case he has to meet.
- Adequate time should be given to make his representation.

F. Importance of Principles of Natural Justice in employees' disciplinary actions

The role of the Principles of Natural Justice is vital for regulating employment, and all disciplinary actions touch these cardinal principles. It is a cardinal principle of law that no person can be held guilty without informing about the charges levelled against him and thereafter providing him an opportunity to defend/ to counter the allegations to prove his innocence. The said principle finds a place in Article 311 of the Constitution. The courts and Tribunals interfere in the event of a violation of principles of natural justice whilst conducting a departmental Inquiry (in case of the Service or Government Sector) and imposing a penalty based on the findings of the Inquiry officer.

There are some examples of violation of principles of natural justice during disciplinary proceedings, such as non-supply of relevant documents, not allowing the assistance of Defence, no opportunity to cross-examine the witnesses, etc. However, non-observance of every aspect of the procedure prescribed does not amount to a violation of principles of natural justice. In the event of procedural violation, the employee must show what prejudice has been caused to him due to non-observance of procedure by the disciplinary authority.

The Courts, time and again, reinforced the need for procedural fairness in disciplinary actions to ensure that delinquent employee/s must be given adequate notice and opportunity of hearing before initiating any adverse action. The emphasis is to adhere to principles of natural justice and does not require following strict rules.

Any order or decision in matters involving civil consequences has to be made consistently with the rules of natural justice[24]. Therefore, the order of termination of service of an employee or workman visits him with civil consequences of jeopardising his livelihood, but also the career and livelihood of the dependents. Therefore, before taking any action to put an end to the tenure of an employee or workman, fair play requires that a reasonable opportunity to put forth his case is given and a domestic Inquiry conducted, complying with the principles of natural justice.

The Hon'ble Supreme Court has taken the firm view that every complaint of violation of principles of natural justice is to be examined from the angle of fair hearing by applying the test of prejudice. In the matter of State Bank of Patiala v. S. K. Sharma.[25] the Hon'ble Supreme Court has inter alia pronounced certain principles in the context of disciplinary inquiries, whilst punishment imposed by the employer upon an employee, which are as follows:

i. An order passed punishing an employee post disciplinary Inquiry in violation of statutory rules and regulations, said enquiries should not be set aside automatically;
ii. A substantive provision has normally to be complied with, and the theory of substantive compliance or the test of prejudice would not be applicable in such a case;
iii. In the case of violation of a procedural provision, it is to be seen whether it falls under "no-notice", "no opportunity", and no hearing category. Except in cases falling "no notice", no opportunity and no hearing categories, the complaint of violation of a procedural provision should be examined from the point of view of prejudice. If it is found that a delinquent employee has

[24] AIR 1967 SC 1269
[25] AIR1996 SC 1669

been prejudiced, an appropriate order has to be made to repair and remedy the prejudice, including setting aside the Inquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, no interference is called for. There may, however, be certain procedural provisions which are of fundamental character, whose violation by itself is proof of prejudice. The court may not insist on proof of prejudice in such cases.

iv. In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantive compliance. The order passed in violation of such a provision can be set aside only where such a violation has occasioned prejudice to the delinquent employee.

v. In case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in the public interest. If it is found to be former, then it must be seen whether the delinquent employee has waived the requirement either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent employee has not waived it, then the Court or Tribunal should make appropriate directions, including the setting aside of the order of punishment.

vi. Whether the Inquiry is not governed by any rules/ regulations/statutory provisions and the only obligation is to observe the principles of natural justice, the court or the tribunal should make a distinction between a total violation of natural justice (rule of Audi alteram partem) and a violation of a facet of the said rule. In the case of the former, the order passed would undoubtedly be invalid, or one may call it “void” or a nullity. But in the latter case, the effect of the violation has to be examined from the standpoint of prejudice.

In all the important and pertinent points in all the cases are that the delinquent employee should have a reasonable opportunity of presenting his case, and the inquiry officer should act fairly, impartially, and reasonably.

The Inquiry should be free from all kinds of biases, as the Inquiry should always be held by a person who is not a witness or interested party.

The fundamental principle of justice is that a person shall not be subject to final judgment or punishment without affording him an opportunity of personal hearing, even if the statute governing the functioning of such a tribunal is silent upon the question.

G. Exclusions to the principles of natural justice

The rule of Audi alteram partem can be excluded in certain situations, there are such examples which are inclusive, such as (a) Statutory exclusion *e.g.*, under the Criminal Procedure Code there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused while the proceedings are under investigation by a police officer (b) where the issue of public safety, public health involved e.g. emergent situation where immediate action allows no delay to prevent some imminent danger or injury or hazard to paramount public interests (c) no application in a mere relationship of master and servant e.g. servant dismissed by the master (d) removal of person for negligent of duty or unfit for duty, it has been judicially upheld that no right to heard before removal (e) termination of a probationer and also in the case of compulsory retirement in government service.

H. Challenges in natural justice

The application of principles of natural justice faces several challenges, including balancing the need for procedural fairness with efficiency and expediency. In some cases, strict adherence to these principles may result in delays or increased costs. However, courts and Tribunals strive to strike a balance, ensuring that procedural safeguards do not become overly burdensome while still protecting the individual's rights.

I. Evolution

The concept of natural justice continues to evolve, adapting to changing societal values and legal standards. The advent of digital technology and online dispute resolution mechanisms has introduced new considerations for ensuring fair and unbiased decision-making. During the COVID period, new lessons have been learnt as it has taught the world to move in virtual environments. The procedure of natural justice can be adhered to by conducting proceedings through virtual modes.

J. Summarisation

The principles of natural justice are the cornerstone of a fair and just legal system. By upholding the rule against bias and the right to a fair hearing, these principles safeguard that decisions are made impartially and transparently. They protect individuals' rights, maintain public confidence in the justice system, and promote the rule of law. As legal systems and societal expectations evolve, the principles of natural justice will continue to play a crucial role in safeguarding fairness and equity in decision-making processes.

Table 21: Checklist table outlining Legal Ethics and Employee Rights in Domestic Inquiry:

Aspect	Legal Ethics	Employee Rights
Impartiality	The Inquiry officer must be neutral and free from bias.	Employees have the right to an unbiased investigation.
Natural Justice	Fair hearing and opportunity to present evidence.	Right to be heard before any disciplinary action.
Confidentiality	Sensitive information must be handled discreetly.	Protection from undue exposure or defamation.
Transparency	Clear documentation and communication of proceedings.	Right to access charges and supporting evidence. All proceeding conducted in the presence of the charged employee
Proportionality	Punishment should be reasonable and justified.	Right to challenge disproportionate penalties.
Legal Representation	Employees may be allowed legal counsel in certain cases.	Right to seek legal assistance if permitted. At least -assistance of a co-employee.
Reasoned Decision	Verdict must be based on facts and reasoning.	Right to receive a well-explained decision.
Appeal Mechanism	Employees can challenge unfair decisions.	Right to appeal through legal channels.

3.3. Essentials of Impartial & Fair Hearing

3.3.1. The first limb is to issue Notice:

Notice denotes information or knowledge of facts, which apprises the person about proceedings in which his interest is involved, or in other words, communicates to him some facts about him, and it is the duty of the notifying authority to convey. "Notice." The Hon'ble Supreme Court has meant "communication of materials since no one can meet an unknown ground.[26]"

The most important step for the initiation of a hearing by the deciding authority is to issue a notice to the affected party. The said party must know about the exact allegations in a case, one cannot defend proceedings initiated; therefore, notice must contain facts.

A full bench of the Hon'ble Allahabad High Court in the matter of Triambak Pati Tripathi[27] commented that one of the essential principles of natural justice is that persons whose rights are to be affected must be given notice of the case or charges which he has to defend. The foremost requirement of natural justice is that the liable person who is directly affected by act, decision or proceedings of the authority be given adequate notice of what is proposed to enable him (a) to make representation of his behalf (b) mark his appearance before the authority at the time of hearing and (c) to able defend himself effectively in the case or to answer the charges levelled in the case.

3.3.2. Criteria for Serving the Notice

1. **Notice is to be addressed correctly,** meaning the name of the employee, employee code, designation, father's name, department, and state subdivision of the Department, if any, postal address where the employee has furnished as his/her address on record most recently.

[26] AIR 1978 SC 851 at page 875 (Mohinder Singh Gill V. The Chief Election Commissioner)
[27] AIR 1973 All 1

2. **Must specify exact facts, charges, and requirements**, Verbatim in cases of verbal abuses

Sufficient time should be given to reply; On expiry of time, show patience before acting further. Under the Industrial Relations Code, 2020, no minimum period for reply has been prescribed. However, a reasonable time must be afforded to the employee to respond to allegations, with the duration calibrated to the gravity of the misconduct charges. It must be noted that the notice must have the correct address of the notice; an incorrect address will vitiate the entire proceedings. All proceedings initiated under an invalid notice are ultra vires and without jurisdiction. It is a well-recognised principle that the delivery of the notice is the first and foremost essential of the proceedings.

Notice must be served in sufficient time, which means sufficient time may be given to the notice for making a representation against the allegations/charges. Disclosure of the charge or of opposing the case must be made in a reasonable time to allow the affected person to prepare his defence or explanation. The requirements for submission or representation in the notice varies on the facts & circumstances of each case. The basic intent is to provide a reasonable time to the affected person to prepare his defence, e.g., where an employee was informed at twelve noon that an inquiry would be held into charges at 6.00 p.m. on the same day, it was held that the time given to the employee to prepare his defence was insufficient and thereby deprived the opportunity to make his representation.[28]

The giving time for representation is not rigid & inflexible; it can be changed based on the gravity of the charges and the nature of the defence required to counter them. The basic instinct is that the timing given to respond should not be so unreasonably short as to defeat the right of objection. The basic concept is that a reasonable opportunity of hearing should be given to the parties, as too short notice for a hearing means denial of adequate opportunity of hearing and thereby denial of the principle of natural justice.

[28] AIR 1963 Mad 76 (S. Rengarajan V. Shrirangam Janopakra Bank Limited)

Notice must state the time and venue where the proceedings are to be conducted by the Judicial or quasi-judicial authority. It is pertinent to note that the timings and place location should be such that the defending party can reach easily within the given time frame for attending the proceedings and to represent the case properly. The notice is required to be unambiguous; if it is ambiguous or void, it will not be treated as a reasonable or proper notice.

Notice must specify the charges explicitly, enabling the person to know the exact nature of the allegation/accusation made against him so that he may reply to the said charges accordingly in his defence. It must be noted that a person against whom prejudice has been caused should be aware of the allegations and charges against him. Thus, the notice must specify the points on which the defending party is expected to reply.

Service of notice should not be an empty formality; one must take utmost care in its despatch and delivery. Nowadays, in addition to registered post & courier, there are other modes of delivery of notice available. In the era of social media, one may send the same through email to the Addressee (if available in the record) and/or through WhatsApp on the mobile number. It is a well-accepted and now established practice to show the evidence of delivery through such channels, and it has been recognised as an effective delivery of notice to the addressee. Notices shall be served by registered or speed post with acknowledgment due. This method ensures effective service, as once a correctly addressed registered letter is delivered to the post office, the sender relinquishes control, and delivery follows in the ordinary course. There are divergent views of the judiciary and a need for evidence of actual delivery thereof.

There is another way of service of notice by affixation, when reasonable attempts were made to find the addressee, but failed. Though there is a word of caution that it will only be effective in case a number of attempts were made to trace the addressee.

The notice should give sufficient time, and according to the facts of the case. In the case of *Punjab National Bank v. All India Bank Employees Federation*[29] *it was held that t*he notice is required to be unambiguous; if it is ambiguous or void, it will not be treated as a reasonable or proper notice.

The requirement of the notice will not be insisted upon as a mere technical formality. It must be communicated to the affected person.

3.3.3. Hearing:

An opportunity to be heard as an element of fair hearing is the fundamental rule of *Audi Alteram Partem*. The rule of fair hearing helps in protecting individuals' rights. It ensures that no one is deprived of life or liberty without an opportunity to present their case. The rule of fair hearing boosts confidence in the legal system when individuals believe that they have been heard and are more likely to have faith in the fairness and integrity of the process and outcomes thereof.

Hearing enables the party appearing to persuade the authority concerned by reasoned arguments to accept his point of view by removing the doubt of the deciding authority by answering all the possible and relevant questions.

Justice demands "*the parties should have an opportunity of submitting to the person by whose decision they are bound, such considerations as in their judgment ought to be brought before him* [30]

In a famous case of Mohinder Singh Gill v. The Chief Election Commissioner[31], The Hon'ble Justice Krishna Iyer, while expressing his views, quoted on Fairness "is not a bull in a China shop, nor a bee in one's bonnet. Its essence is good conscience in each situation; nothing more - but nothing less". ***The opportunity of providing a hearing must be genuine and not a mere empty formality.***

[29] AIR 1960 SC.
[30] Spackman v. Plimstead District Board of Works (1885)10AC 229
[31] (1978) SCC 405

Where the proceedings are quasi-judicial in nature, affording an opportunity of being heard can be assumed, the courts of India have considered oral or personal hearing a necessary part of the hearing unless the context requires otherwise. Indian courts instead provide an opportunity in written representation for this purpose, as held in the case of *A.K. Gopalan v. State of Madras*[32]. It is the second most important ingredient of Audi Alteram Partem. If the order is passed by the authority without providing a reasonable opportunity to the affected person, it will be invalid and must be set aside since the reasonable opportunity of hearing is an essential ingredient of the Audi Alteram Partem rule.

If all the circumstances have been considered by taking written representation before taking the action, the action cannot be set aside merely because a personal or oral hearing cannot be given, as held in the case of *Union of India v. Prabhakar*[33].

Fair hearing is free from all biases and provides an opportunity impartially, it should be in its letter & spirit. The hearing authority must be considered as under:

a. Should see all evidence placed before the authority, which is against the defending party, and the same must be provided to the party as:
    - One has the right to know the evidence against him.
    - In case the evidence is used without disclosing it to the affected party, it would be prejudicial to a fair hearing.
b. Must provide an opportunity to the affected person to produce all relevant materials for defending or countering the allegations levelled against him as:
    - One has a legitimate right to the evidence in his defence.

[32] AIR 1950 SC
[33] AIR 1973 SC

- In the event of denial, the said opportunity by the adjudicating authority, then refusal thereof, will be a violation of the rule of fair hearing.
- Authority has the power to summon the witnesses/es and documents in support thereof. The refusal to provide witnesses and documents by the authority will be tantamount to a violation of the rules of a fair hearing.

An opportunity of hearing is given to the party, but the party decides neither to appear himself nor to give any written reply to the received notice; in such a situation, there is no violation of natural justice.

It is pertinent to note that the principle of natural justice requiring a hearing to be granted to a person before being condemned applies not only to judicial or quasi-judicial but also to administrative proceedings, as long as the statute does not exclude it specifically.

3.3.4. Proceedings in the Hearing:

One should not be subject to final judgment or to punishment without an opportunity of being heard thoroughly, as justice demands that the deciding authority shall embrace almost every question of fair procedure, which assures the decision is made on unbiased consideration.

It is extremely important to note that the deciding authority should not sit with a pre-judged mind but should have patient hearings with an open mind for both parties. In the event of a decision authority having specialised knowledge and skill related to the issue involved in the inquiry, it may not be held prejudicial to the hearing, provided it acts impartially and supplements its knowledge for effective proceedings. In case the deciding authority hears the case with a closed mind and has made up its mind without considering the contentions of the affected party, the said proceedings shall be null and void. Fair hearing assures an impartial process; it does not include personal biases or arbitrary judgments.

Faith in the administration of justice is one of the pillars on which democratic institutions function and sustain, and to retain that faith, the deciding authority must do what is right. No decision-making authority can be considered competent to hear a case in which it is directly or indirectly interested, else the judgment will be null and void.

The deciding authority must consider the genuine request for adjournments to comply with principles of natural justice. The arbitrary rejection of requests for time is not good. Sometimes, if justice is to be done, the grant of adjournment requests is necessary in order to avoid the aspersions of being biased. Further, the deciding authority is under no obligation to grant an adjournment *suo-motu* if no such request was made by the party.

The deciding authority is duty-bound to consider all the relevant questions in light of the evidence adduced before it. Where the direct evidence is not available, in such situations, the questions have to be considered in light of available circumstantial and corroborative pieces of evidence.

In certain specialised cases where some technical issues or a question of law is involved, in those cases, the assistant technical expert or legal representative, as the case may be, is not a violation of natural justice, but the denial of expert representation will amount to a violation of fair hearing, as held in the case of *Natyaraiyam v. State*[34].

3.3.5. Applicability under Indian laws (Standing Orders, Payment of Subsistence Allowance Act, etc.)

Domestic inquiry in India is being governed by multiple labour laws that ensure fairness and compliance in workplace disciplinary actions. India is governed by various labour laws and constitutional provisions to ensure fairness in workplace disciplinary actions. The **Industrial Disputes Act, 1947 (ID Act)** requires a fair inquiry before terminating workmen, while the **Industrial Employment (Standing Orders) Act, 1946** mandates transparent disciplinary procedures within organisations. The provisions

[34] AIR1962 (Orissa)

of the Standing Order are now part of the **Industrial Relations Code 2020.** Under the said Code Employers must define service conditions via Standing Orders, it is mandatory provision for establishments with 300 or more workmen. In essence, disciplinary action is not directly codified in detail but it is delegated to Standing Orders. In the public sector, **Article 311 of the Constitution** provides safeguards against arbitrary dismissal, ensuring employees have a reasonable opportunity to defend themselves. Additionally, natural justice principles—such as the right to be heard and unbiased decision-making—apply universally across public and private sectors, reinforcing procedural fairness in domestic enquiries.

Under the Industrial Relations Code 2020, the relevant provisions of Standing Orders are under Chapter IV, more specifically in Sections 28 to 39

- Section 28: Requires employers with 300 or more workers to prepare standing orders covering conditions of employment, including disciplinary procedures.
- Section 30: Standing orders must explicitly state matters such as misconduct, disciplinary action, and procedures for inquiry.
- Section 31: Employers must follow model standing orders until their own are certified.
- Section 35: Provides for modification of standing orders, ensuring disciplinary rules remain updated.

Impact: Disciplinary proceedings must strictly follow the certified standing orders, which act as the statutory framework for handling misconduct.

The Industrial Relations Code (IRC) 2020 consolidates provisions from the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946. Sections 28–39 (Standing Orders) and Section 4 (Grievance Redressal Committee) introduce streamlined, codified mechanisms for disciplinary proceedings and worker grievances, which differ significantly from the older ID Act framework.

Table 22: Comparative Table: IRC 2020 vs ID Act

Provision	IRC 2020 (Sections 28–39, Section 4)	Industrial Disputes Act, 1947	Key Difference
Standing Orders (Sec. 28–39)	Mandatory for establishments with **300+ workers**; must cover misconduct, disciplinary procedures, and inquiry processes. Model standing orders apply until certified.	Governed by **Industrial Employment (Standing Orders) Act, 1946**; threshold was **100+ workers**.	IRC raises threshold to 300, reducing compliance burden for smaller units.
Certification of Standing Orders (Sec. 30–31)	Employer must submit draft; until certified, **model standing orders** apply automatically.	Certification required under 1946 Act; no automatic application of model orders.	IRC ensures immediate applicability, avoiding gaps.
Modification of Standing Orders (Sec. 35)	Allows modification with approval of the certifying officer; periodic updates are possible.	Similar provision existed, but the process was slower and more rigid.	IRC simplifies modification, aligning with ease of business.
Grievance Redressal Committee (Sec. 4)	Mandatory in establishments with **20+ workers**; equal representation of workers and management; time-bound resolution of grievances.	Works Committee under ID Act is required in establishments with **100+ workers**; grievance handling was less structured.	IRC lowers the threshold to 20, making grievance mechanisms more accessible.
Disciplinary Proceedings	Must follow certified standing orders; inquiry, charge-sheet, hearing, and reasoned order required.	No codified disciplinary procedure; governed by standing orders under the 1946 Act and case law.	IRC integrates disciplinary procedure directly into the Code, ensuring statutory clarity.
Dispute Resolution	Streamlined three-tier system: conciliation, tribunal, appellate authority.	Multiple overlapping authorities under the ID Act (Labour Courts, Industrial Tribunals, Works Committees).	IRC simplifies and rationalizes forums.
Worker Safeguards	Explicit grievance redressal forum; statutory requirement for fair inquiry.	Safeguards largely judicially evolved; no statutory grievance committee.	IRC codifies safeguards, reducing reliance on litigation.

3.3.6. Summarization:

- **Thresholds changed**: Standing orders now apply to establishments with 300+ workers (vs 100 earlier), while grievance committees apply at 20+ workers (vs 100 earlier under ID Act).
- **Codification of disciplinary process**: IRC explicitly requires standing orders to include disciplinary procedures, making compliance clearer.
- **Simplification**: IRC reduces multiplicity of forums and integrates grievance redressal directly into the Code.
- **Worker protection**: Lower threshold for grievance committees ensures broader access to dispute resolution.

3.3.7. Risks & Challenges:

- **Smaller establishments (100–299 workers)**: Now exempt from standing orders, potentially weakening formal disciplinary safeguards.
- **Implementation gap**: Success depends on effective grievance committees; without proper functioning, workers may still rely on litigation.
- **Balance of power**: While IRC simplifies compliance for employers, it risks reducing statutory protections compared to the ID Act.

Here's a **compliance checklist** tailored for IRC 2020, focusing on **Sections 28–39 (Standing Orders)** and **Section 4 (Grievance Redressal Committee)**, with comparison to the older ID Act framework. This can serve as a ready reckoner and board-level governance.

Table 23:

Area	IRC 2020 Requirement	Compliance Action	Difference from ID Act
Standing Orders – Applicability (Sec. 28)	Mandatory for establishments with **300+ workers**	Verify workforce strength; prepare draft standing orders if threshold met	ID Act/Standing Orders Act applied at **100+ workers**
Draft Submission (Sec. 30)	Employer must submit draft standing orders covering misconduct, disciplinary procedure, etc.	Draft and file with Certifying Officer; ensure coverage of disciplinary rules	The earlier Act required submission but lacked automatic fallback
Model Standing Orders (Sec. 31)	Apply automatically until certified	Ensure awareness and compliance with model orders immediately	No automatic application under earlier law
Certification Process (Sec. 32–34)	Certifying Officer reviews and approves	Maintain records of certification; display certified orders	Similar under 1946 Act, but IRC streamlines
Modification (Sec. 35)	Allowed with approval; periodic updates possible	Review standing orders regularly; file modifications when needed	Earlier process slower and more rigid
Publication (Sec. 36–37)	Certified orders must be published and accessible to workers	Display prominently; circulate digitally if possible	Same requirement, but IRC emphasizes accessibility
Grievance Redressal Committee (Sec. 4)	Mandatory in establishments with **20+ workers**; equal representation; time-bound resolution	Constitute committee; notify workers; maintain records of proceedings	ID Act required Works Committee at **100+ workers**
Disciplinary Proceedings	Must follow certified/model standing orders; inquiry, charge-sheet, hearing, reasoned order	Train HR/legal teams; maintain inquiry records; ensure natural justice	ID Act relied on case law; IRC codifies procedure
Worker Safeguards	Workers can raise grievances before committee, a statutory forum	Establish grievance handling SOP; track timelines	ID Act lacked statutory grievance committee
Dispute Resolution Forums	Conciliation → Tribunal → Appellate Authority	Map escalation process; maintain liaison with authorities	ID Act had multiple overlapping forums

Table 24: Here's how key laws apply:

Law	Applicability in Domestic Inquiry
Industrial Disputes Act, 1947 (ID Act) and also in Industrial Relations Code 2020	Defines "workman" and protects against unfair dismissal. Requires a fair Inquiry before termination.
Earlier Industrial Employment (Standing Orders) Act, 1946 . Now Industrial Relations Code 2020	Mandates employers to define service conditions, including disciplinary procedures. Ensures transparency in domestic enquiries.
Constitution of India	Articles 14 & 21 uphold principles of natural justice, ensuring fair treatment and due process.
Indian Evidence Act, 1872	Though not strictly applicable, principles of fair evidence evaluation are followed in domestic enquiries.
Shops and Establishments Act	Governs employment conditions in commercial establishments, ensuring fair disciplinary practices.

Table 25: Table outlining Domestic Inquiry vs. Recommendation, along with examples:

Aspect	Domestic Inquiry	Recommendation
Nature	Formal internal investigation into misconduct.	Advisory process providing recommendations.
Purpose	Determines guilt and appropriate disciplinary action.	Offers suggestions for corrective measures.
Binding Effect	Findings can lead to penalties like suspension or termination.	Recommendations are not binding; the final decision rests with the authority.
Legal Framework	Governed by labour laws like the **Industrial Disputes Act, 1947,** and the **Industrial Relations Code 2020**	Often used in policy reviews or advisory committees.
Example	An employee accused of financial fraud undergoes a domestic inquiry, leading to termination.	A committee reviews workplace policies and recommends changes to improve employee welfare.

3.4. Principles Of Domestic Inquiry

a) The foremost requirement is to comply with the Principles of Natural Justice whilst adjudicating the issue of misconduct or indiscipline against the delinquent workman;

b) Opportunity must be provided to the delinquent workman to defend the case;

c) The proceedings are quasi-judicial in nature; nevertheless, a delinquent workman is entitled to lead evidence to prove his stand; he is eligible to call his witnesses as well.

d) A delinquent employee can cross-examine the witnesses produced against him by the Employer/Management. It is important to disclose the allegations/charges and evidence in support thereof to the delinquent employee with an opportunity to deal with it

e) The Inquiry Officer plays a crucial role in the entire Domestic Proceedings by staying neutral and conducting it without any untoward incidents

f) It is the duty of the Inquiry Officer to decide the matter impartially, and the report should be without any bias.

3.4.1 Process of Domestic Inquiry

Domestic Inquiry is a quasi-judicial function. The term “quasi” means ‘almost’, ‘nearly ' or similar, and the term “judicial” means “pertaining to the administration of justice”. In the case of quasi-judicial function, there is no statute to govern the proceedings, and therefore, the reliance is placed on the common law principles, *i.e.*, on the methodology of natural justice and on judicial precedents. Domestic Inquiry is not a judicial function, and therefore, procedures about judicial proceedings will not strictly apply. The very purpose of the Inquiry is to find out vera-city of charges levelled against an employee are valid.

The concept of natural justice is nothing but rules that ensure fair play and reasonableness. It helps in preventing the miscarriage of justice and in dispensing justice.

3.4.2. Stakeholders and Their Roles

A domestic inquiry involves multiple stakeholders, each playing a vital role in ensuring fairness and procedural integrity. The **employer/ disciplinary authority** initiates the process and appoints an **Inquiry officer**, who oversees the proceedings impartially. The **accused employee** has the right to defend themselves and present evidence, sometimes with the assistance of a **legal representative**, if permitted or at least a co-employee.

A **presenting officer** representing the employer submits charges and supporting evidence, while **witnesses** provide testimony relevant to the case. The **HR/compliance team** ensures adherence to policies and legal frameworks, while **trade union representatives** safeguard employee rights. Ultimately, the **disciplinary authority** reviews the findings and determines disciplinary action or appeals. This structured approach maintains transparency and due process in workplace disciplinary matters.

Here's a structured table outlining the **Stakeholders** involved in a **Domestic Inquiry** and their respective **Roles**:

Table 26:

Stakeholder	Role in Domestic Inquiry
Employer/ Disciplinary Authority	Initiates the inquiry, appoints the Inquiry officer, and ensures compliance with legal procedures.
Employee (Delinquent)	Has the right to be heard, adduce evidence, and defend against an allegation.
Inquiry Officer	Conducts the inquiry impartially, examines evidence, and prepares the final report.
Presenting Officer	Represents the employer, presents charges, and submits evidence against the accused.
Witnesses	Provide testimony and evidence supporting or refuting the allegations.
Legal Representative	Assists the accused (if permitted) in presenting their defence and ensuring procedural fairness.
HR/Compliance Team	Ensures adherence to company policies and legal frameworks governing the inquiry.
Trade Union Representative	Supports the accused employee, ensuring fair treatment and compliance with labour laws.
Disciplinary Authority	Reviews the Inquiry findings and decides on disciplinary action or appeals.

3.4.3. Step-by-Step Process of Domestic Inquiry

The following steps are required to be followed for conducting an inquiry and each will be dealt with in chapter in detail.

1. Complaint in writing from the aggrieved
2. Preliminary Investigation to establish prima facie issues to frame charges
3. Drafting and Issuance of Charge-sheet
4. In cases of suspension pending inquiry, pay subsistence allowance applicable
5. Appointment of Inquiry Officer
6. Notice of Inquiry/institution of inquiry
7. Conduct the Inquiry by IO with due notification
8. Explanation of Employee's rights during inquiry
9. Cross Examination of Management Witnesses
10. Employee's Defence
11. Rebuttal by the management
12. Recording of the proceedings
13. Concluding the Inquiry by offering to summarise respective stances from the delinquent and the presenting officer
14. Inquiry Report submission by IO
15. Post Inquiry Actions such as:
16. Sharing the inquiry report with the delinquent for perusal
17. Show cause notice with proposed punishment
18. Receipt of response to show cause to deliberate to identify the scope to show leniency
19. Final order either to impose punishment or show clemency

A. Complaint

A complaint means a grievance or objection registered against the employee/workman, who has committed the act of misconduct, and by virtue of it, someone has suffered loss/pain, or injury, and decides to raise a formal allegation against the said workman. In simple terms, a complaint means an allegation made orally or in writing against the workman to the higher authority/supervisor with a view to taking necessary action under the appropriate provisions of the law/rules.

A complaint includes an oral allegation, but it must remain *Prima-facie* disclose the Commission of an offence.

After receiving the complaint, either the supervisor or the Head of Department (HOD) finds out the veracity and the gravity of the complaint and seeks an explanation from the delinquent employee. When the misconduct or indiscipline is minor in nature, the HOD may issue a warning letter, which is known as a Departmental Warning. Departmental Warning is normally issued by taking a lenient view while keeping in mind that a person would mend his ways, attitude/behaviour. The said letter is normally given in the case where a worker/employee admits his/her guilt. In case the misconduct is grave and requires further investigation in order to surface the reality for appropriate action, the departmental head or supervisor (whichever is applicable) sends the complaint to the HR department for investigating the facts in detail for the management to take appropriate and further action in the matter. The higher authority is invariably either the head of the unit or the HR head, who, after proper assessment of the incident, may initiate further action. It is pertinent to mention here that the gravity of the charges actually holds the key for determining further action, *i.e.*, whether to conduct a preliminary inquiry or straightaway initiate the process of issuance of charge -sheet.

B. Preliminary Inquiry

The very purpose of holding a preliminary inquiry by the management is to determine whether a prima facie case exists against a delinquent employee or not. For conducting a preliminary investigation, no notice is required to be served upon the delinquent employee. The whole purpose of a preliminary investigation is to ascertain the facts before initiating the process of domestic inquiry. After collating the facts of the incident HR/IR Department prepares the preliminary investigation report to determine whether a full investigation by means of a domestic Inquiry is required or not. It is not required to submit a preliminary investigation report to the delinquent employee. It is pertinent to note here that whatever might have happened before the date of framing the charges will only be tantamount to preliminary in nature.

Preliminary investigation is not mandatory; it may or may not be held. It all depends upon the gravity of the charges. Nutshell: it is one step before initiating a full-fledged domestic Inquiry against the delinquent employee. It is also known as a fact-finding inquiry. Its report is not required to be shared with the delinquent employee.

There are complaints that necessitate a preliminary inquiry where the complainant also could be equally culpable in the incident, but first one to report in writing to the manager. Many shop floor face-offs, abuses, and exchanges of blows between two workers need to be investigated before charging the alleged person(s). There are cases of absenteeism, on the other hand, which are clear on the attendance record and need no preliminary investigation.

After examining the fact -finding report, if management considers that an inquiry should be initiated against a delinquent employee, then the process of the charge sheet will commence. It is the first step in initiating the process of the Domestic Inquiry. The purpose of a preliminary Inquiry is to determine whether any disciplinary action against the workmen should be launched or not. Such an investigation is called a preliminary inquiry. In such an investigation, there may be ex-parte examination and ex-parte reports. The depositions of the witnesses in such investigations, if any, or the reports in the investigations are meant merely for ascertaining whether there is any prima facie case justifying disciplinary proceedings. This was held in the matter of Fire Stone Tyres vs. their Workmen[35].

Need of preliminary inquiry is to check the veracity of the complaint meticulously. There may be a possibility that the filed complaint may be frivolous, reckless, and with the intent to have some vengeance against the workman. The fact-finding should be done to gather all the possible evidence and proofs which help in determining the case and which help the authority to frame charges of misconduct in accordance with the Industrial Standing Orders. The said inquiries are invariably conducted verbally, and the interviewing authority is duty-bound to record every statement in writing with all possible specifications.

The preliminary investigation is to be conducted on the alleged and as well as compliant and also other witnesses to the incident to get a well-rounded picture of the nature of misconduct.

[35] 1967 II ILJ SC715

C. CHARGE SHEET

The ordinary meaning of charge-sheet {This word is imported from criminal law, which is codified law, unlike in Domestic Inquiry} is a meticulous process, a memorandum of charges, i.e., acts or preliminarily alleged to have been committed by a delinquent employee. Charge is an allegation of misconduct, misbehaviour, indiscipline, lack of interest in the work, negligence, etc.

"Charge sheet is nothing but a piece of paper or document containing the alleged acts of misconduct against an employee".

No disciplinary action can be initiated against a delinquent employee unless it is first served with a charge sheet containing all charges and their essential particulars. It is basically the first step or foundation of the Domestic Inquiry process.

Charge-sheet is the beginning of the natural justice process, which provides an opportunity to the delinquent employee to defend himself, which facilitates a fair hearing process. The Hon'ble Supreme Court has held in the matter of Birchh Bhuian v. State of Bihar[36] that a charge-sheet is not an accusation or information given in abstract, but a charge has been made against a person in respect of an offence alleged to have been committed.

The writing of a charge sheet is an art; it should be concise, crisp, and to the point, and there is no scope for any additional facts or exaggeration, else it will lead to ambiguity. Since the charge sheet is the foundation of the Inquiry, one should spend quality time drafting charges aligned with the misconduct allegedly committed by the delinquent employee. It is such a sensitive and tedious job that once the charge-sheet is finalised and served upon the delinquent employee, then it would not be open for the employer to add or modify further charges against the employee, and the case should proceed on the basis of the charge-sheet originally framed and issued.

[36] AIR1963 SC1120

For drafting a charge-sheet, no form is prescribed in the industrial law, and the essence may be that one should prescribe the exact incident of misconduct whilst drafting the charge-sheet. An ordinary charge sheet would indicate the proposed punishment, but there are no hard & fast rules to it. It is imperative to issue charge sheet in the language known to the delinquent employee, *i.e.*, charges are to be framed in the vernacular language for the worker where the establishment is located, to facilitate the delinquent employee to read and understand, or show it to a friend to read and explain. Where the employee has claimed that he understands to read and write English in the biodata at the time of joining the job, the charge sheet can be issued in English. In case of receipt of a charge sheet in English, if the delinquent replies to get a vernacular language translation, then, in all fairness to observe the natural justice, the disciplinary authority should ensure the same is complied with. The basic intent is to draft the charges well understandable by the delinquent employee for defending the same appropriately.

One thing should be clear that the charge sheet should not be issued with a closed mind, for all the intentions and appearances should be clear that management has not reached to any definite conclusion, *w.r.t.* the culpability of the employee, and the management will decide post-Inquiry, when the Inquiry Officer submits its report.

A charge sheet is invariably written in English. If required or at the insistence of a delinquent workman, it should be translated in vernacular language, which is understood by the delinquent workman or workmen in the establishment. However, a charge sheet issued in the English language is not considered imperfect. This was held in Tractor India Limited v. Mohammad Sayeed. [37]

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[37] AIR 1959 SC1196

Thus, the very purpose of the charge-sheet is to make the delinquent employee aware of what he is supposed to or is alleged to have done. which enables the delinquent employee to understand for defending the same appropriately. Thus, the requirement is to state an unambiguous language, mentioning the charges levelled against the delinquent employee in the simplest, best possible manner. The necessary ingredients of the Charge-sheet are more particularly set out as under:

i. Employee name, father's name, employee number, department, and specific location address; if the employee is not coming on duty, then home temporary and permanent address, email id, and mobile number are required to be mentioned. It is pertinent to mention here that it must be addressed correctly, for want of which it will be treated as invalid. Therefore, all proceedings initiated under an invalid chargesheet would be vitiated.

ii. Precise time, date, and place, where the delinquent employee had done misconduct; Always try to use the word "about" before the timings. Time and place must be properly notified in it. Disclosure of charge or for defending the case must be made in a reasonable time to allow the delinquent employee to prepare his defence or his arguments.

iii. Actual wording used by the delinquent employee should be mentioned verbatim, even if it is in vernacular language; the wording should be précised, *i.e.* exact wording of abusive language should be set out in the charge-sheet. Although there are some judicial precedents, that specify that a charge-sheet is not vague merely because it alleges rude behaviour of the employee without specifying the exact words. However, mentioning the exact wording of the allegation is always better, which makes the charges quite clear and free from ambiguity.

iv. Accusation based on allegations; the allegation could be part of the charge sheet or annexed to the charge sheet.

v. Do not use any abbreviations, which may lead to confusion and not ordinarily understood, though in the corporate world lot of abbreviations are coined and used in day-to-day affairs; Specific details with proper words should be written.

vi. Should clearly quote the clause(s) of the Model/ Certified Standing Orders as the case may be under which the delinquent employee is liable to be punished for the misconduct alleged; where the Standing Orders are not applicable there reference to terms of employment and rules and regulations of employment or the Shop & Establishment Act, whichever is applicable will apply. Under which provisions the employee has been charged should be specified clearly, but where the error or mis-description in quoting the Standing Order number may be due to a typographical error, then it would not invalidate the proceedings unless it is proved that it was deliberately done to cause prejudice to the delinquent employee.

vii. It should not specify the proposed punishment to be awarded to the delinquent employee, it may prejudice the mind of the Inquiry officer. It may also be viewed that Inquiry is being initiated with a pre-determined mind with regard to punishment, and Inquiry is an empty formality. The charge-sheet becomes invalid upon stating the proposed punishment in it.

viii. Evidence in support of charges, but very concise and to the point, where it is imperative to keep in view of the gravity or complexity of the misconduct, else there is no requirement of specifying the evidence in the charge-sheet.

ix. The witnesses to be examined should not be stated in the charge-sheet, it is the management's prerogative. The charge-sheet can be issued without the witnesses; this may be shared at the time of commencement of the Inquiry by the Inquiry Officer.

x. The Charge-sheet should direct the focus on specifics and should not use any vague terms for which the management seeks a reply from the delinquent employee.

xi. The additional information may also be specified very concisely, if the delinquent employee is habitually committing misconduct. The previous record is mentioned to exacerbate the charge.

xii. Competent and authorised person of the employer eligible to sign the charge-sheet; it is the most important and critical point in the charge-sheet that it must be signed by an authorised person of the employer. The employer or the appointing authority has the right to take disciplinary action against the delinquent employee. If the charge-sheet is not signed or signed by someone other than the authorised person, then it is a useless and futile exercise. In a Company or any organisation, the Board of Directors delegates the power to the authorised person to act in disciplinary matters. The Board of Directors may delegate the powers for disciplinary matters and for punishment authorities differently based on the hierarchy of the organisation through either Board Resolution or Power of Attorney.

xiii. Therefore, it is pertinent to note that the disciplinary authority empowered to initiate disciplinary proceedings can issue a chargesheet and proceed with disciplinary action. A charge-sheet issued by an incompetent person is null and void, and any proceeding conducted based on the said charge-sheet will be invalid and vitiated.

xiv. Suspension: In the event of serious misconduct and where the presence of a delinquent employee at the workplace may affect the Inquiry procedure, the said employee is suspended till the pendency of the Inquiry. The same should be clearly stated in the charge-sheet.

Timeline for explaining: Charge-sheet must stipulate the timeline for the reply of the delinquent employee, a reasonable time may be given for submissions of written explanation to the charges. Ideally, it should not be less than 72 hours from the date of receipt of the charge-sheet by the delinquent employee. The time given for explanation depends upon various factors such as the nature of charges, the gravity of misconduct, which needs detailed explanation, the education level of the employee, who may be on leave or travelling. The time for explaining may be extended, keeping in view the facts and circumstances at that time. The word "reasonableness" does not have a fixed boundary, and at its best & precise meaning is what is fair and appropriate in accordance with the existing circumstances. Under the Industrial Relations Codes 2020 and the Model Standing Order, do not specify the timelines for reply; however, herein below is the practical HR Guidance:

Table 27

Nature of Charge	Recommended Time
Simple attendance/late coming matter	48 hours to 3 days
Ordinary misconduct	3 to 7 days
Complex misconduct involving documents	7 to 15 days
Fraud, financial irregularities, data theft, sexual harassment, corruption allegations	7 to 15 days or more, depending on records involved

A reply period of even **48 hours** has been upheld in certain cases where:

- Facts were straightforward.
- Employee already knew the allegations.
- No voluminous documents were involved.
- Employee sought no extension.

When a Shorter Period May Become Illegal, where:-

- Complex allegations are involved.
- Relevant documents are not supplied.
- Employee requests reasonable extension and it is arbitrarily denied.
- The short timeline causes prejudice to the defence.

For major misconduct cases under the IR Code, it is generally recommended:

"Submit your explanation within 7 calendar days of receipt of this charge sheet**."**

This period is widely accepted as reasonable and is easier to defend before Labour Courts and Industrial Tribunals.

In case there is a provision with respect to timelines given in the Standing Order or Service rules for seeking a written explanation or reply from the delinquent employee to the charge-sheet, the same needs to be followed.

A **charge-sheet** in a domestic inquiry serves as the formal document outlining allegations against an employee. It must be **clear, precise, and legally sound** to ensure fairness in disciplinary proceedings. Here are its **salient and mandatory features**:

Table 28:

Feature	Description
Name, address and Employee no.	Full name with father's name, Address (Department, section/ Home), identity code of employee
Specific Allegation	Clearly defines the misconduct with relevant details, avoiding vague accusations.
Date, Time, and Place of Incident	Provides accurate details to ensure clarity and prevent ambiguity.
Reference to Standing Order/ Rules of the Company	Links the alleged misconduct to specific company policies or standing orders.
Supporting Evidence	List documents, witness statements, or other proof supporting the charges.
Opportunity for Defence	Informs the employee of their right to respond and present their case.
Consequences of Misconduct	Specifies potential disciplinary actions if charges are proven.
Authority Issuing the Charge-Sheet	Clearly mentions the competent authority responsible for initiating the inquiry.
Deadline for Response	Sets a reasonable timeframe for the employee to submit their defence.

A well-drafted charge-sheet ensures **transparency, procedural fairness, and adherence to natural justice**.

In case an employee, on receiving charge-sheet seeks an extension of time for filing a reply based on a genuine reason or reasonableness, the same may be considered with an open mind. Care must be taken that it should not be a ploy on the part of a delinquent employee to prolong or delay the disciplinary process. When an employee, without asking for an extension of time, offered an explanation without any reservation within 48 hours or within the time allowed in such a situation, he cannot complain thereafter that the time offered for explanation was inadequate and thereby the principle of natural justice was violated. The time given for explanation depends upon various factors such as the nature of the charges, understanding education of the person charged, etc.

a. In case a person is out of station, then the time for explanation may be extended to enable him to submit his reply;
b. In the event of an illiterate person, sufficient time may be given for seeking an explanation of the charge-sheet so that he may consult either his friend or co-worker.
c. In case the timeline or limit for submitting the explanation to the Charge-sheet is specified, then the same should be adhered to unless there is a written request from the delinquent to extend the timeline with due reason.

a. SERVICE OF CHARGESHEET

Serving a charge-sheet is one of the most important aspects of the domestic inquiry process, and absolute clarity for serving the charge is a must. In the event an employee refuses to accept the notice in the normal course of issuance in person, the charge-sheet shall be dispatched by registered post to the employee’s last known address as recorded in the company’s official records. If the delinquent employee’s service is terminated based on not accepting the charge-sheet, it is not justifiable. Serving a charge-sheet is the employer’s duty to make the delinquent employee aware of the misconduct committed by him before inflicting appropriate punishment post the inquiry process.

In case the service of the charge-sheet is not effective upon the delinquent employee, then the entire hard work done in drafting & finalising the charge-sheet will go in vain. Further, the service of the charge-sheet to the delinquent employee should be done at the earliest after the occurrence of the incident. The inordinate delay in effectively serving the service of a charge-sheet to the employee will be held against the employer, and domestic Inquiry proceedings may be vitiated on this ground since it creates doubt of afterthought or is held to be biased.

The charge-sheet can be served upon the delinquent employee through different modes, i.e., by hand, by post at his postal address (temporary as well as permanent residential) available in the record of the employer. In the event of not being accepted by the employee, it can be displayed on the notice board of the union or the employer. After adopting all the said modalities of services, the service of the charge-sheet could not be done then the publication in the leading newspapers can be done. Now, in these cases, the possibility of serving the charge-sheet can be explored through the email ID of the employee (if available) or through WhatsApp on the mobile number (if available). Invariably, the modalities of service generally specified in the Standing orders, the same should be adopted. It is pertinent to mention here that it has been experienced that the service of a charge-sheet by hand is mostly refused by the delinquent employee. Therefore, the service thereof is effected by postal service, but difficulty also arises where the employee is either shifted to a different postal address or refuses to accept the delivery of the same. Sometimes the employer may take the help of the union office bearer to effect the service upon the employee. In case the Employer can demonstrate with evidence to effect the service upon the delinquent employee but failed, in such cases it would be considered valid service, and an ex-parte inquiry can be conducted.

The process of serving the charge-sheet should be followed in a prescribed manner, and not adhering to the process as stipulated in the standing order may result in the process being ineffective. In a case Standing Orders of the company provided that the workmen charged with an offence should be supplied a copy of such charge. It would be construed as deemed service of a charge-sheet on refusal to accept the charge-sheet by the workman, thence no requirement of affixing the charge-sheet on the Notice-Board of the company as specified in the said Standing Order. In Bata Shoe Co.(P) Limited V. D.N. Ganguly,[38] the Hon'ble Supreme Court has held that affixing the charge-sheet on the Notice Board of the Company was not effective service of the notice and opined as under:

"Proper course in our view was when the registered notices came back unserved in the case of those eleven workmen, to publish notices in the newspaper in the regional language with wide circulation in Bihar along with the charges framed against them".

[38] (1961) I LLJ 303 (SC)

In the above matter, the court has opined that the circulation of charges through print media in the regional language in the leading newspaper was a better option than affixing them on the Notice Board. This is also not free from subjectivity.

Defect in the charge sheet: When the charge sheet is drafted on the basis of partially relevant facts and partially on either irrelevant or assumed facts, it is an extremely serious defect, and the charge sheet cannot be sustained in law, and the said defective charge sheet will vitiate the Domestic Inquiry proceedings.

It is pertinent to state here that the term “vague” denotes issue cannot be determined with certainty; an antonym of the word vague is “definite”. When a word or an expression lacks clarity and cannot be interpreted with certainty, such words are considered indistinct, blurred, or uncertain.

The term vague means *“if the ground which is supplied is incapable of being understood with sufficient certainty, it would be called vague. It must vary according to the circumstances. If it is capable of being intelligently understood and sufficiently definite to furnish materials to enable the charge-sheeted person to make a representation against the charges, it cannot be called vague.”*

Modification of the charge sheet: The employer has to hold a proper inquiry into the alleged misconduct of the employee, and modification thereof must always begin with supplier-specific charges. It would not be open to the employer to add any further charges against the employee, and the case would have to be considered on the original charges as it was framed. In case during the course Inquiry, it is found out that the additional information pertaining to the main charges surfaced in that event, an opportunity to deal with additional facts must be given. It is pertinent to note that amendment or alteration charge-sheet is a matter of procedure and therefore, for any alteration /amendment be given within the opportunity to defend by the delinquent employee. Hence, there will be no violation of the Rule of Inquiry.

Table outlining the Modus of Service of Charge-Sheet and Defects in Service That Can Vitiate Inquiry:

Table 29:

Modus of Service	Description	Defects in Service	Impact on Inquiry
Personal Delivery	Charge-sheet is handed over directly to the employee.	Failure to obtain acknowledgement or refusal to accept.	Inquiry may be challenged due to lack of proof of service.
Registered Post	Sent via official postal service with an acknowledgement receipt.	Incorrect address or non-receipt by the employee.	Inquiry can be invalidated if the service is not properly documented.
Email (if permitted by policy)	Sent electronically with proof of delivery.	Employee claims non-receipt or technical issues.	Inquiry may be questioned if email service is not legally recognised.
Publication in a Newspaper	Used when the employee is untraceable.	Failure to justify why this method was used.	Inquiry may be deemed unfair if alternative service methods were not exhausted.
Through Workplace Notice Board	Charge-sheet is displayed publicly at the workplace.	Employee is absent or unaware of the notice.	Inquiry may be vitiated if the employee was not reasonably informed.

Proper service of the charge-sheet is **critical** to ensuring a fair inquiry. Any defect in service can lead to **legal challenges**, potentially invalidating disciplinary proceedings. Courts have ruled that **failure to serve the charge-sheet properly can vitiate the inquiry**, making any disciplinary action legally unsustainable.

b. Reply to the received Charge-sheet

The next step in the domestic Inquiry process is for the delinquent employee to respond to the allegations levelled against him in the received charge-sheet. After receiving the charge sheet, the delinquent employee has the following options:

- May ask for further details or documents, as specified in the charge sheet
- Admitted charges as stated in the charge-sheet;
- May refuse or deny the allegations either in part or in totality;
- May ask for an extension of time for filing submission; or
- Decides not to submit any reply.

The management is required to wait for the reply /submissions of the delinquent employee against the issued charges till the time given in the charge-sheet for the response. There is no need to send a reminder in case the said employee fails to submit his reply. In case of demand for additional clarification or documents, if those are critical and necessary to bring clarity of facts, the same may be provided against acknowledgement. In case the delinquent employee seeks an extension of time, the same may be given at least once as a measure of abundant caution, but for genuine reasons, it should not be a ploy on the part of the employee. Further, the request for the extension of time must be received in writing. It has been explained at length above. However, when management receives the reply to the charge/s levelled against the delinquent employee, it is the duty of the management to read the same without any bias. In case management considers the merits in the response of the delinquent employee, then the proceedings may be dropped without any action. In case the delinquent employee denies charges and provides an unsatisfactory response/ explanation in such a situation, management may proceed with domestic disciplinary actions.

Domestic inquiry can also be instituted if the delinquent employee is unable to provide any explanation to the level charges within the stipulated or extended period. This conforms with the first principle of natural justice, i.e., *audi alteram partem*, meaning no one can be punished consequent upon alleged misconduct without affording an opportunity to defend against the charges levelled by the employer. This means a fair and proper opportunity of being heard, which means that there must always be a substantial opportunity and a proper latitude to meet everything which is likely to be considered against a party.

In the event of admission of charges by the employee, there is no further requirement to proceed with an inquiry, and management has the option to inflict punishment in accordance with the Standing Orders or as per the rules, or may give a lighter punishment, i.e., a warning letter, etc. Management has absolute discretion to exercise certain yardsticks based on the past behaviour & conduct or honest submission of the employee. It not only brings confidence in the management but also provides an opportunity to the delinquent employee to improve in the future. The key to making the workplace congenial and demonstrating professional ethics is gaining the confidence of the engaged workforce, which leads to innovation and a spike in productivity. Thus, in all circumstances, management should behave impartially with the objective of inculcating discipline in the organisation. A word of caution is that the delinquent employee's statement should also be recorded by the management in the presence of witnesses, or else an inquiry should be held. If the delinquent employee maintains his stand of admission, then there is no need to proceed with the lengthy procedure of the Inquiry. The Inquiry Officer may give his findings on the basis of honest submissions of the delinquent employee. The necessity to take such a step is to avert any situation of denial or allegation of admission under the coercion or duress of the management, and not a voluntary admission by him.

The admission is purportedly a confession, which is a statement by the accused in any crime against the law or any misconduct or offence in violation of rules and regulations. Confession is the best piece of evidence of guilt. Confession is voluntarily made and invariably accepted. **In a case before the Delhi High Court, it has been held that when the delinquent employee has admitted his guilt, then the Inquiry is not necessary**. If the delinquent employee who has been guilty of writing filthy language in the letter to his supervisor and admitted his mistake, then holding an Inquiry is not necessary. An employer may proceed with appropriate punishment in accordance with the gravity of the charges.

Further, where the delinquent employee had obtained employment by producing false documents and fabricated certificates of his age and/or qualification, in such a situation, there is no need to hold an Inquiry, and he can be discharged without holding an Inquiry.

D. Appointment of Inquiry Officer & Presenting Officer

This is another very crucial and critical step for initiating the Domestic Process. Once the management is convinced that the detailed investigation of the charges against the delinquent employee is required for bringing the reality to the surface impartially and also in compliance with the principle of natural justice, before determining any punishment for the misconduct done by the employee. Therefore, selection of an Inquiry Officer should be done for conducting the Inquiry, which is a very delicate issue and certain principles should be kept in mind whilst selecting an impartial and unbiased Inquiry Officer. Therefore, one should not be appointed as an Inquiry Officer under the following conditions:

a. *Nemo debet esse judex in sua causa,* i.e. no man can be judge in his own cause;
b. Witness in the ensuing Inquiry;
c. has issued the charge-sheet;
d. well-versed with the facts and circumstances of the case;
e. related to the complainant or having a vested interest;
f. punishing authority and investigating authority cannot be the same.

One should look for an Inquiry Officer who is well-versed with the process of Inquiry and has analytical ability. It is not necessary that the person should have a law qualification, but a person should be well acquainted with the system of the organisation. In case the company fails to find a suitable person internally, then one can hire an outsider, who may be an advocate or a consultant suitable for conducting an inquiry into the matter.

a. Post Selection of Inquiry Officer

Once the name of the Inquiry officer is finalised, then it is the responsibility of the employer / Disciplinary Authority to issue an Inquiry notice to the delinquent employee stating therein as under:

1. The received reply is found unsatisfactory with very concise reasons, and the management has decided to proceed with Inquiry.
2. Disclose the name of the Inquiry officer, who will conduct the Inquiry, and the appointed Inquiry officer will write separately to the delinquent employee as well as to the management representative. He will intimate the date, time, and venue of the Inquiry to both. Preferably, the Inquiry should be conducted at the workplace and during working hours. However, in extremely critical and abnormal circumstances, the venue may be kept outside the workplace. In all circumstances, the reasonable time may be given in the issued notice before the commencement of the Inquiry.

The workman/ delinquent employee has the liberty to object to the appointment of the Inquiry Officer at the earliest, in fact, on the first instance, if he feels that the appointed Inquiry Officer is biased and not impartial. Such objection, if raised, is the duty of the management to consider the same on valid grounds, and not on frivolous or vexatious objections. Necessary steps may be taken to change the Inquiry officer. It is always better and in favour of the employer to change the Inquiry officer, otherwise the conducted Inquiry would be vitiated at a later stage.

b. Management Representative / Presenting Officer

The employer shall also issue an appointment letter or written authorisation to the management representative, authorising him/her to represent the management in the ensuing Inquiry. It is important that the management representative, also named as the presenting officer, is responsible for leading the case on behalf of management before the Inquiry officer. The doctrine of bias does not apply to him. The Presenting Officer shall systematically lead the company's witnesses before the Inquiry Officer as evidence against the delinquent employee, conduct their examination, and undertake the cross-examination of the defence witnesses. He is the face of management before the Inquiry Officer, and therefore, he should depose first and get himself cross-examined by the delinquent employee before the Inquiry Officer. His role is just like a prosecution counsel in a criminal proceeding.

c. Role of the Inquiry Officer begins:

The Inquiry Officer is the supreme authority in the Inquiry proceedings. The appointed Inquiry Officer is required to work independently without any pressure from the management. He informs the date, time and venue of the Inquiry to the delinquent employee as well as to the management representative.

Inquiry Officer has limited power, unlike a regular court. He is not required to follow the rules and procedures of a court strictly, i.e. the provisions relating to the Indian Evidence Act 1972 or Code of Civil Procedure 1908 as amended since the inquiry is against the delinquent employee who has committed an offence against employer/management on account of misconduct which is punishable in accordance with the Standing Orders/ rules and regulations/ contract of employment, etc. It is now well settled law that the domestic Inquiry does not stand on the same pedestal as that of trials in the court; they are not governed by technical and procedural laws. *The foremost requirement is to conduct an inquiry by complying with the principles of natural justice, honestly, and with bona fide intent to investigate the charges levelled against the delinquent employee by the employer/ management*.

Steps urgently required to be taken as follows:

i. Notice of the Inquiry
ii. Representation of the parties
iii. Evidence - rules of natural justice

i. Notice of Inquiry

In order to take part in the Inquiry, the delinquent workman should have a notice of the date, time, and venue of the Inquiry in advance to enable him to prepare the defence accordingly.

In the decided case of "*Goodyear India Limited versus Industrial Tribunal*[39]*"* the view was taken "*it is a function of management to serve the notice and to inform the employee verbally in the presence of the witness, the date and time at which the Inquiry into his alleged misconduct is to be held*". The High Court discountenanced the view taken by the Tribunal that the Inquiry Officer assumes the function of a judge and it is for him to fix a date and time and venue of the Inquiry and also to inform both the parties about the same.

Role of Inquiry Officer during Inquiry.

The Inquiry Officer's role begins on the date of his appointment by the management/ employer for conducting an inquiry against a delinquent employee. Before the commencement of the inquiry, the Inquiry Officer sends notice to the management representative as well as to the delinquent employee, therein he intimates the commencement date, time, and venue of the Inquiry.

The Inquiry Officer is to conduct the Inquiry impartially, unbiased, and with an open mind. He should not provide any favour or support to the management representative/presenting officer. Further, in case the delinquent employee raises an objection to his appointment as an Inquiry Officer on the ground of prejudice or bias against him, then the Inquiry Officer should refer the matter to the disciplinary authority before proceeding further in the inquiry. It is imperative for the employer to resolve the issue of his appointment to regain the confidence of the delinquent employee.

[39] (1969)I LLJ153 P&H

Post settlement of the issue, *w.r.t.* the appointment of the Inquiry Officer or changing the Inquiry Officer in case the plea of the delinquent employee was genuine. The proceedings will commence on the given date, time, and venue given in the notice of Inquiry.

After receiving the notices from the Inquiry Officer, the delinquent employee and the presenting officer of the company are required to be present before the Inquiry Officer. The delinquent employee may bring his co-worker into the inquiry from the beginning, the reason being that sometimes either the level of understanding of the delinquent employee is low or not educated enough to understand the nuances of the proceedings, or the delinquent employee may be under stress, and it may affect his coherent thoughts to logically stack the facts to defend himself. Even otherwise, an Inquiry Officer provides an opportunity to him to bring his ally on the next date of hearing in a situation where he does not feel comfortable in facing the Inquiry proceedings. The charge-sheeted employee has a right to be represented by a co-employee during the Inquiry proceedings, but it does not mean that he should be represented by a union or an external union leader. This was held in Dunlop Rubber Co. (India) Limited v. Their Workmen[40]. In case some complex issues are involved and a delinquent employee wishes to engage a lawyer, the matter shall be referred to the disciplinary authority (employer), and further proceedings shall be commenced post receipt of advice in this regard.

In case the delinquent employee does not appear on the given date, then, in order to comply with the principles of natural justice, the Inquiry Officer should not conclude the Inquiry and provide another opportunity to him for appearance on the adjourned date. Since the Inquiry officer is the supreme authority, he has the authority to adjourn the matter despite the objection of the presenting officer. Inquiry Officer should instruct the employer to inform the next date of the hearing and ensure his presence. It is pertinent to mention here that in case the delinquent employee does not appear despite giving adjournments, then the Inquiry may be proceeded ex-parte. The Inquiry visualised by any service rule or by standing order is an Inquiry in the presence of the delinquent employee, and he must get a reasonable opportunity to defend his case.

[40]A.I.R.1965 SC 1392

Sometimes, a domestic Inquiry is conducted in the absence of a delinquent employee, when he refuses to present himself before the Inquiry officer despite several communications as well as a written notice. In such a situation, the Inquiry Officer does not have any option but to proceed ex-parte against the delinquent employee. It is pertinent to state here that the delinquent employee either absents from the beginning or withdraws or leaves the Inquiry in the middle of the proceedings. It is the duty cast upon the Inquiry officer to take the evidence on record, and in ex-parte proceedings, no cross-examination is done. Proceedings conclude based on documents and available evidence before the Inquiry officer.

It is also important to note that when the delinquent employee either refuses to present or boycotts the Inquiry proceedings on the pretext of unreasonable grounds, in such situations, the ex - parte Inquiry is justified[41]. Further, if the delinquent employee is dismissed on the basis of ex-parte proceedings report of the Inquiry officer by the employer, in such a situation, the delinquent employee cannot complain that the dismissal is against the principles of natural justice.

In the event of both parties are present before the Inquiry Officer as per the scheduled date ,before initiating the proceedings, the Inquiry Officer ensures the identity of all those who are present in the Inquiry. Further, he should instruct that parties should remain present during all the sittings of the Inquiry, without the presence of a delinquent employee Inquiry would not be concluded. Inquiry Officer must explain the purpose of the Inquiry and describe the procedure or outlines of the process in brief for their understanding and ensure that discipline & conducive environment are to be maintained in the proceedings. He is duty-bound to record every bit of the proceedings in writing, preferably in his handwriting, or may take the help of a typing clerk. Post-recording of the proceedings of the day, he should sign and obtain the signatures of all those who have participated in the proceedings.

[41] Brook Bond Company of India Limited v. Subha Raman (1961) II LLJ 417 (SC)

As a standard process before the commencement of the inquiry proceeding, the Inquiry officer can read out the following and explain it in detail, and record it as proceedings.

d. Model Procedure for domestic inquiry on the first sitting *(The Inquiry Officer (IO) to read out the same)*:

1. The inquiry will be conducted in English/ Vernacular language per the Management's custom. However, if the CSE expresses his inability to understand English or the vernacular Language, a translator will be made available by management to explain the proceedings in the language CSE understands.
2. If the CSE desires, he may bring a co-worker as his assistant to the trial. (He will no longer be called an assistant but a co-worker) Otherwise, neither the lawyer nor the outsider will be allowed to attend the trial as an assistant to the CSE.
3. The parties should be submitting the list of evidence and witnesses at the beginning of the second sitting proceedings, and the copies of the evidence submitted by the Management at the inquiry will be given to the CSE, and the Management will be given copies of the evidence filed on the part of the CSE after duly marking and taking on record.
4. The Management witnesses will give statements in the presence of the CSE one by one or the other or in writing. And the CSE will be allowed to lead its witnesses before the inquiry officer in the proceedings. The witnesses of the CSE can also give their statements orally or in writing.
5. After the completion of all witnesses making their testimony, the CSE shall be allowed to cross-examine the statement of the Management witness individually.

6. The Management Representative/P.O. will be allowed to cross-examine the statement of the CSE, once the CSE has completed his cross-examination.
7. Cross-examination should be based on evidence and in relation to the charge. To bring a fair atmosphere, the questions to the witness are to be clearly spelled to the IO to record first, and the IO shall repeat the question to the witness to answer. Once the witness answers the question, the same shall be recorded by the IO, and any repeated answer shall also be recorded.
8. In case either of the parties missed to attend the hearing, the same shall be recorded as absent, and a new date will be posted for the hearing. However, censure may be passed for absence without valid reasons.. If the trend continues, IO will apply due discretion and close the inquiry on the ex- parte.
9. The CSE shall not write any note in the MOM of proceedings. If he wishes to report anything in connection with the investigation, he can submit it in writing. The answer will be given to the CSE. The matter will be registered in the investigation.
10. The next date of hearing will be recorded in the case of inquiry. No notice letter will be sent separately to the administration or the CSE for further investigation.
11. A short adjournment will be given between an inquiry proceeding.
12. Both sides should sign the inquiry process on each side. After the day-to-day investigation, a copy of the investigation process will be handed over to the CSE.
    A. The CSE was asked whether he agreed or denied the charges, explaining the charges levelled against him in the charge sheet.

B. He replied that << he has accepted charges without any diminutions / accepted the charges with diminutions >>

C. Since the CSE has not wholly accepted the charges, the inquiry proceeding is to continue to the extent the management proves the contested part of the charges levelled against the CSE.

e. Proceedings before the Inquiry Officer

At the first instance, the Inquiry Officer instructs the presenting officer to lead the case on behalf of the management and prove the charges levelled against the delinquent employee stated in the Charge-sheet. The presenting officer produces a copy of the Charge-sheet and reads it entirely, or the Inquiry Officer can also read out the charges levelled against the delinquent employee, which he needs to defend. Presenting officer provides their testimony and explains the event/ incident of alleged misconduct, provides documentary evidence, substantiates the charges with facts and adduces the witnesses in support thereof. The documents submitted are marked as exhibits. Further, the documents so produced by him in the Inquiry should be with the consent of the employer. In case the documents produced are not as per the charges levelled in the charge-sheet, then the delinquent employee should raise objections and get his protest recorded in the proceedings. For evidence, the strict technical rules of procedure of the Indian Evidence Act do not apply even to adjudicatory authorities under the Industrial Disputes Act, much less would apply domestic inquiry.

In State of Haryana vs. Rattan Singh[42]Hon'ble Justice Krishna Iyer opined, "it *is well settled that in a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence, provided it has reasonable nexus and credibility".*

[42] 1977 (2) SCC 491

Therefore, during proceedings when the evidence is led by the presenting office, it is the turn of the employee or his co-worker (if any) to cross-examine the witnesses. The purpose of the cross-examination is to challenge their testimony, highlight inconsistencies, and also to bring reality to the surface, as sometimes the witnesses are tempted to resort to falsehood with a view favouring the employer.

A word of caution is that one should not ask leading questions (wherein the suggestive answer is there, *i.e.* Have you met X person at about 4.00 p.m. at YZ location?). The answer to these types of questions either Yes or No, which is not permissible. The term leading question has been defined under Section 141 of the Indian Evidence Act as any question suggesting the answer. The leading statements and cross-examinations are invariably denied by the Inquiry Officer and do not include whilst recording the statements.

The cross-examination is an art, and substantial preparation is required. The defence representative intends to prove through cross-examination of the employer's witnesses that the charges alleged against him are false and fabricated or tutored. The effective cross-examination helps in bringing truth, destroy the weak evidence.

Once the presenting officer communicates that he has deposed all the evidence and witnesses in support of charges levelled against the delinquent employee. Thereafter, the Inquiry Officer provides the opportunity to the delinquent employee to defend himself. Further, when the delinquent employee needs assistance in interpreting the evidence, the interpreter should sign an endorsement to the effect that the evidence, as recorded by the Inquiry Officer, was interpreted to the delinquent employee to his satisfaction.

Likewise, the same process applies to the delinquent employee, who also gets the opportunity to lead his defence evidence and witnesses in support thereof. He submits the documents that support his defence. These documents are marked as Exhibits in the record. The presenting officer cross-examines the delinquent employee's witnesses to question their credibility and the validity of their statements. It is pertinent to note that if the delinquent workman has no evidence to produce or refuses to bring any witnesses in his favour, the same must be recorded by the Inquiry Officer.

The Inquiry Officer's role is to observe and record the proceedings; he should not, by any stretch of imagination, be considerate but should demonstrate an impartial and unbiased gesture during the proceedings. To seek clarification, he should neither cross-examine nor ask leading questions, though he is entitled to ask questions for clarity or obtain further details. The Inquiry officer is competent to ask questions to the witnesses during depositions by them for seeking clarifications on raised points/contentions. The Inquiry officer is well within his rights to ask questions, acting as judge, but should not ask leading questions since the role of cross-examination belongs to the parties in the domestic Inquiry.

It is pertinent to specify that where the charges are clear and there is no dispute of facts, then the cross-examination is not essential. The Hon'ble Supreme Court in *K.L. Tripathi v. State Bank of India*[43] held that if the facts are undisputed or only require an explanation, the lack of opportunity for cross-examination does not cause prejudice nor invalidate the decision.

[43] 1984 SCR (1) 184

In case there is no complex issue involved, the Inquiry should be concluded in a single day. In the event the proceedings are stretched, maybe due to a complex issue, then the same may be adjourned to the next date on mutual consent of the parties. This entire process of Inquiry may not be concluded in a single day, but continue on the given dates. The adjournments given should be with short intervals, with a couple of gaps in between, unless a valid reason necessitates a next date with more than a week's gap.

The Inquiry Officer ensures that all the statements, evidence, and proceedings are accurately recorded. On each day of hearings, he not only signs the recorded proceedings but also obtains the signatures with date from those who have participated in the proceedings at the end of each session. In case the delinquent employee and/or co-worker is illiterate, then a thumb impression should be obtained. He is under an obligation to provide a copy of the proceedings to both parties for their record. Further, all the documents and pieces of evidence presented during the proceedings are marked as exhibits and recorded in the Inquiry file. In the words of Hon'ble Justice Gajendragadkar, "if the industrial adjudication attaches the importance of domestic enquiries and the conclusion reached at the end of searching queries, that necessarily postulates that Inquiry would be followed by a statement containing the conclusion of the Inquiry Officer.

The rule of hearing should be ramified into several corollaries, rules regarding examination and cross-examination of witnesses, oral argument, the legitimacy of inferences to be drawn from the facts and circumstances on record, etc. The Inquiry officer, therefore, after taking evidence adduced by the parties, has to record the findings and conclusions as to whether the misconduct is proved or not, which are of vital importance for the adjudication of disputes arising out of the disciplinary action. It is therefore essential that the Inquiry Officer should prepare a brief report indicating his conclusion and reasons in support thereof. The failure of recording the findings and conclusions at the end of the inquiry would therefore constitute a serious infirmity in the Inquiry itself, which would render the inquiry invalid.

f. Inquiry Report

It is a very critical and important part of the Inquiry as the management's action depends upon the outcome of the Inquiry Report. The Inquiry Officer should describe briefly the contentions made and evidence laid before him by both parties in support of and against the charges levelled in the charge-sheet. Inquiry Officer, whilst narrating the brief of each party, should analyse the same and provide his reasoning as to whether the same is in support of charges or against it. His role is to find out the veracity of the charges.

The Inquiry Officer's report should contain as follows:

a. Date-wise proceedings
b. Evidence produced by each party and their analytical view on the same.
c. If the hearing was adjourned, the reason for adjournment, etc.
d. Evaluation of whether the allegations have been substantiated or not
e. Consideration of the delinquent employee's defence and explanations
f. Finding must be supported by legal evidence.
g. Not entitled to bring in additional facts in the report

h. Annexures of all the copies of relevant documents reviewed during the Inquiry
i. If some evidence is irrelevant and discarded, the same should be stated in the report
j. Report should not give any recommendations *w.r.t.* punishment; it is not the prerogative of the Inquiry Officer
k. Clear conclusion regarding the guilt or innocence of the delinquent employee based on findings after the entire proceedings before him
l. Signature of the Inquiry Officer with date of the report

The Inquiry Officer should ensure that the report is well structured, based on facts, and impartial since it is a credible and effective document for addressing the issue at hand and for onward action by the management. The right to take disciplinary action and inflict a quantum of punishment is mainly a managerial function. Therefore, the Inquiry Officer is duty-bound to hand over a well-structured Inquiry Report to the authorised authority in management for his perusal and appropriate action. It is sort of a judgment post conclusion of inquiry proceedings, barring a decision on punishment.

3.5. Irrelevant Remarks:

An inquiry report becomes invalid if the Inquiry Officer relies on irrelevant remarks, personal knowledge, or extraneous material that the workman had no chance to contest, or if the findings are biased, perverse, or unsupported by evidence. Minor inaccuracies or incidental remarks that do not affect the outcome will not vitiate the inquiry, as tribunals only intervene when errors are material enough to tilt the balance of justice.

Perversity: perversity vitiates the inquiry proceedings. There is the twofold test of the perversity of a finding:

(1) The finding is not supported by any legal evidence at all
(2) On the basis of the material on record, no prudent person could have arrived at the finding as stipulated in the inquiry report.

Table 30: A crucial distinction must be observed between a finding that is wholly devoid of legal evidence and a finding that, though grounded in some evidentiary material, suffers from insufficiency, inadequacy, or unsatisfactory quality. The former strikes at the very foundation of judicial legitimacy, while the latter raises questions of weight, credibility, and sufficiency." **Summarise table of the Domestic Inquiry Process: Step-by-Step Table**

Stage	Description
1. Initiation of Inquiry	A formal inquiry is initiated following allegations of misconduct. The employer appoints an Inquiry Officer to ensure a fair investigation.
2. Notice to Charged Employee	The accused employee receives a written charge sheet, detailing allegations and providing a chance for defence.
3. Constitution of Inquiry Committee	If required, a panel may be formed alongside the Inquiry Officer to examine the matter thoroughly.
4. Preliminary Hearing	An initial meeting occurs where procedural guidelines, evidence submission, and timelines are established.
5. Presentation of Evidence	The employer presents relevant documents, witness statements, and supporting materials to substantiate allegations.
6. Cross-Examination by Employee	The accused has the right to examine witnesses, challenge evidence, and present counterarguments.
7. Employee's Defence Submission	The employee submits their defence, supported by witnesses and documentary proof, if any.
8. Final Arguments by Both Parties	Both the employer and employee summarise their positions, emphasising their respective arguments.
9. Inquiry Officer's Findings & Report	The Inquiry Officer reviews all evidence and prepares a detailed report, documenting findings and conclusions.
10. Submission to Disciplinary Authority	The report is handed over to the authority responsible for deciding the course of action based on the findings.
11. Decision & Implementation	A final decision—ranging from exoneration to disciplinary action—is taken and communicated to the employee.

3.6. Post Inquiry Report action

The order of punishment is the final stage of an inquiry, where the disciplinary authority—not bound by the Inquiry Officer's findings—decides if charges are proved and what penalty is appropriate. The order must state clear reasons, in line with the principle of ***audi alteram partem*** (hear the other side), and comply with certified/model standing orders by weighing the gravity of misconduct. A past good record does not negate proven grave misconduct, though management may, at its discretion, accept an apology and reinstate without implying unfair practice. Importantly, the authority must consider both the Inquiry Officer's report and the employee's explanation; failure to do so can render the punishment order invalid.

The tribunal can justifiably interfere with the punishment and award a lesser punishment. It is well recognise principle of jurisprudence which permits to be imposed for misconduct that the penalty must be commensurate with the offence committed and proved.

In a concise manner, whilst deciding about the quantum of punishment, the following points should be considered:

i. Gravity of the misconduct
ii. Previous records, if any.
iii. Mitigating/aggravating circumstances that may exist.
iv. The punishment must be in concurrence with the Standing Orders/Services Rules of the Company

It is the employer's discretion to decide the punishment against the delinquent employee, as it depends upon other factors besides the findings of the Inquiry Report. It is the absolute discretion of the employer to accept the findings and conclusions of the Inquiry Officer.

In some circumstances, the Inquiry officer's report may not be acceptable, since the findings may not be in line with the evidence adduced by the management representative against the delinquent employee or may have an element of perversity in it. In such a situation, the employer, whilst dissenting with the views of the Inquiry Officer and may proceed with the action decided based on the level of misconduct, which should be in line with the misconduct stipulated in the Standing Orders of the establishment vis-à-vis punishment relating thereto. If such a situation arises, then it is advised to take legal assistance to draft a final show cause to the delinquent employee by highlighting the lacunae in the Inquiry Officer's report and proposing a punishment to be imposed for the misconduct. The delinquent employee’s response is to be reviewed in conjunction with the inquiry report and the final show cause notice’s contentions, and decide to drop the proposal to punish or inflict the punishment as proposed.

In the event the inquiry report is accepted by the employer, which establishes that the delinquent employee is guilty, the employer is well within its discretion to evaluate various types of punishments before inflicting punishment on the delinquent employee, considering the severity of the misconduct, behaviour, and previous record of the said employee and other relevant factors in the said case.

Generally, the type of punishments listed in the standing orders may be as follows:

1. Warning or Reprimand: A formal notice to the delinquent employee indicating the behaviour or performance must improve in the future; this kind of punishment may also be imposed in the case of admission on the part of the delinquent employee, and there is no requirement of going through the complete process of domestic inquiry;
2. Suspension: Temporary removal from the workplace, usually without pay, for a specified period.
3. Demotion: Reduction in the existing rank or designation, often with a corresponding decrease in salary and responsibilities.
4. Pay cut: Reducing the salary either temporarily or permanently;
5. Withholding increment or promotion: an annual increase in salary and/or due promotion may be stopped;
6. Involuntary Transfer: Moving the delinquent employee to a different location or department, sometimes to a less desirable position/location.
7. Termination: Ceasing the employment relationship permanently and also instructing HR to file a letter in the personal file of the employee with instructions not to hire him again.

In cases of severe punishment, employers must avoid any appearance of vendetta. Where termination may create negative perceptions, a softer approach—such as allowing the employee to resign—offers a dignified exit. This preserves the individual's ability to seek future employment without stigma, recognising that livelihood and survival are at stake. Discharge is severing the contract of employment for an employee by the action of an employer based on various factors in mind. Though it is a punishment but less severe, and discharge entitles the delinquent employee to notice or wages in lieu thereof. When an employer suggests delinquent employee to resign, it is called constructive discharge. If an employee disagrees, the dismissal is the ultimate punishment that can be inflicted on an employee by the employer. Dismissal is the end of an employment contract in a very unpleasant manner and leaves a stigma on the career of an employee. Dismissal also affects the employer, as there is a possibility of litigation. Therefore, dismissal /termination is generally exercised with care and caution. However, an employee who has committed serious misconduct or repeatedly committed misconduct does not require any mercy, and the employer's action of dismissal is justifiable.

Termination/dismissal order should be passed when the misconduct of the delinquent employee is duly proved in an impartial and fair trial in a domestic Inquiry. The appropriate authority of the employer must consider all aspects and meticulously go through the findings of the Inquiry officer, and must issue a second show-cause notice with the inquiry report and provide him a chance to represent as to why such a harsh punishment should not be given to him. The reply of the delinquent employee must be considered before the final order of dismissal.

Further, the dismissal order must be passed/issued by the authorised representative of the employer, who should be empowered for it, else the employer himself will issue such an order. The principle is that the competent authority should not be lower than the appointing authority. In private companies, the Directors must pass a delegation of authority either by way of a power of attorney or through a Board resolution in this regard.

A dismissal order issued by an incompetent authority is wholly null and void. It cannot be validated. It is amply clear that in the absence of proper delegation of powers with proper documentation, if an order of dismissal is passed by a subordinate authority, then it is null and void, and it vitiates the entire process or exercise done by the employer.

Once the **Inquiry Report** is finalised, the post-inquiry process involves several critical steps to ensure a fair and legally compliant outcome. Here's a **structured breakdown** for clarity:

Table 31: Post-Inquiry Report Process

Step	Description
1. Review by Disciplinary Authority	The report is examined by the designated authority to determine whether the charges are proven.
2. Providing the Report to the Employee	The charged employee is given access to the findings to ensure transparency and allow them to respond.
3. Opportunity for Representation	If permitted, the employee may submit a representation or explanation regarding the findings before a final decision is made.
4. Decision on Disciplinary Action	Based on the report, evidence, and employee's response, the authority decides the appropriate action—exoneration, penalty, or dismissal.
5. Issuance of Punishment Order (if applicable)	If disciplinary action is taken, the organisation issues a formal order specifying the penalty imposed, following company policy and labour laws.
6. Right to Appeal	The employee may be granted the right to appeal to a higher authority or tribunal if the action is perceived as unjust.
7. Implementation of Final Decision	The company enforces the decision, ensuring compliance with legal and procedural guidelines.
8. Closure of Inquiry Records	Official records are documented and archived for future reference, ensuring legal accountability and compliance.

Table 32: Exceptional Situations in Domestic Inquiry:

Situation	Explanation	Legal Considerations
Employee Doesn't Attend	If the employee fails to appear despite proper notice, the inquiry may proceed ex - parte.	The employer must ensure proper service of notice and provide reasonable opportunities for attendance.
Inquiry in Absentia	Yes, an inquiry can be conducted in the employee's absence if they deliberately avoid participation.	Principles of natural justice must be upheld, ensuring the employee was given a fair chance to respond.
Advocate Representation	Generally, employees are not entitled to legal representation unless company rules or Standing Orders permit it.	Courts have ruled that legal representation is not a fundamental right in domestic inquiries unless explicitly allowed.
Delay in Inquiry	Excessive delays can render the inquiry unfair and may be challenged legally.	Employers must conduct inquiries within a reasonable timeframe to avoid procedural lapses.
Handling Bias Allegations	If bias is alleged, the Inquiry officer may be replaced, or the inquiry process reviewed.	The inquiry must be conducted impartially, and any conflict of interest should be addressed promptly.

3.7. Sample Templates

- Appointment Letter – Inquiry Officer / Presenting Officer
- Notice of Inquiry
- Daily Proceedings Sheet
- Inquiry Report Format
- Checklist: Documents to Maintain

3.7.1. Checklist: Conducting a Fair Domestic Inquiry

Here's a structured checklist for conducting a domestic inquiry:

Table 33:

Stage	Checklist Items	Key Considerations
Pre-Inquiry Preparation	Define grounds for inquiry (misconduct, policy violation, etc.).	Ensure allegations are specific and legally sound.
	Issue a charge-sheet with clear allegations and evidence.	Must be properly drafted and served to the employee.
	Ensure proper service of the charge-sheet.	Use registered post, personal delivery, or other valid methods.
	Appoint an impartial Inquiry officer.	Officer must be free from bias and conflicts of interest.
	Notify the employee about the date, time, and venue of the inquiry.	Provide reasonable notice and opportunity to attend.
Conducting the Inquiry	Allow the employee to present their defence and submit evidence.	Ensure adherence to natural justice principles.
	Examine witnesses fairly, allowing cross-examination.	Witnesses should be credible and relevant to the case.
	Maintain proper documentation of proceedings.	Keep detailed records for transparency and legal compliance.
	Avoid unreasonable delays in completing the inquiry.	Prolonged inquiries may be challenged legally.
Post-Inquiry Actions	Prepare a reasoned report with findings and conclusions.	Report should be based on facts and logical reasoning.
	Provide the employee with a copy of the report if required.	Ensures transparency and allows for response.
	Decide on appropriate disciplinary action based on findings.	Must align with company policies and labour laws.
	Allow the employee to appeal if permitted under company policy.	Appeals should follow a structured review process.
	Ensure compliance with labour laws & Standing Order	Legal adherence prevents future disputes.

Fige 7:

	Sample					Annexure	
Disciplinary Tracker Format							
Name of Employee		XYZ				Employee Id	12345
S.No	Misconduct - Brief	Occurance	Committed Date	Charge Sheet Date	Inquiry Commenced Date	Inquiry Completion Date	Action Taken
1	Absenteeism -25 days	First time	11-02-2022	20-03-2022	28-03-2022	15-04-2022	Warning letter
2	Absenteeism -15 days	Second time	12-03-2023	15-05-2023	30-05-2023	12-06-2023	4 days Suspension

3.7.2. Second or Final Show Cause Notice

This is also a very important aspect of the Domestic Inquiry process, which begins post Inquiry report, when management determines its mind based on the findings of the Inquiry report for inflicting the punishment in line with the Standing Order, Rules and regulations of the organisation and/ or service rules, whichever is applicable to the delinquent employee. One has to keep in mind that the punishment should be commensurate with the defined rules & regulations and complement the findings in the inquiry report *w.r.t.* charges of misconduct levelled and proved. The very purpose of the second show cause is to provide a copy of the Inquiry report and simultaneously purposes that why a punishment of discharge or termination should not be inflicted upon him for the charges of misconduct levelled and subsequently proved at the inquiry. Invariably, the second show cause notice is given in case of serious punishment.

It is mandatory to provide a copy of the inquiry report to the charged employee to enable him to know the outcome of the investigation and to know what has been said against him. Further, whether the conclusion of the Inquiry officer is justifiable or not? In the matter of ECIL v. Karunakar,[44] the Hon’ble constitution bench of the Supreme Court had held that providing a copy of the Inquiry report to the delinquent employee was a part of the principles of natural justice. It is further ruled that the non-supply of the Inquiry report would cause prejudice to the delinquent workman, and disciplinary action of the management was liable to be set aside. The Hon’ble bench further stated that the principle as laid down in this case applied with equal force to the disciplinary proceedings both in public and private employments.

[44] (1993) 4 SCC 727

It is not necessary to wait for the reply of the delinquent employee to the second show cause notice; the management may proceed with the decided action once the notice period and the reply is over. In the event of receiving the explanation should be judged on its merits, the management may still proceed with the decided action.

Where the domestic Inquiry fairly conducted, and principles of natural justice have been adhered to, in such cases, the Labour Court/ Tribunal, do not interfere with the management's action of discharge or termination of a delinquent workman. Further, if any dispute is pending in any Labour Court/ Tribunal at the time of inflicting punishment of dismissal/termination, the permission/approval of such Labour Court/ Tribunal has to be taken mandatorily as provided u/s 33 of the Industrial Disputes Act, 1947.

In a catena of cases[45] the Labour Court/Tribunal will consider whether a prima facie case for discharge or dismissal is made out on the basis of a domestic Inquiry if such an inquiry does not suffer from any defect and the conclusion is arrived at by the employer is bona fide and /or no victimisation of the workman. Post-examination of the Inquiry record by the Labour Court/ Tribunal, the approval is granted. In the event Labour Court/Tribunal finds one or more infirmities in the domestic inquiry then the authority shall permit the parties to adduce their respective evidence to enable the Labour Court / Tribunal shall conclude Inquiry to adjudge whether the discharge, dismissal, or any other punishment was justified or not.

In concise, it is settled position Labour Court/ Tribunal examines first the material led in the domestic Inquiry in support or against in respect of charges levelled as a primary issue and if it is found that there is violation of principles of natural justice or mis-conduct is not proved, in that situation on request of the parties be allowed to adduce evidence for the first time in support of their stand with right of cross examination to the other party. In the event of producing evidence before the Labour Court

[45] Lalla Ram v. DCM Chemicals Works limited (1978) 3 SCC; Punjab National Bank Limited v. Workmen (1960) 1 SCR 806;

or Tribunal, it must be satisfied that the misconduct is established on a preponderance of the evidence. In case the evidence adduced by the parties before the said authority, then the whole evidence can be reappreciated by it to its satisfaction. The finding on misconduct in such a situation is conclusive, and the point of consideration is whether the punishment by way of dismissal was in proportion with the misconduct and if disproportionate, then to reduce the same.

3.8. Virtual Enquiries in Domestic Enquiries: Safeguards and Pitfalls

The constraints in assembling the disputing parties and adjudging a person in a physical hearing are a challenge at times. We witnessed how the pandemic prevented people from assembling in one place, and the courts started hearing the cases via video conferencing. The same is attempted in a domestic inquiry for safety reasons and can be used for other types of constraints. Virtual enquiries, using video conferencing or online platforms, are becoming increasingly common in domestic situations.

However, the disciplinary authorities should consider the following safeguards and pitfalls:

3.8.1. Safeguards:

1. Accessibility: Virtual platforms can make enquiries more accessible for individuals with disabilities or those located remotely.
2. Safety: In situations where there are safety concerns, virtual enquiries can help protect vulnerable individuals from further harm.
3. Efficiency: They can save time and resources by eliminating travel needs.
4. Record keeping: Virtual platforms often allow for easier recording of the Inquiry for documentation purposes.

3.8.2. Pitfalls:

1. Technology limitations: Technical issues with internet connectivity, audio/video quality, or platform functionality can disrupt the Inquiry.
2. Non-verbal communication: Virtual platforms can make it harder to assess non-verbal cues, which are crucial in domestic enquiries.
3. Security: Data security breaches can expose sensitive information.
4. Privacy: Participants might feel less comfortable discussing private matters in a virtual setting.
5. Digital divide: Individuals without access to technology or with limited digital literacy could be disadvantaged.

3.8.3. Best Practices:

1. Preparation: Ensure all participants have a stable internet connection, working equipment, and familiarity with the platform.
2. Data security: Use secure platforms with appropriate encryption protocols.
3. Confidentiality: Establish clear guidelines regarding data storage and access.
4. Vulnerability assessment: Consider if a virtual platform is safe for all participants in a domestic abuse situation.
5. Alternative arrangements: Have a plan for conducting the Inquiry in person if technical issues arise or if a virtual setting is not appropriate.

A clearly articulated policy and procedure to hold such virtual inquiries by an organisation is essential to venture into such practices. Otherwise, the time and effort saved shall be toppled by procedural anomalies which can jeopardise the domestic inquiry process itself.

3.9. Suspension

Suspension is a temporary stay away from the workplace, thus keeping the employer and employee relationship in abeyance for a certain period of time. It could be for two reasons (a) suspension till pending Inquiry and (b) suspension as punishment.

a. **Suspension, pending Inquiry:** It is a temporary cessation of the right to work and keeping away from the position and place of work. The suspension of the charge-sheeted employee from duty till the time the domestic or departmental inquiry concludes. Further, the suspended employee cannot resume duty till the decision of the disciplinary authority is based on the findings of the Inquiry Officer. The suspended employee is required to report once at office for attendance only. Industrial Workers First 90 days 50% of basic wages + dearness/compensatory allowances for domestic/ departmental inquiries (as per Standing Orders Act). Beyond 90 days, 75% of wages/allowances, if the delay is not attributable to the employee, and beyond 90 days, reduced to 25% of wages/allowances if the delay is attributable to the employee.

b. **The Industrial Relations Code, 2020, explicitly requires that a domestic enquiry into misconduct must be completed within 90 days from the date of suspension of the employee.** This provision ensures timely resolution and prevents indefinite suspension.

   - **Specific Provision on 90-Day Domestic Enquiry**

     Section 62(4) of the Industrial Relations Code2020, states as under:

     "*The inquiry in respect of misconduct of an employee during the period of suspension shall be completed within a period of ninety days from the date of suspension*."

     Subsistence Allowance: During suspension pending enquiry, the employee is entitled to subsistence allowance as per standing orders.

Objective: This timeline was introduced to prevent employers from keeping employees under prolonged suspension without closure, which was a common criticism under earlier labour laws.

Practical Implications for Employers

- Strict Timeline: Employers must conclude the enquiry within 90 days; otherwise, suspension beyond this period can be challenged.
- Documentation: Inquiry proceedings, charge sheet, witness statements, and final report must be properly recorded.
- Natural Justice: Even within the 90-day limit, principles of natural justice (fair hearing, opportunity to defend) must be upheld.
- Judicial Scrutiny: Courts have consistently held that delay in enquiry without valid justification can render disciplinary action invalid.

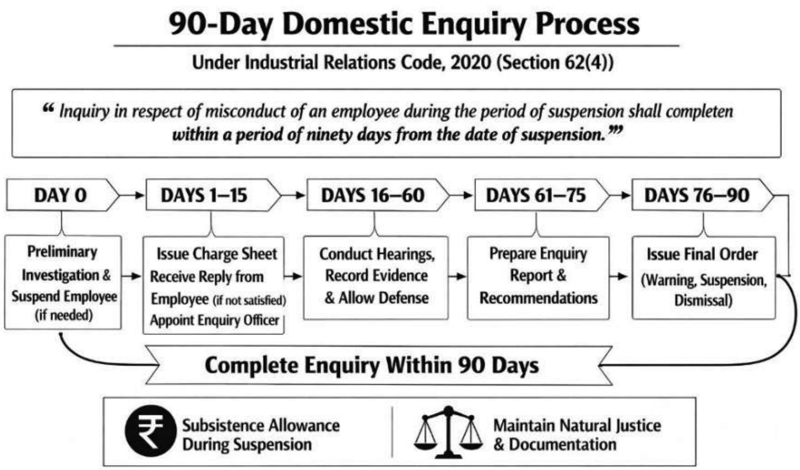
c. The purpose of suspension is to keep the charge-sheeted employee away from the workplace, else he may affect the Inquiry process and influence the witnesses or distort the evidence.

d. **Suspension as punishment:** This is awarded to the delinquent employee post Inquiry, when the charges levelled against him are proved, and disciplinary authority inflicted the punishment as suspension for a specific period based on the gravity of the misconduct done by him. The maximum period of suspension is invariably based on the provision stipulated in the Standing Orders or Rules & regulations of the establishment.

The effect of suspension is that the relationship between the employer and employee is suspended with the consequences that the servant is not bound to render the service and the master is not bound to pay. Balvantary Ratilal Patil v. State of Maharashtra[46].

[46] (1968) II LLJ 700 SC

Fig 8:



3.10. Double Jeopardy

Domestic Inquiry is not barred in case the delinquent workman is facing a criminal case. In the event of acquittal of a delinquent workman in a criminal case, even then, the domestic Inquiry would continue till its culmination. The principles of double jeopardy and the issue of estoppel will not apply, as both are independent actions. The criminal case is a public wrong as it is a public wrong against society whereas the disciplinary proceedings relate to misconduct in service. Both the fields are different and operate in different spheres. One is a pure criminal trial based on criminal jurisprudence, whereas the other is based on evidence.

Departmental Inquiry vis-à-vis Domestic Inquiry

An Inquiry against a government employee is referred as a departmental Inquiry. The rights of the government servant are safeguarded and emanate from Article 311 of the Constitution of India. Article 311 of the Constitution of India provides that the members of civil service shall be dismissed or demoted or reduced in rank by any authority subordinate to that of the appointing authority. Further, Article 311(2) mandates (i) an Inquiry is held (ii) charges framed against the employee be informed to him (iii) provide an opportunity of being heard to defend himself. The principles of natural justice are to be complied with before inflicting any punishment to the government employee, else disciplinary proceedings will be set aside by the courts on the grounds of violation of natural justice and defective procedure. On the other hand, the domestic Inquiry is the fact-finding and to check the veracity of charges levelled against the employee in the private establishment. It is normally used and connected with an internal Inquiry against the industrial or commercial workman for the alleged charge of misconduct.

It is very much clear from here that there is no such provision under the Constitution of India available to the industrial or commercial workman in the private sector. The process of domestic Inquiry is governed in accordance with the respective standing orders framed under the Industrial Employment (Standing Orders) Act 1946, now embedded in the Industrial Relations Code 2020 for the private sector. The standing order ensures a harmonious relationship at the workplace, which mandates the employees adhere to the conditions of employment.

3.11. Appeal Mechanism Post Domestic Inquiry

Under the Industrial Relations Code, 2020, an employee who has undergone a disciplinary enquiry (DE process) has the right to appeal through the internal grievance redressal mechanism, and unresolved matters can escalate to conciliation, arbitration, or adjudication before Industrial Tribunals. This ensures that disciplinary actions are not final without recourse to higher forums.

A. Internal Appeal

- Grievance Redressal Committee (GRC):
    - Every industrial establishment with 20+ workers must constitute a GRC.
    - An employee dissatisfied with disciplinary action (e.g., suspension, dismissal) can file an appeal here.
    - The GRC must resolve disputes within 30 days.

B. Conciliation

- If the internal appeal fails, the matter can be referred to a Conciliation Officer appointed under the Code.
- The officer attempts to mediate between employer and employee to reach a settlement.
- Conciliation proceedings are mandatory before escalation to higher forums.

C. Arbitration

- Parties may voluntarily agree to refer disputes to arbitration.
- Arbitration awards are binding and enforceable, similar to tribunal awards.

D. Industrial Tribunal

- If conciliation fails, disputes can be referred to the Industrial Tribunal.
- The Tribunal has powers equivalent to a civil court and can adjudicate disciplinary matters, including wrongful dismissal or disproportionate punishment.
- Appeals against Tribunal awards lie with the High Court/Supreme Court depending on the nature of the case.

E. Key Features of Appeal Rights

- Time-bound resolution: Internal GRC → 30 days; Conciliation → typically 45 days.
- Multiple layers of appeal: Internal → Conciliation → Arbitration → Tribunal → Higher judiciary.
- Protection for workers: Ensures disciplinary actions are not arbitrary and employees have structured remedies.
- Employer safeguards: Employers can defend disciplinary actions before neutral forums, ensuring balance.

F. Practical Implications

- For Employees: Always file an appeal first with the GRC; escalate if unsatisfied.
- For Employers: Maintain proper documentation of Domestic Inquiry proceedings, as tribunals scrutinize fairness and proportionality.
- For Both Parties: Conciliation is often the fastest and least adversarial route.

Table 34: Comparison Table: Appeal Options'

Stage	Authority	Timeline	Nature of Decision
Internal Appeal	Grievance Redressal Committee	30 days	Internal, binding if accepted
Conciliation	Conciliation Officer	~45 days	Settlement-oriented
Arbitration	Arbitrator (mutual)	Flexible	Binding award
Industrial Tribunal	Tribunal (quasi-judicial)	Variable (months)	Legally enforceable
Higher Judiciary	High Court/Supreme Court	Variable	Final authority

G. Exceptions

There are exceptions to the application of Audi alteram partem.

1. **Termination of the probationer**: An employee is appointed on a probation period to evaluate his behaviour and performance at work and thereafter to decide whether a person can be confirmed as a permanent employee or not. The termination of a probationer does not in any way involve any civil consequences and can be discharged simpliciter without involving any stigma. This was held in the matter of Oil & Natural Gas Commission v. Dr. Md. S. Iskender Ali[47].

47 AIR(1980) 3 SCC 428

2. In case of **compulsory retirement in the government sector**. The compulsory retirement is not a punishment, nor is there any stigma attached to it[48]. The principles of natural justice do not apply in such cases, and therefore, no requirement for a hearing before retirement.
3. Where the holder of an office is subject to removal **"at pleasure"** as opposed to removal 'for cause' such as being unfit or neglect of duty, such a person can be removed, as he has no right to be heard before dismissal. In India, it is an established principle of law that **a person holding office at pleasure is not entitled to any hearing,** e.g., *a civilian employee in defence service drawing his salary from the defence estimate, holds office at the pleasure of the President under Article 310 of the Constitution of India, he will not be entitled to protection under Article 311 of the Constitution.*

In these exclusionary cases, the Audi alteram partem rule is held inapplicable not by way of an exception to fair play in action but because nothing unfair can be inferred by not affording an opportunity of being heard.

3.12. Important Do's and Don'ts in The Domestic Inquiry Process

Tabular format for the **Important Do's and Don'ts in the Domestic Inquiry Process**, ensuring clarity and ease of reference:

48 AIR 1954 SC 369 {Shyam Lal v. State of UP}

Table 35: DO's and DON'Ts in the Domestic Inquiry Process

DO's	DON'Ts
Conduct a **preliminary investigation** to assess the nature of misconduct.	Do not frame charges on **flimsy grounds**.
Base decisions on **prima facie evidence** from preliminary inquiry.	Avoid appointing a **witness or complainant** as the Inquiry Officer.
Carefully **frame charges**, ensuring clarity in date, time, and specific misconduct details.	Do not appoint an **Inquiry Officer** before receiving the employee's reply.
Ensure charges **are not vague**—review them with colleague(s), carried Preliminary inquiry for accuracy.	Avoid **multiplying charges**; frame **one article per transaction**.
Appoint an **impartial Inquiry Officer** with no conflict of interest.	Do not subject the Inquiry Officer to **direction or control** from senior authorities.
Properly **sign and serve** the charge sheet to the employee with an acknowledgement.	Avoid reference to **preliminary inquiry reports** in charge framing.
Ensure **proper evaluation of evidence** by the Inquiry Officer.	Do not mention **past misconduct or proposed penalties** in the charge sheet.
Supply the **Inquiry Report** to the employee, regardless of the decision.	Do not ask a **subordinate officer** to sign the charge sheet or penalty order on your behalf.
Issue **speaking penalty orders**—mention reasons for proving misconduct.	Avoid relying on **extraneous material** outside of inquiry evidence.
Give a **prospective date of effect** in the final order, not retrospective.	Do not introduce **new charges** in the final penalty order to justify misconduct.

Table 36: DO's and DON'Ts for Inquiry Officers

DO's	DON'Ts
Verify the **order of appointment** as Inquiry Officer.	Do not **assume the role** of a prosecutor.
Ensure receipt of all **relevant documents**, including the charge sheet and evidence records.	Avoid examining witnesses on issues **not related** to the charges.
Reject **unreasonable adjournment requests** that delay proceedings and record reasons.	Do not ask leading questions to witnesses **during examination-in-chief**.
Document **disallowed cross-examination questions** with justification.	Avoid expecting the employee to **disprove the charges** before management has proven them.
Record **depositions** during the inquiry and obtain signatures.	Do not try to **delay the inquiry** through unnecessary adjournments.
Meet witnesses **before the inquiry** to refresh their memory.	Avoid showing **undue influence** over the Inquiry Authority.
Maintain thorough knowledge of **departmental policies** and legal guidelines.	Do not introduce evidence that is **not relevant** to the case.
Take detailed notes throughout the proceedings to ensure **proper documentation**.	Avoid leading **defence witnesses** in cross-examinations.
Ensure procedural compliance at **different stages** of disciplinary proceedings.	Do not allow the employee to **extend proceedings without a valid reason**—record delays.
Support the **Disciplinary Authority** with well-structured findings.	Avoid presenting **extraneous arguments** outside inquiry evidence.

Note: In case of suspension pending inquiry, please ensure there is no lag from the management side on slated proceedings by the IO. At the same time, if the CSE is trying to drag it with delay tactics, have it recorded in the proceedings. This provision shall prevent the Claim of the Works Committee (CSE) from being asserted as a matter of right in respect of any increase in subsistence allowance from 50% to 75%. Conversely, you can reduce it to 25% if you have done the appropriate recordings ascribed to CSE.

Table 37: DO's and DON'Ts for Defence Assistant / Co-Employee/ Charge Sheeted Employee

DO's	DON'Ts
Act quickly—obtain all papers from the Charge Sheeted Employee (CSE) and study them thoroughly.	Do not wait for the hearing to understand the case facts—delays can harm the defence.
Apply for additional documents needed for defence preparation without delay.	Do not obstruct or hinder the proceedings—this can create a negative impression.
Take extracts or make copies of important papers while inspecting the listed documents.	Avoid **raising frivolous objections** that lack merit.
Carefully review the charges and allegations to ensure full clarity.	Do not assume facts without verifying them against records.
Check the Inquiry Officer's impartiality—raise objections immediately if there are concerns.	Avoid arguing unnecessarily with the **Presenting Officer**, except on technical flaws.
Ensure all defence documents are recorded and marked as 'Exhibits' in the hearing.	Do not put **too many questions** to the Presenting Officer's witnesses—focus on key points.
Cross-examine management witnesses skilfully to expose inconsistencies.	Avoid **delaying tactics**—seeking unnecessary adjournments may harm your client's case.
Impeach prosecution witnesses by questioning their trustworthiness—come prepared.	Do not forget to **collect copies of witness depositions** and daily order sheets.
Challenge requests for new evidence—ensure it is not used to fill gaps unfairly.	Avoid mentioning defence witnesses **without full particulars** for identification and relevance.
Ask for new evidence to rebut prosecution claims if new evidence is allowed.	Do not leave **cross-examination questions unprepared**—frame them in advance.
Note down points during the chief examination for cross-examination clarification.	Do not assume that the **CSE must disprove charges**—management bears the burden of proof.

DO's	DON'Ts
Frame cross-examination questions well in advance for effectiveness.	Avoid putting leading questions during **examination-in-chief**—focus on facts.
Create doubts in witness statements to benefit the defence.	Do not forget to **re-examine your witness** if clarification is needed.
Decide if the CSE should be examined as a witness to clarify key procedural points.	Avoid assuming an adversarial role—focus on fair representation.
Make use of the mandatory questions asked by the Inquiry Officer at the end of proceedings.	Do not **delay requesting previous statements** made by witnesses during the preliminary inquiry.
Argue bona fide intentions if evidence is against the CSE to mitigate the impact.	Do not introduce **irrelevant arguments** that distract from the main charges.

3.13. New Norms: Remote working vis-a-vis Challenges in the DI process for HR:

Remote working of employees includes the concept of work from home (WFH). While WFH, the employees may engage in misconduct knowingly or unknowingly. Below are some illustrations:

- Time theft or leave creep, where employees overstate hours worked or do not take leave but claim to be working.
- Spending work time on personal activities or misusing work resources such as computers and phones.
- Being under the influence of alcohol or drugs during work hours.
- Sexual harassment or sending inappropriate messages/images using business resources.
- Online bullying or abusive behaviour toward colleagues
- Inappropriate secondary employment or misuse of confidential information.
- Theft, fraud, or corrupt conduct, including invoice manipulation or data theft.
- Security risks due to poor digital security practices or a lack of IT monitoring in remote setups.

Table 38: Challenges in Remote Work & Domestic Inquiry Compliance

Challenge	Impact on DE Process
Lack of Physical Oversight	Misconduct (harassment, fraud) occurs in private digital spaces, making detection harder.
Digital Evidence Complexity	Remote misconduct relies on emails, chat logs, and video calls, which are duly found as recorded versions.
Bias in Virtual IC Hearings	Remote inquiries may lack **body language cues**, affecting fairness in adjudication. Maybe the person can play around with Video and audio.
Cross-Border Jurisdiction Issues	Employees working remotely across states/countries complicate **legal applicability**.
AI Ethics & Surveillance Risks	AI-driven monitoring raises concerns about **privacy vs. compliance**.

3.14. FAQs on Domestic Inquiry

A. DOMESTIC ENQUIRY & PROCESS:

1. When is a Domestic Inquiry required?

   A. When serious misconduct is alleged, such as theft, insubordination, harassment, rule violations, or vandalism. It confirms that due process is followed before action is taken.

2. Is Inquiry mandatory before dismissal?

   A. Not always.

   - No Inquiry needed: Fraudulent certificates, probationers, or when guilt is admitted (with proper record).
   - Advisable: In most cases, to ensure fairness and protect employer’s decision.

3. Who can be an Inquiry Officer?

   A. An independent, unbiased person familiar with Inquiry procedures. Must not be a witness or have any vested interest.

4. Is an inquiry unfair if conducted by an officer of the establishment?

   A. No. As long as the inquiry is impartial and procedures are properly followed, it remains valid.

5. Can an inquiry be held on a holiday?

   A. Yes. The Inquiry Officer may conduct proceedings on a holiday. If no adjournment is sought, the enquiry can proceed ex-parte.

   (Shiv Durga Iron Works Ltd. v. Workmen)

6. Can an employee skip an inquiry citing leave?

   A. If leave is duly sanctioned on valid grounds, the employee is entitled to adjournment.

7. Can an employee claim unfairness if absent and unable to cross-examine witnesses?

   A. No. If the employee deliberately absents himself, the inability to cross-examine does not make the inquiry unfair.

8. Is a domestic inquiry mandatory?

   A. Yes, an inquiry is essential to uphold natural justice—even if the employee fails to reply to the charge-sheet.

   However, the Supreme Court has held that dismissal without inquiry is not automatically invalid; the tribunal can still assess misconduct based on evidence.

   (Gujarat Steel Tubes Ltd. v. Mazdoor Sabha)

9. What if adjournment is wrongly refused?

   A. If valid grounds exist and adjournment is denied, it amounts to a denial of opportunity. The enquiry can be vitiated.

10. Can disciplinary proceedings continue after retirement?

    A. No. Proceedings cannot be initiated or continued post-retirement. Benefits must be released as if no inquiry was pending.

    (U.P. Cooperative Institutional Service Board case)

11. Must the inquiry report be shared with the employee?

    A. Yes. Failure to provide the report violates the principle of audi alteram partem (no one can be condemned unheard).

12. What if the misconduct is proven but seems minor?

    A. Choose proportionate action, such as a warning rather than severe penalties.

13. What if senior management wants a harsher penalty?

    A. Advise based on fairness, precedent, and risk. Document the rationale clearly.

14. What if the employee apologizes after the inquiry?

    A. Consider it, but base the decision primarily on facts and the seriousness of misconduct.

15. What if termination seems too harsh but action is needed?

    A. Consider alternative penalties like suspension or withholding increment.

16. What if the employee does not attend the inquiry?

    A. After giving a reasonable opportunity, the inquiry can proceed ex-parte.

17. What if the employee keeps asking for adjournments?

    A. Allow reasonable requests, but avoid unnecessary delays. Record reasons for decisions.

18. What if the Inquiry Officer is challenged for bias?

    A. Review the concern objectively. If valid, consider replacing the Inquiry Officer.

19. What if witnesses are reluctant to participate?

    A. Encourage participation respectfully and assure confidentiality where appropriate.

DISCIPLINARY DECISION – PRACTICAL DILEMMAS

20. What if misconduct is proven but not very serious? A. Use proportionate action like warning instead of harsh penalties.

21. What if management wants strict punishment despite weak evidence?
    A. Advise against it. Weak cases increase legal risk.
22. What if the employee apologizes after misconduct is proven?
    A. Consider it, but base decision on facts and seriousness.
23. What if charges are not proved but management still has doubts?
    A. Close the case. Avoid indirect punishment.

B. Domestic Enquiry – Suggested Sample Formats

APPOINTMENT OF INQUIRY OFFICER

Context

An Inquiry Officer (IO) is appointed to conduct a fair and unbiased inquiry into the charges. The appointment must clearly establish independence and scope.

Sample Format

[On Company Letterhead]

Date:

To,
[Name of Inquiry Officer]

Subject: Appointment as Inquiry Officer

Dear [Name],

You are hereby appointed as the Inquiry Officer to conduct a Domestic Inquiry into the charges issued against [Employee Name] vide Charge Sheet dated [date].

You are requested to:

- Conduct the inquiry in a fair and impartial manner
- Provide a reasonable opportunity to the employee to present their case
- Examine relevant documents and witnesses
- Submit your findings in the form of an Inquiry Report

The inquiry may be conducted in accordance with the Company's disciplinary procedures and principles of natural justice.

Please confirm your acceptance of this assignment.

For [Company Name]
[Name]
[Designation]

Key Considerations

- Ensure the Inquiry Officer is neutral and not connected to the case
- Clearly define scope without influencing outcome
- Avoid appointing direct supervisors or involved parties

FORMAT 4: NOTICE OF DOMESTIC INQUIRY (HEARING NOTICE)

Context

This notice informs the employee about the inquiry proceedings and ensures they are given a fair opportunity to participate.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Notice of Domestic Inquiry

Dear [Employee Name],

This is to inform you that a Domestic Inquiry has been initiated in connection with the Charge Sheet issued to you dated [date].

The inquiry proceedings are scheduled as follows:

Date:
Time:
Venue / Mode (Physical/Virtual):

You are required to be present and may:

- Present your explanation
- Submit documents in your defence
- Bring witnesses, if any

You may also be accompanied by a co-employee, as per Company policy.

In case you are unable to attend, you are required to inform in advance with reasons.

Failure to attend without sufficient cause may result in the inquiry proceeding ex parte.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Provide adequate notice time
- Clearly mention rights available to the employee
- Avoid complex legal language
- Ensure proper documentation of delivery

C. PROCEEDINGS, FINDINGS & CLOSURE)

FORMAT 5: DAILY ORDER SHEET / RECORD OF PROCEEDINGS

Context

The Daily Order Sheet (DOS) is a running record of inquiry proceedings. It ensures transparency and provides a clear trail of how the inquiry was conducted.

Sample Format

Domestic Inquiry – Record of Proceedings

Case: [Employee Name]
Date of Hearing:
Inquiry Officer:

Proceedings:

- The inquiry commenced at [time] in the presence of:
    - Inquiry Officer
    - Management Representative (if any)
    - Employee / Representative
- The charges were read out and explained to the employee.
- The employee confirmed understanding of the charges.
- The employee pleaded: [Accepted / Denied / Partially Accepted]
- Documents presented:
  [List of documents]
- Witnesses examined:
  [Name & brief note]
- Key submissions made during the hearing:
  [Brief neutral summary]
- Next date of hearing (if applicable):

The proceedings concluded at [time].

Signature of Inquiry Officer

Signature of Employee (or note if declined),

Signature of Presenting Officer

Signature of Witnesses

Key Considerations

- Maintain factual and neutral recording—no interpretations
- Record attendance, submissions, and sequence clearly
- Obtain signatures wherever possible
- Note refusals, absences, or delays transparently

FORMAT 6: WITNESS STATEMENT RECORDING

Context

Witness statements form a key part of evidence. They should be recorded clearly, without leading or influencing the witness.

Sample Format

Witness Statement

Name of Witness:
Designation:
Date:

I, [Name], state as follows:

[Statement in first person describing facts observed.
Encourage narration in the witness's own words.]

I confirm that the above statement is true to the best of my knowledge and belief.

Signature of Witness

Signature of Inquiry Officer

Key Considerations

- Avoid leading questions or suggested answers
- Record statements in first person
- Ensure clarity and completeness
- Allow witness to review before signing

FORMAT 7: CROSS-EXAMINATION RECORD

Context

Cross-examination ensures fairness by allowing the employee to question evidence presented against them.

Sample Format

Cross-Examination Record

Witness Name:
Date:

Questions by Employee / Representative:
Q1:
Q2:

Responses by Witness:
A1:
A2:

Re-examination (if any):

The above has been recorded during the inquiry proceedings.

Signature of Inquiry Officer

Signature of Witness

Signature of Employee / Representative

Key Considerations

- Record questions and answers as closely as possible to actual wording
- Avoid summarising in a way that changes meaning
- Ensure respectful and orderly conduct
- Allow both sides fair opportunity

FORMAT 8: INQUIRY REPORT

Context

The Inquiry Report is the most critical document in the process. It presents findings based on evidence and must be reasoned, structured, and neutral.

Sample Format - Inquiry Report

Employee Name:
Charge Sheet Date:
Inquiry Officer:

1. Background

Brief overview of the case and charges.

2. Charges

List of charges as per Charge Sheet.

3. Proceedings Summary

Brief summary of inquiry process, hearings conducted, and participation.

4. Evidence Presented

- Documents
- Witnesses

5. Analysis of Each Charge

Charge 1:

- Summary of evidence
- Consideration of employee’s response
- Observations

Finding: [Proved / Not Proved / Partially Proved]

6. Conclusion

Based on the above, the findings are as follows:
[Summarise outcomes of all charges]

7. Remarks (Optional)

[Any general observations, without recommending punishment]

Signature of Inquiry Officer
Date:

Key Considerations

- Base findings strictly on evidence and proceedings
- Avoid emotional or judgmental language
- Do not recommend punishment (unless policy requires)
- Maintain clarity between facts, analysis, and findings

FORMAT 9: WITHDRAWAL OF CHARGES / CLOSURE (NOT PROVED)

Context

Where charges are not established, it is important to formally close the matter. This reinforces fairness and demonstrates that disciplinary processes are not outcome-driven.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Closure of Disciplinary Proceedings

Dear [Employee Name],

This is with reference to the disciplinary proceedings initiated against you vide Charge Sheet dated [date] and the subsequent Domestic Inquiry conducted.

Based on the findings of the Inquiry Report, the charges against you have not been established.

Accordingly, the disciplinary proceedings initiated in this matter are hereby closed.

You are advised to continue to adhere to the Company's policies and maintain expected standards of conduct.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Maintain neutral and respectful tone
- Avoid language that suggests suspicion or partial guilt
- Reinforce closure clearly
- Ensure no indirect penal consequence follows

Disclaimer

This format is intended for informal or early-stage intervention and does not constitute formal disciplinary action. Organizations may adapt it based on their internal practices.

D. WRITTEN WARNING / ADVISORY COMMUNICATION

Context

When concerns persist despite informal discussions, a written communication may be issued to formally record expectations and signal the need for improvement. This serves as a corrective measure, not immediate punishment.

Sample Format

[On Company Letterhead / HR Communication]

Date:

To,
[Employee Name]

Subject: Advisory / Written Warning

Dear [Employee Name],

This is with reference to the discussions held with you on [date(s)] regarding [brief description of issue].

Despite earlier communication and guidance, the concern continues to be observed, specifically:

[Clearly mention the issue with examples, if required]

You are advised to take immediate steps to address the above and ensure adherence to expected standards of conduct and performance.

Failure to demonstrate improvement may lead to further action in accordance with Company policy.

You are encouraged to reach out to your manager or HR if you require any clarification or support.

For [Company Name]
[Name]
[Designation]

Key Considerations

- Refer to previous discussions or counseling
- Keep the tone firm but not punitive
- Be clear about expected improvement
- Avoid vague language—be specific but respectful
- Use consistently across similar cases

Closing Note

"When accountability is built early through clarity and conversation, discipline becomes a last resort rather than a frequent necessity."

Disclaimer

These formats are illustrative and should be adapted based on organizational hierarchy, policies, and applicable legal requirements.

E. CHAPTER 6 – LEGAL CONSIDERATIONS & AVOIDING DISCRIMINATION

FORMAT 20: SPEAKING ORDER (REASONED DECISION)

Context

A Speaking Order is a structured decision document issued after reviewing the Inquiry Report. It explains the reasoning behind accepting or differing from the findings and forms the foundation for any disciplinary action.

Courts have repeatedly emphasised that decisions must reflect application of mind, fairness, and proportionality.

Sample Format
[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Decision on Disciplinary Proceedings

Dear [Employee Name],

This is with reference to the disciplinary proceedings initiated against you vide Charge Sheet dated [date], and the Domestic Inquiry conducted thereafter.

The Inquiry Officer has submitted the Inquiry Report dated [date], which has been carefully reviewed.

1. Summary of Charges

   [Briefly list charges]

2. Findings of the Inquiry

   [Summarise findings charge-wise]

3. Consideration by the Disciplinary Authority

The Inquiry Report and all related records have been examined. Your submissions during the inquiry have also been taken into account.

Based on this review:

- Charge 1: [Accepted / Not Accepted / Modified view]
- Charge 2: [Same structure]

4. Conclusion

Based on the above, it is concluded that:
[Clearly state which charges are established]

A decision on appropriate action is being taken separately.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Demonstrate independent application of mind
- Do not blindly reproduce Inquiry Report
- Be clear where you agree or differ
- Maintain a neutral and reasoned tone
- Avoid emotional or subjective language

FORMAT 21: PUNISHMENT IMPOSITION ORDER (CONSOLIDATED FORMAT)

Context

This format is used to impose disciplinary action after charges are established. It is designed as a single structure, with flexibility to apply different types of penalties.

The issuing authority should select and adapt the relevant portion depending on the nature of punishment:

- Warning
- Suspension
- Withholding of increment
- Other minor penalties

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Disciplinary Action

Dear [Employee Name],

This is with reference to the disciplinary proceedings initiated against you and the subsequent decision communicated vide letter dated [date].

Based on the findings and after due consideration, it has been concluded that the charges against you have been established.

Decision

In view of the above, the following action is being taken:

[Select and adapt one of the below options]

Option A: Warning

You are hereby issued a formal warning. You are advised to ensure that such instances do not recur and to adhere to expected standards of conduct.

Option B: Suspension (as penalty)

You are hereby placed under suspension for a period of [X days] effective from [date]. During this period, terms applicable as per company policy will apply.

Option C: Withholding of Increment

Your increment for the period [specify] is being withheld.

Option D: Other Penalty (Specify)
[Clearly describe]

Closing Note

You are advised to treat this matter with seriousness and ensure compliance with company policies going forward.

[Company Name]

[Name]
[Designation]

Key Considerations

- Ensure proportionality between misconduct and punishment
- Avoid combining multiple penalties unless justified
- Be clear and specific in the action taken
- Maintain consistency across similar cases
- Avoid language that appears punitive beyond necessity

FORMAT 22: DISMISSAL / TERMINATION ORDER (POST INQUIRY)

Context

This is the most serious disciplinary outcome and must reflect:

- Due process
- Established misconduct
- Reasoned decision

Improper drafting at this stage can expose the organization to significant legal risk.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Termination of Employment

Dear [Employee Name],

This is with reference to the disciplinary proceedings initiated against you vide Charge Sheet dated [date], and the Domestic Inquiry conducted thereafter.

Based on the findings of the Inquiry Report and subsequent review, it has been concluded that the charges against you have been established.

Considering the nature and seriousness of the misconduct, it has been decided to terminate your employment with effect from [date].

You will be informed separately regarding settlement of dues, if any, in accordance with company policy.

You are advised to complete necessary formalities and hand over company property, if applicable.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Ensure clear linkage to inquiry and findings
- Avoid unnecessary details or emotional language
- Maintain dignity and professionalism
- Follow all statutory and contractual obligations
- Ensure documentation is complete before issuance

FORMAT 23: CLOSURE NOTE (BENEFIT OF DOUBT / NOT ESTABLISHED)

Context

In some cases, misconduct may not be fully established due to lack of evidence. A structured closure communication helps reinforce fairness and transparency.

Sample Format

[On Company Letterhead]

Date:

To,
[Employee Name]

Subject: Closure of Disciplinary Proceedings

Dear [Employee Name],

This is with reference to the disciplinary proceedings initiated against you.

Based on the Inquiry Report and review of available records, the charges against you have not been conclusively established.

Accordingly, the matter is being treated as closed.

You are advised to continue to adhere to expected standards of conduct and company policies.

For [Company Name]

[Name]
[Designation]

Key Considerations

- Maintain neutral tone—no implied guilt
- Avoid ambiguity in closure
- Ensure no indirect penalty follows
- Reinforce expectations without sounding punitive

Final Thought for Chapter 6 (Optional Insert)

"The strength of a disciplinary decision lies not in its severity, but in its fairness, consistency, and ability to withstand scrutiny."

Disclaimer

This format is illustrative and should be adapted based on case specifics and organizational practices.

Chapter 4

Sexual Harassment at workplace

"Sexual harassment at work is not just misconduct—it is a violation of dignity, equality, and justice, ***and has no place in any workplace****."*

4.1. Introduction

Women have been working all along, and some excerpts are:

Women have been central to the progress and well-being of societies through history, for example, in the 4th Century BCE in Greece, one of the first recorded female gynaecologists defied laws banning women from practising medicine. Her success led to legal reforms allowing women to study medicine. In another example, in 17th-century Mexico, a self-taught scholar and poet defended women's right to education and intellectual freedom.

In India, their role was once held in high regard—particularly during the Vedic period, when women were educated, spiritually empowered, and actively involved in public life. Figures like Gargi and Maitreyi were known for their intellect and philosophical insight, standing alongside male scholars as equals. This period reflected a time when gender parity was not merely aspirational but lived. However, as the centuries unfolded and societal structures evolved, this reverence gave way to regression. The post-Vedic era witnessed a shift toward patriarchy, where traditional freedoms were restricted, and women's roles were increasingly confined to domestic life. Their voices, once part of mainstream discourse, began to fade under layers of custom, control, and exclusion.

Yet, women's resolve never disappeared—it transformed. Over time, quiet resilience gave rise to louder calls for reform. Movements for education, equal rights, and representation gained momentum, especially in the modern era. But new spaces brought new challenges. The workplace, while opening avenues for empowerment, also revealed entrenched inequalities—most notably in the form of sexual harassment. Today, however, women across the world are speaking out, demanding dignity and justice at work.

4.2. The evolution of women in the workforce:

With the advent of the Industrial Revolution, the landscape of work transformed—not only in India but across the world. The participation of women in the workforce steadily increased, making significant contributions across diverse sectors, including services. Since the Industrial Revolution, the world of work has seen a dramatic shift, and women began entering the workforce in growing numbers, contributing across a wide range of fields inter-alia:

- **Tech & Services**
- **Agriculture**
- **Construction**
- **Domestic & Informal Work**

In India, women play a pivotal role in industries where tasks demand precision, tradition, or socio-economic adaptability—such as beedi rolling in Tamil Nadu and Madhya Pradesh, tea plucking in Assam and Darjeeling, and embroidery crafts like Chikankari and Kutch work. They dominate papad and agarbatti production through cooperatives like Lijjat, contribute to jewellery polishing and bangle finishing in Firozabad, and lead milk collection and testing in dairy cooperatives like Amul. These roles not only reflect their skill and cultural centrality but also serve as vital income sources, reinforcing their indispensable contribution to India's informal economy.

Women entered the formal workforce, and a stark reality began to surface. Workplace harassment, often rooted in power imbalances and gender discrimination, emerged as a serious and recurring issue. What was once dismissed as inappropriate behaviour or part of an "office culture" gradually came to be recognised for what it truly is: a violation of dignity, safety, and fundamental rights.

The turning point came when voices that had been silenced for years began to be heard. Individual experiences, media coverage, and public movements helped shed light on the emotional, physical, and economic harm caused by such conduct. Harassment was no longer seen as a personal discomfort; it became recognised as a systemic problem that undermines equal opportunity and organisational integrity.

Over time, this growing awareness pushed the government to respond. Legal systems started to acknowledge that the lack of safeguards at the workplace not only exposed women to harm but also discouraged their participation in the economy. The need for clear definitions, grievance mechanisms, and employer accountability became pressing.

Despite these strides, women still face tough hurdles—like unequal pay, gender bias, and workplace harassment. These challenges don't just hold women back—they slow down economic progress for everyone.

4.3. Constitutional Guarantee & Gender Equality:

India's Constitution firmly opposes discrimination, particularly in employment. Article 11 urges measures to eliminate workplace discrimination, while Articles 14 and 15 ensure equality and prohibit bias based on gender, caste, religion, or birthplace. Article 19(1)(g) guarantees the freedom to pursue any profession in a safe environment, and Article 21 protects personal dignity and liberty, emphasising the need for respectful treatment of women in professional settings. Collectively, they form a powerful legal promise: that every individual, regardless of gender, should be able to work with safety, respect, and equal opportunity.

But where do these promises stand in practice?

1. According to the International Labour Organisation (ILO), the gender pay gap in India stands at 27% as of 2023, meaning women earn 73% of what men earn for doing the same job.
2. Around 27% of women experience sexual harassment at work in India, according to a 2021 survey.
3. The majority of India's women work in the informal sector and have no access to the Prevention of Sexual Harassment Act protections.

Table 39:

Constitutional Promise	Workplace Reality
No bias in hiring	Gender pay gap persists across industries
Right to safe professional choice	Harassment continues to undermine participation
Right to dignity at work	Weak redressal often silences victims' voices

Sexual harassment in professional spaces directly violates the fundamental right to gender equality, as well as the right to life and liberty. Against this backdrop, the discourse on workplace misconduct and sexual harassment must be explored in depth to understand its implications and the legal frameworks designed to address it.

4.4. Emergence of Workplace Harassment as a Legal Concern

What was once whispered in corridors is now written into law.

Workplace harassment, long buried under hierarchies and silence, has emerged as a pressing legal and ethical concern. The shift didn't happen overnight; it grew from collective voices, pivotal court rulings, and a growing societal demand for dignity at work.

At the heart of this transformation lies the recognition that **a toxic workplace is not just a management issue—it is a violation of rights.** *Vishaka v. State of Rajasthan*[49] lit the torch, compelling legal frameworks such as the POSH Act to follow. The message became clear: **conduct that undermines safety and respect at work is not merely inappropriate—it is unlawful**.

Workplace harassment isn't just a personal complaint—it reflects deeper issues of power and culture. That's why organisations must go beyond ticking legal boxes and actively build safe, fair, and respectful areas.

4.5. Global and Indian Genesis

4.5.1. Genesis

The genesis of sexual harassment can be traced back to the Industrial Revolution in the early nineteenth century. Right from the inception, it is regarded as a social evil and has spread across the world.

How did "Sexual Harassment" got its name?

The term **"sexual harassment"** wasn't born in a courtroom—it was born in a moment of collective truth-telling.

[49] (1997)6 SCC 241

1975: At Cornell University, a group of women, led by academic **Lin Farley**, held a public “Speak Out” session where working women shared stories of being demeaned, propositioned, or punished for rejecting advances at work. Farley used the phrase “sexual harassment” to describe this widespread but unnamed experience.

That same year, *The New York Times* ran the headline:
“Women Begin to Speak Out Against Sexual Harassment at Work”—and the term entered public consciousness.

But the **problem itself is far older**.
From the **Industrial Revolution** onward, as women entered factories, farms, and domestic labour in large numbers, they often faced coercion, exploitation, and silence. What was once dismissed as “just part of the job” slowly began to be recognised as a **systemic abuse of power**.

Why does it matter?
Giving it a name gave it power.
What was once invisible became **actionable**—a social wrong that could be challenged, legislated, and redressed.

4.5.2. CEDAW & ILO Convention (Including Convention 190)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN in **1979** and enforced from **1981**, stands as a global bill of rights for women. It defines what discrimination looks like—and demands that nations dismantle it across every sphere: from politics and education to health, employment, and family life. For India, a signatory, this isn’t just a diplomatic nod—it’s a constitutional echo. **Article 11** of CEDAW specifically calls on member states to eliminate discrimination in the workplace.

Decades later, **ILO Convention 190 (2019)** pushed the envelope further, recognising freedom from harassment at work as a universal right. **ILO’s Convention 190** breaks new ground. It’s the first international treaty to recognise the **right to a world of work free from violence and harassment**, including gender-based abuse. It doesn’t just protect employees—it covers job seekers, interns, gig workers, and even those commuting to work. Its message is clear: **dignity at work is non-negotiable**.

What makes Convention 190 groundbreaking?
It acknowledges that harassment:

- Can affect **anyone**, regardless of gender or identity
- May occur **between peers**, or involve **supervisors, subordinates**, or even **third parties** like clients, vendors, or students
- Is not limited to physical spheres; it can happen **online**, during commutes, or in employer-provided housing

Article 1 of the Convention defines:

- **"Violence and harassment"** as a range of unacceptable behaviours—whether one-time or repeated—that cause or are likely to cause **physical, psychological, sexual, or economic harm**, including gender-based abuse
- **"Gender-based violence and harassment"** as acts directed at someone **because of their sex or gender**, or that **disproportionately affect** a particular gender, including **sexual harassment**

Why it matters?
Convention 190 reframes workplace safety as a **human right**, not just a compliance checkbox. It urges governments and employers to adopt a **zero-tolerance culture**, backed by clear policies, training, and accountability.

Despite these global frameworks, acts of violence and discrimination against women persist across borders, cultures, and income levels. As women step into every corner of the workforce, the onus is on governments and institutions to not just legislate, but to **enforce, educate, and empower**.

4.6. Rise of Awareness in India

In the early 19th century, women's presence in India's workforce was minimal, largely limited to domestic chores or caregiving professions like nursing. Yet even in these confined spaces, **sexual harassment was a silent reality**, rarely acknowledged and even more rarely addressed.

By the **1980s**, the silence began to crack. In Mumbai, the **Forum Against Oppression of Women** emerged as a bold voice, protesting the harassment faced by nurses in both public and private hospitals, often at the hands of male colleagues, patients, and hospital staff. This marked one of the earliest organised movements in India to confront workplace harassment head-on.

But awareness alone wasn't enough.

Awareness alone wasn't enough. Deep-rooted cultural norms, fear of judgment, and lack of support often forced women into silence, enduring harassment quietly until it became unbearable. Gradually, things began to change. Legal reforms, rising awareness, and global movements like #MeToo encouraged women in India and beyond to speak up. Today, incidents ranging from lewd comments to physical assault, sexual molestation, and exposure to pornography—whether at work or elsewhere—are being reported more openly. Sexual harassment at the workplace is not just a crime; it's a serious violation of human rights that can threaten a woman's job and dignity.

4.7. Judicial Activism and Vishaka Judgment

Long before the POSH Act found its way into the statute books, it was the Indian judiciary that stepped in to fill a dangerous silence. In 1997, the Supreme Court's landmark ruling in *Vishaka v. State of Rajasthan* wasn't just a judgment—it was a **call to action**. Sparked by the brutal injustice faced by Bhanwari Devi, the Court invoked constitutional rights and international conventions to craft the **Vishaka Guidelines**—a bold example of **judicial activism** where the bench became the bridge between **law and justice**. These guidelines didn't just define sexual harassment—they **redefined workplace dignity**. Until Parliament acted in 2013, these judicially crafted safeguards stood as the only legal shield for working women across India.

4.8. Understanding Workplace Harassment

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, commonly known as the **POSH Act**, is India's first comprehensive legislation aimed at ensuring a safe and dignified work environment for women. It defines sexual harassment broadly and mandates that every workplace with 10 or more employees establish an **Internal Committee (IC)**. Prior to POSH, the terminology **ICC (Internal Complaints Committee)** was used in the *Vishaka Guidelines (1997)* and in early references before the POSH Act was enacted. It emphasized the committee's role in handling complaints of sexual harassment. Both IC and ICC **refer to the same statutory body** mandated under the POSH Act. The term IC has broadened beyond just complaints to include **prevention, prohibition, and redressal** of sexual harassment at the workplace. **ICC** is still widely used in practice, especially in corporate training, HR manuals, and informal references. ICC and IC are invariably used interchangeably in corporate training, whereas for compliance and governance documents, **"Internal Committee (IC)"** should be used to align with the Act.

The Act outlines procedures for filing complaints, conducting inquiries, and ensuring confidentiality and protection against retaliation. It applies to all sectors—organized and unorganised, public and private—and recognises workplace harassment as both a **violation of fundamental rights** and a **punishable offence**.

A safe and respectful workplace is not just a legal requirement but a fundamental right. The **POSH Act, 2013,** establishes clear guidelines to prevent and address sexual harassment at work.

Scenario:

Imagine a new employee overhearing inappropriate jokes being made in a meeting. She will feel uncomfortable but isn't sure if this qualifies as harassment.

Table 40: Question: What should she do in this situation?

Step	Action	Key Considerations
Analyse the Situation	Identify why the jokes felt inappropriate—were they discriminatory, offensive, or suggestive?	Determine whether the remarks created a **hostile work environment** or were merely unprofessional.
Consider Direct Intervention	Address the behaviour if comfortable.	Use **assertive but neutral** statements like: *"Let's keep conversations professional."*
Document the Incident	Maintain a record if inappropriate jokes persist.	Capture **date, location, individuals involved, and specific remarks** for reference.
Seek Guidance	Approach a **trusted colleague or HR** for clarity on company policies.	Review **POSH (Prevention of Sexual Harassment) guidelines** if applicable.
Report if Necessary	If the jokes violate workplace policies, escalate the matter officially.	Use **confidential reporting mechanisms** available within the company.

Recognising Sexual Harassment

Harassment is an unwelcome act that creates an **intimidating, hostile, or offensive work environment**, including:

- ☐ Inappropriate physical contact
- ☐ Sexually suggestive remarks or gestures
- ☐ Displaying explicit content
- ☐ Persistent unwelcome attention

4.8.1. Legal Definitions Section: Harassment (Section 2(n) & 3(2) of POSH Act)

Defining the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act 2013:

For a complete understanding of the definition, read Section 2(n) and Section 3(2) of the Act together. Section 2(n) is as under:

"Sexual Harassment includes any one or more of the following acts of behaviour (whether directly or by implication), namely:

(i) *Physical contact and advances; or*

(ii) *A demand or request for sexual favours; or*

(iii) *Making sexually coloured remarks; or*

(iv) *Showing pornography; or*

(v) *Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.*"

Section 3(2) further states that:

"The following circumstances, among other circumstances, if it occurs or are present in relation to or connected with any act or behaviour of sexual harassment, may amount to sexual harassment:-

(i) *Implied or explicit promise of preferential treatment in her employment; or*

(ii) *Implied or explicit threat of detrimental treatment in her employment; or*

(iii) *Implied or explicit threat about her present or future employment status; or*

(iv) *Interferes with her work or creating, intimidating or offensive or hostile work environment for her; or*

(v) *Humiliating treatment likely to affect her health or safety."*

4.8.2. Types of Sexual Harassment

Sexual harassment manifests in various forms, with physical harassment being the most overt. This includes unwarranted physical contact, standing excessively close, touching, patting, pinching, hugging, or even sexual assault. The impact is deeply unsettling, creating discomfort and fear in professional spaces.

But physical harassment is only one facet. The discourse on workplace harassment has broadly categorised itself into two key types: **"Quid Pro Quo"** and **"Hostile Work Environment"** harassment.

A. Quid Pro Quo Harassment: Exploiting Power Dynamics

This form of harassment occurs when a person in authority—such as a supervisor or manager—demands sexual favours in exchange for workplace benefits like promotions, favourable assignments, or protection from termination. The underlying threat is clear: refusal to comply could result in adverse consequences.

While typically involving an individual in a superior position, **quid pro quo harassment** can also occur among colleagues of equal rank. Imagine a scenario where a coworker demands sexual favours in exchange for cooperation on a project or assistance with workplace tasks. The critical legal point? The actual negative consequence doesn’t need to occur—proving that such a demand was made is sufficient to establish misconduct.

Indian law recognises quid pro quo harassment explicitly under **Section 3(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, reinforcing protections against abuse of power.

B. Hostile Work Environment Harassment: Creating a Toxic Culture

This form of harassment doesn't require explicit requests for sexual favours—it's about **creating an environment of intimidation, humiliation, or discomfort**. Examples include:

- Persistent **whistling or making sexually suggestive sounds**
- Using **vulgar jokes, crude language, or spreading defamatory rumours**
- **Sexual gestures or imitating suggestive acts**
- **Unwelcome staring, excessive proximity, or unwarranted physical contact during conversations**

Notably, sexual harassment is **not defined solely by the perpetrator's intent—but by its impact on the victim**. Courts in India, including in the landmark **Apparel Export Promotion Council v. A.K. Chopra** [50]case, have reinforced that the hostile work environment test evaluates **whether the conduct created intimidation and discomfort**, rather than whether the offender intended harm.

C. Indirect Victimisation: Unspoken Harassment

Beyond direct physical or verbal misconduct, harassment can take subtle yet damaging forms:

- Assigning **unfair treatment** to certain employees based on gender
- **Unwanted proximity**—invading personal space
- **Comments on appearance, fairness, or physical attributes** in suggestive ways

A well-known legal precedent—the Mrs. Rupan Deol Bajaj v. KPS Gill[51] case—reinforced the idea that actions like inappropriate physical contact, even under the guise of social behaviour, can amount to outraging a woman's modesty. This case cemented the principle that the impact on the victim matters more than the alleged intent of the perpetrator.

[50]AIR 1999 SUPREME COURT 625
[51] 1995 SCC (6) 194

Table 41: Tabular comparison of Quid Pro Quo vs. Hostile Work Environment under POSH (Prevention of Sexual Harassment) laws:

Aspect	Quid Pro Quo	Hostile Work Environment
Definition	Harassment where a person in power demands sexual favours in exchange for workplace benefits or threatens negative consequences.	Harassment that creates an intimidating, offensive, or hostile work atmosphere, affecting an employee's ability to work.
Power Dynamics	Involves **authority figures** (such as a manager or senior executive) exploiting their position.	Can involve **anyone**—colleagues, clients, vendors, or supervisors.
Typical Examples	A supervisor offering a promotion in return for sexual favours. A threat of demotion or termination if demands are not met.	Repeated inappropriate jokes, offensive comments, unwelcome advances, sexually explicit materials, or persistent unwelcome conduct.
Legal Implications	Considered **direct harassment** and is easier to prove due to explicit exchanges.	Often **subjective** and may require evidence of a pattern of behaviour affecting the work environment.
Impact on Employee	Fear of retaliation, coerced decisions regarding career progression.	Mental distress, anxiety, reduced productivity, and an overall toxic workplace culture.
Actionable Steps	Report to HR or the **Internal Complaints Committee (ICC),** as it is a **clear violation of POSH laws**.	Gather **evidence** (emails, messages, witness testimonies) and report to HR or ICC if the behaviour persists.

4.9 Wider Implications- Need to understand

Sexual harassment negatively affects workplace **safety, mental well-being, productivity, and organisational culture**. It isn't just an ethical issue—it's a serious legal concern.

International labour standards emphasise that violence and harassment in professional settings constitute **human rights violations and barriers to equal opportunities**. As businesses expand globally, employers must not only acknowledge the legal obligation to prevent workplace harassment but also recognise the risks of failing to act—such as reputational damage, lower employee morale, high attrition rates, and potential legal repercussions due to **vicarious liability**.

While **sexual harassment is often perceived as a women's issue**, **it is not gender-specific**, and any individual in a vulnerable position can be subjected to it. However, statistically, women remain the most victims, especially in structured workplaces influenced by hierarchical dynamics.

4.10. Expanding the Workplace Concept

Workplace harassment doesn't just occur at a desk, workstation, or office. The legal definition extends beyond conventional boundaries and covers:

- ❖ Any location an employee visits as part of their job
- ❖ Work-related travel and transportation provided by the employer
- ❖ Remote, field-based, or non-traditional workspaces

4.10.1. The ILO's 'World of Work' Approach

The International Labour Organisation (ILO) broadens the definition further to **all productive work environments**, regardless of physical setting:

- ✓ Selling products in public spaces (e.g., streets or markets)
- ✓ Work-from-home setups
- ✓ Remote field assignments and contractual jobs

4.10.2. Applying the Definition in Real Cases

- **Scenario:** A salesperson experiences harassment while visiting a client's location for work → This qualifies as workplace harassment.
- **Scenario:** An employee faces inappropriate behaviour while commuting in employer-provided transport → Falls under workplace harassment regulations.
- **Scenario:** A freelance worker facing sexual harassment in a market while selling products → Covered under the ILO's definition of 'world of work'.

4.10.3. Employers' Responsibility

- Must create **safe environments beyond office walls**
- Need clear policies addressing harassment in **work-related travel & non-traditional settings**

4.10.4. Employees' Rights

- Protection applies beyond the physical workspace
- Workplace harassment law covers **all work-associated locations**

Table 42

Types	What It Includes	Example Scenario
Physical	Offices, factories, hospitals, schools, shops, courts, NGOs, etc.	A woman doctor was harassed by a colleague in a hospital corridor.
Extended	Client sites, offsite events, training venues, and transport provided by the employer	A sales executive is harassed during a client visit or in a company cab.
Remote/Home	Any dwelling where work is performed—home, rented flat, or co-working space	A woman working from home receives inappropriate messages during work hours.
Virtual	Emails, Zoom/Teams calls, WhatsApp, Slack, and social media are used for work	A manager makes lewd comments during a video call or sends suggestive emojis on chat.

4.11. Scope of protection under the Law

4.11.1. Who can complain in a sexual harassment matter?

Section 3(1) of the Act states, "No woman shall be subjected to sexual harassment at any workplace"

The statute has broadened the scope and intended the protection of law to the "aggrieved woman" in relation to the workplace, irrespective of age, whether employed or not, which means third parties also have protection under the law. An aggrieved woman who alleges to have been subjected to any act of sexual harassment by the perpetrator. Even the outsider, who has been harassed at the workplace, can also seek a remedy under this Act. In the matter of Srinivas Rajan v. The Director of Matriculation Schools, the mother of a student was harassed by a schoolteacher, who used to drop her son off at school. The High Court of Madras has held that Vishaka's guidelines not only dealt with the women employees but also the sexual harassment faced by third parties or outsiders, and the employer's obligation is to take action against the culprit.

The terms “employee”, “employer”, and “workplace” are defined extensively with the objective of dealing with any kind of situation pertaining to sexual harassment at the workplace.

4.11.2. Who is covered under POSH?

a. Employee

Definition: Any woman employed at a workplace, whether **regular, temporary, ad hoc, part-time, full-time, contractual, intern, or volunteer**.

Examples:

- **Corporate Intern:** A 21-year-old intern at a marketing firm faces inappropriate jokes from a team lead during lunch breaks. She’s fully protected under POSH.
- **Factory Worker:** A daily-wage female worker in a garment unit is harassed by a supervisor. Despite her informal status, she can file a complaint.
- **Remote Freelancer:** A woman working remotely for a tech startup is harassed during Zoom calls. The virtual workspace is still a “workplace” under POSH.

b. Employer

Definition: A person or authority responsible for the management, supervision, and control of the workplace. This includes **directors, HR heads, school principals, government officers**, etc.

Examples:

- **Startup Founder:** The CEO of a 15-person startup must constitute an Internal Committee (IC) and ensure awareness sessions—even if no complaints have been filed.
- **School Principal:** A principal is responsible for ensuring that teachers and staff are trained on POSH, and that students (if above 18) are protected.
- **Government Officer:** A district collector overseeing a public office must ensure compliance, including forming a Local Committee if needed.

c. Third Parties

Definition: Individuals who are **not employees** but interact with the workplace, like **clients, vendors, delivery agents, consultants, or visitors**.

Examples:

- **Client Harassment:** A female sales executive is harassed by a client during a business dinner. The employer must support her and take preventive action, including blacklisting the client.
- **Vendor Misconduct:** A woman working in a retail store is harassed by a delivery agent. The store must act, possibly banning the vendor and reporting the incident.
- **Consultant at Offsite:** A female consultant is harassed during a company-sponsored offsite retreat. Even though she's not on payroll, the IC has jurisdiction.

4.12. Impact of Sexual Harassment

Sexual harassment is not just a personal trauma—it's a **systemic fault line** that fractures trust, corrodes workplace culture, and drains economic potential. Behind every whispered complaint or unreported incident lies a **cascade of consequences** that ripple far beyond the individual.

- **Emotionally**, it leaves survivors grappling with anxiety, depression, insomnia, and PTSD-like symptoms. The workplace becomes a battlefield, not a space for growth.
- **Economically**, women who experience harassment are more likely to exit their jobs, face career stagnation, or abandon entire industries, leading to wage gaps, lost tenure, and shattered ambitions.
- **For employers**, the costs are staggering, including reduced productivity, increased absenteeism, high attrition, reputational damage, and legal liabilities.
- **Reputationally**, organisations that fail to act face public backlash, investor distrust, and talent drain—especially in the era of #MeToo and digital accountability.
- **Culturally**, unchecked harassment normalises power abuse, silences voices, and undermines diversity and inclusion efforts.

In short, sexual harassment is not a "women's issue"—it's a **workplace risk**, a **leadership failure**, and a **barrier to progress**.

Table 43: Here's the impact of sexual harassment on both employers and employees in a structured tabular format for clarity:

Impact Area	Effect on Employer	Effect on Employee
Reputation & Branding	Damage to corporate image, negative media coverage, loss of stakeholder trust	Stigma attached to reporting, isolation from colleagues
Employee Turnover	High attrition rates, loss of skilled employees	Feeling unsafe, prompting resignation or job change
Workplace Morale	Decline in team cohesion, increased conflicts	Psychological distress, reduced job satisfaction
Productivity	Lower overall efficiency due to workplace toxicity	Distraction, inability to focus on tasks
Absenteeism	Higher instances of sick leaves and time off	Frequent absenteeism due to stress, fear, or mental health issues
Legal & Compliance Risks	Potential lawsuits, regulatory penalties, and financial liability	Struggles in proving the misconduct, delays in justice
Training & Development Costs	Increased expenses for retraining or hiring replacements	Career progression hindered, lack of motivation for growth
Workplace Culture	Toxic environment discouraging collaboration and inclusivity	Loss of confidence, reluctance to speak up or contribute
Mental & Physical Health	Increased healthcare costs due to workplace distress	Anxiety, depression, PTSD, reduced well-being
Economic Cost	Compensation claims, legal fees, loss of productivity	Personal financial loss from quitting or legal battles

4.13. India vis-à-vis Sexual Harassment Law Initiatives

In India, awareness around sexual harassment at the workplace emerged relatively late. Until the 1990s, women had limited avenues for redressal, often resorting to filing complaints under **Section 354** (assault or criminal force to outrage modesty) and **Section 509** (insulting the modesty of a woman) of the Indian Penal Code, 1860. These provisions, however, were neither workplace-specific nor preventive.

The **Bhanwari Devi case** in 1992 became a national reckoning. A grassroots worker in Rajasthan, Bhanwari was gang-raped for intervening in a child marriage. Her pursuit of justice exposed the **systemic vulnerability** of working women across India, regardless of geography, sector, or status. It underscored how unchecked sexual misconduct could escalate into brutal violence.

The need to address the issue in its landmark judgment of **Vishaka & Others v. State of Rajasthan & Ors**[52]. In 1992, Bhanwari Devi, a grassroots social worker (Saathin) from Rajasthan, tried to prevent a child marriage in a powerful Gujjar family. Her intervention triggered severe backlash. As an act of revenge, she was brutally gang-raped by several men from the community in front of her husband. Despite the gravity of the crime, she faced immense hurdles in lodging a police complaint, and her pursuit of justice was met with **apathy, delays, and humiliation.** The trial court later acquitted the accused, citing a lack of evidence. Her case gained national attention and became a catalyst for legal reform concerning sexual harassment in India.

This case triggered nationwide outrage and exposed the **systemic vulnerabilities** faced by working women. It sparked a **Public Interest Litigation (PIL)** by women's groups under the banner *Vishakha*, culminating in the **landmark Supreme Court judgment in 1997** that recognised workplace sexual harassment as a violation of constitutional rights.

In response, a group of NGOs filed a **Public Interest Litigation (PIL)** under Article 32 of the Constitution. This culminated in the **landmark Vishaka v. State of Rajasthan** judgment on **13 August 1997.**

[52] (1977) 7 SCC 323

In this historic ruling, the **Supreme Court of India** acknowledged that:

"The present civil and penal laws in India do not adequately provide specific protection of women from sexual harassment in workplaces, and the enactment of such legislation will take considerable time."

Thus, the Court stepped in with **judicial activism**, issuing the **Vishaka Guidelines**—a set of binding directives that treated sexual harassment as a violation of **Articles 14, 15, 19(1)(g), and 21** of the Constitution. These guidelines remained the de facto law until the **POSH Act, 2013,** was enacted.

"*One woman's pursuit of justice lit the path for millions*."

The Hon'ble Supreme Court of India, in a pathbreaking judgment, delved into the deeply entrenched issue of **gender inequality in Indian society**, recognising it as a root cause of violence against women. While examining the issue of **sexual harassment at the workplace**, the Court acknowledged a critical legislative vacuum and turned to **international treaties**, particularly the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*—despite these not being fully enacted into domestic law.

Then Mr. Justice J.S. Verma of the Hon'ble Supreme Court quoted "*The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all facets of gender equality….*"

In the given judgment, the Hon'ble Court, whilst providing the general definition of sexual harassment, has also set out the guidelines to deal with the malaise of women at workplace. Further, the Hon'ble Court has taken into consideration relevant provisions of the CEDAW for which India is also a signatory. These guidelines **are popularly known as the Vishakha Guidelines**.

The Hon'ble Court outlined the Vishakha Guidelines, binding employers in both private and public sectors, to address sexual harassment at workplaces until a suitable law is enacted by Parliament. These guidelines were influenced by India's commitments under CEDAW.

The salient features of the Vishakha guidelines are as under:

- The Court declared that sexual harassment amounts to immorality among the victims and was a gross violation of their fundamental rights as enshrined under Articles 14, 19, and 21 of the Constitution.

Article 14: *Equality before Law: The state shall not deny to any person equality before the law or equal protection of the law within the territories of India.*

Article 14 ensures equality before the law and equal protection, prohibiting unreasonable distinctions. The Supreme Court emphasises that classifications must have clear criteria and a rational basis to achieve their intended purpose.

The principle of reasonableness, which legally and philosophically is an essential element of equality and non-arbitrariness, pervades Article 14 like a brooding omnipresence[53].

Article 19 grants citizens' rights such as freedom of speech, movement, and profession, emphasising gender equality in workplaces. Sexual harassment violates these freedoms, affecting women's ability to work, express themselves, and move freely due to trauma and stigma.

Article 21 protects life and personal liberty for all genders. The court in Vishakha ruled that sexual harassment infringes on the right to life and dignity, tasks the state with ensuring gender equality, and highlights the need for freedom from discrimination at work.

In the matter of Deputy Inspector General of Police v. S. Samuthiram[54] the Supreme Court commented as under:

"Every Citizen in this country has a right to live with dignity and honour, and this is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual Harassment, like eve-teasing of women, amounts to a violation of rights guaranteed under Article 14, 15 as well."

[53] (1978) 1 SCC 248 para 56
[54] (2013) 1SCC 598 para 26

- The Court also formulated guidelines while meaningfully disposing of the case. The then Solicitor General of India, who appeared on behalf of the Union of India, had given its assent for the guidelines through the Solicitor General, in addition to committing to devise a women's policy that would make sure that women's rights are protected, to provide them with a safe atmosphere to flourish in various fields of life.

The Court defined sexual harassment in the Vishaka judgment as:

"Sexual Harassment" inter alia includes the following, whether directly or by implication:

1. Making sexually coloured remarks
2. Unwelcome physical, verbal or non-verbal conduct of a sexual nature
3. Demand or request for sexual favours
4. Physical contact and advances
5. Showing Pornography

The preventive steps that the employers (private and public) or institutions are required to adopt as follows:

- sexual harassment at the workplace should be informed, produced, and circulated. Every act of harassment shall be dealt with in an appropriate manner, which shall include criminal proceedings and disciplinary action.
- For the time-bound and effective redressal of complaints, a robust mechanism should be in place at workplaces.
- A complaints committee should be put in place, which should be headed by a woman, and more than half of its members should also be women.
- To prevent any pressure from the higher-ups at the workplace, a third party, like an NGO, should be involved.

- Inclusion of the prohibition of sexual harassment in the Standing Order under the Industrial Employment Act.
- Moreover, concrete steps must be taken to create awareness at the workplace as to what sexual harassment is and how to approach appropriate people if someone is harassed at the workplace.

Workplace sexual harassment is not just a legal issue—it's a lived trauma, often suffered in silence. Countless women endure it without speaking up, held back by fear, stigma, and the risk of professional fallout. This silence is not accidental—it's enforced by deeply rooted power imbalances and social conditioning. Despite the landmark *Vishakha* judgment most employers responded with indifference, turning a blind eye to the very safeguards meant to protect their workforce.

The result? A system that too often fails those, who were meant to be shielded, allowing cycles of abuse to persist and dignity to erode in the shadows of inaction. The response of most of employers was not very enthusiastic and therefore, things were moved at a snail's pace. No meaningful efforts were made either by the private or public sectors to implement the guidelines.

In 2013, India enacted the POSH Act, a landmark law born from the *Vishaka* judgment and intensified by the Nirbhaya outcry in 2012, to safeguard women's right to a safe, dignified workplace. It offers civil remedies nationwide and complements existing criminal laws to combat sexual harassment effectively. Yet its effective implementation remained in the doldrums due to the lack of willingness of the corporate as well as the public sectors.

Despite over a decade since enactment, the POSH Act, 2013, remains far from achieving universal compliance. It is disheartening that many corporates and allied institutions continue to treat its implementation as a formality rather than a foundational commitment to workplace dignity. The lack of institutional will, patchy awareness programs, and superficial policy frameworks reflect a broader reluctance to engage seriously with the spirit of the law. **Compliance with POSH cannot be optional—it must be integral to an organisation's ethical architecture.**

There was another case, in fact first after the Vishakha Judgment, titled Apparel Export Promotion Council V. A.K. Chopra[55], the Hon'ble Supreme Court reiterated the law of the Vishakha judgment and dismissed the officer of the Company, who was found guilty of sexual harassment of a female employee at the workplace. The Supreme Court reinforced its stance on workplace sexual harassment and clarified that physical contact is not a prerequisite for sexual harassment—even unwelcome verbal or non-verbal behaviour with sexual undertones can amount to a serious violation if it creates a hostile work environment or affects a woman's dignity at work.

The Court also responded strongly to public concern: when an NGO submitted a letter of protest on the issue, the Supreme Court treated it as a writ petition and stepped in to monitor the implementation of the Vishakha Guidelines. It emphasised that compliance must go beyond superficial adoption—the guidelines must be followed in both form and spirit to ensure women have a safe, respectful, and dignified workplace. The Court directed the Central and State Governments to report back on the actual steps taken to uphold these standards.

*The Supreme Court ruled that physical contact is not required for an act to qualify as sexual harassment. The Hon'ble Court further explained that "**sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her**"*

[55] (1999) 1 SCC 759

The POSH Act mandates the establishment of Internal Complaints Committees (ICCs) at workplaces to address and investigate complaints of sexual harassment. It recognises sexual harassment as a violation of women's rights and includes unwelcome advances, requests for sexual favours, and behaviours that create a hostile work environment. Despite its enactment, challenges remain, including gaps in defining harassment, clarifying employer responsibilities, and ensuring adequate protection for victims during investigations. While the Act is a significant step forward, efforts continue to refine and strengthen its implementation.

Table 44: Tabular format outlining India's key initiatives under POSH since its inception and ongoing developments:

Year	Initiative	Key Impact
1997	**Vishaka Guidelines**	Laid the foundation for workplace sexual harassment laws in India.
2013	**POSH Act Enacted**	Established legal protections, mandated **Internal Committees (IC)**, and defined sexual harassment. The term Internal Complaints Committee (ICC) was used in Vishaka Guidelines in 1997 by the Hon'ble Supreme Court. The Act adopted the correct term IC officially in 2013.
2015	**Mandatory Employer Compliance**	Required organisations to conduct **POSH training** and submit annual reports on complaints.
2017	**Judicial Clarifications**	Strengthened enforcement through **landmark judgements** reinforcing employer accountability.
2020	**Digital POSH Training**	Increased accessibility through **online awareness programs** and virtual complaint mechanisms.
2023	**Expanded Scope**	Included **remote work harassment** and broadened protections beyond traditional office settings.
2025	**AI-Based Reporting Systems**	Emerging use of **AI-driven complaint tracking** for better transparency and resolution.

4.14. The POSH Act in brief and its compliance are as under

A. Prohibition of sexual harassment at the workplace;

B. Preventing and protecting women against workplace sexual harassment; and

C. To ensure effective redressal of complaints of workplace sexual harassment.

A. Sexual Harassment at the Workplace

The POSH Act radically reimagines what a "workplace" means—because safety shouldn't end at office walls. Unlike the Vishakha Guidelines, which limited protection to conventional office settings, the Act extends its shield to wherever work takes a woman—client sites, offsite meetings, business travel, even the cab arranged by her employer. Whether in a bustling corporate office, a remote worksite, a gig-based environment, or a foreign-owned company operating in India, **the definition of workplace under POSH is deliberately expansive**. This bold legislative design reflects a clear intent: **no matter the industry, employer, or geography, every woman has the right to dignity and safety while she works**.

The Delhi High Court, in the case of Saurabh Kumar Mallick v. Comptroller & Auditor General of India, emphasised the importance of the Vishaka guidelines in preventing workplace sexual harassment and ensuring accountability for offenders. The court clarified that spaces like an official mess could be considered part of the workplace under the following criteria:

- Proximity to the employee's official work location
- Whether the management has control over the space
- Connection or extension of the workplace to the location

Importantly, the Court cautioned against a rigid interpretation of the term "workplace," especially in the modern era of remote operations and hybrid work. With post-pandemic norms normalising virtual engagements across geographies, it is entirely plausible that CEOs or senior officials may run organisational affairs from their homes. If such authority is misused—for instance, to harass a subordinate like a private secretary—**it would be legally untenable to exclude such settings from scrutiny merely because they fall outside a conventional office space**.

This precedent reiterates that the scope of "workplace" must be interpreted liberally to protect employees in all environments where professional power dynamics exist.

In another case titled Gaurav Jain V. Hindustan Latex Family Planning Promotion Trust & Ors[56], the Delhi High Court upheld the Internal Committee's decision to terminate an employee accused of sexually harassing a female colleague during an official outstation assignment. This ruling reinforces the authority of Internal Committees and affirms that workplace protection under the POSH Act extends beyond traditional office boundaries.

With the rise of remote work and digital collaboration, the interpretation of "workplace" has expanded. Courts have reiterated that the POSH Act's definition is purposefully wide, designed to cover any setting where professional interactions occur, and women may be at risk. This ensures that **legal safeguards keep pace with the changing contours of modern workspaces.** (Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University[57]).

B. Preventing and protecting women against workplace sexual harassment

The POSH Act is more than a legal mandate; it's a catalyst for workplace equality**.** Fostering safe and respectful environments, it affirms women's right to equal opportunity, dignity, and freedom from discrimination. Effective implementation doesn't just protect or empower. A secure workplace boosts women's confidence to participate fully in the workforce, paving the way for their economic independence and advancing the nation toward truly inclusive growth

[56] (2015) SCC online 11026
[57] 2014 SCC online Bom814

C. To ensure effective redressal of complaints of workplace sexual harassment

Complaints Committee: An important feature of the POSH Law is that it envisages the setting up of a grievance redressal forum, *i.e.,* a complaints committee. The Act provides for two types of complaint mechanisms: the Internal Committee ("IC") and the Local Committee ("LC"). The IC and LC have the same powers as vested in a civil court under the Code of Civil Procedure, 1908. All the complaints committees shall have at least half of the total members so nominated as women. The members of the complaint committees will hold their position for up to 3 years from the date of their nomination or appointment.

The other important features of the POSH Act are as follows:

"Aggrieved woman" means-

a. In relation to a workplace, a woman, of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent.

b. In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

The definition covers the right of every woman to a safe and secure workplace environment, irrespective of her age and working status. Therefore, all women working or visiting any workplace, whether in the capacity of regular, temporary, or daily wager is protected.

The hiring for the job is immaterial, whether they engaged directly or through a contractor, with or without the knowledge of the principal employer. The female can be a co-worker, probationer, trainee, apprentice or any other term related thereto.

Further, she could be a co-worker, a contract worker, a probationer, a trainee, an apprentice, or called by any other such name. A woman employed to work in a domestic place or house is also covered. So, the definition is very wide and inclusive one.

"Employee" definition under the POSH Act is fairly wide to cover regular, temporary, ad-hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourer's, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working voluntarily or otherwise, whether the terms of employment are express or implied.

"Sexual Harassment: The term defines "Sexual Harassment" in the Act is in line with the Supreme Court's definition of 'Sexual Harassment' in the Vishaka Judgment. "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

i. Physical contact and advances; or
ii. A demand or request for sexual favours; or
iii. Making sexually coloured remarks; or
iv. Showing pornography; or
v. Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

The definition is inclusive, and all kinds of unwelcoming gestures, remarks, physical advancement/ touching, either forcefully or unintentionally, are covered in it. One must note that sexual harassment at workplace is not acceptable, and the experience is subjective. It is the impact and not the intent that matters. It almost always occurs in a matrix of power. There may be a single instance of sexual harassment or multiple incidents over a period of time. Therefore, each case is unique and should be examined under a different lens on the basis of the surrounding facts and circumstances meticulously.

4.14.1. Employer's Obligation under the POSH Act

1. Employers to display a notice at the workplace providing details of the protection given to female employees against sexual harassment.

2. Employers must compose an Internal Committee (IC) at the workplace/ establishment to address complaints of sexual harassment. It is pertinent to clarify here that some may refer it ICC, whereas post POSH, the term officially adopted IC, which is the correct term since it has expanded the scope beyond just complaints of sexual harassment at the workplace.
3. IC must be led by a woman; at least half of its members should be women.
4. Employers must take necessary steps to prevent sexual harassment and also ensure that female employees are not victimised or to have any discrimination in the organisation.
5. Employers are to provide requisite support and support to the complainant for creating a conducive environment in case she has to be transferred, where she can perform her duties without any pressure.
6. Employer is duty-bound to provide a conducive working environment to the women in the organisation. The Hon'ble High Court of Madras High Court in a most learned, laudable, landmark, logical and latest judgment "HCL Technologies Ltd vs N Parsarathy "[58] has held "Any act or words that make a woman feel uncomfortable at her workplace, or are perceived by her as being unwelcome, constitute an act of sexual harassment as defined under the Prevention of Sexual Harassment (POSH) irrespective of the perpetrator's intent behind such actions." The court emphasised the *reasonable woman standard* in cases under the POSH Act, focusing on how the victim perceives the behaviour rather than the harasser's intent. Justice RN Manjula highlighted that unwelcome and inappropriate behaviour, if upsetting to a woman, qualifies as sexual harassment. This aligns with the U.S. Supreme Court's ruling in "Joseph Oncale vs Sundowner Offshore Services", which set the standard of decency through a woman's perspective. In this particular case, the Madras High Court reinstated findings by the Internal Committee (IC) of HCL Technologies, which had initially determined that a senior employee's actions—standing too close, touching shoulders, and insisting on handshakes—constituted harassment. Justice Manjula's judgment broadens the POSH Act's application, advocating for respectful workplace interactions that prioritise women's experiences.

[58] Citation No.: 2025: MHC:202 that was reserved on 24.10.2024 and pronounced on 22.01.2025

More than ten years since its enactment, the POSH Act stands as a law honoured more in breach than in practice. Its noble intent—to safeguard women in the workplace—has been dampened by apathy and institutional indifference. Many employers, particularly in the service sector, continue to treat compliance as a checkbox, while enforcement agencies look the other way. This is not just negligence—it's complicity.

The law mandates, in no uncertain terms, that every organisation with 10 or more employees must constitute an Internal Committee (IC) to address sexual harassment complaints swiftly and justly. Yet, countless workplaces either lack such a mechanism or operate one in name only. **This failure doesn't just erode legal compliance—it robs women of dignity, security, and voice.**

The apt example is the case of Mr. Aureliano Fernandes ("Appellant") V. University of Goa & Ors. (Civil Appeal No. 2482/2014 before Hon'ble Supreme Court), ***wherein the Supreme Court addressed a serious lapse in the enforcement of the POSH Act.*** The University dismissed the appellant and barred him from future employment after its Complaints Committee found him guilty of sexual harassment. Due to delays caused by his health issues, the Committee decided the case exparte, without his presence.

However, the Supreme Court noted that the Committee failed to follow the basic principle of natural justice: giving both sides a fair chance to be heard. The Court expressed deep concern over the gap between what the law prescribes and how it is implemented.

It made a strong observation—no matter how progressive a law may be, like POSH, it cannot ensure safety and dignity for women unless it is enforced sincerely and consistently by all stakeholders—government and private alike.

In the said j judgment, the Hon'ble Court issued certain directions in order to fulfil, *inter alia,* the promise of the POSH Act holds to working women all over the country as under:

i. *The Union of India, all State Governments and Union Territories are directed to undertake a time-bound exercise to verify as to whether all the concerned Ministries, Departments, Government organisations, authorities, Public Sector Undertakings, institutions, bodies, etc. and that the composition of the said Committees are strictly in terms of the provisions of the POSH Act.*

ii. *It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.*

iii. *A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions, and by government and private hospitals/nursing homes.*

iv. *Immediate and effective steps shall be taken by the authorities/ managements/employers to familiarise members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.*

v. *The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.*

It is pertinent to specify that the Hon'ble Supreme Court's directions are specifically to the government authorities, whereas the POSH Act equally applies to private establishments since the Court has reaffirmed existing legal provisions of the Act. The abovementioned case is a strict reminder to the public as well as private establishments to implement the POSH Act concerning workplace sexual harassment. Employers must prioritise fairness, ensuring that all parties involved are given a fair and reasonable opportunity to present their case. The judgment emphasises the importance of vigorously enforcing the provisions of the Act and thereby protecting the dignity of individuals at the workplace.

The critical analysis of various reported cases shows that the higher judiciary of the country has played a dynamic role in upholding the human rights of women enshrined in the Constitution of India and as declared in several international instruments on human rights.

In the evolving workplace landscape, fostering a safe, respectful, and inclusive environment is not just a legal obligation but a fundamental pillar of an organisation and good for employees' well-being. The Prevention of Sexual Harassment (POSH) Act is a landmark legislation designed to eradicate sexual harassment in the workplace and empower every individual to work with dignity and confidence. Compliance with POSH is more than a statutory requirement; it is a commitment to uphold human rights, nurture trust, and build a culture where every voice is heard and respected.

In the contemporary corporate ecosystem, HR and Legal professionals play a pivotal role in shaping workplaces that are safe, respectful, and inclusive. POSH compliance is not merely a statutory obligation but a strategic imperative that safeguards employee dignity, mitigates legal risks, and enhances organisational reputation. *By gaining expertise in POSH compliance, HR and Legal experts can foster a culture of trust and accountability, thereby transforming workplaces into environments where every individual can thrive without fear of harassment or discrimination.*

The implementation of robust POSH policies, establishing effective Internal Committees (ICs), and conducting sensitisation and training, ensures timely redressal of grievances.

The POSH Act mandates the composition of IC by every employer at the workplace, and the constitution of Local Committees (LCs) and Internal Committees (ICs) for conducting investigations of sexual harassment issues. In the matter of "The Internal Complaints Committee of Tata Consultancy Services V. Tanuja Priya Bhat, the High Court of Mumbai has held that an employer must provide a safe working environment, free from sexual harassment, and that the employer is responsible for ensuring that the internal complaints committee is constituted and should function effectively. The structure & composition of committees have been prescribed under the POSH Act and adherence timelines related thereto as directed by the Hon'ble Supreme Court without any contravention of the directives of the POSH Act.

A. Process for Reporting and investigation of sexual harassment cases

Every employer in the workplace must constitute a committee to be called the "Internal Committee". It must be a written document. Every employer must have a policy document in place wherein the redressal of sexual harassment mechanism and the structure of committees be specified. In the matter of Poornima Advani v. Union of India[59] the court held that the POSH Act applies to government organisations as well, and the government must ensure that all its offices and workplaces have the Internal Committee (**IC**) in place, where sexual harassment can be filed for appropriate action and addressed. **An Internal Committee isn't just a statutory requirement—it's a commitment to justice.**

Complaints of sexual harassment made by female employees shall be dealt with by IC.

The IC should have at least four (4) members, including a Chairman/ presiding officer (A senior-most female member in the system, preferably with experience of handling grievance/ complaint under the POSH Act). Two employees familiar with the provisions of POSH laws and one external member, either from an NGO (Social work organisation) or a person, may be an Advocate having the ability to deal with sexual harassment cases. It is always advisable to have odd numbers in ICC, in the event of a divided opinion, the majority views will prevail whilst deciding the case. There is no prohibition on the inclusion of male members, but the majority of members, at least half, should be female members.

External member, as mandated by law should have the ability to handle the complaint in a professional manner without any biases. The external member can be of any gender. The external member plays a crucial and neutral role in the committee. In the matter of Ruchika Singh Chhabra v. M/s. Air France India and Anr[60]. The Delhi High Court held that it is a fundamental defect as the IC was not constituted in accordance with the guidelines laid down in the Vishakha judgement, and the principles of natural justice have not been complied with. The Court further opined that the allegations were serious in nature and an investigation was done without

[59] AIRONLINE 2018 DEL 1334
[60] LPA 237/2018, C.M. APPL.16802-03/2018

adhering to the process. External member does not only have to be independent but also must have expertise in issues related to sexual harassment.

It is duty of the employer to publish the important and pertinent provisions of POSH along with the names & details of the existing ICC members at the workplace at a conspicuous place as well as on the official website of the company.

4.15. Complaint and Inquiry Mechanism

4.15.1. Filing of Complaint

Any aggrieved woman who has been or is being sexually harassed can file a complaint. The complaint must be in writing.

A complaint of sexual harassment at the workplace can be filed with the IC or with the Local Committee (LC) and not with HR or Departmental Head, whichever is applicable in a situation. Where the workplace has less than 10 employees or sexual harassment is directly alleged against the employer. The LC is constituted by the District Officer, as each district has a District Officer who handles such complaints and is responsible for addressing complaints of small/ micro-organisations against the employer/ owner, who is allegedly involved in sexual harassment. It depends on the occurrence, facts and circumstances of each case.

As per Section 4, the IC and LC under Section 6 of the POSH Act set out the mechanism for prevention and redressal of sexual harassment issues. Section 4 prescribes that it is mandatory for the employers to have IC at all offices, units or establishments irrespective of the locations. It should be for the private as well as the public sectors.

Section 6 pertains to the construct of the Sexual Harassment Committee at the local level in each district. The said committee is known as the Local Committee (LC), which handles the complaints against the employer and/or small setups having less than 10 employees.

As per Section 11(3) of the POSH Act, the IC and LC have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, which means the IC can initiate an inquiry into a complaint of sexual harassment at the workplace according to the internal complaints policy. IC can summon the witnesses and also the evidence, which are necessary and related to the case. All the complaints committees shall have at least half of the total members so nominated be women. The tenure of the ICC members is for three years, and if any member is found partial, a violator of the provisions of law, or any other prejudices, etc., then said member shall be removed from the committee without delay. The Aggrieved woman can file the complaint directly to the ICC at her workplace.

4.15.2. Filing Process

Timing: The complaint must be filed within three months of the date of occurrence. IC or LC is empowered to extend the time limit for another three months, subject to its satisfaction on the ground of valid and justifiable reasons of delay in filing the complaint by the complainant. In the event the complainant is unable to write the complaint herself on valid and justifiable grounds, it is for IC or LC to render the requisite support to the complainant for filing a written complaint. Though the time period is three months, if there is a series of incidents, the three months shall be counted from the date of the last incident. This has been clarified in Section 9 of the POSH Act.

4.15.3. Contents in the draft complaint

The complaint must be well drafted in writing, describing the exact facts pertaining to the incidents and the name of the perpetrator. The complaint should have concise, crisp facts, date & timing (approximate one), place of incident, and witness/es, if available. Ensure the names of the witness/es which are disclosed be credible. There should not be any exaggeration in the written complaint. Also state therein whether the complainant asked the perpetrator to refrain from the unwelcome act of harassment. Attach as many documents as possible in support as evidence for establishing her case; these could be any or all the relevant e-mails, SMS's/ WhatsApp messages, call details, photographs, recordings, etc. Must mention in the said complaint the particulars of the perpetrator, such as name, designation, department, and any official reporting relation between the complainant and the perpetrator. The relief/ prayer that is sought from the employer.

4.15.4. Mechanism or process of IC for handling a complaint

The IC must acknowledge receipt of the complaint in writing to the complainant. The IC shall meet within 2 (two) days of the filing of the complaint to examine the complaint made by the female member. ICC, before initiating the process of inquiry, may conduct a preliminary assessment to determine whether the complaint pertains to sexual harassment as defined under the POSH Act or not. If it is found to be a sexual harassment case, then IC proceeds with the detailed investigation.

The IC should also send notice of the investigation to the perpetrator/ respondent within 7 (Seven) days from the date of receipt of the complaint outlining the exact allegation with an instruction to submit a reply thereto within 10 days with all the possible evidence in support to his submissions.

The next step is to proceed with the inquiry process, and at the start of initiating the inquiry, IC should take the consent of the complainant for dealing with the matter. In case the complainant desires to settle the matter, then the respondent/accused should carry out efforts for resolving the complaint through conciliation. Conciliation by no means should include any monetary settlement.

The IC shall, in the case of settlement, record all statements of the complainant and that of the respondent/ accused, the same must be forwarded to the Executive Committee with a recommendation.

The Executive Committee shall implement such a recommendation and send a report of such recommendation within 15 (fifteen) days to the ICC.

Copies of such a settlement shall be provided to the complainant and the respondent.

On a conciliatory settlement being attained, no further inquiry shall be conducted by the ICC.

4.15.5. Compliance with principles of natural justice during investigation

In the event of no resolution, in such case, it is the duty cast upon the IC to complete the inquiry within 90 days from the date of receipt of a written complaint from the aggrieved female employee.

IC is duty-bound to maintain strict confidentiality during the investigation process. IC should apply its judicious mind and investigate without any pressure from the employer in an impartial manner. In the matter of Dr.

Punita K. Sodhi v. Union of India & Ors[61] The Delhi High Court has reviewed the case and criticised the IC for its biased inquiry, ultimately leading to a more robust understanding of how such inquiries should be conducted. In this case, Dr. Punita, a senior ophthalmologist, alleged sexual harassment by a senior doctor at Safdarjung Hospital. ICC conducted an inquiry and concluded the inquiry in haste without any conclusive evidence to prove the case.

The IC's inquiry process is anchored in the principles of natural justice—fairness, impartiality, and equal opportunity. Both the complainant and the respondent are given a chance to present their case, submit evidence, and respond to each other's claims. Unlike criminal trials, the IC doesn't look for proof beyond a reasonable doubt; instead, it operates on the principle of "preponderance of probabilities"—what's more likely than not based on the facts presented.

All statements, documents, and testimonies are carefully recorded to ensure a transparent and reasoned outcome. Courts have consistently upheld this framework. In *Farah Deeba v. Union of India*[62], for instance, the judiciary reinforced the importance of procedural compliance and recognised the IC's vital role in redressing workplace harassment.

To protect the complainant during the inquiry, the IC may also recommend interim measures—such as temporary transfers, leave, or restrictions on contact between parties—ensuring the proceedings unfold in a safe and dignified manner.

The Delhi High Court recently ruled in Prof. Rasal Singh v. University of Delhi[63] held " *POSH Act nowhere prescribes the power of suspension nor does it seek to regulate or restrict its exercise. That domain is left entirely to the service rules and the applicable regulations of the institution. The inevitable conclusion, therefore, is this -the power of suspension vests with the employer and is governed by, and circumscribed by, the service rules and office regulations of the institution or organisation concerned*."

[61] W.P. (C) 367/2009 & CMs 828, 11426/2009 Judgement 9th September'2010
[62] O.A./1104/2019
[63] WP(c) 14760/2025 dated 24.04.2026

Meaning thereby, if the organisation's service rules do not provide the provision, the employee cannot be placed under suspension during the pendency of the enquiry. The High Court has clarified that suspension during pendency of the inquiry is entirely different from suspension as a penalty after inquiry.

4.15.6 Post inquiry process

Post-conclusion of the hearing, IC firms up its decision based on discussion amongst the members. IC submits its recommendation to the Employer in strict confidence within 10 days from the date of completion of the inquiry or the district office. IC is empowered to recommend restitution to the aggrieved woman for the emotional trauma and losses suffered in terms of monetary compensation, besides recommending action against the perpetrator.

IC recommendations could be any one of them:

1. Act of grave misconduct proved against the perpetrator and thereby suggest termination, demotion, suspension or a written apology (in case of less serious allegation of Sexual Harassment).
2. Misconduct neither proved nor established, in such a case, it may exonerate the person since the allegation is not substantiated
3. False complaint or false evidence established, hence recommendation for suitable punishment against the so-called aggrieved woman.

A. Summary of POSH inquiry

1. Fairness: To maintain an unbiased approach throughout the inquiry
2. Calmness: To provide comfort and a conducive environment during the inquiry to the victim
3. Analytical approach: Collect and review all evidence comprehensively
4. Timelines: Adhere to the timelines as per the POSH Act

5. Documentation: Maintain all the documents, statements and other collated evidence meticulously. Should have signatures of the parties
6. Compliance: Ensure legal compliance as per the POSH Act

The above are some crucial and pertinent steps for conducting an impartial inquiry.

4.15.7. Flow Chart

Procedure for filing complaint and conducting enquiry

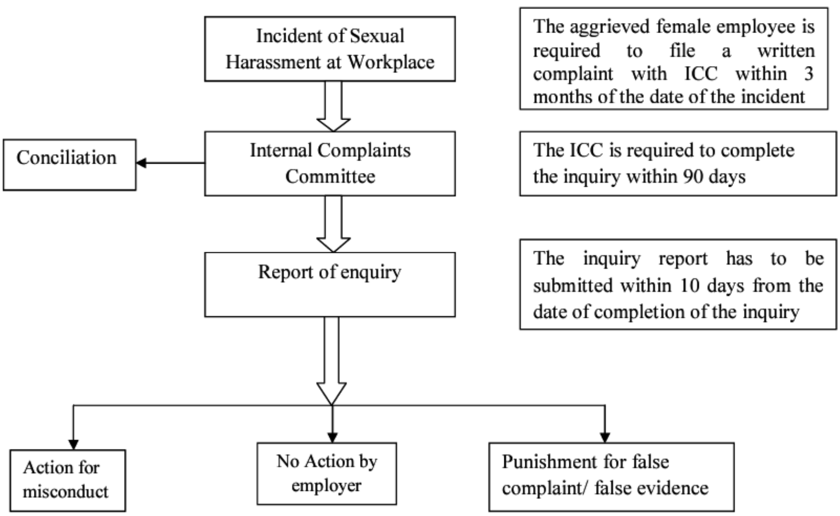


Table 45: Summarising the POSH complaint process mechanism for easy reference:

Step	Key Actions	Important Considerations
Filing of Complaint	An aggrieved woman must file a written complaint within the organisation.	Can file with IC or Local Committee (LC), not HR or departmental heads.
Jurisdiction	ICC handles complaints within organisations; LC addresses cases against employers or in workplaces with fewer than 10 employees.	LC is constituted by the District Officer in each district.
Legal Framework	POSH Act mandates ICC in all offices and establishments.	LC handles complaints in smaller setups or against employers.
Complaint Filing Timeline	A complaint must be filed within 3 months of the incident; can be extended by another 3 months in justified cases.	IC or LC assists if the complainant is unable to write. If incidents occur over time, count from the last occurrence.
Drafting Complaint	Complaint must be clear, factual, and concise with the name of the perpetrator, date, time, location, and witnesses (if available).	Attach supporting documents, emails, messages, photos, and recordings for evidence.
Inquiry Process	IC acknowledges the complaint within 2 days, reviews it, and determines if it qualifies under POSH.	IC sends a notice to the respondent within 7 days, expecting a reply within 10 days.
Conciliation Option	If the complainant agrees, IC allows conciliation, but monetary settlements are not permitted.	IC records the settlement and forwards recommendations to management.
Formal Inquiry	If a settlement isn't reached, IC must complete the inquiry within 90 days.	IC can summon witnesses and collect evidence like a civil court.
Principles of Natural Justice	IC must conduct an unbiased, confidential inquiry without employer pressure.	Equal opportunity for the hearing must be given to both parties.
Judicial Precedents	Courts emphasise fairness in inquiry (e.g., Dr. Punita K. Sodhi case).	Delhi HC rulings reinforce IC's duty to ensure justice.
Interim Relief	IC may recommend transfers, leave, or restrictions on the accused's contact with the complainant.	Based on the complainant's request to minimise discomfort.
Final Recommendation	IC submits findings within 10 days after the inquiry.	May recommend monetary compensation, termination, suspension, or apology.
False Complaints	If the complaint is proven false, IC can suggest disciplinary action against the complainant.	Ensures justice for both parties under POSH.

A. Implementation of recommendations by the Employer

It is the duty cast upon the Employer to act upon the recommendations of IC within 60 days from the date of receipt of the report. There is a provision of penalty under the POSH Act, in case the employer has failed to discharge its obligation within the stipulated period.

Communicate to the parties in writing that the decision has been taken in alignment with the IC's recommendations and in accordance with the applicable policies and statutory requirements.

4.16. Appeal Provision

Either party aggrieved by IC's recommendation can challenge the same before the Appellate Tribunal on the grounds of error alleged to be committed or the gaps in the findings in the IC decision. The party must ensure that it has adequate evidence to prove its points before the Appellate Authority.

4.16.1. Challenges while investigating and the role of HR and IC

1. **Challenges in Maintaining Confidentiality during Investigations:** Protecting identities is crucial, but investigations may require limited disclosures. Digital evidence poses additional risks. Breaching confidentiality can damage reputations and attract legal consequences.
2. **Preventing False Accusations under POSH:** Foster a culture of honesty, ensure IC's independence and impartiality, investigate with due process, and include penalties for filing false or malicious complaints.

3. **Remedies for Accused Employees Alleging Bias:** The accused may seek internal review, appeal decisions (if policy permits), approach the court for judicial review, or file a defamation suit—provided they can prove bias or procedural flaws.
4. **Role of External Members in the IC:** External members bring objectivity and legal expertise, and help counter internal biases—ensuring adherence to fair procedures and strengthening the integrity of inquiries.
5. **Handling Complaints against Senior Executives:** Ensure an impartial IC, involve external counsel if needed, reinforce that all employees are equally accountable, and protect the complainant from retaliation. All employees, irrespective of their designations, are to be treated equally.
6. **POSH and Consensual Workplace Relationships:** Though POSH doesn't cover consensual relationships, concerns arise when power dynamics exist. Organisations should define clear policies to manage conflicts of interest and ensure transparency.
7. **Linking POSH Compliance to Brand and Business Growth:** POSH compliance signals ethical leadership. Non-compliance risks reputational damage, legal penalties, poor morale, and loss of business opportunities due to ethical vetting by partners.
8. **Addressing Allegations of IC Bias:** Organisations should review IC composition, consider replacing biased members, allow evidence presentation, involve external experts, and ensure alternate complaint channels while maintaining transparency and confidentiality.

Table 46: Practical Guidance for HR/IR Departments on POSH Compliance

Guidance Area	Action Steps	Key Considerations
IC Composition & Training	Ensure **trained female members** are included in the IC.	IC members should be well-versed in the **POSH Act provisions, inquiry processes, and ethical standards**.
Roles & Responsibilities of IC	IC members must understand their **duties, decision-making protocols, and investigation procedures**.	Training should emphasise **fairness, confidentiality, and adherence to timelines**.
Structure of IC Membership	Maintain an **odd number of members** to allow majority decision-making when disagreements arise.	Ensures **clarity in resolutions** and prevents deadlock situations.
Selection Criteria for IC Members	Choose members based on **analytical skills, commitment, reputation for fairness, accessibility, gender sensitivity, and credibility**.	IC members should be **independent and impartial** to uphold justice.
Periodic Review & Feedback	Schedule **regular ICmeetings** to review cases, discuss improvements, and gather feedback.	Helps **refine complaint-handling processes** and maintains policy effectiveness.
Employee Training & Awareness	Conduct **POSH training for all employees**, regardless of gender or designation.	Ensure **written acknowledgement** of training completion is stored in personnel files.
Refresher Training & Continuous Learning	Organise **annual refresher training** for employees.	Reinforces awareness and keeps staff updated on **policy changes and case handling**.
POSH Awareness in Employee Induction	Include **POSH awareness documents** in induction materials for new employees.	Ensures new hires **understand workplace conduct expectations from day one**.
Compliance Monitoring	Maintain **audit reports and track adherence to POSH policies**.	Helps in **proactive identification** of workplace risks and gaps in policy execution.

4.17. Judicial Interpretations & Precedents

4.17.1. Supreme Court Judgments

A. Vishaka v. State of Rajasthan[64] (1997)

- **Significance**: Laid the foundation for workplace sexual harassment law in India.
- **Interpretation**: Recognised sexual harassment as a violation of fundamental rights under Articles 14, 15, 19(1)(g), and 21.
- **Natural Justice**: Introduced the *Vishaka Guidelines*, mandating fair inquiry and ICC constitution.

B. Medha Kotwal Lele v. Union of India (2013)

- **Issue**: Non-compliance with Vishaka Guidelines.
- **Outcome**: Directed all states and institutions to implement ICCs and treat their reports as inquiry findings under service rules.

C. Apparel Export Promotion Council v. A.K. Chopra (1999)

- **Interpretation**: Attempted molestation without physical contact qualifies as sexual harassment.
- **Natural Justice**: Upheld dismissal based on ICC findings, reinforcing victim-centric standards.

D. Aureliano Fernandes v. State of Goa (2023)

- **Procedural Lapse**: IC conducted ex-parte inquiry despite the medical absence of the respondent.
- **Bias & Natural Justice**: The Supreme Court set aside the IC findings and ordered a fresh inquiry.

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[64] See foot note 49 for citation

- **Systemic Reform**: Issued nationwide directions for IC constitution, training, and transparency.

4.17.2. High Court Judgments

A. Vineeth V.V. v. Kerala State Electricity Board (2024)

- **Procedural Lapse**: IC failed to serve the complaint copy and denied cross-examination.
- **Natural Justice**: Kerala High Court quashed the IC report and ordered the reconstitution of the committee.

B. R. Mohanakrishnan v. Deputy Inspector General of Police (Madras HC, 2024)

- **Limitation & Bias**: The Court held that serious misconduct is a continuing cause of action.
- **Natural Justice**: IC’s denial of cross-examination partially vitiated the inquiry; matter remanded for fresh proceedings.

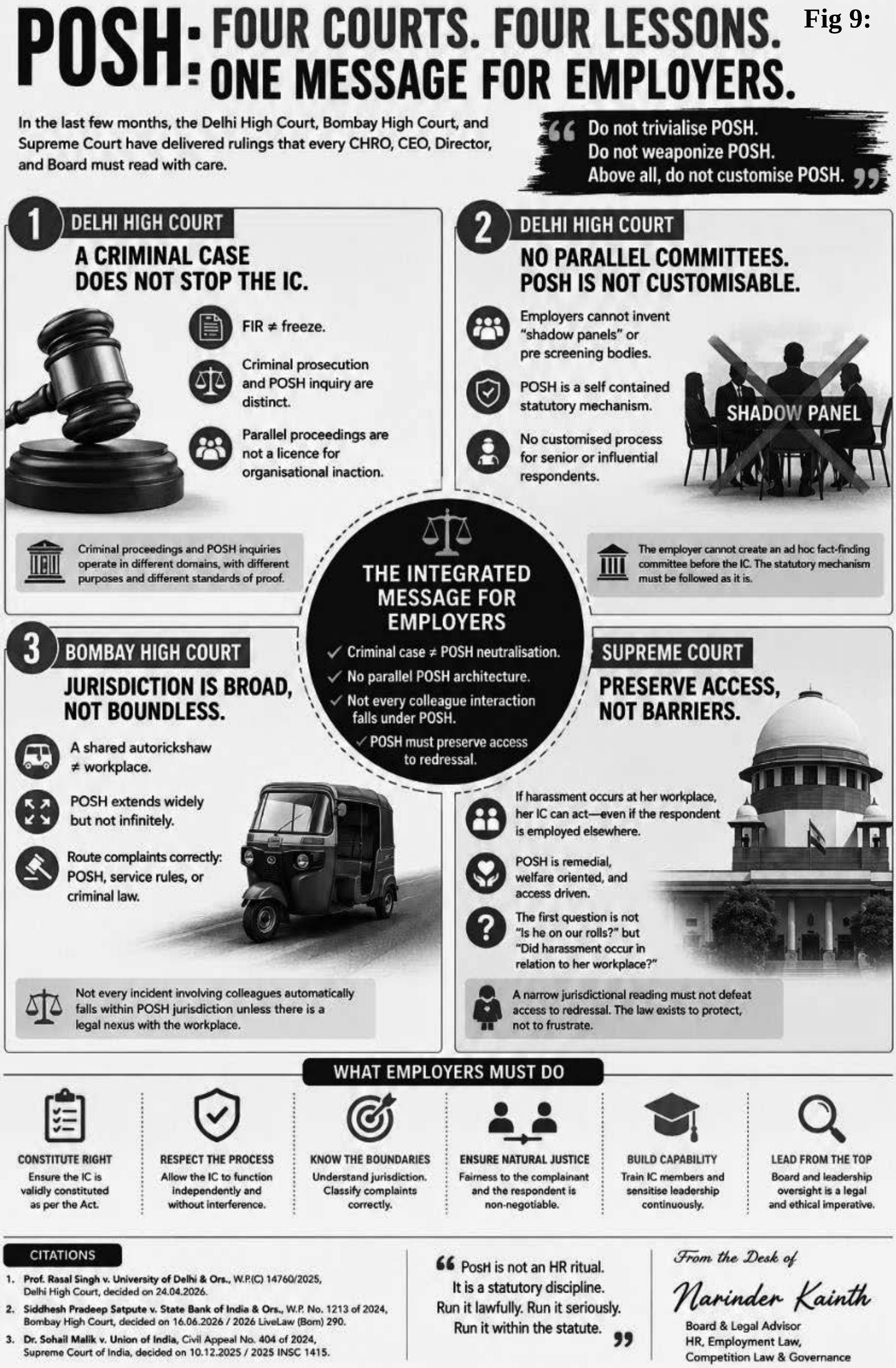
C. Somaya Gupta v. Jawaharlal Nehru University (Delhi HC, 2018)

- **Bias Allegation**: Presiding officer was a witness.
- **Outcome**: Court upheld ICC’s constitution as fair, emphasising the *real likelihood of bias* test.

D. Tejinder Kaur v. Union of India (Delhi HC, 2017)

- **Dual Role of IC**: Highlighted the need for impartiality during both the investigation and inquiry stages.
- **Natural Justice**: Allegations of bias must be addressed before inquiry proceeds.

Fig 9:


POSH: FOUR COURTS. FOUR LESSONS.
ONE MESSAGE FOR EMPLOYERS.
In the last few months, the Delhi High Court, Bombay High Court, and Supreme Court have delivered rulings that every CHRO, CEO, Director, and Board must read with care.
“Do not trivialise POSH.
Do not weaponize POSH.
Above all, do not customise POSH.”
1
DELHI HIGH COURT
A CRIMINAL CASE DOES NOT STOP THE IC.
FIR ≠ freeze.
Criminal prosecution and POSH inquiry are distinct.
Parallel proceedings are not a licence for organisational inaction.
Criminal proceedings and POSH inquiries operate in different domains, with different purposes and different standards of proof.
2
DELHI HIGH COURT
NO PARALLEL COMMITTEES. POSH IS NOT CUSTOMISABLE.
Employers cannot invent “shadow panels” or pre screening bodies.
POSH is a self contained statutory mechanism.
No customised process for senior or influential respondents.
SHADOW PANEL
The employer cannot create an ad hoc fact-finding committee before the IC. The statutory mechanism must be followed as it is.
THE INTEGRATED MESSAGE FOR EMPLOYERS
✓ Criminal case ≠ POSH neutralisation.
✓ No parallel POSH architecture.
✓ Not every colleague interaction falls under POSH.
✓ POSH must preserve access to redressal.
3
BOMBAY HIGH COURT
JURISDICTION IS BROAD, NOT BOUNDLESS.
A shared autorickshaw ≠ workplace.
POSH extends widely but not infinitely.
Route complaints correctly: POSH, service rules, or criminal law.
Not every incident involving colleagues automatically falls within POSH jurisdiction unless there is a legal nexus with the workplace.
SUPREME COURT
PRESERVE ACCESS, NOT BARRIERS.
If harassment occurs at her workplace, her IC can act—even if the respondent is employed elsewhere.
POSH is remedial, welfare oriented, and access driven.
The first question is not “Is he on our rolls?” but “Did harassment occur in relation to her workplace?”
A narrow jurisdictional reading must not defeat access to redressal. The law exists to protect, not to frustrate.
WHAT EMPLOYERS MUST DO
CONSTITUTE RIGHT
Ensure the IC is validly constituted as per the Act.
RESPECT THE PROCESS
Allow the IC to function independently and without interference.
KNOW THE BOUNDARIES
Understand jurisdiction. Classify complaints correctly.
ENSURE NATURAL JUSTICE
Fairness to the complainant and the respondent is non-negotiable.
BUILD CAPABILITY
Train IC members and sensitise leadership continuously.
LEAD FROM THE TOP
Board and leadership oversight is a legal and ethical imperative.
CITATIONS
1. Prof. Rasal Singh v. University of Delhi & Ors., W.P.(C) 14760/2025, Delhi High Court, decided on 24.04.2026.
2. Siddhesh Pradeep Satpute v. State Bank of India & Ors., W.P. No. 1213 of 2024, Bombay High Court, decided on 16.06.2026 / 2026 LiveLaw (Bom) 290.
3. Dr. Sohail Malik v. Union of India, Civil Appeal No. 404 of 2024, Supreme Court of India, decided on 10.12.2025 / 2025 INSC 1415.
“PosH is not an HR ritual.
It is a statutory discipline.
Run it lawfully. Run it seriously.
Run it within the statute.”
From the Desk of
Narinder Kainth
Board & Legal Advisor
HR, Employment Law,
Competition Law & Governance

4.17.3. Key Judgments in 2026 on POSH Act.

In 2026 a cluster of important judgments from the Delhi High Court, the Bombay High Court, and the Hon'ble Supreme Court clarified the architecture of the Sexual Harassment of Women under POSH Act, 2013 with a degree of institutional seriousness the subject demands. Four propositions emerge.

I. A criminal prosecution does not suspend the Internal Committee[65]

The pendency of an FIR or criminal proceedings does not constitute a lawful ground for deferring or abandoning an IC inquiry. Criminal prosecution is penal in character and operates within the machinery of the Code; a POSH inquiry is a workplace redressal mechanism under a welfare statute. The two operate in distinct domains. An employer who treats the filing of an FIR as an occasion for organizational inaction therefore has no statutory warrant for doing so.

II. The Act is a self-contained mechanism — employer cannot pre-screen it

In *Prof. Rasal Singh v. University of Delhi & Ors*[66]The Court held that an employer cannot constitute an ad hoc fact-finding body to examine allegations of sexual harassment before placing the complaint before the IC. The Act provides a complete procedural code; once allegations fall within its field, the employer cannot substitute, supplement or pre-empt that code through a management-designed parallel inquiry. Whatever powers the employer retains under service rules, interim suspension, for instance, must operate alongside the statutory mechanism, not as a substitute for it. The ruling is a firm corrective to the practice of routing sensitive complaints through shadow committees, most commonly where the respondent holds institutional seniority.

[65] Various Courts pronouncement has held it

[66] (W.P.(C) 14760/2025, Delhi High Court, 24 April 2026)

III. "Workplace" is broad, but carries a statutory boundary

In *Siddhesh Pradeep Satpute v. State Bank of India & Ors*[67]. the Court held that a shared autorickshaw used for the daily commute did not constitute a "workplace" under the Act, where the transport had neither been provided nor arranged by the employer. The definition of "workplace" in the Act is intentionally broad, but not without limits. The requisite nexus with the workplace must be established before POSH jurisdiction is attracted. The practical consequence for employers is not to dismiss such complaints but to classify them correctly, whether under the Act, under the applicable service rules, or under ordinary criminal law and document the reasoning for that classification with care.

IV. The IC of the complainant's workplace has jurisdiction even where the respondent belongs to another establishment

In *Dr. Sohail Malik v. Union of India*[68], The Hon'ble Supreme Court resolved a recurring jurisdictional dispute under Section 11 of the Act. It held that the IC constituted at the complainant's workplace is competent to inquire into a complaint, notwithstanding that the respondent is employed in a different department or establishment. A narrow reading of the expression "where the respondent is an employee" was rejected as inconsistent with the remedial purpose of the statute. Access to redressal is a central object of the Act; that object is frustrated if an aggrieved woman is required to pursue the respondent's establishment before she can invoke the statutory mechanism.

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[67] (W.P. No. 1213 of 2024, Bombay High Court, 16 June 2026; 2026 Live Law (Bom) 290)

[68] (Civil Appeal No. 404 of 2024, Supreme Court of India, 10 December 2025; 2025 INSC 1415)

4.17.4. The integrated proposition

These four rulings, taken together, establish the following: the IC process is not displaced by criminal proceedings; it cannot be pre-empted by managerial convenience; its jurisdictional reach, while substantial, must be calibrated against the statutory definition of "workplace"; and it must be constituted and exercised in a manner that preserves, rather than obstructs, access to redressal.

The Act is not an HR protocol subject to internal adaptation. It is a statutory discipline. Employers who treat it as such — in letter and in spirit — will find these judgments confirmatory. Those who do not will find them inconvenient.

Key Takeaways

- **Interpretation**: Courts have expanded the definition of workplace and harassment to include virtual spaces and non-physical acts.
- **Procedural Safeguards**: ICs must follow Rule 7 of POSH Rules—serving complaint, allowing defence, and ensuring a fair hearing.
- **Bias**: Courts apply the *real likelihood of bias* test, not mere suspicion.
- **Natural Justice**: Fair opportunity to respond, cross-examine, and access documents is non-negotiable.

4.18. Compliance by the Employer under the POSH Act

Employer is duty-bound to submit an annual compliance report *w.r.t.* POSH in time bound manner.

As per Section 21 of the POSH Act, the annual report shall be prepared in accordance with the prescribed format given under the Act. The report is to be prepared by IC/LC (whichever applicable authority) and to be provided to the employer. The employer, in turn, should file before the Labour Authorities or designated Authorities, whichever is applicable, as indicated by the State Government.

The annual report is required to be submitted within three months to the end of the financial year, wherein the inter alia following details of the previous year is given:

a. Number of cases reported in the said year
b. Number of cases disposed of
c. Number of cases settled through conciliation
d. Number of pending complaints at end of the year
e. Employer action *w.r.t.* implementation of the recommendations of ICC, if any
f. Number of cases that were referred to the police or other law enforcement agencies
g. Number of trainings/ workshops/ seminars and awareness programmes for the employees and also for upskilling members of IC, which have been conducted by the employer in the said year
h. The reason for the delay in the disposal of the inquiry beyond 90 days needs to be explained with valid and justifiable grounds

Non-submission of the annual report amounts to a violation of the provisions of the POSH Act, the employer is required to face penal consequences related thereto.

The annual report helps in identifying the area of operation and types of complaints. The corrective steps could help the employers to take appropriate measures to arrest such a menace.

The District Officer is further required to prepare a brief report on the collected annual reports and send it to the State Government. Such reports are also important for the Government for collation of data on a PAN India basis and to charge the enforcement machinery and also to improve upon the legislation as well.

Table 47: Summary of Complaint Redressal Process:

S. No.	Steps involved in the process	Limitation of Time
1	Filing of Complaint by the aggrieved woman	Within three (**03**) months from the date of incident; if a series of incidents, then three (**03**) months from the last incident
2.	Notice to the perpetrator by IC/ LC	Seven (**07**) days from the date of receipt of the complaint
3	Written Response /reply by perpetrator	Ten (**10**) days from the date of receipt of notice
4.	Inquiry process by IC/LC	Within Ninety (**90**) days to complete; delay needs a written, valid justification
5.	IC to submit report	Within ten (**10**) days from the date of closure of the inquiry
6	Management to Act on IC Report	Within Sixty (**60**) days
7	Appeal by either party	Within Ninety (**90**) days

The strict adherence to timing is paramount unless there are compelling reasons for delay, as each delay requires a valid justification.

4.19. # ME TOO

4.19.1. Modern Outrage Sexual harassment:

A systemic affliction that's thrived in silence for generations. That silence was pierced on October 15, 2017, when Alyssa Milano tweeted a simple yet seismic invitation: "If you've been sexually harassed or assaulted, write 'me too.'" What followed was a digital uprising—over 12 million voices flooding the internet within 24 hours, exposing the scale of a crisis long buried. But this reckoning had already begun a year earlier, when multiple women broke their silence against Hollywood mogul Harvey Weinstein, igniting the hashtag #MeToo into a movement that rewrote global conversations about power, abuse, and accountability.

By 2018, #MeToo had become a global roar.
No longer just a hashtag, it was a powerful force echoing across countries, industries, and communities.

Why did it strike such a nerve?
Because traditional systems—courts, workplaces, even social norms—had failed to listen, protect, or act. For decades, too many perpetrators walked away untouched. Survivors were left unheard.

But #MeToo flipped the script.
This wasn't just about pain—it was about power. A different kind of power: the kind that comes from breaking silence, standing together, and saying "enough."

What made it so impactful?
Solidarity. Empathy. Strength in numbers. Suddenly, millions of stories had a platform. Especially in the workplace, where harassment had been swept under the rug for years, voices were finally being amplified.

And institutions couldn't look away.
Global companies were forced to act. Policies were rewritten. Cultures were questioned. People began to ask—not just "Who's guilty?" but "What kind of workplace do we want to build?"

Addressing sexual harassment is not just a legal obligation but a crucial aspect of fostering healthy business environments worldwide. Employers who neglect to tackle this pervasive problem risk their organisations' reputations and expose their businesses to significant jeopardy. Taking proactive measures to eliminate harassment is not only ethical but also essential for long-term organisational success and societal well-being.

4.19.2. Employers Responsibility

The Employers are duty-bound and cannot shrug their vicarious liabilities on one pretext or another.

It is pertinent to take the reference of "ICICI Bank v. Vinod Kumar, wherein the court held that employers cannot absolve themselves of liability for sexual harassment by claiming that the perpetrator was not an employee of the organisation but a third-party contractor.

Conclusion: Men must unlearn a lifetime of imbibed contempt for women. It must be pointed out that this can only be addressed by familial and social sensitisation that begins from infancy, creating a society that grants women equality and dignity by default.

Table 48: The #MeToo movement and the POSH (Prevention of Sexual Harassment) Act, 2013, are both aimed at addressing sexual harassment, but they function differently:

Aspect	#MeToo Movement	POSH Act, 2013
Nature	A **social movement** that gained global attention, encouraging survivors to speak out.	A **legal framework** mandating workplace protection against sexual harassment.
Scope	Covers **all instances of sexual harassment**—both workplace-related and beyond.	Specifically applies to **workplace harassment** affecting women.
Legal Status	Not legally binding, but it influences **policy changes and awareness**.	A **binding law** that requires organisations to prevent and address sexual harassment.
Reporting Mechanism	Survivors may share experiences publicly or privately.	Complaints must be filed with the **Internal Committees (IC)** or **Local Committees (LC)** under POSH.
Protection	It can bring **social accountability,** but doesn't ensure **formal legal action**.	Provides a structured **redressal mechanism**, including inquiries and legal remedies.
Inclusivity	Has encouraged discussions about **harassment faced by all genders**.	POSH Act **only protects women**, though legal changes are being discussed.

While #MeToo sparked global awareness, POSH provides structured legal protection for workplace harassment cases.

4.20. Extended Legal and Compliance Landscape

4.20.1. Police Complaint under Bhartiya Nyana Sanhita 2023(BNS)

In case the aggrieved woman decides to initiate a police complaint against the perpetrator, it is the duty of the employer to render all assistance to the sufferer.

Chapter 5 of BNS streamlines and modernises the legal framework by consolidating various offences against women—such as assault, harassment, and exploitation—into a unified, updated penal code, ensuring clarity and stronger legal recourse. The following sections of BNS can be invoked for initiating the Sexual Harassment case:

4.20.2. Section 75

A. A man committing any of the following acts-

i. Physical contact and advances involving unwelcome and explicit sexual overtures; or

ii. A demand or request for sexual favours; or

iii. Showing pornography against the will of the woman; or

iv. Making sexually coloured remarks, shall be guilty of the offence of sexual harassment

1. Any man who commits the offence specified in the clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years or with both.
2. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year or with fine or both.

   The offence under Section 75 is cognizable and non-bailable. The offence is triable by the Session Court.

4.20.3. Responsibility of the Employer under another Law, i.e., The Companies Act 2013

Ministry of Corporate Affairs (MCA) introduced an amendment effective as of July 31, 2018, and rules framed thereunder.

The Ministry of Corporate Affairs (MCA), via Notification G.S.R. 357(E) dated May 30, 2025, has introduced the Companies (Accounts) Second Amendment Rules, 2025, effective from July 14, 2025. These apply to all companies under the Companies Act, 2013—public, private, listed, and unlisted—unless specifically exempted.

Mandatory POSH Disclosures in Board's Report

The amendment revises Rule 8(5)(x) of the Companies (Accounts) Rules, 2014. Instead of a general compliance statement, companies must now disclose the following in their Board's Report:

- Number of complaints received under the POSH Act during the financial year
- Number of complaints disposed of
- Number of complaints pending beyond 90 days

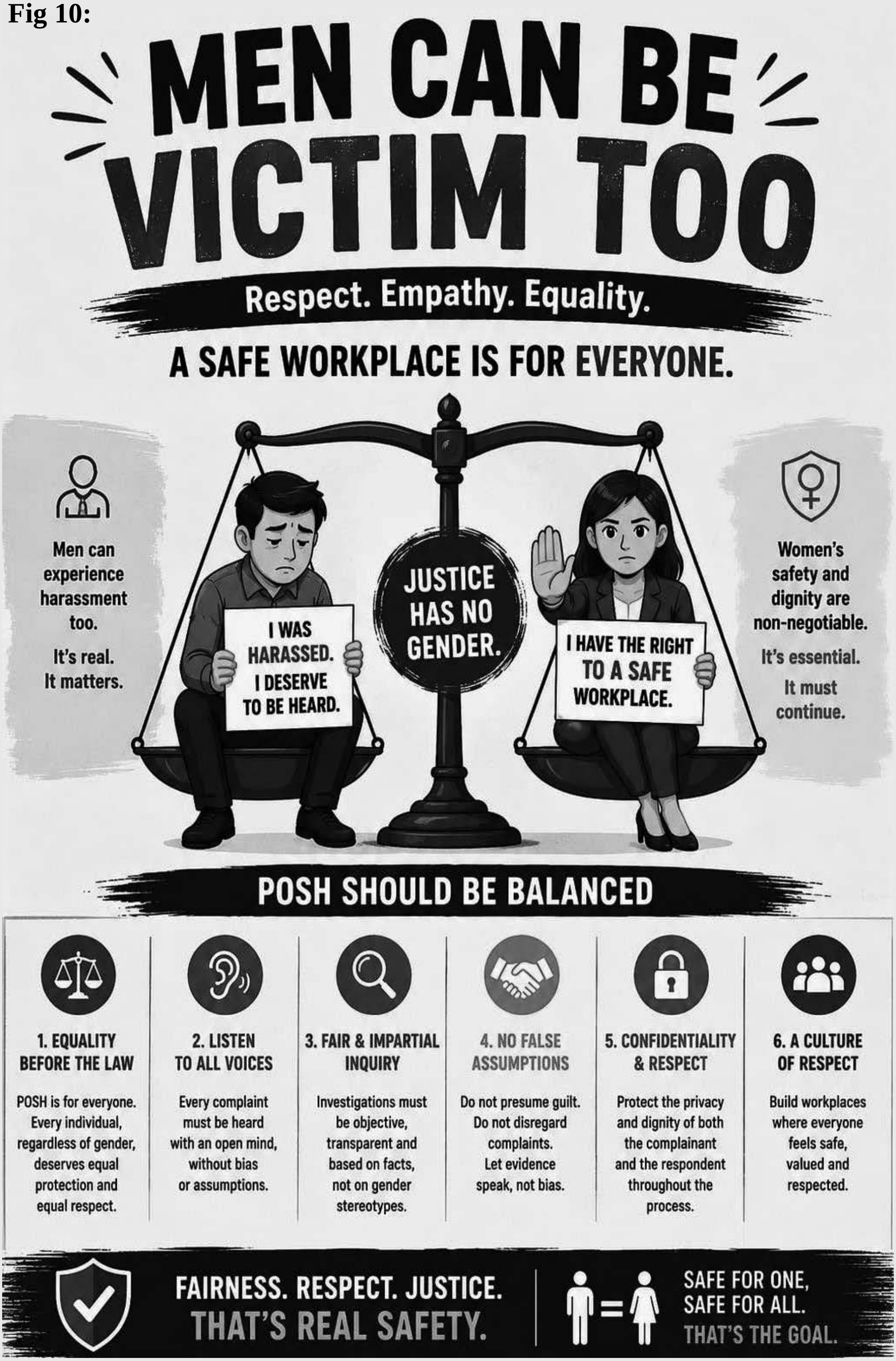
Purpose: To enhance transparency and accountability in corporate reporting on workplace safety for women.

4.20.4. Mandatory POSH Disclosures in Director's Report

As per the amended Rule 8 of the Companies (Accounts) Rules, 2014, companies are now required to include a specific statement in their Board of Directors' Report affirming compliance with the constitution of the Internal Committee (IC) under the POSH Act. This compliance disclosure forms an integral part of the Director's Report, which must be filed with the company's annual returns with the Registrar of Companies.

Failure to disclose this compliance, as mandated under Section 134 of the Companies Act, 2013, and the corresponding rules, attracts stringent penalties. The company may be fined not less than ₹50,000, which can extend to 25,00,000. Additionally, every officer found in default may face imprisonment of up to three years, or a fine of not less than ₹50,000 (extendable to ₹5,00,000), or both.

Fig 10:


MEN CAN BE VICTIM TOO
Respect. Empathy. Equality.
A SAFE WORKPLACE IS FOR EVERYONE.
Men can experience harassment too.
It's real. It matters.
I WAS HARASSED. I DESERVE TO BE HEARD.
JUSTICE HAS NO GENDER.
I HAVE THE RIGHT TO A SAFE WORKPLACE.
Women's safety and dignity are non-negotiable.
It's essential.
It must continue.
POSH SHOULD BE BALANCED
1. EQUALITY BEFORE THE LAW
POSH is for everyone. Every individual, regardless of gender, deserves equal protection and equal respect.
2. LISTEN TO ALL VOICES
Every complaint must be heard with an open mind, without bias or assumptions.
3. FAIR & IMPARTIAL INQUIRY
Investigations must be objective, transparent and based on facts, not on gender stereotypes.
4. NO FALSE ASSUMPTIONS
Do not presume guilt. Do not disregard complaints. Let evidence speak, not bias.
5. CONFIDENTIALITY & RESPECT
Protect the privacy and dignity of both the complainant and the respondent throughout the process.
6. A CULTURE OF RESPECT
Build workplaces where everyone feels safe, valued and respected.
FAIRNESS. RESPECT. JUSTICE.
THAT'S REAL SAFETY.
SAFE FOR ONE, SAFE FOR ALL.
THAT'S THE GOAL.

4.21. Can a Man be harassed?

Fig 11:

4.21.1. Men Can Be Victims Too

Men are often expected to be tough, unemotional, and unaffected by harm. But that image hides a difficult truth—**men can also be victims of sexual harassment.**

Even though the law protects women and gives them platforms to speak up, male survivors are often ignored. Society doesn't always take their pain seriously. Many are afraid to speak out, fearing they won't be believed or will be judged.

But harassment isn’t about gender—it’s about power and misuse of boundaries. It’s time we stop assuming only women are affected. **All survivors deserve to be heard, respected, and protected—regardless of gender.**

A. Facts: Breaking the Silence

- **Sexual harassment isn’t gendered.** Men, too, face unwelcome advances, coercion, and inappropriate behaviour—especially in the workplace.
- **Power dynamics matter.** Male employees can be harassed by colleagues or those in authority, just like their female counterparts.
- **Silence isn't strength.** Stigma and limited legal recognition often force men to endure in silence.
- **Stereotypes hurt.** The belief that only women are victims leaves male survivors invisible and unsupported.

Harassment affects individuals, not genders. Acknowledging all victims is key to true justice.

4.21.2. Male Harassment: The Justice Gap We Don’t Talk About

Legal cases don’t just settle disputes—they expose the cracks in our systems. And in the realm of sexual harassment, a few bold judgments have thrown much-needed light on a truth long ignored: **men can be victims too.**

- ➢ **Take *Shanta Kumar v. CSIR (***W.P. (C) 8149/2010, decided on 31 October 2017***).*** For the first time, the Delhi High Court clearly stated what few dared to acknowledge—**harassment is not a woman-only issue.** When a male employee accused his female superior of misconduct, the court didn’t dismiss him—it demanded gender-neutral workplace policies to protect *all* employees.

- **Fast forward to *Sandeep Khurana v. Delhi Transco Ltd.* (**135 (2006) DLT 346, decided on 17 November 2006**).** Another male employee came forward—another blind spot exposed. The court didn't just hear the case; it spotlighted a hard truth: **this** case highlighted procedural lapses in handling a male employee's complaint of harassment by a female colleague. The Court quashed the disciplinary action due to **non-compliance with natural justice and procedural safeguards**, underscoring the **limitations of the POSH Act** in protecting male victims.

4.21.3. TIME to rethink and amend existing law for equal protection

These cases aren't outliers—they're **wake-up calls.**
Men are still left unprotected. Their trauma, often dismissed. Their voices, routinely unheard. The law that shields one gender must not *exclude* others.

- **Workplaces are changing.**
  Remote teams. Multigenerational staff. Global values. Isn't it time our laws caught up?
- **Gender-neutral protections aren't radical. They're rational.**
  They don't erase the importance of protecting women—they **expand** justice to everyone.

4.21.4. The next step is to take action:

It's no longer enough to acknowledge the problem.
India must amend existing laws or create new ones to ensure every victim, regardless of gender, is safe, heard, and protected.

Because harassment isn't about gender.
It's about power. And justice must meet power with equality.

4.21.5. Time to change

These cases highlight the need for urgent reform. While progress has been made in protecting women from harassment, the lack of gender-neutral laws leaves men exposed and unprotected. Crimes against male victims are often dismissed, reinforcing damaging stereotypes. As workplaces and society evolve, driven by technological growth and globalisation, a fair and balanced approach to tackling harassment is essential.

For too long, sexual harassment laws have focused solely on protecting women. While that protection is vital, the absence of gender-neutral laws leaves **male victims invisible, unsupported, and unprotected**.

Crimes against men are no less serious. But they are often dismissed, ridiculed, or ignored—fuelling damaging stereotypes and silencing survivors.

4.21.6. Justice Has No Gender

As the world changes—with more inclusive workplaces, diverse teams, and global mindsets—our laws must evolve too. **Harassment is not about gender; it's about power.** And anyone can be a victim.

Bill No. I of 2024, which proposes amendments to the POSH Act, is a step in the right direction. But one bill alone isn't enough. What we need is a **complete shift toward gender-neutral protections**—laws that treat all survivors with dignity, regardless of gender.

It's not just a policy upgrade—it's a moral necessity.

4.21.7. Progressive Workplaces Are Leading the Way

Some forward-thinking companies are already adopting **gender-neutral sexual harassment policies**, with mechanisms to handle cases involving **male, female, or non-binary victims**. These organisations recognise that:

- Respect has no gender.
- Victimhood is not limited to women.
- **Equality means equal protection for all.**

Other companies, private or public, must now follow. **Why the Law Must Catch Up?**

In the case of **Professor Vikram Singh Chauhan at Delhi University (2014)**. When he accused a female colleague of harassment, he had no recourse under POSH. The High Court could only point him to civil or criminal remedies, **because the law refused to recognise him as a potential victim under POSH**.

That's not justice. That's exclusion.

4.21.8. The Way Forward

Amend the POSH Act to protect all genders
Promote gender-inclusive policies across sectors
Challenge stereotypes that link harassment only to male perpetrators
Recognise male survivors—not with sympathy, but with **equal rights**

Let's move beyond outdated norms. Because equality isn't real until the law protects everyone.

In the matter of Gaurav Jain v. Hindustan Coca-Cola Beverages Pvt. Limited (2020), the National Company Law Tribunal (NCLT) commented the same as usual that the POSH Act is meant for women and suggested recourse under Indian Penal Code, now it has been replaced with BNS 2023. In this matter, a superior woman sexually harassed the male employee.

Time has come to gear up and introduce gender-neutrality policies at workplaces and other institutions. The Central Government should sooner or later focus on either an amendment in the POSH Act or bring some safeguards for men too through enactment, since with the advent of high-speed technologies, commercialisation, hybrid culture due to globalisation of business and impunity, it is important to have a balancing act, as most of the countries have already taken initiative in this direction.

Hence, there is a need for laws that men will be given equal protection and safety as women and that everyone, regardless of their gender, has the right to live free of harassment or intimidation.

Table 49: THE CURRENT REALITY

Law	Scope
POSH Act, 2013	Protects **only women** as complainants. Excludes men, transgender, and non-binary individuals.
Result	Male victims remain **invisible**. Legal remedies are limited and indirect.

4.21.9. WHY IT MATTERS

Harassment is about power—not gender.

Leaving anyone unprotected means justice is incomplete.

- Male survivors are often **silenced by stigma**
- Legal blind spots reinforce gender stereotypes
- Many **workplaces lack inclusive policies**

4.21.10. WHAT PROGRESS LOOKS LIKE

- Bill No. I of 2024 proposes POSH amendment
- Some **corporates have adopted** gender-neutral harassment policies
- Global best practices include **inclusive redressal systems**

4.21.11. THE ACTION PLAN

To build safer, fairer workplaces:

- **Amend POSH** to protect *all* individuals
- Encourage **gender-neutral policies** in every organisation
- Break the myth: *only women* face harassment
- Promote awareness & legal literacy for **every employee**

4.22. Law is Dynamic and needs to change with the times to align with society's demands

In a significant move, Bill No. I of 2024 has been introduced in the Parliament, suggesting amendments to the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (POSH Act). Gazetted Notification No. 2, dated 2nd February 2024, outlines these proposed changes aimed at enhancing the efficacy and addressing loopholes in the existing legislation.

Table 50

Description	Current Provision	Proposed Amendment
Complaint Filing Timeline	3 months from the date of the incident or the last incident in case of a series of events	Extended to 1 year from the date of the incident or the last incident
Time Limitation Extension	IC can extend the limitation for up to 3 months from receipt of the complaint	The amendment proposes extending this window to one year while abolishing the discretionary three-month extension. Instead, Internal Committees (ICs) will have the authority to allow indefinite extensions if there is a reasonable justification for the delay.
Conciliation Provision	Section 10 allows for conciliation	Proposed to be omitted due to potential coercion and undermining of women's dignity. This means this provision addresses concerns about **coercion, pressure, or undue influence on complainants to settle.** By ensuring every case undergoes a formal inquiry, this step aims to reinforce the integrity of the justice process.

4.22.1. Here are the key features of the proposed amendments:

1. Extension of Complaint Filing Timeline: Currently, the POSH Act mandates a timeline of three months from the date of the incident or, in the case of a series of events, three months from the date of the last incident, for filing a complaint. The proposed amendment seeks to extend this timeline to one year. This extension aims to provide victims with a more reasonable timeframe to come forward and report incidents of sexual harassment, considering the sensitive nature of such cases.
2. Removal of Time Limitation Extension Provision: Under the existing provisions, the Internal Committee (IC) has the authority to extend the limitation for a period of up to three months from the date of receipt of the complaint. However, the proposed amendment eliminates this provision. Once enacted, there will be no specific time limit, granting the IC unlimited powers to extend the timeline for submitting complaints. This change aims to ensure that victims are not unduly constrained by rigid timeframes when seeking redressal for instances of sexual harassment.

3. Omission of Conciliation Provision: Section 10 of the POSH Act, which provides for conciliation, is proposed to be omitted. The rationale behind this decision, as outlined in the Statement of Objects accompanying the Bill, is the recognition that this provision poses significant challenges. It fails to adequately consider the potential for influencing, coercing, pressuring, or intimidating the complainant into reaching a settlement. Legislators argue that attempting to reach a compromise in cases of sexual harassment undermines the dignity of women. Therefore, the proposed amendment seeks to remove this provision altogether.

Note: **These amendments will be enforced on a date appointed by the Central Government through notification in the Official Gazette.**

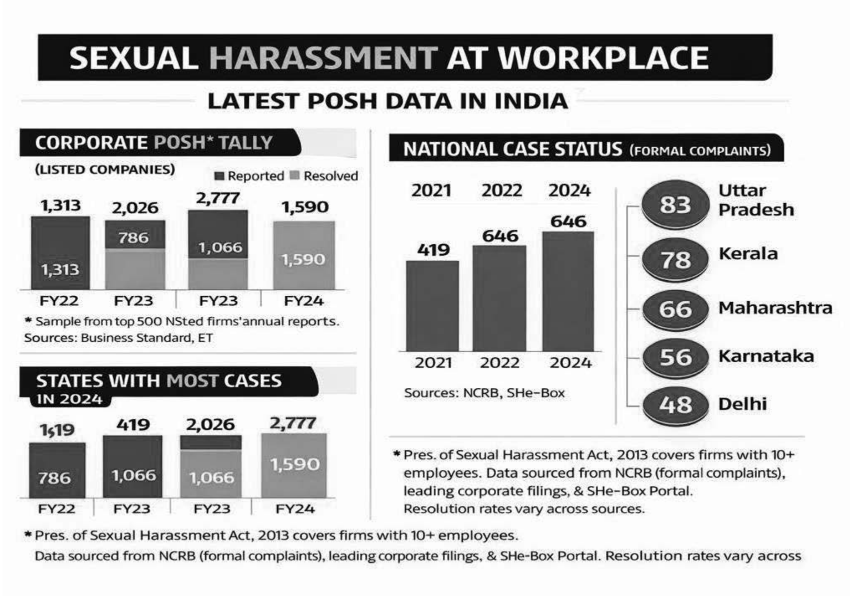
The proposed changes reflect a concerted effort to strengthen the legal framework for addressing sexual harassment in the workplace. By extending the complaint-filing timeline, eliminating time limitation extensions, and omitting provisions for conciliation, the amendments aim to enhance the accessibility, fairness, and effectiveness of the POSH Act in providing redressal and protection to victims of sexual harassment.

4.23. Business vis-a -vis Sexual Harassment at the workplace

In rapid growing commercial world, where India is eyeing the 3rd biggest economy in the world, the Sexual Harassment Cases are also growing every year since 2018.

The statistics below are taken from the Business Standard of 15th August'2024. After 78 years of India's independence, we laid down the law in 2013, which is commonly known as the POSH Act. It is a matter of concern that employers intend to grow business but have little concern on these heinous misconducts happening at workplaces against females, the data set out therein is official, one, every year +400 proven cases of sexual harassment, it does not reflect those figures, where some sufferers did not complain may be due to social stigma or otherwise. Deterrent measures and strict enforcement are the key to arresting such menace.

Fig 12:



The data above from corporate disclosures indicate a significant rise in reported POSH complaints over the last 2–3 years. Reported cases across leading organizations have more than doubled during this period. The silver lining is that the rising number of complaints reflects the growing awareness among employees, who are now more conscious of their rights.

Post-2024 POSH trends reveal a sharp structural contrast. Nearly 85–90% of reported cases arise from the private sector, with disposal rates of ~85–90% annually, but a persistent 10–15% pendency spillover. By contrast, government channels account for less than 10–15% of cases yet demonstrate higher closure discipline, aided by centralized monitoring. The message for corporate India is clear: the POSH challenge is no longer about legal adequacy, but about corporate-scale reporting maturity and timely redressal. Compliance frameworks exist nationwide, but backlog risk and reporting maturity are now disproportionately corporate challenges rather than regulatory gaps. For leaders, this underscores a pressing responsibility—building cultures where awareness translates into trust, reporting translates into resolution, and governance translates into credibility.

4.23.1. What this suggests

- Improved awareness among employees
- Increased confidence in reporting mechanisms
- Strengthening of internal POSH frameworks

4.23.2. Reporting vs. Reality

While reported cases are increasing, broader indicators suggest that a large proportion of incidents still go unreported.

Key takeaway:

- Reported data reflects only a part of the overall reality
- Underreporting continues due to factors such as fear, stigma, and perceived career impact

4.23.3. Resolution & Closure

Data also indicates that not all reported cases are resolved within expected timelines, with variations in closure rates across organizations.

Implication:

- Effectiveness and timeliness of Internal Committees (ICs) remain critical
- Quality of resolution is as important as speed

4.23.4. Fragmented Data Landscape

POSH-related data in India is currently spread across multiple sources—corporate disclosures, legal reporting systems, and government platforms—making it difficult to form a single, comprehensive view.

4.23.5. Key Interpretation for Organizations

It is important to interpret rising complaint numbers correctly:

An increase in complaints often reflects increased trust in the system, rather than an increase in incidents.

POSH is not just a compliance requirement—it is a critical indicator of organizational culture, trust, and leadership credibility. Strengthening our approach in this area will have a direct impact on employee confidence and overall workplace environment.

4.24. Summarisation Of POSH

4.24.1. Existence & Development

- The **POSH Act, 2013** was a landmark legislation aimed at ensuring workplace safety for women. It emerged from the **Vishaka Guidelines**, which laid the foundation for legal recognition of sexual harassment at work.
- Over the years, the law has evolved with **corporate policies**, **judicial interpretations**, and **global influences** shaping its application.

4.24.2. Compliance & IC

- The **Internal Committee (IC)** remains the backbone of POSH compliance, ensuring fair inquiry and redressal.
- Organisations have increasingly moved towards **proactive compliance**, integrating **awareness programs**, **anonymous reporting mechanisms**, and **third-party audits** to strengthen enforcement.

4.24.3. Continuous Progress & Organisational Approach

- The pandemic and remote work culture have expanded the definition of **workplace harassment**, requiring companies to adapt policies for **virtual misconduct**.
- **Gender-neutral frameworks** are gaining traction, ensuring inclusivity beyond binary gender definitions.
- **Technology-driven solutions**, such as AI-based reporting tools and digital training modules, are enhancing compliance efficiency.

4.24.4. POSH Compliance Matrix

Table 51: Safeguarding Integrity in the Modern Workplace

Area of Compliance	Key Responsibilities	Impact
Confidentiality	Safeguard identities, secure digital trails, limit disclosure to need-to-know parties	Preserves trust and avoids reputational/legal damage
False Accusation Safeguard	Promote honest reporting, empower impartial IC, and act on malicious complaints	Ensures fairness and protects the process
Remedy for the Accused	Enable internal reviews, judicial recourse, and defamation suits if necessary	Upholds legal rights and procedural fairness
Role of External Members	Bring objectivity, legal expertise, and counter internal bias	Strengthens credibility and ethical balance
Senior-Level Accusations	Use impartial IC, external counsel, and clear communication	Demonstrates equal accountability and zero tolerance
Consensual Relationships	Set policies on conflict of interest and transparency	Minimises future disputes tied to power imbalance
POSH & Brand Value	Commit to compliance, train regularly, and audit systems	Builds trust, retains talent, and attracts partnerships
Alleged IC Bias	Review IC, allow evidence, reconstitute members if needed	Reinforces due process and institutional credibility

4.25. Milestones for 2030

- **Stronger enforcement mechanisms**: Stricter penalties and better monitoring of IC effectiveness.
- **Global alignment**: Indian POSH laws may integrate best practices from international anti-harassment frameworks.
- **Intersectionality in workplace safety**: Addressing harassment beyond gender—covering caste, disability, and LGBTQ+ concerns.
- **AI-driven compliance**: Automated tracking of complaints, sentiment analysis in workplace interactions, and predictive analytics to prevent misconduct.

Table 52: Next 10 years (from 2025 to 2035) in all probability the POSH approach as under:

Future Milestones & Innovations
AI-driven **misconduct prediction models** introduced—organisations use behavioural analytics to flag potential harassment risks before incidents occur.
Mandatory gender-neutral POSH policies—laws expand to protect all employees, regardless of gender identity.
Blockchain-based complaint tracking—ensuring transparency, tamper-proof records, and real-time monitoring of IC proceedings.
Global POSH compliance standards—India aligns its workplace harassment laws with international best practices, creating a **UN-backed framework**.
Virtual workplace harassment laws—specific regulations introduced for misconduct in **metaverse workspaces** and AI-driven interactions.
POSH 2.0 Amendment Act—strengthening penalties, **criminalizing repeat offenders**, and introducing **whistleblower protection** for bystanders.
AI-powered IC panels—neutral AI adjudicators assist in **bias-free investigations**, ensuring fair and consistent rulings.
Psychological safety audits—companies are required to conduct **annual workplace culture assessments** to measure harassment risks and employee well-being.
Real-time misconduct reporting—wearable tech and smart office sensors detect inappropriate behaviour and trigger immediate alerts.
Intersectional harassment laws—POSH expands to cover **caste, disability, LGBTQ+ rights**, and other workplace discrimination factors.
Global AI-driven compliance monitoring—organisations use **predictive analytics** to prevent harassment before it happens, making workplaces safer than ever.

This out-of-the-box approach envisions tech-driven compliance, inclusivity, and proactive prevention—not just reacting to misconduct but eliminating it before it occurs.

4.26. Frequently Asked Questions

A. What remedy does the accused employee have if he feels that the investigation under the POSH was biased and unfair?

If an employee believes the IC inquiry was unfair, they may seek internal review (if permitted), then opt for judicial scrutiny of procedural lapses, or file defamation if the reputation damage is baseless. The onus lies on the accused to establish bias or flaws in the process.

B. What is the role of "external members" in the IC, and how can they influence the fairness of the investigation?

The external member of the IC, typically an expert from an NGO or legal background, plays a vital role in ensuring impartiality by offering objective insights, guiding legal compliance under the POSH Act, and helping the committee navigate internal power dynamics fairly. Their presence ensures the inquiry process meets both ethical and statutory standards.

C. How should organisation handle cases where the accused is senior level executive or someone in a position of power?

To uphold the integrity of the POSH Act during complex complaints, organisations must ensure IC independence, involve legal experts for transparency, reinforce equal accountability across all levels, and safeguard complainants from retaliation or adverse action. (ref Flow Chart)

D. How does the POSH Act address the issue of consensual relationships in the workplace?

The POSH Act pertains to unwelcome behaviour and harassment, not in a consensual relationship; however, the problem arises when the power dynamics come into play, such as between a supervisor and subordinate. Be cautious:

- If the relationship leads to favouritism or conflicts of interest, it could lead to allegations of harassment by others or later claims of coercion;
- The organisation can mitigate the risk by having policies in place regarding workplace relationships, especially concerning transparency and conflict-of-interest declarations.

E. Can POSH Act compliance be linked to an organisation's brand reputation and business growth?

Definitely yes, POSH's compliance is a reflection of an organisation's commitment to ethical standards and employees' well-being. Failure to comply can:

- Damage the company's brand reputation, particularly in cases of high-profile harassment scandals;
- Impact employees' morale and attention, making it difficult to attract talent and retain the same
- Lead to legal penalties or loss of business partnerships as many companies now evaluate vendors' or partners' workplace ethics and compliance as a part of the decision-making process.

F. What steps should the organisation take if an employee alleges that the Internal Committee is biased?

If bias is alleged, the organisation must act swiftly:

a. Review the IC's composition and procedures
b. Allow evidence of bias to be presented
c. Replace compromised IC members with independent experts
d. Offer alternative legal channels for complaints
e. Maintain transparency while safeguarding confidentiality

G. What remedy does the accused employee have if he feels that the investigation under the POSH was biased and unfair?

A. If an employee believes the IC inquiry was unfair, they may seek internal review (if permitted), then opt for judicial scrutiny of procedural lapses, or file defamation if the reputation damage is baseless. The onus lies on the accused to establish bias or flaws in the process.

H. What is the role of "external members" in the IC, and how they can influence the fairness of the investigation?

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I. How should the organization handle cases where the accused is senior level executive or someone in a position of power?

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- If the relationship leads to favouritism or conflicts of interest, it could lead to allegations of harassment by others or later claims of coercion;
- The organization can mitigate the risk by having policies in place regarding workplace relationships, especially concerning transparency and conflict-of-interest declarations.

K. What if the complainant does not want to proceed formally?

A. Respect the choice, but inform them of available options, including conciliation if appropriate.

L. What if the respondent denies all allegations?

A. Proceed with inquiry. Denial alone does not conclude the matter.

M. What if both parties present conflicting versions?

A. Evaluate based on consistency, supporting evidence, and credibility.

N. What if confidentiality is breached?

A. Address immediately and take corrective action as per policy.

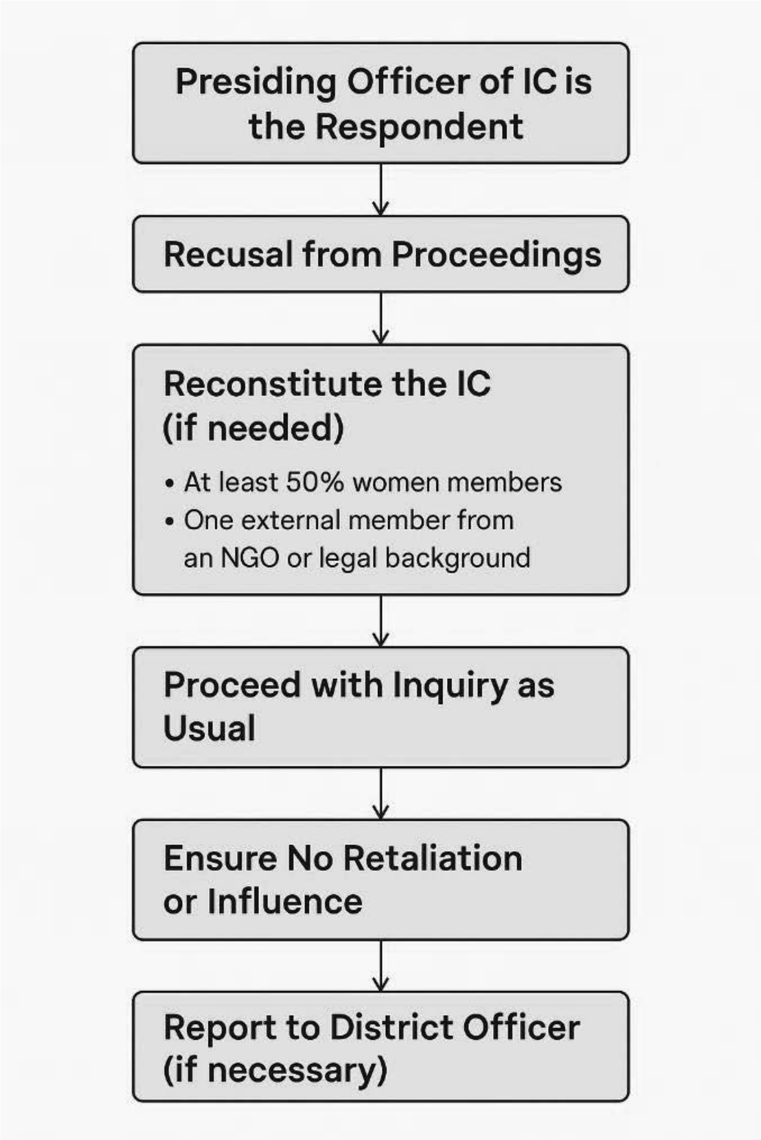
The contingency process when the **Presiding Officer of the Internal Committee is the respondent** in a sexual harassment complaint under the **POSH Act, 2013.**

O. Can an employer create parallel mechanisms outside the statutory IC under the POSH Act?

The Hon'ble Delhi High Court has negated it and said "NO" to external investigation. POSH Act is a self-contained and complete code. Only a duly constituted IC has jurisdiction to investigate the complaint.

P. When the accused under the POSH Act, 2013 is a senior executive or someone in a position of power

Fig 13:



These steps are vital to uphold trust and credibility in the POSH process.

4.27. POSH – Suggested Sample Formats

Sample Board Note Template

Confidential

To: Board of Directors
From: Chief Compliance Officer / HR Head
Date: [Insert Date]

Subject: POSH Compliance Update – Sensitive Matter under Review

Dear Board Members,

This is to formally inform you of a sensitive matter currently being reviewed under the framework of the *Prevention of Sexual Harassment at Workplace (POSH) Act, 2013.* A complaint has been filed involving an individual in a senior leadership position.

As required by law and guided by our internal POSH policy:

- The Internal Committee (IC) has initiated a confidential inquiry and is being supported by external legal counsel.
- Precautionary measures have been taken to ensure procedural integrity, confidentiality, and protection for all involved parties.
- No final determinations have been made as yet.
- The IC will complete its inquiry within the mandated 90-day timeline, and the organisation will act upon recommendations as per legal guidance.

This note is to reaffirm our ongoing commitment to ethical governance, POSH compliance, and safe workplace values.

For transparency, the matter may be referenced (without identifying details) in our Board Annual Report and any statutory disclosures under the Companies Act.

We will keep the Board apprised as legally permitted and appropriate.

Warm regards,

-SD-

[Name]
[Designation]

4.27.1. Building Respect Beyond Compliance

Compliance with POSH is not merely a statutory obligation — it is a moral commitment to dignity, fairness, and institutional trust. Safeguarding individuals from harassment is foundational to human rights, but so is cultivating environments where courage is met with compassion, and power is balanced by principle. ***The true measure of a workplace lies not just in how it handles grievances, but in how it fosters integrity before harm occurs.***

4.28. Justice must be embedded — not just enforced!

FORMAT 1: COMPLAINT SUBMISSION FORMAT

Context

A complaint under POSH may be submitted in writing by the aggrieved person. Providing a simple structure helps ensure clarity, while allowing the individual to express concerns in their own words.

Sample Format

Complaint under the Prevention of Sexual Harassment Policy

Date:

To,
Internal Committee (IC)
[Company Name]

I, [Name], wish to submit a complaint regarding an incident(s) that I believe constitutes sexual harassment at the workplace.

1. Details of the Respondent

Name:
Designation:
Department (if known):

2. Description of Incident(s)

[Provide details of what happened, including dates, location(s), and nature of behaviour. Multiple incidents, if any, may be listed chronologically.]

3. Supporting Information (if any)

[Documents, messages, emails, or other information]

4. Witnesses (if any)

[Names, if applicable]

5. Any Other Relevant Information

I request that the matter be reviewed and appropriate action be taken as per policy.

Name:
Signature:
Contact Details:

Key Considerations

- Allow the complainant to **use their own words**—do not over-structure
- Provide assistance if the individual is unable to draft the complaint
- Maintain **strict confidentiality**
- Avoid insisting on unnecessary details at the initial stage

FORMAT 2: ACKNOWLEDGEMENT OF COMPLAINT (IC)

Context

Acknowledging the complaint promptly reassures the complainant that the matter is being taken seriously and will be handled as per due process.

Sample Format

[On Company / IC Communication]

Date:

To,
[Complainant Name]

Subject: Acknowledgement of Complaint

Dear [Name],

This is to acknowledge receipt of your complaint dated [date], submitted to the Internal Committee.

The matter will be reviewed in accordance with the applicable policy and legal provisions. You will be informed of the next steps in due course.

You are requested to maintain confidentiality regarding this matter.

In case you require any support or clarification, you may reach out to the Internal Committee.

For the Internal Committee

[Name]
[Designation]

Key Considerations

- Acknowledge promptly and respectfully
- Avoid any comment on the merits of the complaint
- Reinforce confidentiality
- Keep tone empathetic and neutral

FORMAT 3: NOTICE TO RESPONDENT

Context

The Respondent must be informed of the complaint and given an opportunity to respond. This is essential to ensure fairness and natural justice.

Sample Format

[On Company Letterhead / IC Communication]

Date:

To,
[Respondent Name]

Subject: Notice of Complaint

Dear [Name],

This is to inform you that a complaint has been received by the Internal Committee alleging conduct that may fall under the Company's Prevention of Sexual Harassment policy.

A summary of the complaint is enclosed herewith.

You are requested to submit your written response to the Internal Committee within [X] days from receipt of this notice.

You are advised to maintain confidentiality regarding this matter.

The matter will be reviewed in accordance with applicable procedures, and you will be provided an opportunity to present your case.

For Internal Committee

[Name]
[Designation]

Key Considerations

- Share relevant details without unnecessary disclosure
- Avoid language that suggests guilt
- Provide reasonable time for response
- Reinforce confidentiality clearly

FORMAT 4: NOTICE OF INQUIRY HEARING (IC PROCEEDINGS)

Context

This notice informs both parties about the inquiry proceedings and ensures fair opportunity to participate.

Sample Format

[On IC Communication]

Date:

To,
[Complainant / Respondent]

Subject: Notice of Inquiry Hearing

Dear [Name],

This is to inform you that the Internal Committee will be conducting inquiry proceedings in relation to the complaint.

Details are as follows:

Date:
Time:
Venue / Mode:

You are requested to be present and may:

- Present your submissions
- Provide supporting documents
- Identify witnesses, if any

You are requested to maintain confidentiality regarding the proceedings.

In case you are unable to attend, please inform the Committee in advance.

For Internal Committee

[Name]
[Designation]

Key Considerations

- Ensure **adequate notice period**
- Provide equal opportunity to both parties
- Maintain respectful and neutral tone
- Avoid procedural complexity

FORMAT 5: POSH INQUIRY REPORT (IC FINDINGS)

Context

The Internal Committee is required to submit a report with findings based on evidence and proceedings. This document is critical and must reflect fairness, clarity, and reasoning.

Sample Format

POSH Inquiry Report

Complainant:
Respondent:
Date of Complaint:
Internal Committee Members:

1. Background

Brief overview of the complaint.

2. Summary of Allegations

[Neutral summary]

3. Proceedings Conducted

Dates of hearings and participation details.

4. Evidence Reviewed

- Documents
- Statements
- Witness inputs

5. Analysis

Assessment of evidence and submissions of both parties.

6. Findings

Whether the allegations are:

- Substantiated / Not Substantiated / Partially Substantiated

7. Recommendations

[Action recommended, if any, as per policy]

For the Internal Committee
[Signatures of Members]
Date:

Key Considerations

- Maintain **neutral and balanced analysis**
- Avoid moral or emotional commentary
- Clearly separate **facts, analysis, and findings**
- Ensure consistency with evidence

FORMAT 6: CLOSURE COMMUNICATION (TO PARTIES)

Context

After completion of the inquiry and decision, both parties should be formally informed of closure in a respectful and confidential manner.

Sample Format

[On Company / IC Communication]

Date:

To,
[Complainant / Respondent]

Subject: Closure of POSH Inquiry

Dear [Name],

This is with reference to the complaint reviewed by the Internal Committee.

Based on the inquiry conducted and the findings recorded, the matter has been concluded in accordance with applicable policy.

Appropriate action, as recommended, has been/is being taken.

You are requested to maintain confidentiality regarding this matter.

We appreciate your cooperation during the process.

For [Company Name / Internal Committee]

[Name]
[Designation]

Key Considerations

- Maintain confidentiality and sensitivity
- Avoid detailed disclosure beyond what is appropriate
- Ensure tone is respectful to both parties
- Do not create perception of bias

Disclaimer

These formats are indicative and should be adapted based on the outcome of the inquiry and applicable legal requirements.

Closing Note for POSH Chapter (Optional Insert)

"A fair and sensitive process does not only resolve complaints—it builds trust in the system that protects dignity at the workplace."


GRIEVANCE REDRESSAL
OFFICER

Chapter 5

Grievance - Reporting and Redressal Processes

"A grievance is most poignant when almost redressed"
Eric Hoffer

5.1. Introduction

When people come together to work, there are adjustment issues, and left unattended, it develops friction in any industry or corporate setting. The smooth functioning of operations and the overall productivity of the workforce are often contingent upon the environment in which employees operate. A key factor in maintaining a positive and productive work environment is the effective management of employee grievances. Grievances, if left unaddressed, can lead to a host of issues that negatively impact both the individual and the organisation. Let's delve into the concept of grievances within a corporate context, explore the various types of grievances that may arise, and underscore the critical importance of timely and effective grievance resolution.

5.2. Defining Grievance

A grievance is a formal complaint or an expression of dissatisfaction that an employee raises with their employer, typically regarding workplace conditions, practices, or treatment. Grievances can arise due to perceived unfairness, violations of rights, conflicts with colleagues or management, and dissatisfaction with company policies or procedures. In essence, a grievance is a signal that something within the organisation is not aligned with the expectations or well-being of the employee, necessitating a prompt and appropriate response.

5.3. Types of Grievances

Grievances can be broadly categorised into several types, each requiring a tailored approach for resolution. Understanding these types is crucial for HR professionals and managers to effectively address the underlying issues:

A. **Individual Grievances:** These are grievances raised by a single employee, often concerning their personal treatment or conditions of employment. Examples include disputes over pay, working hours, job assignments, or disciplinary actions.

B. **Collective Grievances:** These involve multiple employees who are affected by the same issue, often related to broader workplace policies or practices. Examples include concerns about workplace safety, discriminatory practices, or unfair labour practices that affect a group or department.

C. **Policy-Related Grievances**: These grievances stem from dissatisfaction with company policies or changes in policies that employees perceive as unfair or detrimental. Examples include changes to benefits, promotion criteria, or workplace rules that employees feel are not in their best interest.

D. **Management-Related Grievances:** These arise when employees feel that they have been treated unfairly by their supervisors or management. Common issues include favouritism, lack of communication, poor leadership, or unfair performance evaluations.

E. **Workplace Environment Grievances:** These grievances are related to the physical or psychological work environment. Examples include issues with workplace safety, harassment, or bullying, as well as concerns about work-life balance or excessive workload.

F. **Impact of unattended Grievances:** When a grievance is left unattended, it doesn't just disappear; it festers. Over time, it can ripple through an organisation with serious consequences.

1 At the individual level, it affects:

- Emotional and Psychological Impact
- Frustration and resentment build up, leading to emotional exhaustion.
- Stress and anxiety increase, affecting mental health and well-being.
- Loss of trust in leadership or authority figures becomes widespread.

2 Organisational Consequences

- Decline in productivity as motivation and morale drop.
- Higher absenteeism and employee turnover, especially in workplaces.
- Poor team dynamics and collaboration due to unresolved tension.
- Increased conflict, sometimes escalating into strikes, protests, or legal action.

3 Financial and Reputational Costs

- Wasted resources from inefficiency and rework.
- Legal liabilities - if the grievance involves disorder, discrimination, harassment, or safety violations.
- Damage to reputation, making it harder to attract and retain talent or public trust.

4 Systemic Breakdown

- Erosion of accountability when people feel unheard or powerless.
- Cultural toxicity where silence becomes the norm, and fear replaces dialogue.
- Escalation of minor issues into major crises due to neglect.

In short, unattended grievances are like cracks in a dam—they may seem small at first, but left unchecked, they can lead to a flood.

5.4. Capturing Grievances at the Source

When an organisation is huge and present across a large geography with many industrial units or other types of Shops and Establishment units, then having an IT application which can be accessed through a mobile app by scanning a QR code and logging the grievances to the central repository would be an ideal process. Please refer to the process flow chart on grievance management provided in case of developing an application.

The process will give the line of sight to the Employee relations professionals and CHROs on the kind of issues emanating at the individual units within the large organisation, which sometimes need changes in policy to address the grievances often sprung up. Or training the management team at the unit level to address the grievances with compassion. The local leadership's ability to manage the grievances effectively, will build the leadership qualities to mantle higher responsibilities.

5.5 The commonly reported grievances:

A. Working conditions: complaints about an unsafe or unhealthy environment, inadequate tools, or poor facilities.

B. Pay and benefits: Issues related to Salary disputes, unpaid incentives, bonuses or allowances, or perceived pay discrimination vis-à-vis others in the same category.

C. Inadequate or discriminatory benefit packages: Example, Health insurance like benefits When it is discriminated for the employees based on the category of employment.

D. Bullying/harassment: Under these many categories of harassment, which is recorded especially verbal harassment, inappropriate jokes with other genders, cyber bullying, discrimination based on Gender, Race, age, sexual orientation, disability, and Specific characteristics of the individual depicted in a derogatory sense.

E. Retaliation: those who raise concerns often face retaliation in the form of adverse treatment such as slighting, sidelining, triggering others to act against the person in consonance, and withholding a benefit or promotion which is due.

F. Retaliation is the most common reason aggrieved employees hesitate to report issues openly, as fear of exposure to the committee undermines their courage to come forward. They tend to go anonymous and which generally lacks veracity when investigated due to specifics not present.

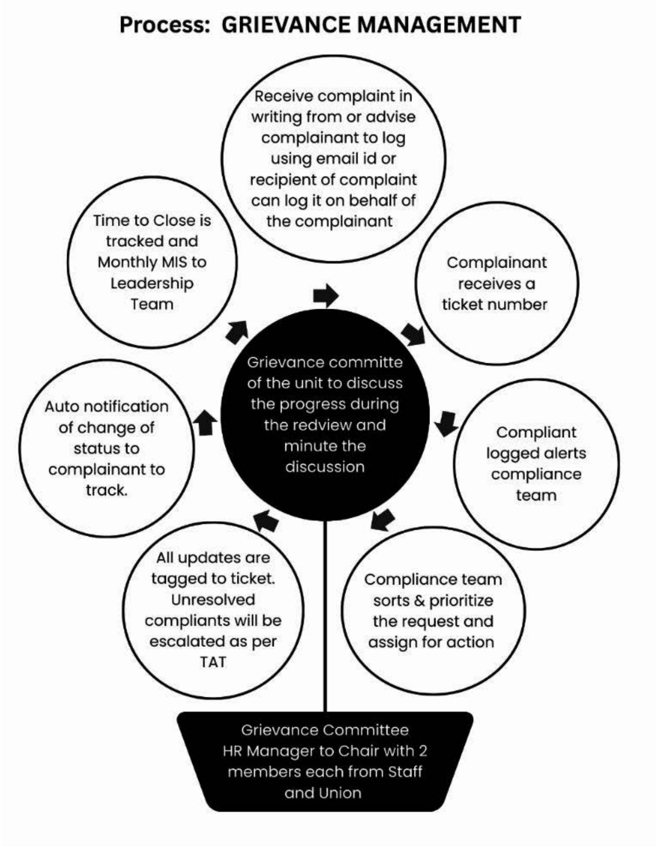
G. The best practice to understand the health of the work environment is the following metrics:

- The percentage of Grievance based on identification of the originator Vs anonymity
- How many days has it taken the employee to report the incidence after its occurrences
- The percentage satisfaction on resolution Vs unsatisfaction
- Percentage goes unsubstantiated after investigation
- Turnaround time – Grievance receipt to resolution

The organisation have to work on creating the relevant policies, structures, education and communication on all the above in order to make a workplace a congenial and productive. The retaliation in any form if noticed by the management, they should take exemplary corrective action against the individual(s) who are perpetrating it.

Though there are grievances classified as Informal and formal by some, when the management has to act resolutely with farsighted approach, the recorded formal grievance is needed. Sometimes the grievance formally received becomes the basis for investigation, which leads to disciplinary action either on the person(s) named or in rare instances, on the complainant himself for foisting false allegations on others.

Fig 14:



The grievances can be classified into 5 types based on the urgency to act up on.

1. **Critical -** When the recorded grievance is between life and death situation, it requires action(s) from the concerned HR teams on a war footing and redeem the employee out of the situation
2. **High -** When the recorded grievance is serious potential to cause industrial unrest and impact productivity, it requires urgent action(s) from the concerned HR teams to work on it and steps taken to damage control
3. **Medium** – The recorded grievances fall in between urgent and low priority. It needs speed of action to resolve, and at the same time, well thought out for precedence impact.

4. **Low** – An often-repeated grievance from the management point, caused due to inordinate delay on the part of local management where an aggrieved employee is located. Also, sometimes an imaginary grievance is received from an employee.
5. **Others** – Grievance observed as a third party, such as the sexual harassment or violation of the code of conduct

Conclusion

Grievance management is not merely a procedural obligation but a vital aspect of organisational health and success. The timely redressal reduces the indiscipline to a great extent, since hearing it appropriately leads to recognising the importance of resolving them promptly, which leads to a positive work environment, enhancing employee satisfaction. The process in place can avert the potentially severe consequences caused by unresolved issues. In an increasingly competitive business landscape, prioritising grievance resolution is essential for maintaining a productive and engaged workforce, and ultimately, achieving long-term organisational success.

5.6. Annexure

5.6.1. Model for an Effective Grievance Redressal Mechanism

Introduction

A well-structured grievance redressal mechanism is essential for managing and addressing employee grievances effectively within any organisation. The model outlined below provides a systematic approach that ensures grievances are handled promptly, fairly, and transparently, thereby promoting a positive workplace culture and minimising the risks associated with unresolved grievances.

The Industrial Dispute Act, 1947, Section 9.C deals specifically with setting up grievance redress machinery in an industrial establishment which employs 20 or more workers. It specifically states in 9.C.2 that the grievance reduction committee shall consist of an equal number of members from the employer and the workmen. The maximum number of the committee shall be 6, and the chairman of the committee is to be elected on a rotational basis between the employer and the workers. The Cross reference under the Industrial Relations Code, 2020 is as under:

- Relevant Section: Section 4 – Grievance Redressal Committee
- Content:
  - Every industrial establishment employing 20 or more workers must constitute a Grievance Redressal Committee.
  - The committee must have equal representation from employers and workers.
  - The maximum number of members is 10 (note: expanded from 6 under the 1947 Act).
  - The chairperson is to be chosen on a rotational basis between employer and workers.
  - The committee must complete its proceedings within 30 days of receiving a complaint.

5.7. Grievance Redressal Policy

Objective: Establish a clear and comprehensive policy that outlines the organisation's commitment to addressing employee grievances. The policy should be easily accessible to all employees and regularly communicated.

Key Components:

– Scope: Define the types of grievances covered under the policy, including individual, collective, policy-related, management-related, and workplace environment grievances.

– Rights and Responsibilities: Clarify the rights and responsibilities of employees, supervisors, and the HR department in the grievance process.

– Confidentiality: Ensure that the grievance process maintains the confidentiality of the complainant and other involved parties.

– Non-Retaliation: Include a non-retaliation clause to protect employees from any adverse actions for raising a grievance.

5.8. Grievance Reporting System

Objective: Create a transparent and accessible reporting system that allows employees to raise grievances without fear of retaliation.

Key Components:

- Multiple Reporting Channels: Provide employees with various options to report grievances, such as direct reporting to a supervisor, HR, a grievance committee, or through an anonymous hotline or digital platform.
- Grievance Form: Develop a standardised grievance form that captures all necessary details, including the nature of the grievance, date of occurrence, and any supporting evidence.
- Timely Acknowledgement: Ensure that all grievances are acknowledged promptly, typically within 24-48 hours, to reassure employees that their concerns are being taken seriously.

5.9. Grievance Investigation Process

Objective: Conduct a thorough and impartial investigation into the grievance to determine its validity and identify appropriate solutions.

Key Components:

- Grievance Committee: Establish a grievance committee comprising representatives from HR, management, and, where applicable, employee representatives. This committee should be trained in handling grievances and conducting investigations.
- Fact-Finding: Collect relevant information, interview involved parties, and review any documentation or evidence related to the grievance.
- Impartiality: Ensure that the investigation is conducted impartially, without any bias or preconceived notions.
- Timelines: Set clear timelines for the investigation process, with the goal of resolving the grievance within a specified period (e.g., 7-14 days).

5.10. Resolution and Remedial Action

Objective: Implement appropriate remedial actions based on the findings of the investigation to address the grievance and prevent future occurrences.

Key Components:

- Solution Development: Develop solutions that address the root cause of the grievance and align with organisational policies and values. This may include disciplinary action, policy changes, mediation, or other corrective measures.
- Communication: Communicate the resolution to the complainant and, if necessary, to other affected parties. Ensure that the resolution is clearly explained and documented.
- Follow-Up: Conduct follow-up meetings with the complainant to ensure that the resolution is satisfactory and that no further issues have arisen.

5.11. Appeal Process

Objective: Provide employees with the option to appeal the resolution if they are not satisfied with the outcome.

Key Components:

- Appeal Procedure: Outline a clear procedure for appealing a decision, including the timeframe for submitting an appeal and the next steps in the review process.
- Second-Level Review: Designate a higher authority, such as a senior HR executive or an external mediator, to review the appeal and make a final decision.
- Final Decision: Communicate the final decision to the complainant, and ensure that the process is transparent and fair.

5.12. Documentation and Record-Keeping

Objective: Maintain detailed records of all grievances and their resolutions to ensure transparency, compliance, and continuous improvement.

Key Components:

- Grievance Log: Keep a centralised log of all grievances received, including the date, nature of the grievance, parties involved, investigation details, resolution, and follow-up actions.

- Confidentiality: Store grievance records securely to protect the privacy of all involved parties.
- Audit and Review: Regularly audit grievance records to identify trends, assess the effectiveness of the grievance redressal process, and implement improvements as needed.

5.13. Training and Awareness

Objective: Ensure that all employees, including management and HR personnel, are aware of the grievance redressal process and are trained in its effective implementation.

Key Components:

- Employee Orientation: Include grievance redressal procedures in employee onboarding and orientation programs.
- Ongoing Training: Provide regular training sessions for managers, supervisors, and HR personnel on how to handle grievances, conduct investigations, and maintain compliance with company policies and legal requirements.
- Awareness Campaigns: Periodically run awareness campaigns to remind employees of the available grievance reporting channels and the importance of using them.

5.14. Monitoring and Continuous Improvement

Objective: Continuously monitor the effectiveness of the grievance redressal mechanism and make necessary adjustments to improve the process.

Key Components:

- Feedback Mechanism: Solicit feedback from employees on the grievance process to identify areas for improvement.
- Performance Metrics: Track key performance indicators (KPIs) such as the number of grievances reported, resolution times, and employee satisfaction with the process.
- Periodic Reviews: Conduct regular reviews of the grievance redressal process, involving all relevant stakeholders, to ensure it remains effective and aligned with organisational goals.

An effective grievance redressal mechanism is vital for maintaining a positive and productive work environment. By implementing a structured process that emphasises transparency, fairness, and timely resolution, organisations can address employee grievances in a manner that promotes trust, loyalty, and overall organisational success. Continuous monitoring and improvement of the grievance process further ensure that it remains responsive to the evolving needs of the workforce and the organisation.

Accountability is the Glue that fastens it to Commitment.

Chapter 6

Fostering A Culture of Accountability and Responsibility

"A culture of accountability makes a good organisation great and a great organisation unstoppable"
Henry Evans

6.1. Introduction

In any organisation, the role of leadership in shaping and sustaining a culture of accountability and responsibility is pivotal. Leaders are not just enforcers of rules; they are the architects of the organisational culture. When leaders prioritise accountability and responsibility, they set the tone for the entire organisation, influencing how employees behave, make decisions, and interact with one another.

At the leadership level, the implications of fostering this culture are profound. A culture of accountability ensures that everyone in the organisation, from top management to frontline employees, understands their responsibilities, meets expectations, and owns the outcomes of their actions. This culture directly impacts organisational performance, employee morale, and the overall reputation of the company.

When leaders embody accountability, they inspire trust and credibility among their teams. This trust leads to a more engaged workforce, where employees feel valued, are more likely to take initiative, and are motivated to perform at their best. Conversely, a lack of accountability at the leadership level can lead to a toxic work environment, where blame-shifting, low morale, and inefficiency prevail.

6.2. Implications of Leadership Accountability

1. **Trust and Credibility**: Leaders who are accountable for their actions build trust with their teams. Trust is the foundation of effective leadership and is essential for maintaining a positive work environment. When employees trust their leaders, they are more likely to be engaged and committed to their work.

2. **High Performance and Productivity:** A culture of accountability drives high performance. Employees who know that their efforts are recognised and that there are clear consequences for not meeting expectations are more likely to perform at their best. This leads to higher productivity and better overall organisational performance.

3. **Employee Engagement and Retention**: Accountability at the leadership level fosters a sense of fairness and justice within the organisation. Employees are more likely to be engaged and stay with the company when they see that leaders hold themselves and others accountable for their actions.

4. **Organisational Reputation:** The behaviour of leaders has a significant impact on the organisation's reputation. Companies known for strong leadership and a culture of accountability are more attractive to top talent, customers, and investors.

6.3. Leaders Can Take to Promote a Culture of Accountability and Discipline

A. Lead by Example

- Demonstrate Accountability: Leaders must model the behaviour they expect from their teams. This means taking responsibility for their decisions, admitting mistakes, and showing transparency in their actions.
- Own Outcomes: Whether the outcome is positive or negative, leaders should own it. This sets a powerful example for employees, showing that accountability is a non-negotiable value within the organisation.

B. Set Clear Expectations

- Communicate Standards: Clearly define what is expected from employees in terms of behaviour, performance, and conduct. Ensure that these expectations are communicated consistently across the organisation.
- Define Consequences: Establish clear and fair consequences for failing to meet expectations. This includes not only punitive measures but also opportunities for improvement and development.

C. Provide Regular Feedback

- Constructive Criticism: Leaders should provide timely and constructive feedback to help employees understand where they stand and how they can improve. Regular feedback helps employees stay on track and fosters a culture of continuous improvement.
- Recognise Accountability: Publicly acknowledge and reward employees who consistently demonstrate accountability. This not only reinforces the desired behaviour but also encourages others to follow suit.

D. Encourage Open Communication

- Foster Transparency: Create an environment where employees feel safe to speak up, share their concerns, and offer feedback. Leaders should encourage open dialogue and be approachable.
- Listen and Act: Actively listen to employee feedback and take appropriate action. This shows that leaders value their employees' input and are committed to addressing issues that affect the workplace.

E. Hold Everyone to the Same Standard

- Consistency: Apply the same standards of accountability to all employees, regardless of their position. Leaders should not show favouritism or allow certain individuals to bypass rules.
- Fairness: Ensure that disciplinary actions are fair and consistent. Employees are more likely to accept accountability when they believe the process is fair and unbiased.

F. Invest in Leadership Development

- Train Leaders: Provide leadership training focused on developing accountability and responsibility. Equip leaders with the skills and knowledge they need to foster these qualities in their teams.
- Mentorship Programs: Implement mentorship programs where senior leaders mentor emerging leaders on the importance of accountability and responsibility.

G. Integrate Accountability into Performance Reviews

- Evaluation Criteria: Include accountability as a key criterion in performance evaluations. Assess how well employees and leaders hold themselves accountable and make it a part of their growth and development plans.
- Development Plans: For those who struggle with accountability, create specific development plans that address this gap and provide support for improvement.

6.4. Setting Behavioural Expectations, Feedback, and Coaching: Key to Ensuring Employee Discipline

6.4.1. Setting Behavioural Expectations

Establishing clear behavioural expectations is the foundation for maintaining employee discipline within an organisation. When expectations are explicitly communicated, employees understand what is required of them in terms of conduct, work ethic, and interaction with others. This clarity minimises ambiguity and reduces the likelihood of misunderstandings that could lead to disciplinary issues. Clearly defined behavioural expectations also serve as a reference point for both employees and managers, making it easier to identify deviations and address them promptly. Moreover, when employees know what is expected, they are more likely to align their actions with organisational values, fostering a positive and cohesive work environment.

6.4.2. The Role of Feedback in Reinforcing Discipline

Feedback is a critical tool in reinforcing behavioural expectations and ensuring discipline. Regular, constructive feedback helps employees understand how their behaviour aligns with or deviates from organisational standards. Positive feedback reinforces good behaviour, encouraging employees to continue performing well, while constructive criticism addresses areas for improvement, helping employees adjust their actions before issues escalate. Feedback should be timely, specific, and delivered in a manner that is both respectful and focused on development. By maintaining an ongoing dialogue about behaviour and performance, managers can correct course early and prevent small issues from becoming significant disciplinary problems.

6.4.3. Coaching as a Developmental Tool for Discipline

Coaching complements feedback by providing a structured approach to developing desired behaviours and correcting undesirable ones. Through coaching, managers work closely with employees to identify areas where they may struggle to meet behavioural expectations and develop personalised strategies to address these challenges. Coaching sessions often involve setting specific goals, discussing obstacles, and developing action plans to achieve the desired outcomes. This process not only helps employees improve their behaviour but also empowers them to take ownership of their development. When coaching is done effectively, it strengthens the relationship between managers and employees, builds trust, and enhances overall discipline within the team.

6.4.4. The Interconnection: A Holistic Approach

The connection between setting behavioural expectations, providing feedback, and offering coaching is integral to ensuring discipline in the workplace. Behavioural expectations set the standard; feedback provides the necessary guidance and corrections; and coaching supports continuous improvement. When these three elements are aligned, they create a holistic approach that promotes a disciplined, accountable, and high-performing workforce. Employees feel supported in meeting expectations, are clear on what is required of them, and are equipped with the tools to succeed. This proactive approach reduces the need for punitive measures and creates a more positive, respectful, and productive organisational culture.

Leaders play a crucial role in fostering a culture of accountability and responsibility. By modelling the behaviour, they wish to see, setting clear expectations, providing regular feedback, and maintaining consistency, leaders can cultivate a disciplined and high-performing workplace. The ripple effect of accountable leadership is significant—it not only enhances individual and team performance but also builds a strong, trustworthy, and reputable organisation.

6.5. Manager Advisory / Counselling Note – Suggested Sample Format

Context

Not every issue requires formal disciplinary action. In many cases, early intervention through a structured conversation can address concerns before they escalate.

This format helps managers document such discussions in a simple and consistent manner, while maintaining a supportive tone.

Sample Format

Manager Advisory / Counselling Note

Employee Name:
Designation:
Department:
Date of Discussion:

Manager Name:

1. Background of Discussion

Briefly describe the concern observed (e.g., attendance, behaviour, communication issues), including relevant context.

2. Discussion Summary

Summarise the key points discussed during the interaction:

- Concern highlighted by the manager
- Employee’s perspective or explanation
- Any contributing factors discussed

3. Agreed Actions / Expectations

Clearly outline:

- Expected improvement areas
- Any agreed timelines
- Support (if any) to be provided

4. Closing Note

This discussion is intended as a constructive step to address the concern and support improvement.

Manager Signature:

Employee Acknowledgement (Optional):
Date:

Key Considerations

- Keep the tone supportive, not accusatory
- Focus on behaviour and impact, not personality
- Encourage open dialogue—this is not a formal charge
- Use this consistently across similar situations
- Maintain confidentiality and proper record-keeping

Chapter 7

Legal Considerations and Avoiding Discrimination

"Laws will not eliminate prejudice from the hearts of human beings. But that is no reason to allow prejudice to continue to be enshrined in our laws—to perpetuate injustice through inaction"

Shirley Chisholm

7.1. Introduction:

Chisholm, the first Black woman elected to the U.S. Congress, was a fierce advocate for civil rights and equality. Her words remind us that while laws may not change hearts overnight, they must reflect our highest ideals—not our lowest biases.

If we contextualise her words in disciplining employees, which is an important activity of the employer, acting in a prejudicial manner in any context should be avoided. It is important to have enough deliberations on legal aspects before initiating any punitive actions. Even though you, as an employer is on the right side of the law in deciding punitive measures post completing all the necessary inquiry formalities, a lens of avoiding any discriminatory effect of such punishment to be worn and seen. If the above considerations are not appropriately made before imposing any punishments, there is a greater propensity for the employer's action being tainted as discriminatory or retaliatory action taken on the innocent.

7.2. Employment Laws & Rights of Employees

Initiating any disciplinary Inquiry against an employee is itself an act which stigmatises such an employee among his colleagues. That is the reason, as a man, an employee served with a charge sheet for a purported misconduct, there is a resistance or hesitation to receive it from the employer. The moment the charge sheet is received by an employee with acknowledgement, the grapevine tends to spread in the work environment, which makes the alleged employee to continue to be not normal. The greater the influencer in the work setting, the stronger the reactions seen emerging in the workplace. After allowing the dust to settle in the workplace, the process of inquiry is held and concluded, when the delinquent employee is show caused with the inquiry report, at times atmosphere becomes tense and may lead to work disruption in odd cases. The employees have the right to protect themselves from unfair actions of the employers by seeking interference of the labour department which is enabled through the Law enacted in 1947 called as The Industrial Dispute Act. Now the provisions are set out in Industrial Relations Code 2020, which are as under:

Table 53:

Aspect	Industrial Disputes Act, 1947	Industrial Relations Code, 2020
Right to seek redress	Employees could approach labour authorities for unfair practices	Employees retain this right under Sections 62–64
Grievance Committee	Section 9C mandated equal representation	Section 4 continues this, expands max members to 10, adds 30-day disposal
Labour Department role	Conciliation officers, labour courts, tribunals	Same structure, streamlined under Industrial Relations Code
Unfair Labour Practices	Listed in Fifth Schedule	Codified under Sections 62–64

At the end, even after the delinquent employee responding with valid plea for protecting himself from being terminated by the employer, the punishment is inflicted on the employee, there is a ground for the aggrieved employee to contest the decision of management alleging as wrongful termination of service and stake claim for reinstatement through a dispute raised through a body or a union, for conciliation. In case the conciliatory effort failed, it goes to the labour court or tribunal on the reference of the appropriate government.

On adjudicating the aspect(s) for which it is referred, a labour court or tribunal may, if it thinks fit, set aside the order of dismissal and order for reinstatement with or without back wages or provide appropriate relief by way of compensation or order a lesser degree of punishment than dismissal.

7.3. Status quo for workmen during the dependency of proceedings

Where a delinquent employee, during or upon conclusion of a disciplinary inquiry, raises an industrial dispute through a recognized trade union or workers' association for conciliation on grounds alleging denial of natural justice, the protection afforded under the Industrial Relations Code, 2020 operates to restrain the employer from altering conditions of service prejudicial to the workman. Accordingly, until the conciliation process is concluded, the employer is barred from proceeding with punitive action, ensuring that the workman's right to fair adjudication remains safeguarded. There was an interesting case of three workmen who happened to be office bearers of a minority union backed by the ruling party of a state. In order to gain prominence and swell their membership over the majority union, all three of them have done a serious misconduct for which they were charge sheeted by the disciplinary authority. They all attended the first sitting of the inquiry and gave a representation to the disciplinary authority that the appointed inquiry officer is biased towards the management and asked for a fresh inquiry officer to inquire their charges. Having no valid reasons given by the delinquents for the change of Inquiry officer, the disciplinary officer responded with the reply to cooperate with the appointed inquiry officer to conduct the inquiry. Citing this as a dispute, the delinquents raised a dispute under Sec 2P of the ID act, before the conciliation officer.

Having conciliated the matter, he has advised the management to continue the inquiry but share the inquiry report with him for perusal to find fairness in the inquiry report. The delinquents continued the inquiry by applying all delaying tactics, and every such request was granted by the Inquiry officer, and completed the inquiry and submitted the report after two years.

The same was shared with delinquent employees and the conciliation officer for their input by the disciplinary authority. The conciliation officer summoned the parties for a meeting and, after explaining his view on the inquiry report, that it had given the charged employees ample opportunity to prove their innocence, but they were unable to do so. And the charges proved in the inquiry with no procedural violation of the conduct of the inquiry. Citing the same in the notes, he dropped the conciliation and sent a report to the government.

Having the conciliation process dropped, instead of being a failure report, using the leeway of time to espouse their cause before the court of law, they were dismissed after show causing with proposed punishment.

7.4. Protected workman

Where the delinquent employee qualifies as a "protected workman" ***under*** *Section 80 of the Industrial Relations Code, 2020, the employer must exercise heightened caution before imposing any punishment for alleged misconduct. No adverse alteration of service conditions or disciplinary action may be taken against such protected workman during the pendency of conciliation or adjudication proceedings, except with the express approval of the authority before whom the dispute is pending. This safeguard ensures that the representative character of the workman is preserved and that disciplinary measures do not prejudice collective bargaining rights.*

he status of "protected workmen" ***under*** *Section 80 of the Industrial Relations Code, 2020 refers to workers who are recognized as such due to their role as office bearers of registered trade unions. These employees cannot be dismissed, punished, or have their service conditions altered during the pendency of conciliation or adjudication proceedings without prior approval of the adjudicating authority. This safeguard ensures that union representatives are not victimized while disputes are ongoing, though it often creates challenges for employers when misconduct allegations arise against union leaders enjoying protected status.*

There have been notable instances where employers have acted firmly within the ambit of Section 80. For example, in one case a newly elected union office bearer facing serious misconduct charges sought to be conferred protected workman status by displacing an already approved protected workman. The employer, through a clearly worded reply, rejected the request, citing that the union's demand was malicious and intended to shield a charge-sheeted employee. The refusal underscored that protected status cannot be manipulated to obstruct disciplinary proceedings or undermine fairness in industrial relations.

7.5. Ensuring Fairness and Consistency

In an ongoing concern or an organisation, the perpetuity of it is longer than the people therein, and that becomes an impediment in bringing consistency in whatever they do. The leader who is in the position to decide on a mattress discipline generally gets carried away by his past experience and an imminent action needed to be taken in the context of the circumstances of the organisation.

To maintain consistency, there are documented processes such as policies and procedures well written and periodically reviewed, with the history of review can do a lot of help. Also, all the incumbent leaders who come into the roles of disciplinary authorities should be socialised through a structured learning intervention and also given the documents to come handy when they need to act on it. If there is a deviation needed from the standard operating procedures or policies, there shall be a committee, such as the ethics committee setting as an apex body shall be roped in before arriving at decisions of deviations. Also, when such deviant decisions are taken, the same shall be marked for whether it sets precedence or not. After every two-

year period, the log maintained on such decisions of precedence be regularised as a standard process or procedure.

To amplify the point above let us take an example. The Organisation has a well-defined POSH policy which was written a decade back with the assumption that generally women are victims of sexual harassment. Whereas, in recent times, the organisation experiences a young male employee complaining against his female manager for being harassed for refusing to yield to her whims and fancies, does not have a way to proceed against the female employee as per the written policy. However, the evidences adduced by the male employee gives a picture of him having been harassed by the female manager regularly needs disciplining. Such out-of-policy decisions to be taken to the apex /ethics committee for direction and also minute the outcome for precedencies or not. Such decisions enter it in to POSH policy to make it gender neutral in the next revision.

When actions are taken against Indiscipline in a consistent manner using standard processes, the fairness will automatically come into place. At rare occasions, the standard processes are to be overlooked for one tough case, when some deviations are approved by an apex/ ethics Committee, the fairness part is ensured.

7.6. Documenting Disciplinary Actions

It is important to have proper documentation of all disciplinary actions. The following reasons emphasise the need for proper documentation.

1. Employees' acceptance: When disciplinary actions are supported by thorough documentation, the employees tend to accept the consequent actions post investigation or Inquiry processes. The written record speaks by themselves at most occasions and has fewer disputes when inflicted with punishment or corrective action. Even if an employee is verbally counselled at the first instance for minor misconduct, it is advisable that a written letter or verbal counselling may be issued to the employee, and the copy of the same is acknowledged and filed in the dossiers.
2. Helps in decision making: The documenting process of discipline actions encourages the employers to reflect on the decisions being made either by a single authority or as a group A documented process ensures that decisions are well thought out and balanced, creating transparency and reinforcing the perception that justice has been served in each case.
3. Tracking the history : Documentation creates a historical record of an employee's behaviour, which can support and strengthen the disciplinary process, the disciplinary authority to identify the patterns overtime which is crucial for making an informed decision about the individual for their particular misconduct at hand. This is dealt in more detail in the chapter which discusses on progressive discipline.
4. Clear communication: the return ensures all Parties have a clear understanding of the discussed matter, inquiry proceedings, and et cetera. This helps eliminate any type of miscommunication and ensures the delinquent employee comprehends the issues addressed without any ambiguity.

5. Legal protection: the proper documentation supports the management from legal disputes which invariably follow post inflicting a punishment on the delinquent employee. The legal forums and the courts expect an employer to have all the written records in a clear manner, which can be stacked in a chronological order to validate that there is no malicious intent in the decision of the management. If there is a gap in the documentation, that may go in favour of the employee, who is generally seen as a victim by the courts.

The process of clear documentation not only ensures fairness and consistency in the management's actions but also makes the parties on the external stake holders to, see the justice done seemingly well in any case. That is the importance of documenting various aspects of disciplinary processes, which can be pecked as second in hierarchy after the first one, "The Principles of Natural Justice".

Chapter 8

From Procedure to Principle: Building A Sustainable Discipline Framework

As organizations mature, the way they approach employee discipline becomes a quiet but powerful indicator of who they really are. Policies may be well drafted and procedures carefully designed, yet discipline often remains one of the most uncomfortable and inconsistently handled aspects of people management. This is not because organizations do not understand the rules, but because discipline is still viewed largely as a **corrective action**, rather than as an **institutional responsibility grounded in principle**.

This chapter does not seek to restate what has already been covered in earlier sections of the book. Instead, it draws together those elements to examine how discipline operates in practice—across decisions, behaviours, leadership intent, and organizational memory. The shift required is subtle but significant: from seeing discipline as something that is *done* to an employee, to understanding it as something that *defines* the organization.

8.1. Discipline Beyond the Incident

In most workplaces, disciplinary processes are triggered by an incident. A complaint is received, a report is escalated, or an issue becomes too visible to ignore. Once the immediate situation is addressed, attention quickly moves on. Over time, this approach reduces discipline to a sequence of disconnected events.

In reality, disciplinary action is never judged in isolation—neither by employees nor by courts. Each case is read in the context of earlier decisions, managerial behaviour, and organisational responses to similar situations. What is often described internally as an “exception” is externally perceived as a pattern.

Indian courts have repeatedly emphasised that fairness cannot be assessed purely by procedural compliance. What matters is whether the employer's conduct demonstrates consistency, proportionality, and good faith. When discipline is applied mechanically, without regard to precedent or context, organizations expose themselves to allegations of arbitrariness—even when formal steps have been followed.

A sustainable discipline framework therefore requires continuity of thinking. It demands that organizations ask not only whether a particular action is justified, but whether it aligns with how similar matters have been handled in the past, and what message it sends about acceptable behaviour going forward.

8.2. HR and Legal: A Relationship That Shapes Outcomes

In many organizations, HR and Legal coexist comfortably until discipline enters the picture. At that point, roles tend to harden. HR is expected to "manage emotions and communication," while Legal is expected to "protect the company." This division, though common, is artificial—and often counterproductive.

Disciplinary decisions sit at the intersection of people, power, and process. When HR and Legal operate in parallel rather than in partnership, discipline loses coherence. HR may focus on intent and context but underestimate how decisions will be interpreted externally. Legal may focus on defensibility but underestimate how decisions are experienced internally.

Indian courts have repeatedly held that disciplinary action cannot be sustained merely because procedures were followed. The quality of reasoning, the fairness of treatment, and the presence of good faith are examined together. This places a shared responsibility on HR and Legal—not sequential responsibility.

In mature organizations, HR does not approach Legal only when a matter escalates, and Legal does not limit its role to post-facto risk containment. Instead, both functions engage early, particularly on questions such as:

- Is this conduct being treated consistently with past cases?
- Are we reacting to the behaviour, or to the person?
- Have we explored corrective options proportionate to the misconduct?
- Would we be comfortable explaining this decision to an external authority?

When HR and Legal jointly ask these questions, discipline becomes more than a compliance exercise. It becomes a reasoned organizational response—one that is defensible not because it is aggressive, but because it is fair.

8.3. The Unspoken Role of Leadership

Leadership influence on discipline is rarely documented, yet it is almost always present. It operates through tone, urgency, and silence as much as through direct instruction.

Leaders often believe they are being hands-off when they delegate disciplinary matters to HR. In reality, employees and managers are acutely sensitive to leadership cues. A casual remark expressing frustration, a preference shared informally, or impatience with process sends a powerful message about expected outcomes.

Courts have consistently underscored the importance of neutrality in disciplinary proceedings. Even where leaders do not formally interfere, the perception of influence can be enough to cast doubt on the integrity of the process. Inquiry officers, managers, and HR professionals are not immune to hierarchical pressure—particularly in cultures where authority is rarely questioned.

Responsible leadership in discipline therefore requires **intentional restraint**. It means allowing processes to unfold without steering them. It also means accepting outcomes that may not align with immediate business convenience or personal expectations.

Leaders who respect this boundary strengthen institutional credibility. Those who do not may achieve short-term closure, but at the cost of long-term trust—both internally and in the eyes of external forums.

8.4. Changing Expectations and Emerging Pressures

The discipline landscape is no longer shaped only by law and policy. It is increasingly shaped by **workforce expectations**, particularly with the growing presence of Gen Z and younger professionals.

This generation brings different assumptions into the workplace. Authority is questioned more openly. Transparency is expected, not appreciated as a favour. Silence is often interpreted as avoidance rather than neutrality. Importantly, fairness is judged not only by outcomes, but by the *process and explanation* that lead to those outcomes.

Traditional disciplinary approaches—where decisions are communicated formally but not explained meaningfully—are increasingly viewed as opaque and dismissive. Younger employees may not always contest decisions legally, but they are far more likely to disengage, escalate grievances publicly, or disengage psychologically when processes appear arbitrary.

Courts, too, have shown greater sensitivity to issues of victimisation, retaliation, and unequal treatment, particularly where grievance mechanisms exist only on paper. The expectation today is not just that employees are heard, but that their concerns are considered visibly and sincerely.

Organizations that continue to rely on authority-driven discipline risk being perceived as rigid and unfair—even when acting within the law. Those that adapt by combining clarity with explanation, firmness with fairness, and authority with accountability are better positioned to sustain credibility across generations.

8.5. The Discipline Maturity Model — and a Moment of Reflection

Discipline systems evolve much like organizations do—unevenly, and often unconsciously. The Discipline Maturity Model provides a way to pause and reflect on where an organization currently stands.

At early stages, discipline tends to be reactive. Decisions are driven by immediate pressure, personalities, or urgency. As structures develop, procedures become more formal, but fairness is often assumed rather than examined. More mature organizations demonstrate consistency, documentation with intent, and early HR–Legal collaboration. At the highest level, discipline becomes preventive—issues are addressed before they escalate, and trust reduces the need for formal action.

8.5.1. A brief self-reflection for HR and Legal leaders:

When disciplinary issues arise in your organization:

- Are similar cases discussed and compared before decisions are taken?
- Is the objective to correct behaviour, or merely to conclude the matter?
- Do managers understand *why* a particular outcome was chosen?
- Is Legal consulted to shape decisions, or only to defend them?
- Would employees describe the process as fair, even when outcomes are adverse?

The answers to these questions often reveal more about discipline maturity than any policy document. Progression does not require perfection—but it does require honesty.

8.6. Discipline as a Measure of Integrity

In the end, discipline reveals what an organization stands for when tested. It shows whether values endure under pressure, whether power is exercised responsibly, and whether fairness is more than a stated ideal.

Courts may review cases years later, but employees form judgments immediately. When discipline is perceived as selective or punitive, trust erodes silently. When it is principled and consistent, it reinforces accountability without fear.

The action ahead is therefore not about tightening controls or adding complexity. It is about embedding discipline as a reflection of organizational integrity. When procedure is guided by principle, discipline stops being a liability and becomes a stabilising force—one that supports fairness, credibility, and long-term sustainability.

8.6.1. Closing Perspective

Discipline, when approached thoughtfully, is not an exercise of control. It is an expression of responsibility. It demonstrates how an organization balances power with fairness, and efficiency with integrity.

As expectations evolve and scrutiny increases, organizations will be judged less by the strictness of their rules and more by the consistency of their principles. The action ahead lies in recognising discipline not as a risk to be managed, but as a capability to be strengthened—quietly, consistently, and with intent.