

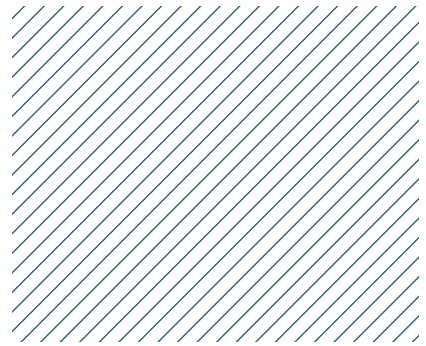


## LOWE'S INDIA ON HOW THE PANDEMIC WILL SHAPE POSH COMPLIANCE

Laws and practices will have to adapt to the new way of life

Written by Monica S. Pirgal, General Counsel, Head of Legal, Lowe's India

Due to the lockdown, we are confined in our homes, working from home 24/7, not at our usual workplaces, with no personal interactions with our colleagues! What is the probability of sexual harassment in such a scenario? Is the law applicable in such circumstances? Can employees still avail protection under the law like they used to?



COVID 19—a term that has changed every belief, practice, and attitude in our personal and professional lives. We have all awakened and are adapting to doing things differently, as the circumstances in which we live today are different, too. This has become the “new normal.”

Due to the effects of pandemic that the world is currently grappling with, a new environment has been created in which employees are currently working and interacting with colleagues, vendors, clients, etc. in new ways on a daily basis. No one ever imagined that 100 percent of the workforce in an organization would work remotely for weeks at a stretch. But before we could embrace the idea, we were pushed into it, and we all learned to work that way!

The legal landscape in India could not have been left behind. Most of the laws in India are being tweaked to ensure that they keep pace with the changing situation and to suit the current need. The law and practices around prevention of sexual harassment at workplace (PoSH) in India will have to adapt to the “new normal” way of working.

### PoSH before COVID-19

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Act”) in India has come a long way from 2013 to 2020 to become a strong, enforceable legislation to handle all sexual harassment issues at the workplace. Companies have constituted their Internal Committees (“IC”) to review sexual harassment complaints and to comply with the Act. Companies have ensured that ample trainings are imparted to sensitise employees. Employees are educated about the law and processes, with an intention to create a safe and secure workplace, especially for women. Some companies have gone a step ahead by implementing a gender-neutral PoSH policy, wherein the men in an organization are also provided with protection.

The law and the awareness programs and trainings under the Act were built on the premise that the physical proximity of two people was one of the most

important factors for sexual harassment to occur at a workplace. Sexually coloured comments, gestures, physical advances, etc. typically could be alleged when two parties are in the same place at the same time.

The definition of “workplace” under the Act is exhaustive, covering every place where official work was conducted. But “workplace” under the Act was widely understood very simply as the “office” where people went to work. In the “office” under a professional set-up, body language, mannerisms, and etiquette were under greater scrutiny and therefore were within an acceptable boundary. Usually unintentional harassment or misunderstanding did not occur very commonly. Once employees headed home, they were in their comfort zones, where no laws or rules applied to them. It was also easy for the IC to draw a clear demarcation about their jurisdiction to investigate into a matter, based on whether the incident occurred at home or on office premises.

**PoSH During COVID-19**

With remote working and lack of physical proximity, did all the sexual harassment at workplace stop? Are internal committees relieved of handling any complaints? The answer is no. Sexual harassment concerns still continue to exist, but the modes of harassment and the scenarios have changed.

With long working hours, work weeks being extended into weekends, and multiple modes of interaction like official chat rooms, emails, videos, and WhatsApp, the workplace has extended to our homes and during most of the day. There is no demarcation between personal and professional lives. Also, with limited social interactions outside of work, the situation has become more complex for the already stressed working professionals in the country.

Due to employees working from home, harassment has taken a new form and shape! It is now in the form of displaying objectionable material on the screen during video calls, displaying unacceptable screensavers with sexual connotations, getting into the personal space of another employee by insisting they turn on video while calling, asking personal questions on official platforms, calling a person during late hours without any justification, taking screenshots of colleagues during video calls and using such images inappropriately, displaying suggestive words on attire like t-shirts during video calls, etc.

**Challenges to be addressed**

This new way of working has challenged both employees and employers alike.

Employers have to think creatively and out-of-the-box to impart new, effective ways of sensitising the employees, moving away from traditional classroom trainings.

Remote working requires a conscious shift in the mindset of employees, too, to ensure that they maintain professionalism in their emails, interactions, and appearance while being in their personal space (home). It is difficult to make that mental shift when each of your respective homes is now your “workplace” and every interaction can come within the purview of the Act.

Also, due to the interactions now moving to phones or video calls in place of in-person meetings, sexual harassment claims could arise due to misunderstanding or even when done unintentionally. Another person’s tone can be misconstrued. Accidentally enabling the video call option so that objectionable material is seen by the other person could trigger sexual harassment claims. Using brackets with H or B on an instant messaging platform could be sent as a hug or beer emoticon, which can be considered offensive by the recipient.

While conducting investigations remotely, maintaining confidentiality is the biggest challenge for all parties, as we are constantly surrounded by others. The time taken for investigations and closure of an inquiry may also be extended due to non-availability of an IC quorum at the same time, preference for personal cross-examinations, or the IC’s inability to examine evidence during the COVID-19 situation.

**Recommended best practices**

Innovative methods to educate employees are a need of the hour. It is very important to remind employees about the applicability of the Act even while they are at home. One way of doing this is by explicitly including home under the definition of “workplace” in the PoSH policy. Embracing the practice of conducting the proceedings under the Act through video conferences and delivering reports or statements electronically will also go a long way.

Educating employees on the etiquette they need to follow while working from home, running campaigns via email, posters, and screensavers, highlighting best practices in simple language, and stating what is not acceptable will avoid any unintentional mistakes. As managers, checking with your teams subtly if anyone needs help in case of any uncomfortable situation can reinforce employees’ confidence about the care and concern that the organization has for them during these trying times.

**Spotlight**



**ETHISPHERE**  
2019 BELA South Asia Best Practices in Prevention of Sexual Harassment (PoSH) Report

**What PoSH Compliance Looked Like A Year Ago**

*Since PoSH was legislated, companies across India have been working to meet its terms and provide a safe environment for their employees. Over the past year, this has been an ongoing discussion at BELA South Asia roundtables and events across India. Under the direction of the BELA South Asia working committee, which was comprised of leaders from Infosys, Accenture, Diageo India, Cummins, Hindustan Coca-Cola Beverages Pvt Ltd and Johnson Controls, last year, the Chapter launched the BELA Prevention of Sexual Harassment (PoSH) Survey and Report.*

*Download the report on the BELA South Asia Member Hub*

**Author Biography**

 **Monica S. Pirgal** is General Counsel, Head of Legal and Company Secretary at Lowes India. She also serves as Executive Director/ Boardmember at the company. Monica is a seasoned and experienced strategic attorney with over 15+ years’ experience in handling legal, secretarial and compliance functions at Lowe’s, Goldman Sachs, PwC, Subex and as an independent law practitioner.