
The AD-roit Links

NEWSLETTER

September 2026

#14

When a Party Refuses to Participate

How Internal Committees are expected to handle Non-Responsive Inquiries

Inside this edition: Discover how Internal Committees should handle non-responsive parties, from proving service and assessing sufficient cause to issuing 15-day notices and conducting defensible *ex-parte* inquiries.

**YOUR NO. 1
GUIDE TO A
SAFER
WORKPLACE**

adroitlinks.com



From the **FOUNDER'S DESK**

Dear Readers,

Welcome to this edition of the **AD-ROit Links** newsletter.

When discussing the Sexual Harassment of Women at Workplace (POSH) Act, 2013, the spotlight naturally falls on formal inquiry procedures, Internal Committees (IC), and disciplinary measures. However, an often misunderstood yet critical feature of the legislation is the **Conciliation Process** (Section 10 of the Act).

In our work advising organizations and leadership teams, we frequently see ambiguity surrounding conciliation. Is it a compromise? Is it settlement? The short answer is: **neither**.



Understanding Conciliation in the POSH Framework

Conciliation is a legally recognized, voluntary mechanism designed to resolve grievances amicably before initiating a formal inquiry—strictly at the explicit request of the aggrieved woman.

Here are three key principles every leader, HR professional, and IC member must keep in mind:

- 1. Voluntary & Complainant-Led:** Conciliation can never be forced upon the complainant, nor can it be suggested as a shortcut by the employer or the IC. The choice rests entirely with the aggrieved individual.
- 2. No Monetary Settlement:** The law explicitly prohibits any monetary settlement as a basis for conciliation. Solutions generally focus on corrective actions—such as written apologies, reassignment of reporting lines, atmospheric changes, or formal warnings.
- 3. Binding Agreements:** If a settlement is reached through conciliation, the IC records the terms, forwards them to the employer for action, and provides copies to both parties. Once finalized, no further formal inquiry is conducted—unless the respondent breaches the agreed terms.

Why It Matters for Workplace Culture

When facilitated with empathy, neutrality, and strict legal compliance, conciliation offers a dignified path to address interpersonal grievances promptly without escalating into a drawn-out inquiry. However, mismanaging it risks undermining trust in your organization's safety mechanisms.

In this edition, we dive deeper into the step-by-step procedure of conciliation, common pitfalls to avoid, and how IC members can effectively navigate these sensitive conversations while preserving fairness and psychological safety.

We hope you find these insights valuable as you continue building respectful and legally robust workplaces. As always, we welcome your thoughts, questions, and feedback.

Warm regards,

Leeza Dutta Singh 

**Founder & Managing Partner,
AD-roit Links**

When a Party Refuses to Participate

How Internal Committees are expected to handle Non-Responsive Inquiries

~ By Atryee Dutta



Few workplace situations challenge an Internal Committee more than radio silence from parties. An inquiry starts; notices are dispatched to parties, then one party disappears.

Sometimes the respondent is silent. They ignore emails, decline meeting invites, submit vague medical certificates, or claim excuses that the Internal Committee has no authority over the Respondent. For instance, the accused manager may submit an abrupt resignation letter assuming walking out the company doors will stop the investigation.

In some cases, The Complainant goes quiet. Overwhelmed by anxiety, pressure or fear of professional retaliation stops answering calls, skips depositions and withdraws from the process entirely.

For an Internal Committee, this silence creates an issue.

Under **Section 11(4) of the PoSH Act**, the committee operates under the deadline of 90 calendar days to complete the inquiry.

If an IC loses patience and makes a hasty decision, the absent party can approach the High Court, arguing that the committee violated the principles of natural justice (*Audi Alteram Partem*, the right to be heard).

Rule 7(5) of the PoSH Rules

The PoSH Act does not allow an uncooperative party to stall the inquiry. Under Rule 7(5), the Internal Committee has the explicit legal power to take one of two definitive actions:

Terminate the inquiry proceedings

If the complainant fails to present herself for hearings without sufficient cause.

Issue an ex-parte decision

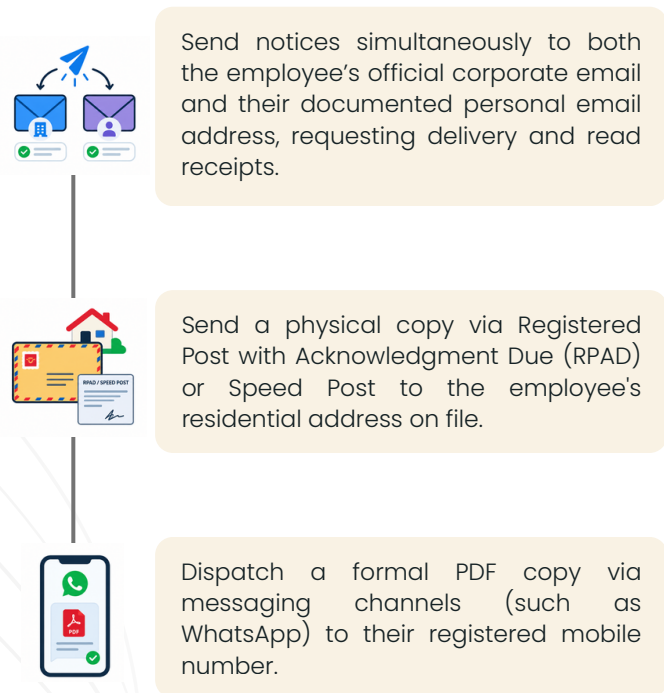
If the respondent fails to present himself for hearings without sufficient cause, allowing the committee to evaluate the evidence and decide the case in his absence.

However, an IC cannot activate these powers simply because a party missed one hearing or arrived late.

Establishing Proof of Service and Testing "Sufficient Cause"

Before an IC can count an absence toward the "three consecutive hearings" rule, it must be able to prove beyond doubt that the party actually received the summons. In judicial review, a casual statement like "we sent an email to their work address" often fails to hold up.

The IC can use the following transmission channels:



Alongside proof of delivery, the committee must evaluate whether the absent party had a "sufficient cause".

Medical Excuse:

If a respondent submits a doctor's note citing anxiety, or general illness, the IC should handle it with professional empathy, up to a point, but a medical certificate cannot be used to run out of the 90-day period.

Under these circumstances, the IC should accommodate the party by offering alternative participation methods:



Virtual Attendance: Permitting the party to attend via secure video conference rather than in person.



Written Statements: Allowing the submission of written responses to a structured questionnaire.



Medical Verification: Requesting a specific assessment from the attending physician confirming whether the individual is medically unfit to communicate or answer basic written questions.

If the individual refuses every reasonable accommodation while offering vague medical notes without a clear recovery date, the committee can document that the absence lacks sufficient cause.

Resignations:

A common tactic used by accused employees is submitting an immediate resignation, claiming that once they leave the payroll, the IC loses jurisdiction over them.

Resignation does not stop or invalidate a PoSH inquiry. The purpose of the Internal Committee is to find the facts and make sure the inquiry is fair and in the best interest of the parties. The company has the right to not accept the resignation until the Internal Committee report is done or to keep looking into the matter and put the results in the employee's official work record.

The Final Notice

The most common mistake committees make when handling a defiant party is conflating the third missed hearing with an immediate *ex-parte* ruling.

The proviso to Rule 7(5) is that the committee will issue a formal, standalone **15-Day Notice** before taking an *ex-parte* step or terminating proceedings.

This notice acts as a statutory final warning.

- It must list the exact dates, times, and delivery confirmations of the three consecutive hearings the party missed and note that the explanations or medical notes provided (if any) were reviewed and formally determined to lack sufficient cause.
- It must schedule a final, fourth hearing date set at least **15 clear calendar days** from the date the notice is received by the party (not 15 days from when the IC posted it).
- It should explicitly state the statutory consequence:

"If you fail to attend this scheduled hearing on [Date/Time], the Internal Committee will proceed ex-parte under Rule 7(5) of the PoSH Rules, and findings will be formulated based on the material on record without further notice."

High Courts may quash inquiry reports where an IC skipped this 15-day notice, gave a shortened timeline (such as 7 or 10 days), or issued the warning retroactively.

What If the Party Attempts to Rejoin Later?

Another practical challenge arises when a respondent ignores the 15-day notice, allows the *ex-parte* stage to begin, and then suddenly appears on Day 75 demanding that the entire inquiry be restarted.

Under established procedural principles, an *ex-parte* respondent is generally entitled to join the inquiry from the stage at which they appear. The IC can permit them to participate in subsequent sessions and submit written arguments on the existing record, preserving both natural justice and the 90-day timeline.

Running an Ex-Parte Inquiry

When the 15-day notice expires and the respondent still fails to appear, the committee enters the *ex-parte* phase. **An *ex-parte* inquiry is not a default judgment.**

During an *ex-parte* proceeding, the IC must execute its evidentiary duties with even greater care:

Conducting Objective Cross-Examination

Because the respondent is not present to cross-examine the complainant, the committee must ask clarifying questions, checking for inconsistencies, timeline discrepancies, or contradictions in the complainant's narrative.

Examining Contemporaneous Witnesses

The IC must depose witnesses who may have observed interactions before or after the incident, colleagues in whom the complainant confided immediately following the event, or individuals mentioned in electronic exchanges.

Reviewing Digital and Documentary Evidence

This includes reviewing original electronic files (email chains, Slack messages, WhatsApp exports, phone call logs), examining office access badge data, reviewing CCTV footage where available, and checking travel receipts or calendar entries.

The final inquiry report should mention how the committee evaluated the credibility of witnesses, what weight was given to circumstantial proof, and how it reached its conclusions based on the surviving record, explicitly demonstrating that the findings were driven by verifiable evidence, not the respondent's absence.

When the Complainant Goes Silent

While a non-responsive respondent is common, a complainant who stops participating presents an equally delicate challenge.

The committee must first ask:

Why did they stop participating?

Filing a sexual harassment complaint requires significant courage, as complainants often experience informal pressures such as cold treatment from colleagues, isolation from management, fears of career stagnation, and subtle intimidation from the respondent.

The IC may take proactive measures here:

- **Reinforcing Interim Protections Under Section 12:** Check if the complainant faces workplace hostility or retaliation. Remind her in writing of her statutory right to interim relief, which includes paid leave for up to three months, a temporary transfer and more.
- **Offering Alternative Deposition Formats:** If being in the same room or even on the same live video screen triggers intense distress, provide alternatives such as allowing her to join audio-only or submit responses to written questionnaires.
- **Screening for Coercion and Unlawful Settlements:** If the complainant abruptly submits a one-line request to "withdraw" the complaint, the IC must not accept it blindly.

Under **Section 10**, monetary settlements are strictly illegal during conciliation. The IC should conduct a brief, confidential check-in to confirm that the withdrawal is voluntary.

If, after documented outreach, supportive accommodations, and the mandatory 15-day advance written notice, the complainant confirms in writing that she does not wish to pursue the matter, or continues to remain uncontactable without explanation, the committee may formally terminate proceedings under Rule 7(5).

Safeguarding Your Case File

When an inquiry involves a non-responsive party, documentation is the organization's primary defense against subsequent litigation.

To ensure your inquiry file withstands judicial scrutiny, every IC must maintain the following operational records:



Proof of Service for Every Summons

Maintain a dedicated docket containing email dispatch logs, read receipts, postal tracking confirmations (RPAD/Speed Post), and digital messaging receipts for every communication sent to the party.



Formal Minutes for Abandoned Sessions

For every scheduled hearing where a party failed to appear, record formal minutes signed by all attending IC members. The minutes must record the date, scheduled time, attendees present, a documented waiting period (at least 30 minutes), and the party's failure to attend.



Objective Log of Accommodations

Document all alternative options offered to the absent party, including virtual hearings, written questionnaires, extended deadlines, and accommodations for medical constraints.



Evidence-Backed Final Report

Ensure the final report (whether an *ex-parte* finding or a termination order) contains a comprehensive summary of evidence, witness statements, and a dated, delivered copy of the final warning letter, accompanied by proof that the party received 15 days before the scheduled hearing.



Statutory External Disclosures

Reflect the disposition of the matter accurately in the annual IC report submitted to the District Officer under Section 21 and the Board of Directors' Report under Section 22, recording the case as concluded under Rule 7(5).

When an inquiry stops due to silence, avoiding the process never changes the outcome; it only forfeits your opportunity to shape it.

For employees, walking away only works against your own interests, complainants dealing with anxiety or retaliation should lean on statutory interim protections under Section 12 rather than abandoning their claim, while respondents must recognize that resigning or ignoring summons will not prevent an *ex-parte* finding from becoming part of their permanent professional record.

The Takeaway is simple

Workplace justice depends on choosing a process over frustration, which requires both panels and participants to actively engage with the framework rather than retreat into silence.

SafeStories: September Edition

Follow us on [LinkedIn](#) to see every new Safestory and join the conversation about building safer workplaces.

Resolving Without an Inquiry: How Conciliation works in a PoSH Inquiry

STEP 1: CONCILIATION CAN ONLY BE CONSIDERED AFTER THE RESPONDENT SUBMITS THEIR WRITTEN REPLY.



STEP 2: THE PROCESS STARTS ONLY WITH THE COMPLAINANT'S WRITTEN REQUEST.



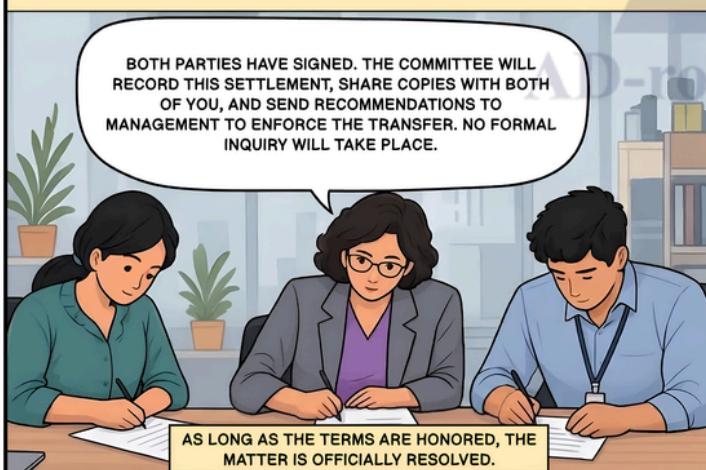
STEP 3: ABSOLUTE STATUTORY BAR ON MONETARY SETTLEMENTS.



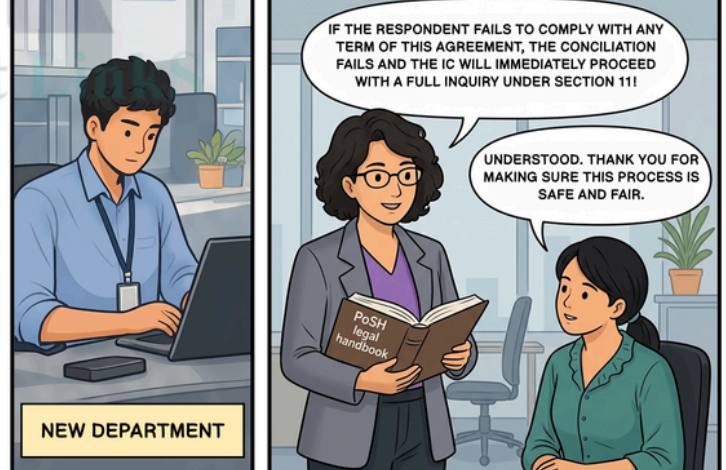
STEP 4: FOCUSING ON BEHAVIORAL AND WORKPLACE REMEDIES.



STEP 5: RECORDING THE TERMS AND NOTIFYING THE EMPLOYER.



STEP 6: WHAT HAPPENS IF THE TERMS ARE BROKEN?



Ask the Legal Expert!

Your legal queries, addressed with expert insight.

Q Can I bring my lawyer or a family member if I feel too intimidated to attend?

No. The PoSH Act prohibits lawyers from representing the parties in an inquiry. However, you can request the committee for reasonable procedural accommodations or written submissions.

Q Can a coworker refuse to testify if the committee summons them as a witness?

Employees summoned as witnesses should participate in good faith. Management is obligated to ensure their attendance, and refusing may be treated as misconduct.

Q Where can an employee appeal if they disagree with an ex-parte decision?

You can file an appeal as per your organization's service rules within 90 days of receiving the final written report. If no service rules exist, then Rule 11 of the POSH Rules, 2013 clarifies that an appeal may be filed before the appellate authority notified under the Industrial Employment (Standing Orders) Act, 1946.

Q Will my teammates find out if an ex-parte inquiry is underway?

No. Section 16 strictly mandates confidentiality. Any unauthorized disclosure of identities or inquiry proceedings by anyone carries formal penalties under service rules.

Q If trauma makes participation impossible for the complainant, can someone else represent her?

Yes. Under Rule 6, a legal heir, qualified relative, coworker, or psychologist may step in and represent her with proper formal authorization.

Q If the inquiry is terminated because the complainant stopped attending, can she file again later?

Generally, no, unless she demonstrates compelling cause for her past absence, and the complaint remains within the statutory three-month filing limit.

Q Does an ex-parte guilty finding show up on background checks for future jobs?

Yes. Disciplinary penalties like termination or reprimands become permanent parts of your personnel file and are disclosed during employment background checks.

Q Can I secretly record my virtual hearing if I decide to attend after a warning?

No. Secret audio or video recording violates internal inquiry protocols and statutory confidentiality rules, which can trigger immediate disciplinary action against you.

Q Can the company withhold my salary or bonus if I refuse to attend hearings?

Companies cannot arbitrarily seize earned wages, but they may place you on administrative suspension or withhold discretionary bonuses for deliberate non-cooperation.

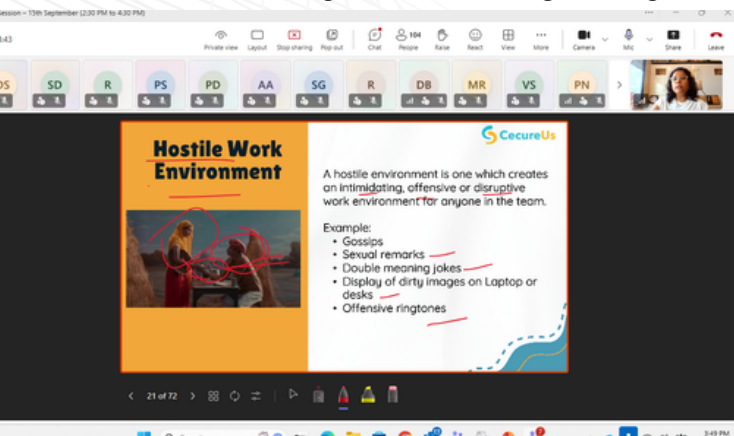


Highlights in Frames

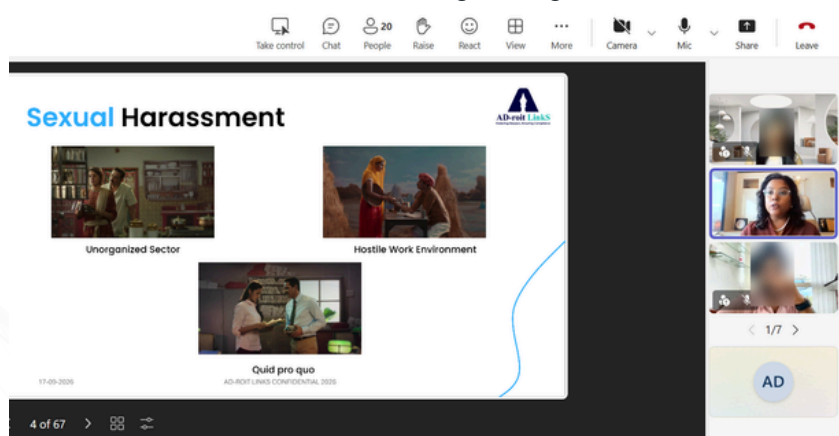
Some moments from The H.E.L.M Event



Online PoSH Training at Lombardi Engineering



Online PoSH Training at AngelOne



Our Services



PoSH Compliance Training & Advisory

Building safer workplaces, one session at a time.



Diversity, Equity & Inclusion (DEI)

Creating cultures where everyone feels a sense of belonging.



Ethics and Code of Business Conduct

Empowering decisions with ethics and integrity.



Simplifying Labour Law Compliance

Turning complex laws into crystal clear solutions.



POCSO Awareness & Support

Protecting children through awareness and action.



Policy Drafting & Review

Policies that work — for people and compliance.



+91 96500-24706



leeza.singh@adroitlinks.com



@adroitlinks



adroitlinks.com



TS -29, 7th Floor, Hope Tower,
Galaxy Blue Sapphire Plaza,
Plot No. C-03, Sector-4, Greater
Noida (W), UP-201009