

Sexual Harassment at the Workplace in India: An Evaluation of the Legal Framework under the Posh Act, 2013

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Abstract- *It is a persistent social evil that significantly impacts women and constitutes a major violation of their fundamental rights to employment, dignity, equality, and a life free from fear. It was the landmark Vishakha case that served as the impetus for the passage of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This act mandates that all workplaces must provide a safe and harassment-free environment for women, as well as establish effective grievance redressal mechanisms on their own. On the other hand, in spite of the lawmakers' intentions, the Act has not produced the effects that were anticipated. There are a considerable number of incidents that are not reported, cases that are reported frequently do not undergo investigation, and there is widespread non-compliance with the terms of the Act, which is aggravated by a general lack of understanding. In this article, a critical analysis of the Act's most important features and inadequacies is presented. Additionally, the research takes a look at the development of workplace sexual harassment doctrine in India and discusses recent court declarations that have shaped its interpretation. In it, the concrete effects of harassment in the workplace on women are investigated, the steps made by the government to counteract it are evaluated, and the discriminatory nature of the Act with regard to other genders is brought to light. The report finishes with proposals for a strong legal framework, and it emphasizes the urgent need for gender-neutral changes that are inclusive. These reforms are necessary to guarantee that all persons, regardless of their gender identification, are afforded fair protection.*

Keywords: Gender Neutrality, POSH, Sexual Harassment and Workplace.

I. INTRODUCTION

In India, women have increasingly evolved from homemakers to essential participants in the labour across all industries. This trend, although liberating, has also resulted in an increase in gender-based offences, with workplace sexual harassment being the most widespread.¹ Sexual harassment in professional

environments is profoundly rooted in systematic gender inequality. It violates a woman's right to equality and her right to live with dignity, both guaranteed by the Constitution of India. The establishment of a hostile, anxious, and hazardous work atmosphere not only hinders women's professional performance but also deters their active engagement in the economy. The consequences extend beyond the workplace, negatively affecting their emotional and physical health, economic and social empowerment, and the overarching objective of inclusive national development.

In response to this urgent matter, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, generally known as the POSH Act,² was adopted by the Ministry of Women and Child Development on December 9, 2013. The Act seeks to provide a safe, secure, and supportive work environment for all women, irrespective of age or job position. It offers a systematic framework for the prevention and resolution of complaints concerning workplace sexual harassment and aims to delineate explicit standards of acceptable behaviour. The Criminal Law (Amendment) Act, 2013 was enacted to amend existing criminal laws, instituting rigorous measures to criminalise acts like voyeurism, stalking, and sexual harassment, thereby strengthening the legislative framework for women's protection.

Gender justice denotes the equitable and impartial treatment of persons regardless of their gender. It aims to eradicate the historical and social inequities encountered specifically by women and marginalised gender groups, guaranteeing equal rights, responsibilities, and opportunities across all domains of life. Grounded in constitutional principles such as equality and non-discrimination, gender justice seeks

to rectify structural disparities and offer specific safeguards where needed. In the realm of workplace harassment, gender justice necessitates the safeguarding of women, who are disproportionately susceptible to such violations, and the establishment of institutional systems that uphold their dignity and security. Gender exclusivity is legal or policy structures intended to benefit just one gender, frequently aimed at rectifying established patterns of discrimination. The POSH Act exemplifies gender-exclusive legislation. It solely safeguards women against sexual harassment in the workplace. This emphasis, although warranted by the necessity to confront the pervasive victimisation of women in professional environments, has also attracted criticism. The Act's exclusivity excluding males and transgender persons from its scope, possibly obstructing their access to justice under analogous conditions.

The Judicial Development and Position on this topic
The legal progression towards acknowledging and combating workplace sexual harassment in India started with the pivotal case of *Vishaka v. State of Rajasthan*, which profoundly impacted the public consciousness. A Dalit lady, Bhanwari Devi, employed by the Rajasthan Government's Rural Development Program, was violently gang-raped by five upper-caste males. Her "offence" was attempting to avert a child marriage in her tribe. This egregious crime revealed the susceptibility of working women, especially in rural and unregulated industries, while also highlighting the lack of a legislative framework to combat workplace sexual harassment in India. Subsequent to the occurrence, women's rights advocates and legal experts jointly submitted a Public Interest Litigation titled "*Vishaka*".³ The Supreme Court, acknowledging the significant legislative deficiency, ruled that workplace sexual harassment is a breach of women's basic rights under Articles 14, 15, 19, and 21 of the Constitution. The Court established the *Vishaka Guidelines*, drawing extensively from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has accepted, under Article 32. These recommendations were to possess the power of law and be obligatory for all workplaces, public or private, until special legislation was adopted. The Court mandated that all employers implement systems for

addressing complaints and ensuring a secure, harassment-free workplace, therefore supporting women's right to work with dignity.⁴

Some of the important cases post this are:

a. AK Chopra case⁵

The senior officer's dismissal for sexually harassing a junior female employee was affirmed by the Supreme Court. It is worth noting that the Court made it clear that physical contact is not a prerequisite for sexual harassment. It expanded the definition to encompass physical, verbal, or other forms of unwanted sexual approaches that make the victim feel unsafe on the job or impact her ability to keep her job. Both domestic and international human rights legislation recognise sexual harassment as discrimination based on gender, and the decision upheld this position.

b. Medha Kotwal Lele & Ors v. Union of India⁶

A famous activist, Dr. Medha Kotwal, wrote to the Supreme Court, and the court took *suo motu* cognisance of the *Vishaka Guidelines*' ineffective implementation. The letter was treated as a writ petition by the Court, which ensured that compliance was checked throughout all states and stressed that implementation was important in both substance and spirit. It foretold legal repercussions for noncompliance and ordered all state governments to provide comprehensive affidavits detailing actions done.⁷

c. Anita Suresh case⁸

For filing an inaccurate complaint under the POSH Act, the petitioner was fined ₹50,000 by the Delhi High Court in this contentious decision. While the Act is crucial for protecting women, the Court stressed that it must not be abused, and that false charges cast doubt on the integrity of real victims. We must ensure that gender justice procedures are implemented in a balanced manner, as this example demonstrates.

d. Durgesh Kuwar case⁹

A lady who had complained of harassment and revealed corruption had her transfer reversed by the court. As a result of her violations of Articles 14, 15, 19(1)(g), and 21, the Court ruled that her transfer constituted retaliation. It said the company's actions were unacceptable and that the retribution was part of

a "carrot-and-stick policy" to silence women and diminish their worth.

e. Kerala High Court on Scope of POSH Act (2024)
Not to be confused with generic grievance redressal mechanisms, the Kerala High Court made it clear that the POSH Act is specialised law meant to tackle sexual harassment in the workplace. The Court stressed that in order to determine whether or not to move on with investigations, Internal Committees must determine whether or not the claims are within the purview of the Act.

f. Supreme Court's Initiative following Kolkata Hospital Incident (August 2024)

Following the horrific rape and murder of a medical student in Kolkata, the National Task Force was formed by the Supreme Court to propose reforms to improve safety measures in healthcare facilities. Paramilitary forces were ordered to be deployed for protection by the court. CCTV cameras were also ordered to be installed, along with increased lighting and separate rest facilities for female staff. Refusing to provide women with a secure workplace is the same as refusing to provide them equality, it emphasised.

This developing jurisprudence has been crucial in influencing the legal and institutional framework around workplace sexual harassment in India. The courts have continually broadened the scope of protection, underscored substantive compliance, and recognised the interconnectedness of gender, caste, and power, from recognition to regulation.¹⁰

Salient Features of the Act of 2013

The Act was established to ensure a safe and secure workplace for women, devoid of sexual harassment. It incorporates the concept of sexual harassment established by the Supreme Court in the Vishaka case and enshrines it in Section 2(n) of the Act. This encompasses inappropriate conduct of a sexual character, either explicitly or implicitly, including physical contact and approaches, solicitations for sexual favours, sexually suggestive statements, display of pornography, or any other unwelcome verbal, non-verbal, or physical activity. Section 2(a) of the Act generally defines a "aggrieved woman" as any woman, regardless of age or job level, who claims to have experienced sexual harassment in a workplace.

This broad term permits not just employees but also clients, consumers, interns, domestic workers, and tourists to seek legal protection.¹¹ Nevertheless, the Act is gender-specific, providing protection just to women and so excludes males and transgender individuals, despite the growing recognition that they can also be victims of workplace harassment. The Act applies to both organised and unorganised sectors, encompassing commercial and public entities, irrespective of staff count. It requires businesses to aggressively promote awareness through educational and sensitisation initiatives, training sessions, and extensive distribution of their anti-harassment policy via posters, banners, emails, and other internal communication methods.

The Act mandates the establishment of an Internal Complaints Committee (ICC) in every office or branch employing more than 10 individuals. This Committee is responsible for receiving, investigating, and adjudicating allegations of sexual harassment. The Act requires the formation of a Local Complaints Committee (LCC) at the district level for workplaces with less than ten workers or where the complaint involves the employer or a third party not directly affiliated with the organization, as stipulated in Section 5. The LCC is essential, especially in handling grievances from domestic workers or individuals in the informal economy. Failure to comply with the terms of the POSH Act, including the non-establishment of an ICC, incurs a penalty of up to ₹50,000. Repeated infractions may result in increased penalties, such as the doubling of fines and the possible revocation or deregistration of the company licence. All offences under the Act are non-cognizable.¹² The Act enables women to immediately report incidents of sexual harassment to the police. Law enforcement officials are required to promptly lodge a FIR, and the complainant's testimony must be documented by or in the presence of a female officer. Should the internal committee neglect its responsibilities, the organization and its committee members may incur punitive repercussions.

The concept of Gender Inclusivity in the Act
Although gender is just one aspect of an individual's identity, societal frameworks, including workplaces, are frequently delineated along gender lines, both subtly and blatantly. The phenomenon of workplace

sexual harassment is progressively acknowledged as a significant issue impacting both genders. The POSH Act limits its protective scope solely to women, so excluding males and transgender individuals from its legal protections. Significantly, criminal laws often inadequately protect males in these settings, rendering the inclusion of transgender persons under such statutes much more unlikely.¹³ The absence of gender neutrality in the POSH Act has elicited significant criticism. The 239th Report of the Parliamentary Standing Committee highlighted the prevalence of female victims in workplace harassment cases as the justification for the Act's female-centric approach.¹⁴ The Act is characterised as a kind of affirmative action under Article 15 of the Indian Constitution, intended to safeguard women against systemic discrimination. Although affirmative action is a legitimate constitutional objective, restricting protection against sexual harassment to a single gender undermines the inherent right of every human to live with dignity, a right guaranteed by Article 21 of the Constitution. Excluding males and transgender individuals from equal protection under workplace harassment rules reinforces systemic inequities and undermines their fundamental human rights.

The transgender population is particularly susceptible to job discrimination and harassment. Notwithstanding the legal acknowledgement provided by the Transgender Persons (Protection of Rights) Act, 2019, and the ostensibly guaranteed right to non-discrimination in employment, transgender individuals persistently encounter significant stigma, social ostracism, and occupational maltreatment. In some instances, they are more vulnerable to harassment than cisgender males, and frequently even more than cisgender women, owing to the lack of specific legal safeguards designed for their circumstances. Although Article 15 does not permit the removal of males from legal rights, it offers a robust constitutional foundation for the inclusion of transgender individuals, considering their socio-economic difficulties and institutional marginalisation.

The POSH Act limits the meaning of "aggrieved woman" to females, however it does not designate a specific gender for the responder. Consequently, individuals of all genders, including males and

transgender individuals, may be held liable under the Act. Furthermore, if a transgender individual identifies as a woman, she may qualify as a "aggrieved woman" and pursue remedies under the Act. In the lack of a gender-neutral legislation, some progressive companies have undertaken the initiative to establish inclusive workplace practices that provide protection to all employees, regardless of gender.¹⁵ Organisations such as the Taj Group of Hotels and Godrej have implemented gender-neutral policies to combat workplace sexual harassment, therefore promoting safer and more fair work environments. Likewise, the University Grants Commission (UGC) has construed the POSH standards in a gender-inclusive fashion, urging educational institutions to adopt similar practices. Although the POSH Act is not fundamentally gender-neutral, companies and organisations may effectuate change by implementing inclusive policies that safeguard all persons from workplace harassment.¹⁶ Subsequently, legislation improvements that officially acknowledge the rights of guys and transgender individuals under sexual harassment statutes would be an essential advancement in guaranteeing dignity and justice for everybody.

Conclusion and Suggestions

Acknowledging protection against workplace sexual harassment as a fundamental human right is crucial for advancing equality, respect, and freedom in the workplace. Although the POSH Act established a fundamental framework, other measures are necessary to rectify its deficiencies and improve its effectiveness.¹⁷ It is essential to educate both employers and workers with the types of workplace sexual harassment, the legal avenues for recourse, and the need of fostering a respectful workplace culture. Mandatory, clearly defined, and regular sensitisation seminars should be implemented more rigorously, with supervision from regulatory authorities. There is an imperative necessity to implement gender-inclusive legislation that safeguards all persons, irrespective of gender identity or expression, against workplace harassment. Such action would provide a more precise comprehension of the many experiences of harassment and reconcile the legislation with constitutional principles.

Employers must adopt affirmative measures by instituting zero-tolerance policies, developing comprehensive complaint mechanisms, and fostering secure environments where all employees feel empowered to express concerns without fear of stigma or retribution. Leadership must promote transparent dialogue, explicitly articulate the organization's position on gender inclusion, and guarantee that enquiries into grievances are executed swiftly, discreetly, and equitably. Ultimately, the successful execution of anti-harassment rules necessitates not just adherence to procedures but also a culture transformation that recognises the intricacies of gender relations, confronts workplace prejudices, and fosters equitable treatment and opportunities for everyone.

REFERENCES

- [1] Government of India. (2013). *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. New Delhi: Ministry of Law and Justice.
- [2] Ministry of Women and Child Development. (2015). *Handbook on Sexual Harassment of Women at Workplace*. Government of India.
- [3] Vishaka & Ors. v. State of Rajasthan, AIR 1997 SC 3011 (India).
- [4] National Commission for Women. (2017). *Report on the Status of Implementation of the POSH Act, 2013*. New Delhi.
- [5] Apparel Export Promotion Council v. A. K. Chopra, (1999) 1 SCC 759 (India).
- [6] Supreme Court of India. (2013). *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.
- [7] Agrawal, P. (2018). Sexual harassment at workplace in India: Issues and challenges. *Journal of the Indian Law Institute*, 60(3), 412–430.
- [8] Suresh Chandra Sharma v. Anita Suresh, (2004) 5 SCC 124 (India).
- [9] Deputy Inspector General of Police & Anr. v. S. Samuthiram, (2013) 1 SCC 598 (India).
- [10] Kothari, C. R. (2019). *Research methodology: Methods and techniques* (4th ed.). New Delhi: New Age International.
- [11] International Labour Organization. (2016). *Background paper on violence and harassment against women and men in the world of work*. Geneva.
- [12] Bhatia, G. (2017). Sexual harassment and constitutional equality in India. *Indian Journal of Gender Studies*, 24(2), 231–247. <https://doi.org/10.1177/0971521517709503>
- [13] University Grants Commission. (2015). *Regulations on prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions*.
- [14] Singh, A. (2020). Effectiveness of internal complaints committees under the POSH Act. *Christ University Law Journal*, 9(1), 45–68.
- [15] Rao, S., & Khandelwal, R. (2019). Workplace sexual harassment law in India: A critical review. *International Journal of Law and Management*, 61(3/4), 629–645. <https://doi.org/10.1108/IJLMA-04-2018-0083>.
- [16] Patel, R. (2021). Gaps in the implementation of the POSH Act, 2013. *Indian Journal of Labour Economics*, 64(2), 287–305.
- [17] Subramanian, K. (2022). Sexual harassment jurisprudence in India: From Vishaka to POSH. *SCC Journal*, 4, 89–104.