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CRITICAL ANALYSIS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

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ABSTRACT

The SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (POSH Act) is an Act of the Parliament of India that seeks to protect women from sexual harassment at their workplaces. The Act defines sexual harassment as any unwelcome sexual advances, requests for sexual favours, or any other verbal or physical conduct of a sexual nature, which either explicitly or implicitly affects the employee's employment or creates a hostile, uncomfortable or offensive work environment.

The POSH Act applies to all workplaces, including the formal and informal sectors, government and private sectors, and the organized and unorganized sectors. The Act also applies to educational institutions and hospitals. It is an important piece of legislation that seeks to protect women from sexual harassment at the workplace.

The Vishaka case⁶⁷⁶ and the subsequent guidelines that were issued by the Supreme Court in 1997 played a key role in enabling the POSH Act, 2013. The case arose out of a Public Interest Litigation (PIL) filed in the Supreme Court, after a social worker was gang raped as she had stopped a little girl from being married off. The petition highlighted a serious absence of a legislation that protects women from being harassed at workplaces. This absence was noted by the apex court.

The case was a turning point in India, recognizing sexual harassment as a gross violation of women's rights to work with dignity as well as to live with dignity. In 1997, the Supreme Court laid down guidelines⁶⁷⁷ for safety of women, to be followed at all workplaces until

a clear legislation was drafted. These guidelines defined what constitutes 'sexual harassment' and outlined a complaint redressal mechanism. The POSH act was built upon the Vishaka Guidelines.

Significance of the act

- raise awareness about sexual harassment in workplaces
- promote a culture of respect for women in workplaces

An indisputable positive about this act is the directive to maintain confidentiality throughout the process (details about the victim, proceedings etc).

Inadequacies in the act

1. Protection offered only to women (Section 3)⁶⁷⁸

This is the most mentioned criticism of the POSH act. The act only addresses sexual harassment faced by women and thereby excludes harassment faced by men. It is of utmost importance to make this a gender-neutral legislation, due to the prevalence of sexual harassment against men, in workplaces. This would lead to more perpetrators being held liable for their heinous acts.

⁶⁷⁶ [Vishaka & Ors vs State Of Rajasthan & Ors on 13 August, 1997 \(indiankanoon.org\)](#)

⁶⁷⁷ [Vishka-Guidelines-against-Sexual-Harassment-in-Workplace-061de8308de91c7-65164897.pdf \(cag.gov.in\)](#)

⁶⁷⁸ [A2013-14.pdf \(legislative.gov.in\)](#)

2. Conciliation (Section 10)⁶⁷⁹

This section of the act provides for conciliation between the victim and the individual who committed the heinous act. This can be seen as a means of protection provided to the perpetrator, who would escape punishment. This section does not guarantee security to the victim to continue working in the same workplace, as there are high chances of repetition of offence. With regards to this, a 2024 amendment regarding the abrogation of this section is pending for parliamentary assent.

3. Action during pendency of inquiry (Section 12)⁶⁸⁰

(1) *During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—*

- *transfer the aggrieved woman or the respondent to any other workplace; or*
- *(b) grant leave to the aggrieved woman up to a period of three months; or*
- *(c) grant such other relief to the aggrieved woman as may be prescribed.*

(2) *The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.*

(3) *On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.*⁶⁸¹

Issues with this section-

- not an effective solution for daily wage workers and women working in unorganised sector
- not specified whether leave recommended by Internal committee is paid or not, which could affect the livelihood of victims

Most workplaces would not offer any sort of monetary help or compensation prior to completion of enquiry as-

- (a) there is no conclusive proof yet, of the assault to have occurred
- (b) if news about compensation ever leaked out, it could harm the reputation of the workplace

Another factor is the societal view of victims of sexual harassment as 'damaged goods' and putting the victim at fault for the crime, instead of the perpetrator. If harassment is reported, until the victim receives justice, she and her family would be shunned by society. These factors, clubbed with fear of loss of job and low faith in the justice system where cases could drag on for multiple years, causes many instances of sexual harassment to go unreported.

4. Powers and duties of District Officer (Section 20)⁶⁸²

*The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.*⁶⁸³

(Section 5)

Under this section, there is no specific mention on whether the District Officer actually has powers to punish perpetrators or even to amend/bring forth new rules, to prevent offences of sexual harassment in workplaces. This ambiguity certainly leaves the District Officer powerless, who would have to consult higher authorities, in order to make decisions.

Conclusion

The POSH act is clearly an important legislation in the fight for women's rights to work and to live with dignity. Specification of what acts are considered as 'sexual harassment', establishment of a proper complaint and redressal mechanism, mandating anonymity during the entire process, among others, are

⁶⁷⁹ id

⁶⁸⁰ id

⁶⁸¹ id

⁶⁸² id

⁶⁸³ id



positives of this act and helps in creating a safer work environment. However, there are certain loopholes which can be exploited and can act as obstacles to the victim from getting justice. To overcome such obstacles, regular amendments and effective adherence to the provisions in the act is required.

