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## EVALUATING THE IMPACT OF THE POSH ACT ON WORKPLACE CULTURE: A CASE STUDY OF CORPORATE ORGANIZATIONS IN INDIA

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### Abstract:

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act)*, marked a major shift in India’s approach to preventing and addressing sexual harassment at work. It built on the foundation laid by the Vishakha Guidelines (1997), expanding upon the legal framework and introducing more concrete provisions. The POSH Act aims to offer women protection from all forms of sexual harassment in the workplace, creating a more structured and comprehensive system for prevention, prohibition, and redressal. A detailed analysis of the POSH Act’s effectiveness /impact requires exploring several critical factors. By examining the legislative journey from the Vishakha Guidelines to the enactment of the POSH Act and its subsequent enforcement, this study explores the evolution of legal frameworks and institutional mechanisms aimed at safeguarding employees’ rights and ensuring a conducive work environment. Drawing on empirical data, case studies, and stakeholder perspectives, the paper assesses the implementation, compliance, and enforcement of the POSH Act, highlighting both successes and challenges encountered in its execution. Furthermore, it examines the impact of the POSH Act on work culture of the organization, employee attitudes, and the prevalence of sexual harassment incidents.

**Keywords:** Sexual Harassment, Public Policy, Vishakha Guidelines, Organizational culture

### Introduction:

Sexual harassment is a regrettable reality that is depicted in literature in many countries. Within the Mahabharata, the tale of Sakuntala recounts how Sakuntala becomes pregnant through Dushyanta, who at first denies being the father. Sita decides to go into exile with her husband Rama in the Ramayana as well. Because of her fragility, Ravana kidnaps her and tries to woo her.

Draupadi’s circumstances in the Mahabharata are similarly challenging since she is repeatedly compelled to take all necessary precautions to shield herself from severe sexual assault. The well-known incident in the assembly, in which Duryodhana attempts to publicly strip her, is one example.<sup>1</sup>

In recent decades, workplace sexual harassment has gained increasing attention in India, and as a result, more corporate are acting on the 2013 “*Sexual Harassment of Women at Workplace Act*”. Nonetheless, there

are still issues with resolving institutionalized gender inequality, power disparities, and normative behaviors that support misbehavior.

### Aim and Objectives

- Evaluating the Impact of the “POSH Act”, on the Frequency and Resolution of *Sexual Harassment Complaints in Indian corporates*.
- To Assess implementation, Compliance, and enforcement of the “*Prevention of Sexual Harassment Act*”.

### Research Methodology:

Secondary legal materials include pertinent books and scholarly writings. The research mostly uses library research for data collection.

### Provisions under the POSH Act<sup>2</sup>

1. “A demand or request for sexual favors, making sexually suggestive comments”, demonstrating pornographic material, and any other undesirable ‘physical, verbal, or non-verbal behavior’ of a sexual character are all considered forms of “sexual harassment” according to the POSH Act.
2. It also enumerates five situations that, if they are related to the behaviors listed above, would qualify as sexual harassment: (i) Promises made implicitly or explicitly to treat employees better; (ii) Threats made implicitly or explicitly to treat employees poorly; (iii) Implies threatened with being fired; (iv) Interfering with work or establishing an unpleasant, insulting or intimidating work atmosphere (v) Mortifying behaviour probably have an impact on one's health or safety.
3. The Act defines an employee in a way that goes beyond company law. Regardless of whether they are employed or not, all female employees have the right to report sexual harassment at work whether they work on “a regular”, “temporary”, on “contract, on an as-needed” or “daily

basis, as trainees or interns”, or even in the absence of the major employer's information.

4. The Act defines “workplace” to include a broader range of industries and companies, as well as non-traditional workplaces (such as telecommuting) and places where employees go to work. It applies to all Indian businesses, whether public and private.
5. Any employer with over ten employees required by law to establish an Internal Complaints Committee (ICC), which any female employee may contact to register a formal complaint about sexual harassment. It must be led by a woman, employ at least two women employees, as a member of the ICC, and have, and incorporate a third party—such as an NGO worker with five years of experience who is familiar with the difficulties of sexual harassment—to avoid undue pressure from higher up the organizational hierarchy. Additionally, the Act requires all districts nationwide to establish a local committee (LC) to handle complaints from women employed by businesses with less than ten employees as well as by the unofficial sector, which includes home-based and domestic workers, voluntary government social workers, and others. The “principles of natural justice” outlined in the Act's Rules must be adhered to by these two Committees i.e. ICC and LC when conducting investigations under the POSH Act.
6. A woman has the right to file a written complaint with the internal or local complaints committee within three to six months of the sexual harassment incident. The committee can address the issue in two ways: either by facilitating “conciliation” between the complainant and the respondent (which must not involve a financial settlement), or by

conducting an investigation and taking necessary action based on its conclusions.

7. The employer must submit an annual audit report to the district officer at the end of each year, detailing the number of sexual harassment complaints received and the actions taken in response. Furthermore, the employer is required to organize regular training sessions and awareness campaigns to educate employees about the Act, as well as orientation sessions and events for ICC members. If the employer fails to establish an ICC or violates any other regulation, they may face a fine of up to ₹50,000, which increases for repeat offences.

#### Analysis of the POSH Act's Impact/ Effect on Indian Corporate Organizations Using Current Judicial Trends:

- ***The manager asked for Sexual favors... Mumbai Woman, seeking dead father's PF, harassed<sup>3</sup>.***

Mumbai police have charged an HR manager from a private company for allegedly requesting sexual favors in exchange for the release of provident money.

The woman resides with her younger brother and grandma and works as a housekeeper. Since her parents were divorced, she was the nominee for her father's PF account and would receive the money after she reached eighteen.

The housekeeper complained and stated, "I did not receive the Provident Fund despite submitting multiple forms to claim it." I experienced more delays after learning that the manager of the company had my father's file." The woman claimed that to speed up the payment, the HR manager requested sexual favors.

- ***Tata Consultancy Services (TCS) vs. Complainant (2018)<sup>4</sup>***

In this case, a female employee working at Tata Consultancy Services (TCS) filed a complaint of sexual harassment under the "Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act" (POSH Act). She accused her supervisor of inappropriate behavior, which included sending her lewd messages and making sexually suggestive comments. The complaint was submitted to the "Internal Complaints Committee" (ICC) as per the requirements of the "POSH Act". The ICC conducted an investigation into the matter but cleared the accused supervisor of the charges. The complainant, not satisfied with the decision of the ICC, took the matter to the **Labour Court** and **National Commission for Women (NCW)**. After further legal proceedings, it was revealed that the internal committee did not follow proper procedures during the investigation, and there was a lack of thorough examination of the evidence. Despite this, the Labour Court did not rule in favor of the complainant, citing procedural issues with the filing and investigation. *The complainant has recently appealed the decision in the Madras High Court, which has issued an interim stay on the case.*

#### ***ScoopWhoop, Co-Founder, Suparn Pandey<sup>5</sup>***

On March 29, a "27-year-old writer and director filed the first official complaint" (FIR) with the MIDC police station. The complaint accused "Arunabh Kumar", the CEO of "The Viral Fever (TVF)", of inappropriate behavior. Subsequently, on March 30, 2016, an additional victim came forward to file a complaint of "sexual harassment" against Kumar at the Versova police station.

Arunabh Kumar, CEO of The Viral Fever (TVF), allegedly asked the victim, who was anonymous, if she would be interested in role-playing, a quickie, or a "commercial" transaction on several occasions. The victim spoke about the abuse and harassment she endured in an anonymous blog post published in 2017.

He informed her that the cops were "in his pocket" when she mentioned reporting such comments and actions. The blog post also included information regarding the responses she received after talking about it. The actor Naveen Kasturia, who has been in multiple TVF videos, revealed that she departed because she was tired of receiving notifications from the firm for breach of contract. The blogger who filed the complaint also mentioned wanting to kill hers.

In the meantime, nine more women, including actor-director Reema Sengupta, claimed in a Facebook post endorsing the anonymous blog that Kumar had approached her while directing a web series for TVF the previous year.

This magistrate court determined that there had been an "unexplained and unreasonable" slow up in submitting the First Information Report, leading to the acquittal of Arunabh Kumar, the creator of The Viral Fever (TVF), in a 2017 "sexual harassment case".

*"There is no concrete evidence produced by the prosecution," the magistrate ruled in his judgment.*

- **Uber**

According to Susan Fowler, a former Uber engineer, her employer harassed her sexually. Uber has received a lot of criticism for the way the matter was handled, even though the accused's

identity is unclear. As reported by Fowler in her blog post "Reflecting On One Very, Very Strange Year At Uber," Uber was allegedly hiding reports of persistent sexual harassment. According to Fowler, if she continued to report issues to HR, her manager threatened to dismiss her. She then departed the company.

- **iGate and Infosys, Former CEO, Phaneesh Murthy<sup>6</sup>**

Phaneesh Murthy faced his first legal battle related to sexual harassment when Reka Maximovitch, his former executive secretary, accused him of the offense while he was at Infosys. Around the same time, he was charged with a second offense after Jennifer Griffith made similar accusations that were settled for \$800,000. Later, Infosys paid \$3 million to settle the legal action and sacked him in 2002. Araceli Roiz, an iGate employee, filed a sexual harassment claim in 2013. After being found guilty after an investigation by independent legal counsel, Murthy was fired.

In a recent decision in "Aureliano Fernandes v. State of Goa and Others", the Supreme Court of India mentioned that although laws prohibiting sexual harassment have been in place for ten years, their enforcement and implementation have not kept up with the times. The main causes include a lack of understanding of the procedure, a lack of confidence in the procedure and its outcomes, a lax adherence to the enforcement regime, and other practical issues.

*Recent Judicial trends indicate that though POSH policy is mandated in the organization still sexual harassment incidents occur and the perpetrator in these cases is either acquitted or the company has to face great economic losses.*

### **Sexual Harassment incidents data based on various surveys:**

Just 8% of 400 working professionals of all ages and genders who participated in a Stratifix Consulting and National Human Resource Development study before 2021<sup>7</sup> knew about the POSH policy; 37% of respondents—mostly women—reported experiencing sexual harassment at work, while 17% either feared or were uninformed of their right to report sexual harassment. Of those surveyed, 11% said they would quit the company rather than report sexual harassment.

*In November 2023, a different Walchand Plus survey found that 40% of working women experiencing insecurity and 53% of HR professionals were unaware of the protections offered by the POSH Act.*

These results are alarming, but they also serve as a sobering reminder that the elimination of sexual harassment as the primary cause of workplace inequality must be a part of our quest for gender equality. It is obvious that providing new hires with online training and posting the POSH policy on the intranet are insufficient when it comes to addressing employee concerns about how and whom to report sexual harassment.

38% of Indian women reported having experienced workplace harassment in the past year, according to a 2018 Martha Farrell Foundation study, which revealed that 80% of them had experienced it. Similar results were observed in a 2020 poll of professional women when 75% reported experiencing sexual harassment at work at some point in their careers and 57% in the previous 12 months.

To give women, including those employed in the public and private sectors, a platform to report incidents of sexual harassment they have experienced at work, the Indian government's "Ministry of Women and Child Development" created the "Sexual Harassment Electronic Box" (*SHe-Box*), an online complaint management system.

### **Conclusion and Suggestions:**

The importance of increased female workforce participation in the development of our country must finally be acknowledged. The percentage of women who are employed or actively seeking employment needs to be reviewed. The gender gap in education, labor force participation, and entrepreneurial activity must be eliminated to remove the barrier to economic growth.

There are still issues with the POSH Act's implementation, such as low awareness, reluctance to report incidents (and when they do, a lack of transparency, and confidence in the staff members handling investigations and results), and the need for more efficient redress mechanisms, particularly for disabled employees who are more likely to encounter sexual harassment than their peers without disabilities and 95% of women employed in the informal sector. Advancements in combating sexual harassment have been sluggish and occasionally discouraging, despite concentrated efforts.

Comprehensive rules and training are the cornerstones, but many corporates have not yet fully incorporated and continuously reinforced these lessons, which exacerbates persistent worries about behavior and reporting. Establishing a culture of "speak up" along with strong confidentiality and anti-victimization protocols is a top objective.

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