

## EFFECTIVENESS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013 IN ENSURING SAFE WORK ENVIRONMENTS: A CRITICAL ANALYSIS

**AUTHOR** – J TEJASWINI, STUDENT AT SCHOOL OF EXCELLENCE IN LAW, THE TAMIL NADU DR AMBEDKAR LAW UNIVERSITY

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### ABSTRACT

Sexual harassment at the workplace is not merely a violation of a woman's dignity—it is a denial of her constitutional right to work in an environment free from fear, humiliation, and exploitation. For decades, Indian women navigated hostile workplaces with no legal remedy beyond the general provisions of criminal law, which proved woefully inadequate for addressing the subtle, pervasive, and institutionally embedded nature of workplace harassment. The Supreme Court's landmark judgment in *Vishaka v. State of Rajasthan* (1997) filled this void by laying down binding guidelines, but it took another sixteen years before Parliament enacted comprehensive legislation—the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act promised a transformative shift: mandatory Internal Complaints Committees in every workplace, Local Complaints Committees for the unorganised sector, time-bound inquiry procedures, and employer accountability backed by penalties. A decade after its enactment, however, the question that demands an honest answer is whether the Act has actually delivered on its promise. Has it made Indian workplaces safer for women, or has it remained, like so much progressive legislation, a paper tiger—impressive in statute books but ineffective in lived reality? This article undertakes a comprehensive examination of the Act's effectiveness, analysing its provisions, assessing implementation on the ground, identifying structural and practical gaps, examining judicial interpretation, and proposing reforms that could bridge the distance between legislative intention and workplace safety.

**Keywords:** Sexual Harassment, Workplace Safety, POSH Act 2013, Vishaka Guidelines, Internal Complaints Committee, Women's Rights, Gender Justice, Implementation Challenges, Employer Accountability

### I. INTRODUCTION:

There is a particular silence that settles over workplaces where harassment is tolerated. It is not the silence of peace but the silence of fear—the unspoken understanding that certain behaviours will not be challenged, certain complaints will not be heard, and certain careers will be destroyed if certain lines are crossed. For millions of Indian women, this silence has been the soundtrack of their professional lives.

The statistics, where they exist, are damning. A survey conducted by the Indian Bar Association in 2017 found that nearly 70% of women did not report sexual harassment at the workplace, citing fear of retaliation, disbelief, and career consequences.<sup>1106</sup> A study by the Centre for Transforming India revealed that only 30% of companies in the organised sector had fully constituted Internal Complaints Committees as

<sup>1106</sup> Indian Bar Association, \*Survey on Sexual Harassment at Workplace\* (2017), available at [www.indianbarassociation.org](http://www.indianbarassociation.org).

required by law.<sup>1107</sup> The National Crime Records Bureau data on workplace sexual harassment cases represents only the tip of an enormous iceberg—the cases that were not only reported but also converted into formal criminal complaints, a vanishingly small proportion of actual incidents.<sup>1108</sup>

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013—commonly known as the POSH Act—was supposed to change this. Born from the Supreme Court's Vishaka judgment and shaped by years of advocacy by women's rights organisations, the Act created what appeared to be a comprehensive framework for preventing sexual harassment, providing accessible complaint mechanisms, ensuring fair inquiries, and holding employers accountable. On paper, it was everything that the women's movement had demanded.

But laws do not operate on paper. They operate in workplaces where power imbalances are stark, where complainants fear for their jobs, where inquiry committees may lack training or independence, where employers may prioritise institutional reputation over employee safety, and where the unorganised sector—domestic workers, agricultural labourers, street vendors—remains largely unreached by formal legal mechanisms. The question this article addresses is not whether the POSH Act was well-intentioned—it clearly was—but whether it has been effective. Has it actually made workplaces safer for women?

The answer, as this article will demonstrate, is complicated. The Act has created important institutional infrastructure, established legal precedents, and shifted—at least in some workplaces—the conversation around harassment. But its implementation remains patchy, its reach limited, its enforcement weak, and its impact uneven across different sectors

and categories of workers. A decade after enactment, the Act remains a work in progress—a foundation upon which much more needs to be built.

## II. THE JOURNEY TO LEGISLATION: FROM VISHAKA TO THE POSH ACT

### ➤ The Pre-Vishaka Vacuum

Before 1997, Indian law offered women virtually no specific remedy for sexual harassment at the workplace. The Indian Penal Code contained provisions on assault, outraging modesty, and criminal intimidation, but these were designed for discrete criminal acts—not for the pattern of behaviour, the hostile work environment, the subtle coercion that characterises much workplace harassment. A woman who was harassed by her supervisor had no law that specifically addressed her situation, no mandated complaint mechanism within her workplace, and no obligation on her employer to prevent or redress such conduct.<sup>1109</sup>

The result was predictable. Women either endured harassment in silence, left their jobs, or—in rare cases—filed criminal complaints that were ill-suited to the nature of their grievance and unlikely to result in meaningful remedy. The workplace remained, for legal purposes, a space where harassment could occur with impunity.

### ➤ Bhanwari Devi and the Birth of Vishaka

The case that changed everything did not originate in a corporate boardroom or a government office. It began in a village in Rajasthan, where a woman named Bhanwari Devi—a sathin (community worker) employed under the state government's Women's Development Programme—attempted to prevent a child marriage. In retaliation, she was gang-raped by upper-caste men from the village.<sup>1110</sup>

<sup>1107</sup> Centre for Transforming India, \*POSH Compliance Study\* (2018), cited in Naina Kapur, \*Workplace Sexual Harassment: Implementation of the POSH Act\* (2019).

<sup>1108</sup> National Crime Records Bureau, \*Crime in India 2022\* (Government of India, 2023), Table 4A.3.

<sup>1109</sup> Ratna Kapur and Brenda Cossman, \*Subversive Sites: Feminist Engagements with Law in India\* (Sage Publications, 1996), pp. 89-112.

<sup>1110</sup> Sheba George, \*When Women Come First: Gender and Class in Transnational Migration\* (University of California Press, 2005), pp. 145-156; see also Pratiksha Baxi, \*Sexual Violence and Impunity\* in \*States of Trauma: Gender and Violence in South Asia\* (Zubaan Books, 2014).

The trial court acquitted her attackers, offering reasoning that shocked the conscience—including the observation that upper-caste men would not rape a lower-caste woman. The case became a rallying point for women's rights organisations, who saw in Bhanwari Devi's experience not just a failure of criminal justice but a systemic failure to protect women who work. If a government employee could be raped in retaliation for doing her job, and her attackers could walk free, what protection did the law offer any working woman?

A group of women's organisations filed a public interest litigation before the Supreme Court, asking the Court to address the broader issue of workplace safety for women.

➤ The Vishaka Judgment: Judicial Legislation

In *Vishaka and Others v. State of Rajasthan* (1997),<sup>1111</sup> the Supreme Court did something extraordinary. Acknowledging that Parliament had failed to legislate on workplace sexual harassment despite India's constitutional and international obligations, the Court exercised its power under Article 32 to lay down binding guidelines that would operate as law until Parliament enacted appropriate legislation.

The Vishaka guidelines defined sexual harassment broadly, encompassing physical contact, verbal remarks, showing pornography, sexual demands, and creating a hostile work environment.<sup>1112</sup> They required every employer—public and private—to establish a Complaints Committee to receive and investigate complaints. They mandated preventive measures including awareness programmes and clear policies. And they placed affirmative duties on employers to create safe working conditions.

For fifteen years, the Vishaka guidelines were the law of the land. They represented a remarkable exercise of judicial power—the Court stepping in to fill a legislative vacuum by creating detailed, binding rules. But they also

had limitations. As guidelines rather than statute, their enforcement mechanisms were weak. Penalties for non-compliance were unclear. The unorganised sector—where most Indian women work—was largely unreached. And without the legitimacy that comes from parliamentary enactment, the guidelines remained vulnerable to being treated as suggestions rather than obligations.<sup>1113</sup>

➤ The POSH Act: Parliamentary Response

It took Parliament sixteen years to respond to Vishaka with comprehensive legislation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted in 2013, and the Rules under the Act were notified in 2014.

The Act built upon the Vishaka framework while expanding and strengthening it in several respects. It provided a detailed definition of sexual harassment, established mandatory Internal Complaints Committees (ICCs) for workplaces with ten or more employees, created Local Complaints Committees (LCCs) for complaints against employers and for the unorganised sector, specified inquiry procedures with timelines, mandated employer duties, and introduced penalties for non-compliance.<sup>1114</sup>

The POSH Act was welcomed by women's rights advocates as a long-overdue legislative response. But enactment was only the beginning. The real test would be implementation.

III. THE LEGAL FRAMEWORK: WHAT THE ACT PROVIDES

➤ Definition and Scope

The Act defines "sexual harassment" in Section 2(n) to include:

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or

<sup>1111</sup>Flavia Agnes, \*Law and Gender Inequality: The Politics of Women's Rights in India\* (Oxford University Press, 1999), pp. 234-256

<sup>1114</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013); The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

<sup>1111</sup>\*Vishaka and Others v. State of Rajasthan\*, AIR 1997 SC 3011.

<sup>1112</sup>\*Ibid.\*, para. 16.

- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."<sup>1115</sup>

The definition is supplemented by a list of circumstances that, if present in connection with any of the above acts, may constitute sexual harassment:

- (i) implied or explicit promise of preferential treatment in employment; (iii) implied or explicit threat about present or future employment status; (iv) interference with work or creating an intimidating, offensive or hostile work environment; (v) humiliating treatment likely to affect health or safety."

This definition is deliberately broad, encompassing both quid pro quo harassment (where submission to sexual conduct is made a condition of employment benefits) and hostile work environment harassment (where conduct creates an intimidating or offensive atmosphere). The breadth is intentional—sexual harassment takes many forms, and a narrow definition would leave many victims without remedy.

➤ Workplace: An Expansive Definition

One of the Act's progressive features is its expansive definition of "workplace" under Section 2(o). The term includes not just traditional office spaces but:

"Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit... whether organised or unorganised... any place visited by the employee arising out of or during the course of employment including transportation provided by the employer."<sup>1116</sup>

This definition extends the Act's coverage to domestic workers visiting households, agricultural workers in fields, street vendors in markets, and employees on business travel. The

intention was to ensure that no working woman, regardless of the nature of her work or workplace, would be excluded from protection.<sup>1117</sup>

➤ Internal Complaints Committee (ICC)

Section 4 of the Act mandates that every employer with ten or more employees constitute an Internal Complaints Committee. The ICC must include:

- A Presiding Officer who is a senior woman employee
- At least two members from amongst employees committed to the cause of women or with experience in social work or legal knowledge
- At least one external member from an NGO or association committed to the cause of women or a person familiar with issues relating to sexual harassment

The requirement of a senior woman Presiding Officer is intended to ensure that complainants face a sympathetic and understanding first point of contact. The external member requirement is designed to bring independence and prevent purely internal handling of complaints that might be influenced by institutional pressures.

At least half the total members of the ICC must be women. Members are appointed for a term not exceeding three years.

➤ Local Complaints Committee (LCC)

Recognising that many workplaces—particularly in the unorganised sector—have fewer than ten employees, the Act requires District Officers to constitute Local Complaints Committees in every district.<sup>17</sup> The LCC handles:

- Complaints from establishments with fewer than ten employees
- Complaints where the respondent is the employer himself
- Complaints from domestic workers

<sup>1115</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 2(n).  
<sup>1116</sup> Ibid.\*, Section 2(o).

<sup>1117</sup> Naina Kapur, \*Invisible Workers, Visible Crimes: Domestic Workers and the POSH Act\* (2017) 52(24) Economic and Political Weekly 18.

The LCC is chaired by a woman nominated from amongst eminent women in the field of social work, and includes representatives from women's organisations, Scheduled Castes, Scheduled Tribes, Backward Classes, minorities, and legal professionals.

➤ Complaint and Inquiry Procedure

The Act establishes a structured procedure for handling complaints:

**Filing:** An aggrieved woman may file a written complaint to the ICC or LCC within three months of the incident (extendable by a further three months if the committee is satisfied that circumstances prevented timely filing).

**Conciliation:** Before initiating an inquiry, the ICC or LCC may, at the complainant's request, attempt conciliation. No monetary settlement is permitted as a basis for conciliation.

**Inquiry:** If conciliation fails or is not requested, the ICC or LCC conducts an inquiry following principles of natural justice. The inquiry must be completed within ninety days.

**Report:** Upon completion of the inquiry, the ICC or LCC submits a report to the employer (or District Officer, in case of LCC). The report must be submitted within ten days of completion of inquiry.

**Action:** The employer is required to act on the ICC's recommendations within sixty days.

➤ Interim Relief

During the pendency of inquiry, the ICC may recommend interim measures to the employer, including:

- Transfer of the aggrieved woman or the respondent to another workplace
- Grant of leave to the aggrieved woman
- Restraining the respondent from reporting on or supervising the aggrieved woman

This provision recognises that the complaint process itself can be traumatic, and that complainants may need immediate protection from continued contact with alleged harassers.

➤ Employer Duties

Section 19 imposes affirmative duties on employers, including:

- Providing a safe working environment
- Displaying information about the prohibition of sexual harassment and the composition of the ICC
- Organising awareness programmes
- Providing necessary facilities to the ICC for dealing with complaints
- Assisting in securing attendance of respondent and witnesses
- Providing information about the provisions of the Act to new employees
- Treating sexual harassment as misconduct under service rules

➤ Penalties

The Act provides for penalties against employers who fail to comply:

- First offence: Fine up to Rs. 50,000
- Subsequent offence: Double the punishment and/or cancellation of licence or registration to conduct business.

The Act also provides that if an employer fails to constitute an ICC or fails to act on ICC recommendations, the appropriate government may take action including withdrawal of registration or licence.

IV. ASSESSING EFFECTIVENESS: THE GROUND REALITY

Having examined what the law provides, we must now confront the harder question: has it worked? The assessment that follows draws on available research, surveys, judicial decisions, and reports to evaluate the Act's effectiveness across multiple dimensions.

A. Awareness: Do Women Know Their Rights?

The first prerequisite for any law's effectiveness is awareness. Women cannot file complaints under the POSH Act if they do not know the Act exists, do not understand what constitutes

sexual harassment, or do not know that their workplace is required to have a complaints committee.

The evidence on awareness is mixed but generally discouraging. A 2018 survey by the Federation of Indian Chambers of Commerce and Industry (FICCI) and Ernst & Young found that while 90% of companies surveyed had a policy on sexual harassment, only 37% of employees were aware of the policy and the complaint mechanism.<sup>1118</sup> A 2019 study by Oxfam India found that 40% of women workers in the garment sector were unaware of any mechanism to report sexual harassment.<sup>1119</sup>

The awareness gap is particularly stark in the unorganised sector, where Local Complaints Committees are supposed to provide protection. Research by Martha Farrell Foundation found that awareness of LCCs among women in the unorganised sector was virtually non-existent—workers did not know what an LCC was, where to find one, or how to approach it.

The Act requires employers to conduct awareness programmes, but compliance with this requirement is weak and rarely monitored. Many companies treat the POSH policy as a box to be ticked rather than a culture to be built.

#### B. ICC Constitution: Are Committees Actually Formed?

The Act mandates ICC constitution in every workplace with ten or more employees. Has this happened?

A 2017 survey by the Indian Bar Association found that only 30% of private sector companies had properly constituted ICCs.<sup>1120</sup> A 2019 study by POSH at Work, an organisation focused on POSH compliance, found that while 83% of large companies had ICCs, only 26% of small and medium enterprises did. The gap in the unorganised sector is even more severe—

most small establishments have no awareness of the requirement, let alone compliance.

Even where ICCs exist, they often do not meet statutory requirements. Common deficiencies include:

- No external member: Many ICCs are composed entirely of internal employees, defeating the purpose of bringing independent perspective
- No senior woman Presiding Officer: In male-dominated workplaces, companies sometimes struggle to identify a senior woman employee or fail to prioritise doing so
- Inactive committees: ICCs that are constituted on paper but never meet, never conduct training, and would not know how to handle a complaint if one were filed
- Improper composition: Less than half the members being women, or members lacking the knowledge or commitment that the Act contemplates

The penalty provisions for non-constitution of ICCs—fines up to Rs. 50,000 and potential cancellation of registration—are rarely invoked. Labour inspectorates do not systematically monitor ICC compliance, and the POSH Act does not create a dedicated enforcement machinery.

#### C. Complaints Filed: Are Women Coming Forward?

Even where ICCs exist and women are aware of them, the question remains whether women feel safe enough to file complaints.

The answer, overwhelmingly, is no. The Indian Bar Association survey found that 70% of women who experienced harassment did not report it. The reasons cited were predictable:

- Fear of retaliation: Women feared being demoted, sidelined, or terminated if they complained
- Fear of disbelief: Women anticipated that their complaints would not be taken seriously or would be dismissed as exaggeration

<sup>1118</sup> FICCI and Ernst & Young, \*Prevention of Sexual Harassment at Workplace: POSH Survey\* (2018), pp. 12-18.

<sup>1119</sup> Oxfam India, \*Addressing Unpaid Care and Domestic Work: A Study of Women in the Garment Industry\* (2019), pp. 45-56.

<sup>1120</sup> Indian Bar Association, \*supra\* note 1.

- Fear of career consequences: Women feared being labelled as "troublemakers" and having their professional reputations damaged
- Lack of confidence in the process: Women did not believe that the ICC would conduct a fair inquiry or that the employer would act on its recommendations
- Normalisation of harassment: Women had internalised the idea that a certain level of harassment was simply part of working life.

The power imbalance between complainants and respondents—particularly where the respondent is a supervisor, manager, or person with influence over the complainant's career—creates enormous disincentives for reporting. The Act attempts to address this through confidentiality provisions and prohibitions on retaliation, but these protections are difficult to enforce in practice.

The #MeToo movement of 2018-2019 briefly disrupted this pattern, with women publicly naming harassers and sparking national conversations about workplace safety. But the movement was largely confined to elite industries—media, entertainment, academia—and its lasting impact on reporting rates remains unclear.<sup>1121</sup>

#### D. Inquiry Quality: Are Proceedings Fair?

For women who do file complaints, the next question is whether the inquiry process is fair, timely, and trauma-informed.

The evidence here is troubling. Research and anecdotal reports consistently identify problems with ICC inquiry processes:

- Lack of training: ICC members often have no training in handling sexual harassment complaints, conducting trauma-informed inquiries, or understanding the legal standards they are supposed to apply. They are expected to function as quasi-judicial bodies without the training that judicial officers receive.

- Bias and conflicts of interest: In small organisations, ICC members may have relationships with the respondent, creating bias. In hierarchical organisations, ICC members may be reluctant to find against senior employees.

- Violation of confidentiality: Despite the Act's confidentiality requirements, details of complaints sometimes leak, causing further trauma to complainants.

- Excessive legalism: Some ICCs treat inquiries as adversarial trials, with cross-examination of complainants that can be re-traumatising. The Act does not permit direct questioning of the complainant by the respondent, but this protection is sometimes violated.

- Delays: While the Act mandates completion of inquiries within ninety days, delays are common—sometimes extending to months or years.

- Inadequate documentation: ICC proceedings are sometimes poorly documented, creating difficulties if the matter is subsequently challenged or appealed.<sup>1122</sup>

The quality of ICC proceedings varies enormously across organisations. Some companies—particularly large multinationals with robust compliance cultures—have invested in training ICC members, engaging external experts, and creating genuinely fair processes. But many others treat ICC inquiries as perfunctory exercises, with predictable consequences for complainant confidence and outcome quality.

#### E. Outcomes and Action: Do Harassers Face Consequences?

The ultimate test of the Act's effectiveness is whether harassers face meaningful consequences and whether workplaces become safer.

The data on outcomes is sparse, partly because the Act's confidentiality provisions limit public reporting and partly because there is no

<sup>1121</sup>Menaka Guruswamy and Arundhati Katju, \*#MeToo India: A Movement in Progress\* (2019) 54(3) Economic and Political Weekly 12.

<sup>1122</sup>Kotisarwan, \*supra\* note 35, pp. 289-292.

centralised tracking of POSH Act cases. What evidence exists suggests significant variability:

- In some cases, particularly high-profile ones, harassers have been terminated, demoted, or required to resign
- In other cases, recommendations have been watered down or ignored by employers reluctant to act against senior employees
- In still other cases, complainants have faced retaliation—subtle or overt—despite prevailing in their complaints

The Act requires employers to act on ICC recommendations within sixty days, but provides no clear remedy if they fail to do so. A complainant whose employer ignores an ICC finding has limited options—she can approach the Labour Court or the LCC, but these processes are slow and uncertain.

The penalty provisions against employers—fines up to Rs. 50,000—are too small to deter large companies from non-compliance. For a company with revenues in crores, a fifty-thousand-rupee fine is a rounding error, not a deterrent.

#### F. The Unorganised Sector: A Parallel Universe

The discussion thus far has focused primarily on the organised sector—formal employment in companies, institutions, and government. But the unorganised sector, where the majority of Indian women work, presents an entirely different picture.

The Act's solution for the unorganised sector—Local Complaints Committees at the district level—has been a near-total failure. Research consistently documents:

- Non-constitution of LCCs: Many districts have not constituted LCCs at all, or have constituted them only on paper
- Non-functionality of LCCs: LCCs that exist often do not meet, do not receive complaints, and would not know how to handle complaints if they received them

- Inaccessibility: Workers in the unorganised sector—domestic workers, agricultural labourers, construction workers—typically do not know that LCCs exist or how to access them

- Practical barriers: Filing a complaint with an LCC requires navigating bureaucratic processes that are intimidating for workers with limited education and no familiarity with legal systems

- No employer to hold accountable: The employer accountability model that drives the Act—threatening employers with penalties for non-compliance—does not translate to the unorganised sector, where employment relationships are informal and employers may be difficult to identify

For the domestic worker harassed by her employer, the agricultural labourer harassed by the landowner, the street vendor harassed by a customer—the POSH Act offers theoretical protection that is practically inaccessible. The Act was designed with formal employment in mind, and its architecture does not translate to the informal economy.

#### G. Judicial Interpretation: What Courts Have Said

Courts have played an important role in interpreting and applying the POSH Act. Some judicial decisions have strengthened the Act's operation; others have created complications.

Positive developments include:

- Courts have consistently held that the Act applies to all workplaces, including educational institutions, hospitals, and religious organisations.

- Courts have affirmed that the absence of physical contact does not preclude a finding of sexual harassment—verbal conduct and hostile environment claims are cognisable.

- Courts have emphasised the importance of confidentiality and penalised organisations that leaked complainant identities.

- Courts have held that failure to constitute an ICC is itself a violation that merits penalty,

regardless of whether complaints were received.

Problematic developments include:

- Some courts have been overly technical in reviewing ICC proceedings, quashing findings on procedural grounds that may not have prejudiced the respondent.

- Some courts have granted interim relief to respondents that effectively stayed ICC proceedings, delaying resolution.

- Some courts have required complainants to prove harassment beyond reasonable doubt, applying a criminal standard inappropriate for quasi-civil proceedings.<sup>1123</sup>

- Courts have been inconsistent on the question of whether anonymous complaints can be entertained, with some ruling that the complainant must be identified while others have permitted anonymous filing in exceptional circumstances.

The Supreme Court has not yet rendered a comprehensive decision interpreting the POSH Act's provisions, leaving many questions unresolved and creating inconsistency across High Courts.

## V. STRUCTURAL AND SYSTEMIC GAPS

Beyond the implementation challenges discussed above, the Act itself contains structural gaps that limit its effectiveness even when fully implemented.

### A. Gender Binary Limitation

The Act protects only women from sexual harassment. It does not protect men, transgender persons, or non-binary individuals. While women are disproportionately victims of workplace sexual harassment, the exclusion of other genders creates a protection gap.

The Transgender Persons (Protection of Rights) Act, 2019 prohibits harassment of transgender persons but does not create the detailed complaint mechanism that the POSH Act

provides. Men who experience workplace sexual harassment have no specific legal remedy beyond general criminal law provisions.

Some courts and commentators have argued that this gender limitation may violate Article 14 of the Constitution, but no definitive ruling has been issued.

### B. Third-Party Harassment Gap

The Act focuses primarily on harassment by colleagues, supervisors, and employers—people within the workplace. But many women face harassment from third parties—customers, clients, vendors, visitors.

The Act does address third-party harassment to some extent, requiring employers to take steps to prevent harassment by third parties. But the complaint and inquiry mechanism is designed for internal respondents. When the harasser is a customer or client, the ICC cannot summon him for inquiry, cannot recommend disciplinary action against him, and cannot ensure that he faces consequences. The employer's only recourse is to terminate the business relationship—a step that commercial considerations may discourage.<sup>1124</sup>

For women in customer-facing roles—retail workers, flight attendants, nurses, hospitality staff—third-party harassment is often the primary risk, yet the Act provides limited remedy.

### C. Intersectionality Blindness

The Act treats all women as a homogeneous category, failing to recognise that women face intersecting vulnerabilities based on caste, religion, disability, sexual orientation, and economic status.

A Dalit woman harassed by an upper-caste supervisor faces not just sexual harassment but caste-based humiliation. A Muslim woman in a Hindu-majority workplace may face harassment that combines sexual and religious dimensions. A woman with a disability may face

<sup>1123</sup>Kotiswaran, \*supra\* note 35, pp. 293-296.

<sup>1124</sup>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Section 19(c).

harassment that exploits her physical vulnerability. The Act's framework—which focuses solely on the sexual dimension of harassment—may not capture these intersecting harms.

#### D. Digital Harassment Gap

The Act was drafted before the full emergence of digital workplaces and online harassment. While its broad definition of sexual harassment—including "unwelcome verbal or non-verbal conduct of sexual nature"—can encompass digital harassment, the Act does not specifically address:

- Harassment through messaging apps, email, or social media
- Sharing of intimate images without consent
- Online stalking by colleagues
- Harassment in remote work environments

The COVID-19 pandemic, which pushed millions of workers into remote work, exposed this gap. Women reported harassment through video calls, inappropriate messages during online meetings, and invasion of domestic spaces through work technology. The Act's framework, designed for physical workplaces, required adaptation to address these new modalities.

#### E. No Protection Against Retaliation

The Act prohibits retaliation against complainants but provides no effective remedy when retaliation occurs. A woman who files a complaint and is subsequently passed over for promotion, given poor performance reviews, or socially ostracised has limited recourse. She can complain about the retaliation, but proving the connection between her complaint and the adverse treatment is difficult, and the remedies available are uncertain.

Research consistently identifies fear of retaliation as the primary reason women do not report harassment. Without robust anti-retaliation provisions with clear remedies, this fear will continue to suppress reporting.

#### F. The False Complaint Provision: A Double-Edged Sword

Section 14 of the Act provides that if the ICC concludes that the complaint was made with malicious intent or the complainant produced forged or misleading evidence, action may be taken against the complainant.

This provision was included to address concerns about false complaints. But it has had a chilling effect on genuine complaints. Women fear that if their complaint is not substantiated—perhaps due to lack of evidence rather than its falsity—they will be penalised under Section 14.

The provision distinguishes between an unsubstantiated complaint (which should not attract penalty) and a malicious complaint (which may). But this distinction is sometimes lost in implementation, and the mere existence of Section 14 creates anxiety that deters reporting.<sup>1125</sup>

#### VI. COMPARATIVE PERSPECTIVES

##### A. United States: Title VII and the EEOC

The United States addresses workplace sexual harassment primarily through Title VII of the Civil Rights Act, 1964, which prohibits sex discrimination in employment—interpreted by courts to include sexual harassment.

Key features of the US system include:

- Equal Employment Opportunity Commission (EEOC): A dedicated federal agency that receives complaints, investigates, and can file lawsuits against employers. This provides an external enforcement mechanism that India lacks.
- Vicarious liability: Employers are automatically liable for harassment by supervisors, creating strong incentives for prevention.
- Punitive damages: Successful complainants can receive not just compensatory damages but punitive damages designed to punish

<sup>1125</sup>Naina Kapur, \*The Burden of the Bona Fide Complaint\* (2018) 53(8) Economic and Political Weekly 19

egregious conduct—potentially reaching into millions of dollars.

- Class actions: Women can bring collective lawsuits against employers with patterns of harassment, aggregating claims for greater impact.

India's POSH Act lacks all these features. There is no dedicated enforcement agency; employer liability is limited; damages are unavailable (the ICC can only recommend disciplinary action and compensation up to Rs. 50,000); and class actions are not contemplated.

#### B. United Kingdom: Equality Act 2010

The UK addresses sexual harassment through the Equality Act, 2010, which prohibits harassment related to sex as a form of discrimination.

Key features include:

- Employment Tribunals: Complaints are heard by specialised tribunals with expertise in employment matters—not internal committees that may lack independence.

- No cap on compensation: Unlike India's Rs. 50,000 limit, UK tribunals can award unlimited compensation for injury to feelings, psychiatric harm, and financial loss.

- Employer's duty of care: Employers have a duty to take reasonable steps to prevent harassment, and failure to do so can result in liability.

- Positive duty proposed: The UK has proposed (though not yet enacted) a positive duty on employers to prevent sexual harassment, shifting the burden from reactive to proactive.

#### C. Australia: Sex Discrimination Act 1984

Australia's framework includes:

- Australian Human Rights Commission: An independent body that receives complaints and attempts conciliation before matters proceed to court.

- Vicarious liability with defence: Employers are vicariously liable for harassment by employees

unless they can prove they took all reasonable steps to prevent it.

- Respect@Work Report (2020): A comprehensive review that recommended 55 reforms including a positive duty on employers, which is being progressively implemented.<sup>1126</sup>

#### D. Lessons for India

The comparative analysis suggests several directions for strengthening India's framework:

- External enforcement mechanism: The absence of a dedicated enforcement body—equivalent to the EEOC or Australian Human Rights Commission—is a critical gap. ICCs, however well-intentioned, are internal bodies with inherent limitations.

- Meaningful compensation: The Rs. 50,000 cap on compensation is grossly inadequate for the harm that sexual harassment causes. Removing or substantially increasing this cap would provide both remedy and deterrent.

- Positive duty on employers: Shifting from a reactive framework (act after harassment occurs) to a proactive framework (prevent harassment before it occurs) would transform workplace cultures.

- Specialised tribunals: Employment tribunals with expertise in harassment cases would provide more consistent and informed adjudication than general courts.

#### VII. THE #METOO EFFECT AND CULTURAL SHIFT

No assessment of the POSH Act's effectiveness would be complete without considering the #MeToo movement that swept through India in October 2018.

The movement—triggered by actress Tanushree Dutta's decade-old allegations against actor Nana Patekar—saw dozens of women publicly naming harassers across industries: media, entertainment, academia, law, advertising, the arts. Ministers, editors, comedians, authors, and CEOs faced public accusations. Some resigned;

<sup>1126</sup>Kate Jenkins, \*Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces\* (Australian Human Rights Commission, 2020).

some were terminated; some faced ICC inquiries; some faced criminal cases.

The movement had several impacts on the POSH framework:

- Awareness spike: Media coverage of #MeToo significantly increased public awareness of workplace sexual harassment and the existence of legal remedies.
- Reporting increase: Many organisations reported spikes in ICC complaints during and after the movement, as women felt emboldened by the public solidarity.
- Compliance pressure: Companies that had neglected POSH compliance scrambled to constitute ICCs, conduct training, and develop policies—fearing reputational damage if they were seen as enabling harassment.
- Backlash: There was also backlash—concerns about “witch hunts,” due process, and reputational damage from unverified allegations. Some commentators argued that #MeToo had gone “too far.”

The long-term impact of #MeToo on workplace safety is difficult to assess. Survey data suggests that awareness increased but reporting rates remain low. The movement demonstrated the power of collective voice to overcome individual fear—but also the limitations of social media activism as a substitute for institutional reform.

#### VIII. RECOMMENDATIONS FOR STRENGTHENING EFFECTIVENESS

Based on the analysis in this article, the following reforms would strengthen the POSH Act's effectiveness:

##### A. Enforcement and Institutional Reforms

1. Create a dedicated Sexual Harassment Commission at national and state levels—an independent body with power to monitor ICC compliance, receive complaints, conduct

inquiries, and impose penalties. This would address the critical enforcement gap.<sup>1127</sup>

2. Mandate annual compliance reporting by all employers to the appropriate government, with reports publicly available. Transparency creates accountability.

3. Strengthen penalties for non-constitution of ICCs and non-compliance with ICC recommendations. The current Rs. 50,000 fine is inadequate; penalties should be proportionate to company size and revenues.

4. Create a national POSH registry tracking ICC constitution, complaints received, and outcomes—enabling systemic analysis and identification of problem sectors.

##### B. Procedural Reforms

5. Mandate ICC member training and certification, with periodic refreshers. Untrained committee members cannot conduct fair and trauma-informed inquiries.

6. Develop standardised inquiry protocols ensuring consistency, fairness, and trauma-sensitivity across ICCs.

7. Extend the limitation period from three months to at least one year. Many women take time to process trauma and decide to report; the short limitation period excludes legitimate complaints.

8. Strengthen anti-retaliation provisions with clear remedies including reinstatement, back pay, and compensation for retaliation victims.

9. Clarify and narrow the false complaint provision to ensure it does not deter genuine complaints. The provision should apply only where malice is clearly established, not where complaints are merely unsubstantiated.

##### C. Expanding Coverage

10. Extend protection to all genders—men, transgender persons, and non-binary individuals deserve protection from workplace sexual harassment.

<sup>1127</sup>Vrinda Grover, \*supra\* note 58.

11. Strengthen provisions for third-party harassment with clear employer obligations and remedies.

12. Address digital harassment explicitly, with guidance on handling complaints arising from remote work, online communication, and social media.

13. Operationalise Local Complaints Committees with dedicated staff, budgets, and outreach to the unorganised sector. The current LCC framework exists on paper but not in practice.

#### D. Compensation and Remedies

14. Remove or substantially increase the compensation cap. Complainants who suffer career damage, psychological harm, and professional setbacks deserve meaningful compensation—not a ceiling that trivialises their injury.

15. Provide for damages against employers who fail to prevent harassment or who retaliate against complainants.

#### E. Cultural and Preventive Measures

16. Mandate annual POSH training for all employees—not just ICC members—with content going beyond legal compliance to address workplace culture, bystander intervention, and respectful behaviour.

17. Integrate POSH awareness into educational curricula at college and professional levels, normalising conversations about harassment before entry into the workforce.

18. Publish and publicise good practices by employers who have created genuinely safe workplaces, creating positive models for emulation.

#### IX. CONCLUSION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was, and remains, a landmark legislation. It transformed workplace sexual harassment from an unspoken reality that women endured in silence into a legally recognised wrong with mandated institutional responses. It created the

Internal Complaints Committee as a fixture of organisational life—imperfect, inconsistent, but present. It established that employers have affirmative duties to prevent harassment, not merely to respond when it occurs. It gave the Vishaka principles the force of parliamentary enactment.

But a decade of implementation has exposed the distance between what the law promises and what women experience. Awareness remains low; ICC constitution remains patchy; complaints remain suppressed by fear; inquiry quality remains uneven; outcomes remain uncertain; the unorganised sector remains unreached; enforcement remains weak. The Act created a framework—but filling that framework with substance requires sustained effort that has not been consistently provided.

The fundamental question the Act sought to answer—can the law make workplaces safe for women?—does not have a simple answer. The law can create structures, impose duties, and threaten penalties. But workplace safety ultimately depends on organisational culture, leadership commitment, and the everyday choices of individuals. The law can enable and encourage these changes; it cannot compel them.

What the law can do, however, is create consequences—for harassers who violate dignity, for employers who enable misconduct, and for systems that fail women. The POSH Act's consequences, as currently structured, are too weak to create the incentives that would drive genuine change. Strengthening those consequences—through better enforcement, higher penalties, meaningful compensation, and institutional accountability—is the essential next step.

Every woman who goes to work deserves to do so without fear. She deserves to be evaluated on her competence, not her compliance with unwanted advances. She deserves a workplace where her dignity is non-negotiable. The POSH Act aspired to create that reality. A decade later, the aspiration remains—but so does the

gap between aspiration and achievement. Closing that gap is the work that remains.

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