

Sexual Harassment at Workplace: Posh Act from Law to Action

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ABSTRACT

India aspires to become one of the major economies of the world, for which it needs to harness its women power, who constitute half of its population but a major deterrent to women joining the workforce is the fear of sexual harassment at the workplace. Sexual Harassment is any unwelcome sexually tinted behavior which creates a hostile work environment. It is a form of gender discrimination and violates the right to equality, life, and the right to practice any occupation, which are fundamental rights guaranteed by the Constitution. With an objective to prevent and redress such harassment, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, known as the POSH Act (Department of Expenditure, n.d.).

In my paper, I would begin with a brief background that led to the promulgation of the Act and then analyse its main provisions. I would then delve into the various nuances of sexual harassment, the employer's duties to ensure a safe workplace, and the procedures to be followed in the event of any harassment incident. Next, I would examine the current situation in light of a few landmark cases of sexual harassment. Finally, I would discuss some suggestions for improvements in the law and its implementation, which can make the workplace more secure for women, contributing to development of the individual, society, and the nation.

Keywords- Gender Equality, POSH Act, Sexual Harassment, Workplace Safety, Legal Framework.

INTRODUCTION

India is a developing nation aiming to become a *vishwaguru* (global leader). The goal of metamorphosing into a developed economy cannot be achieved by excluding women from the workforce. However, women can be motivated to join the workforce only if

they are provided adequate opportunities with regard to nutrition, healthcare, and education to train them, along with certain safeguards once they join the workforce.

The fear of sexual harassment at the workplace discourages many women from engaging in the workforce. Sexual Harassment is any unwelcome sexually tinted behavior which creates a hostile work environment, harms the physical and emotional health of a woman, and impairs her work performance (United Nations, n.d.). Women facing such toxic behavior often opt to leave their work, which can adversely impact the productivity of the organization and overall development of the economy.

With an objective to prevent and redress such harassment, the government enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, known as the POSH Act (Department of Expenditure, n.d.). The POSH Act is a vital legal framework aimed at safeguarding women from sexual harassment in their professional environments. As India strives to become a global leader, empowering women to fully participate in the workforce is crucial, however, fear of harassment remains a significant barrier for women seeking employment opportunities. The POSH Act was introduced to address this issue, ensuring that workplaces are free from any form of sexual harassment, whether physical, verbal, or non-verbal, and providing a formal mechanism for redressal (Department of Women and Child Development, n.d.).

This paper explores the POSH Act in-depth, focusing on its key provisions and the roles of employers, the Internal Complaints Committee (ICC), and employees in fostering a safe and respectful workplace. Through an analysis of landmark cases and existing challenges, the document also offers recommendations for strengthening the law and improving its implementation. These suggestions aim to enhance the effectiveness of the POSH Act and contribute to a society where women can thrive professionally without fear of harassment, ensuring their rightful place in a growing and dynamic economy.

RESEARCH METHODOLOGY

The research methodology for this paper on the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 (POSH Act) is designed to provide a comprehensive analysis of the legal framework, its implementation, and its impact on creating a safe working environment for women.

The methodology adopts a qualitative research approach to study the various aspects of the POSH Act. First, a doctrinal research method will be used to analyze the provisions of the POSH Act itself, including its legislative intent, key definitions, and requirements for employers and employees. This will involve a detailed review of the Act's text and its legal implications. Relevant judicial precedents, such as the Vishaka Case (1997), will also be examined to understand the evolution of sexual harassment laws in India and how the POSH Act draws from these decisions.

The second part of the research will involve case study analysis - a selection of landmark cases, such as the Tarun Tejpal Case, TCS Case, and Apparel Export Promotion Council v. A.K. Chopra (1999), which will be reviewed to assess the application and challenges of the POSH Act in real-world scenarios. These cases will provide insight into the practical difficulties women face in reporting sexual harassment and the effectiveness of the legal system in addressing such complaints.

Lastly, the paper will include suggestions for policy improvements based on the analysis of gaps in the law, including recommendations for enhanced enforcement, awareness, and education in the workplace. This will be supported by an interpretation of secondary data such as government reports, academic articles, and surveys on sexual harassment in Indian workplaces.

BACKGROUND

The issue of sexual harassment at workplace came into prominence in 1992 after the gang rape of Bhanwri Devi who worked as a “*saathin*” (grassroots worker) in Women Development Project (WDP) run by Rajasthan government for welfare of women (Legal Service India, n.d.). As a part of the WDP project, she attempted to stop child marriages scheduled on Akha Teej, a festival considered auspicious for weddings, an act which hurt the sentiments of the locals who strongly believed in this age-old practice. Thereafter, one day when Bhanwri Devi and her husband were working in the field they were attacked by the family members of one of the children whose marriage she had attempted to stop, and in retribution they gang raped her. The police took more than a day to just lodge the F.I.R. and due to a slow and insensitive judiciary coupled with the support of the local MLA, the rapists were acquitted. Aggrieved by the acquittal, several NGOs had

filed a PIL where the Supreme Court acknowledged the menace of sexual harassment and its decision in the landmark case of Vishaka and others v. State of Rajasthan (1997) led to the establishment of the Vishaka guidelines which became the basis for the POSH Act which aims to create a safe and conducive work place for women.

This is a watershed case, as before this case, an aggrieved woman had to seek recourse to IPC for any sexual harassment. The guidelines laid down what constitutes sexual harassment and its impact, defined an employee and workplace and outlined a framework for handling sexual harassment complaints in workplaces which were to be used till an Act was put into place. These guidelines obligated employers to provide a safe working environment for female employees and advocated for the implementation of stringent laws against such behavior, prescribing disciplinary measures and criminal actions to be pursued against perpetrators (Department of Women and Child Development, n.d.). Organizations were tasked with creating a strong complaint redressal mechanism headed by a woman with at least 50% female representation. Furthermore, the participation of an independent third party was mandated to ensure fairness. Organizations were encouraged to foster discussions on sexual harassment in meetings. Importantly, these guidelines extended to both public and private sector employers, highlighting the collective duty to combat sexual harassment across all professional domains.

However, it was a treacherous wait of more than one and a half decades before Parliament enacted the POSH Act in 2013 as per the directives of the Supreme Court based on the Visakha guidelines. The Act was a laudatory step towards women's empowerment with several praiseworthy provisions. It made the employer responsible for creating a safe working place for women and laid down detailed guidelines for preventing and redressing cases of harassment. Several balanced and well-thought-out provisions were included for sensitization regarding gender issues, providing a safe channel for complaints and mechanisms for handling complaints. It also encompassed a wide arena as a workplace, providing a wide coverage of security for women.

KEY TERMS IN THE ACT

The POSH Act, for the first time, laid down the definition of several key components of sexual harassment and laid down elaborate procedures for creating a safe environment. The major provisions of the Act are as follows:

I. Sexual Harassment

Sexual harassment includes any unwelcome physical contact, demand for sexual favors, sexually colored remarks, showing pornography and any other unwelcome conduct of sexual nature (Department of Women and Child Development, n.d.). It can occur when there is a promise of preferential treatment or a threat of differential treatment or a threat to employment or interference in work or humiliating treatment (Department of Expenditure, n.d.). The Act prohibits any such harassment that would make a woman feel unsafe.

II. Workplace

The Act is applicable all over India to all workplaces- whether government or private, including the unorganized sector, hospitals, sports institutes, and even dwelling places. It includes any place visited by the employee as part of her work, including transportation provided for the journey (Department of Women and Child Development, n.d.).

III. Aggrieved Woman

An aggrieved woman refers to a person who has complained about sexual harassment. The Act further defines an employee to include a regular, temporary, contractual, trainee, probationer, apprentice, or even a daily wage worker (Department of Women and Child Development, n.d.).

IV. Internal Complaints Committee (ICC)

Every organization having more than ten workers must form an Internal Complaints Committee (ICC) which would constitute of a chairperson who would be a senior female employee, at least two members who are employees, preferably with knowledge of issues related to women, law or social work and an external member committed towards welfare of women. At least half of the members of the ICC should be women (Department of Women and Child Development, n.d.). The ICC enjoys the same power as a Civil Court while conducting an Inquiry.

V. Complaint Mechanism

An aggrieved woman or, in the prescribed circumstances, a relative, friend, doctor, guardian, legal heir, co-worker, officer of NCW/ SCW, can make a complaint of sexual harassment to the ICC, in writing, within three months of its occurrence. The complaint should contain clear details about the incident, including the date and timing, the respondent's name, and their working relation (Indian Code, n.d.).

The ICC should acknowledge the complaint and explore the possibility of a conciliation; however, it should not be in the form of monetary compensation. In case that is not possible, the committee should proceed to conduct an inquiry into the matter. If relevant service rules are applicable, then inquiry will be conducted accordingly. As per CCS(CCA) Rules, ICC will act as the Inquiring Authority (Indian Code, n.d.). The committee should inform the respondent about the complaint within a week, and he will be accorded ten days to respond to the allegations in the complaint. Every step of the case must be documented by the committee as per the prescribed laws.

The ICC shall submit its report to the employer within 90 days, and if it finds the respondent guilty it will make recommendations for action under the service rules or monetary compensation based on the trauma, loss in career and medical expenses of the aggrieved woman as well as the income and financial status of the respondent (Indian Code, n.d.). The employer must act on the report within 60 days.

Once the complaint is filed, the complainant has certain rights which range from having a safe environment, empathetic people during the procedure, receiving regular updates regarding the case, keeping her identity confidential, and the right to appeal if aggrieved by the outcome. The ICC may recommend transfer of the aggrieved woman, leave, or any other relief deemed fit during the pendency of the proceedings (Department of Women and Child Development, n.d.). The law provides an equal opportunity to the respondent too, to have a committee that listens to his arguments and to get regular updates regarding the case proceedings.

VI. Employer and His Duties

Employer means the head of the workplace responsible for its management. Every employer has a duty to provide a safe workplace (Indian Code, n.d.). He must ensure that

the details of the ICC, as well as the consequences of sexual harassment at the workplace, are displayed prominently at the workplace. He has to conduct awareness and orientation sessions for all staff members and ICC, provide all assistance to the ICC and the aggrieved woman during the processing of a complaint, and ensure that a Sexual Harassment policy is in place while also establishing a comprehensive framework for both prevention and grievance resolution. Furthermore, he should endeavor to enhance the capacity and skills of the Complaints Committees.

VII. Sexual Harassment Policy

It is a policy which explicitly forbids any unwelcome conduct that amounts to workplace sexual harassment, aims to prevent such harassment through orientation programs, awareness initiatives, and sensitization sessions, as well as offering a comprehensive framework for redressing any grievances.

VIII. Confidentiality

The Act prohibits publication of the name of the complainant, respondent and witnesses, and details of the inquiry proceedings. In case this is violated, there exists a provision for specific punishment for it (Indian Code, n.d.).

IX. Annual Report

The ICC must submit an Annual Report to the employer including key details like the total number of complaints received, the number of complaints resolved, cases that have been pending for over 90 days, the number of workshops or awareness programs conducted, and the nature of actions taken by the employer (Indian Code, n.d.).

CASE STUDIES

Sexual harassment is an ever-evolving area with different cases coming up every day. Courts have given several landmark judgments in these matters, and I will be discussing some of the cases which have been successful, and also cases where lacunas in the Act and its procedure were brought forth.

A. Tarun Tejpal Case

Tarun Tejpal a prominent journalist and co-founder and former editor-in-chief of the investigative magazine Tehlka was accused of sexual harassment of a colleague in November 2013 in a five-star hotel of Goa during an official meeting and a police complaint was lodged against him charging him with rape (BBC, 2021). It was a high-profile case with political overtones, and he was finally acquitted in the matter.

In this case the Courts allowed the rape accused access to the private chat records of the victim which were used to prove that she had a history of sexual flirtations – an omission which goes against the basic tenets of gender equity, as past sexual history of victim is not to be taken as a licence for harassment. The character of the victim was used as a justification for the crime, and as this case received a lot of media attention, it conveyed a wrong message and set forth an unwanted precedent.

B. TCS Case

Tata Consultancy Services (TCS) fired one of their employees for speaking up against harassment after she filed a case of sexual harassment against her manager. The company accused her of misconduct- citing her social media posts and requests for help from outside labor unions as the reason, claiming that such acts spoiled the reputation of the company (Hr Katha, 2024). Such vendetta by the employer, very effectively acts as a warning to other victims of sexual harassment who may be contemplating complaining and highlights how women face the double burden of not only the sexual harassment but also discriminatory behavior from their employer when they speak up, who ironically is mandated by law to create a safe environment. Such punishments are a sure way of ensuring the silence of other women who may be trying to garner courage to report such misdeeds, as they will be discouraged by such vengeful acts and refrain from reporting, thus emboldening the present or future perpetrators.

C. Apparel Export Promotion Council v. A.K. Chopra' (1999)

In this case, a female employee alleged that her supervisor sexually harassed her when she had accompanied him to Taj Hotel for an official purpose, in spite of her objections. When she complained about it, the complaints committee found him guilty, he subsequently challenged the decision in court, which too found him guilty (Ridhi, 2023). In this case a key issue which arose was the definition of sexual harassment and the use

of words like molestation *vis a vis* physical assault - the defendant had taken the plea that he had only tried and not actually committed any assault, but the Court held that an attempt also amounts to harassment. Another issue discussed was of vicarious liability of the employer, since the victim was not trained to handle the work for which she was accompanying the supervisor, but the court held that the employer had no control or idea about the issue, so it would not be correct to blame the employer.

D. Aureliano Fernandes V. State of Goa and Others

In this case, a lecturer at Goa University was alleged of harassing several female students. The ICC held an inquiry, and he was dismissed, but he challenged the order of the ICC on the grounds that the proceeding was *ex-parte* as he had not attended the hearing and without hearing his side of the facts, a decision couldn't be passed.

The court ruled that the proceedings were not held as per the law and the case was reverted to the committee for conducting proper proceedings (Indian Kanoon, n.d.). The case highlighted an important aspect of natural justice and fair trial - the Act ensures that both parties are given an equitable chance of putting forth their issues, so that the decision is fair. The case is laudable as the Courts made sure that the accused is not denied a fair trial while simultaneously reiterating that such misconducts need to be dealt firmly.

E. iGate & Infosys, Former CEO, Phaneesh Murthy

During his tenure at Infosys, two women initiated legal action against Phaneesh Murthy who consistently refuted the allegations during the legal proceedings, but the cases were resolved through an out-of-court settlement after a hefty payment, also leading to his departure from the company. Surprisingly in 2013, another lawsuit was filed against Murthy during his tenure at iGate which led to his sacking (Infosys, n.d.).

This case is notable due to two aspects- one, that impressive educational credentials like IIT Chennai and IIM Ahmedabad and a stellar career should not be used as an excuse to condone such delinquent behavior and another unfortunate fact- a person indulging in the same misdeeds repeatedly reflects a lot on the sorry state of affairs and is a chilling reminder of the long route to gender equity society needs to traverse.

WAY AHEAD

The POSH Act is big leap towards providing equity and opportunity to women seeking to enter the workforce and excel in their profession, providing an avenue for financial empowerment and personal growth, however there are a few areas which can be modified and improved for the Act to provide better protection to women seeking to improve their life and that of their family and nation. A few suggestions are discussed that would lead to better implementation of the provisions of the Act in letter and spirit.

A. Illustrative List of Acts Amounting to Harassment

The current definition of sexual harassment outlines certain acts amounting to sexual harassment, but only in generic terms, and there is a need to expand the definition of sexual harassment. It is a fact that the line between what is offensive and what is harmless is blurred- an act may be construed as harmless by one and sexually colored by another, often some acts may be acceptable in a particular cultural scenario but unacceptable in others- like a handshake is acceptable in some cultures but unwelcome in others.

It has been observed that often the defendant takes the plea that the conduct was unintentional and occurred during the normal course of work. Though it has been held that it is the impact of the act and not intent which is to be the touchstone in determining whether it amounts to harassment, it is felt that there are certain behaviors which would universally held to be sexually tainted across all cultures and it would be progressive to have a list of such acts which would amount to harassment without doubt like kissing on the lips, whistling, neck massage, smacking the bottom of a woman. The Equal Employment Opportunity Commission, United Nations has an illustrative list of acts amounting to sexual harassment and it can be referred to by the law makers.

B. Inclusion of a Male Member in ICC

The Act mandates the composition of the ICC, specifying that at least half of the members should be women, but very often organizations constitute ICC with only female members, on the assumption that the aggrieved woman would find it more comfortable to share her ordeal with other women rather than men. Though the move is well-intentioned, it results in a situation where the findings of the ICC, no matter how well researched and technically perfect, are dismissed as shenanigans of a 'bunch of women' defeating the entire purpose.

It is a well-known maxim that justice should not only be done but seen to be done, and it would be a fair move to mandatorily include at least one male member in the ICC. As it is the duty of ICC to have a fair and unbiased stand, inclusion of a male member would bring in the male perspective and result in a balanced decision generating more faith in the outcome among the charged officer and other staff of the organization.

C. Specifying Qualifications for ICC Members

The legislation stipulates that the committee must include an external member with interest in women's issues and knowledgeable in labor, service, civil, or criminal law. However, the terms 'interest' and 'knowledgeable' are subjective, and the law does not specify the extent of familiarity and the level of expertise required. Given the sensitive nature of these cases it would be better to clearly specify the educational qualifications and experience required or better still a state wise panel of such experts might be notified who have displayed established knowledge and expertise in the area, who alone can act as external members, because often it happens that organizations pick up members who would be compliant to toe the line of the management.

D. Training of ICC Members

Since most ICC members are from within the organization, they may not have the requisite knowledge about the procedure to conduct an inquiry. It would be advisable to mandate ICC members to attend an orientation program within a month of appointment to properly understand the nuances of their duty, and a refresher course every subsequent year, which would enable them to imbibe the latest Court orders, rules as well as shared experiences of other organizations.

E. Male Employees to Mandatorily Attend Gender Sensitization Training

The Act mandates that employer must conduct training and awareness programs but often whenever a gender sensitization program is held, male employees avoid them on the ground that it is for women, while the fact is that it is the men who need to be sensitized about acts which amount to unwelcome behavior since they may not be aware of them, having been brought up in patriarchal family setups. It is essential to change the mindset of men to sensitize them about the issues, and they must mandatorily be made to attend

such sessions. It would be a good initiative to include the details of such programs attended as part of their annual appraisal and made a basis for promotion and bonus.

F. Gender Equity Officer

A gender equity officer may be appointed in every workplace in addition to ICC who can act as an intermediary step. The officer can be designated to provide an avenue to women who wish to have an informal redressal rather than approaching the ICC. It is a well-known fact that the moment a sexual harassment complaint is raised a woman starts facing backlash sometimes forcing her to withdraw the complaint or worse faces retribution, like being posted to a faraway office or burdened with additional responsibilities to deflect her from pursuing the case.

When a formal complaint is filed with ICC, often the perpetrator becomes defensive and starts treating it as an ego issue, such a stance can aggravate the matter and instead of deflating the issue, lead to a long, complicated inquiry where it is often the woman who is at the receiving end. An intermediary officer can give an aggrieved woman an opportunity to discuss her ordeal informally and can counsel the delinquent official, or if needed, bring it to the notice of the employer to take suitable action directly without involving the woman, to avoid future harassment. The officer can also be assigned the duty to ensure that all the provisions of the Act are followed.

G. Employer to Be Accountable for his Duties

The Act mandates several duties of the employer, like providing a safe working place, providing assistance to ICC and the aggrieved woman during inquiry, holding training and awareness sessions and ensuring timely completion of inquiries among others, however, there is no mechanism to monitor the same. It would be advisable to have a separate section in the performance appraisal where its compliance on all these parameters are detailed and are taken into consideration for promotion. A provision can also be included to levy a penalty if there is delay or failure in complying with the provisions of the Act so that due adherence is ensured.

H. Extension of Time Limit to File a Complaint

The Act requires a woman to file a complaint within three months of the incident. It must be understood that a woman needs to consider multitude of factors before filing a complaint - loss of job being one of them, which can be a deterrent to women from economically backward class. Further, unmarried women may be hesitant to complain, fearing the impact on their future marriage prospects. It is also established that such harassment leaves women traumatized and due to these reasons women may not garner the courage to complain immediately, hence an amendment to the Act can be introduced, giving at least one year to the woman so that she has time to consider all the factors before registering a complaint.

I. Mandatory Publishing of Penalty

Sexual harassment is an issue which women would naturally be hesitant to rake up especially when they don't have the confidence of getting justice. With a view to promote gender equity, the Act must include a provision where the workplace must notify the facts of any case where the complaint was found to be true along with the penalty imposed on the offender so as to create an atmosphere of trust and confidence among women and a fear of law among potential offenders.

J. Removal of Penalty for False Complaint

As per the Act in case a sexual harassment complaint is found to be false an action can be taken against the complainant. This provision is draconian given the fact that sexual harassment mostly occurs in closed places and witnesses would be hard to come by. Further such harassment plays out within a vortex of power dynamics, implying that the defendant, simply by virtue of his position, would be able to dissuade witnesses as well as threaten the complainant and manage to obtain a clean chit. It is also a fact that sexual harassment is such a demeaning act that most women suffer severe trauma and it can be easy for the accused to prove the allegations of the woman as wrong simply because she may not be able to recall all details correctly or may not be able to speak out the shameful words and acts of the offender in front of the ICC members. Sometimes it is seen that the organization deliberately tries to prove the complaint wrong so as to protect its reputation. Hence, it will be appropriate that this provision is deleted as it deters several genuine complainants from reporting, especially if they are junior employees.

CONCLUSION

Sexual harassment is one of the worst crimes against women, and it is more damaging when it occurs at the workplace. A majority of the women are at the workplace due to economic compulsions and cannot afford to lose their jobs, forcing them to bear this trauma silently. The impact of such harassment is felt not only by the woman but her entire family, and it is compounded when there is no redressal. Such harassment is a violation of human rights and has no place in a civilized society and all endeavors should be made to eradicate the menace. Although concerted efforts have been made to deal with the issue, we are yet to achieve significant success in this regard. Unfortunately, many workplaces prefer to terminate the complainant rather than go through a painstaking inquiry process which can mar the reputation of the organization. It is sadly true that due to the existing societal mindset such complaints are trashed by victim blaming.

India ranks 128 among 177 countries in women's inclusion, justice and security as per Women Peace and Security Index 2023 (ISDM, n.d.) and this abysmal state is reflected at the workplace too. In a patriarchal society like India, men are threatened by women achieving success in the professional field which would make them lose their ability to dominate them. This is one of the reasons for our slow progress in achieving gender equity in the workplace and this mindset needs to be changed.

Society needs to understand that preventing women from entering the workforce would lead to a tardy growth of the economy and if we intend to maximize the national GDP we have to tap into our abundant human capital and that would have to include women. People need to address gender issues without any fear, and on the basis of these discussions, effective laws can be made, which, along with strict implementation, can transform the scenario. It must be remembered that until and unless there is a mindset change, no law or reforms would be effective.

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