

The Legal Odyssey from Vishaka to POSH: Then and Now

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Abstract-- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was significant step to combat the gender-based violence in India. The Act enacted on Supreme Court the guidelines of *Vishaka v. State of Rajasthan*,ⁱ which provides expansive definition of sexual harassment. This Act mandates that there should be two-fold complaint committees for women workers at their workplace ie. Internal Complaint Committee (ICC) and Local Complaint Committee (LCC). ICC is the prerogative of every employer whereas other is of responsibility of each district to establish it for unorganized sector. However, this Act is unilateral in nature as it covers only the women and ignores the other segment of the society like men, LGBTQ+. There is plethora of gaps in its implementation even it has been passed in 2013 one decade ago. In *Aureliano Fernandes v. State of Goa*,ⁱⁱ Supreme Court signifies the need for robust change in POSH legislation. In this paper endeavour has been made to understand the extensive definition of word 'sexual harassment' and its applicability in both organised and unorganized sectors. It also throws light on challenges faced by the women workers, role of judiciary towards POSH Act's implementation along with suggestions and conclusion to plug the loopholes so that object of this benevolent piece of legislation should not be defeated.

Keywords- Workplace, Sexual harassment, Gender justice, Internal Complaint Committee, Local Complaint Committee, Employer, Women worker

I. INTRODUCTION

Protection in the workplace and equality between the sexes are two essential components of a democratic and equitable society. Now a days, in which women are progressively entering a wide variety of professions and making major contributions to the economy, it is of the utmost importance to ensure that they are provided with an environment that is free from discrimination, bias, and harassment. However, violence against women in the workplace continues to be a widespread issue all across the world, and India is not an exception to this widespread problem. Sexual harassment in the workplace is one of the many forms of violence that affects women's rights to dignity, equality, and freedom to work, which in turn perpetuates structural disparities. It is necessary for a woman to be liberated from the social and personal restraints that impede her autonomy in order for her to actually realize her full potential.

Genuine empowerment is achieved when she is free to follow her goals without being subjected to fear, discrimination, or constraints imposed by members of society. However, throughout history, women have had a tough time gaining access to employment opportunities such as the workforce. Ironically, employment, which is supposed to be a source of empowerment, frequently turns out to be a space of oppression, in which women's capacities are restricted as a result of working situations that are hazardous, unfriendly, or are not helpful.

Over the course of several decades, women in India were subjected to harassment and discrimination in the workplace, but they were not afforded any lawful protection. The Vishaka Guidelines,ⁱⁱⁱ which were released by the Supreme Court in 1997, were the first attempt to fill this gap by creating a framework for prevention and redress. These guidelines were issued in 1997. It was necessary to have a more robust legal framework, despite the fact that these recommendations raised awareness and established norms. In order to meet this requirement, the POSH Act of 2013 was passed, which established explicit regulations, procedures, and duties for the purpose of protecting women against harassment in the workplace. It is a reflection of India's aggressive efforts to eliminate workplace harassment and preserve women's rights that this voyage, which began in Vishaka and ended at POSH, has taken place. The legal evolution from Vishaka to POSH represents more than merely a sequence of regulations; it embodies a narrative of empowerment and advancement. This demonstrates how the law may protect women, guarantee that justice is served, and promote dignity in terms of employment. The Vishaka Guidelines, which were issued in 1997, marked the beginning of the justice system's recognition of the freedom of women to work without fear. The Public Health Service Act of 2013 expanded upon this basis, thereby establishing a robust structure that is legally enforceable. In the present day, this voyage serves as a symbol of India's dedication to gender equality and the ongoing efforts to create workplaces that are safe, respectful, and inclusive for women.

II. RATIONALE BEHIND POSH ACT

Prior to legislative changes, the Indian Penal Code, 1860, principally controlled offenses involving sexual aggression against women.

An important turning point was the vicious gang rape of Bhanwari Devi, a Rajasthani social worker who was actively working to stop child weddings, in 1992. Owing to the accused's considerable social influence, the case's registration and prosecution were postponed, and the Trial Court ultimately acquitted them. As a result, Bhanwari Devi launched a Public Interest Litigation under the name Vishaka with the backing of other women's rights organizations. Before the Hon'ble Supreme Court, the petition invoked Articles 14, 15, 19, and 21 of the Indian Constitution, claiming that the incidence constituted a flagrant breach of the rights to equality, equal opportunity, freedom of occupation, and personal liberty. The Hon'ble Supreme Court highlighted the need for comprehensive legislation, acknowledging the lack of a clear legislative framework addressing sexual harassment at work. India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, and the Court noted this as well. The Court used its authority under Article 142^{iv} of the Constitution to establish legally obligatory standards that must be adhered to by all employers while legislative action was pending. Over the years, a number of incidents have brought attention to the shortcomings of depending only on court rulings. The Supreme Court emphasized the necessity for a legal framework in *Medha Kotwal Lele v. Union of India*,^v noting with concern that numerous institutions were not adhering to the Vishaka Guidelines.^{vi} The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was eventually passed by the government as a result of this. The Act enlarged on the Vishaka Guidelines and codified them. It established Internal Complaints Committees (ICCs) for organizations with more than ten employees, Local Complaints Committees (LCCs) for smaller workplaces, and mandated that employers hold awareness and training sessions. It also introduced comprehensive definitions of sexual harassment. For the first time, companies were given a legal duty to maintain safe workplaces, with consequences for noncompliance.

The ruling in *Vishaka v. State of Rajasthan*^{vii} is a notable example of judicial activism as well as a landmark ruling that established the Prevention of Sexual Harassment of Women at Workplace Act, 2013 (POSH Act). However, the legislature took a long time to act on this, and the POSH Act was passed almost ten years after the ruling. After more than a decade of implementation, it is now crucial to assess the POSH Act's efficacy critically to make sure it continues to fulfill its intended purpose and be responsive to changing working conditions.

III. DEFINITION OF SEXUAL HARASSMENT

The POSH Act of 2013 has a definition of sexual harassment that is both comprehensive and all-encompassing, which is one of the most essential aspects of the law. The Act encompasses not just sexual solicitations and physical contact, but also the demand or request for sexual favors, sexually coloured remarks, showing pornography, and any other physical, verbal, or non-verbal action of a sexual nature that is not welcome. Because of this comprehensive scope, it is acknowledged that sexual harassment is not restricted to physical acts but can also take the shape of subtle, verbal, or psychological activities.

In addition, the Act identifies situations that are considered to be sexual harassment. These situations include the following: threats of detrimental treatment or dismissal, the creation of a hostile or intimidating work environment, humiliating conduct that affects a woman's health or safety, and implied or explicit promises of preferential treatment in exchange for sexual favors. The law becomes victim-centered and responsive to the reality of the workplace as a result of this approach.

A comparison of the POSH Act with other laws reveals that it has a more expansive scope than those other statutes. On the other hand, Section 75^{viii} of the Bharatiya Nyaya Sanhita, 2023 criminalizes sexual harassment only in situations where physical contact involves explicit sexual overtures or pornography is shown against the will of a woman. This is in contrast to Section 2(n)^{ix} of the POSH Act, which defines sexual harassment based on unwelcome conduct. Therefore, actions that are considered to be harassment according to the POSH may not always be subject to criminal culpability according to the BNS.

Additionally, in contrast to the POCSO Act,^x which needs sexual intent in a clear and explicit manner, the POSH Act does not place any emphasis on the intent of the perpetrator. The focus is instead placed on the woman's perspective and the experiences she has had. There is a possibility that the behavior constitutes sexual harassment if it is unwelcome and does not respect her dignity. The POSH Act is given a broader and more protective reach as a result of this impact-based approach, which is supported by the Justice J.S. Verma Committee and the Ministry of Women and Child Development.

IV. ROLE OF MENS REA IN POSH ACT

Generally speaking, crime is defined as doing something that is forbidden by law or failing to do something that is required by law. A crime is committed when such an illegal conduct is carried out.

A crime is said to go through four stages in criminal law: intention, preparation, attempt, and achievement. These phases show the physical and mental aspects of an offense. While preparation, effort, and achievement make up the physical aspect, intention makes up the mental element. *Actus reus* is the term for the physical element, and *mens rea* is the term for the mental element. The maxim *actus non facit reum nisi mens sit rea*, which states that an act by itself does not render a person guilty unless it is accompanied by a guilty mind, embodies this idea.

Mens rea is typically a prerequisite for criminal responsibility, and an offense cannot be proven without it. However, this idea is weakened by the POSH Act of 2013, which does not take the offender's intent into account. Under POSH, sexual harassment is defined as an exception to the normal rules of criminal law. Similar deviations from *mens rea* can be observed in several other offenses, such as crimes against the State, dowry deaths, and vicarious liability instances, when the act's nature adequately establishes guilt.

However, because workplace power dynamics—which are frequently dominated by men—make it challenging for resentful women to demonstrate the perpetrator's mental state, sexual harassment cannot always be evaluated only on the basis of intent. In order to address this issue, the POSH Act moves the emphasis from purpose to impact. In criminal law, the prosecution has the burden of proving both the guilty conduct and the guilty intent, and the accused is typically deemed innocent. The burden of proof only passes to the accused under extraordinary circumstances.

This unusual approach is taken by the POSH framework, which emphasizes the woman's experience over the respondent's intention and assumes harm based on unwanted behavior. Therefore, it is intentional to exclude *mens rea* in order to provide women in the workplace with real redress and effective protection.

V. DETERMINATION OF QUANTUM OF PENALTY

Since the POSH Act does not require proof of *mens rea* for sexual harassment, it is crucial to consider the implications of leaving intent out of its structure. *Mens rea* is a key factor in criminal law that determines the seriousness of an offense and the degree of criminal responsibility. According to the principle of proportionality,^{xi} punishment must be commensurate with the level of culpability, which is determined by the gravity of the offense's mental and physical components. An offense can be elevated from a minor to a serious one by the existence of motive, which is the underlying cause that shows the type of intention. As a result, *mens rea* plays a crucial role in establishing the proper severity of punishment.^{xii}

The evaluation of sexual harassment is governed by specific evaluative tests that assist in determining the degree of the violation in order to remedy the lack of *mens rea* under the POSH regime. In order to determine the seriousness of the offense and apply appropriate punishments, below-mentioned test to be followed:

Table 1.1
Showing Tests to Determine Penalty under Posh Act, 2013

Tests to Determine Penalty under POSH

Reasonable Person Test

Quid Pro Quo Test

Test of Modesty and Decency

1. Reasonable Person Test

The purpose of the Reasonable Person Test is to determine whether or not a reasonable person would have the same sentiments toward the behavior as the complaint, namely that it is unwelcome or harassing. **Joseph Oncale v. Sundowner Offshore Services**^{xiii} was cited as the precedent in the case of **U.S. Verma, Principal, D.P.S. v. National Commission for Women**, which resulted in the acceptance of this test. It was highlighted by the court that the evaluation must be conducted from the point of view of the victim, admitting that behavior that is frequently regarded as harmless by men may be quite inappropriate for women.^{xiv}

2. Quid Pro Quo Test

Through the use of the Quid Pro Quo Test, it is determined whether or not the harassment involved an explicit or implicit connection between sexual favors and employment-related rewards or obligations. Under the circumstances of the case **Ruchika Kedia v. Internal Complaints Committee**,^{xv} Goa Institute of Management, the court emphasized the significance of recognizing quid pro quo harassment as a means of preventing abuses of power from evading scrutiny.

3. Test of Modesty and Decency

Given that the Supreme Court established the Test of Modesty and Decency in the case of **Tarkeshwar Sahu v. State of Bihar**^{xvi} and reiterated it in the case of **State of Punjab v. Major Singh**,^{xvii} it is necessary for the behavior to be such that it shocks the sense of decency that a woman possesses and, as a result, constitutes an affront to her dignity.

With regard to the POSH Act, it is essential to take note of the fact that the definition of sexual harassment largely functions within the sphere of service and disciplinary regulations of an institution. It is necessary to provide evidence of mens rea in order to comply with the definition of criminal culpability that is outlined in the Bharatiya Nyaya Sanhita. The Madras High Court, in the case of **HCL Technologies Ltd. v. X**,^{xviii} underlined this distinction by elaborating on the fact that criminal prosecution requires the establishment of purpose, in contrast to proceedings that are conducted within the POSH framework.

VI. INTERNATIONAL TRENDS

Sexual harassment at work is a worldwide issue that has garnered significant international attention and legal action in recent decades, making it more than just an issue in India. Sexual harassment in the workplace is becoming more widely acknowledged worldwide as a breach of equality, human dignity, and labour rights rather than just a case of individual wrongdoing. Numerous nations have enacted extensive legal systems that give victims efficient redress and clearly define the duties of employers. India is one of the few countries with a specific law that addresses sexual harassment in the workplace. The World Bank, the International Labour Organization (ILO), and UN Women have reported that while about 50 nations currently lack full protections, about 140 countries have implemented comparable legislative frameworks. But the POSH Act still focuses a lot on individual complaints and falls short in addressing structural prejudice that occurs in workplaces. In order to combat ingrained power disparities and organizational prejudices, the POSH Act lacks external oversight measures. International best practices show that independent monitoring organizations greatly improve the trust in grievance redressal systems and minimize conflicts of interest.

In Canada and Sweden, on the other hand, take a more comprehensive and wide-ranging viewpoint. Incorporating workplace harassment into its Occupational Health and Safety framework, Canada addresses gender discrimination, bullying, and sexual harassment.

Preventative interventions, compliance checks, and training are legally required of employers. In contrast, Sweden places a strong emphasis on responsibility and openness by mandating that organizations disclose instances of harassment to outside authorities. Additionally, it gives priority to victim rehabilitation through psychological support and counseling, which creates a more secure and encouraging reporting environment.

Title VII of the Civil Rights Act of 1964, which forbids discrimination on the basis of sex in the United States, has been interpreted by courts to cover sexual harassment, including hostile workplace harassment and quid pro quo harassment. Employers are required by the courts to stop and correct such behavior. In a similar vein, the Equality Act, 2010 of the United Kingdom specifically forbids sex-related harassment and requires employers to take reasonable measures to prevent harassment in the workplace; otherwise, they risk legal repercussions.

International labour and human rights organizations have been instrumental in forming global norms, going beyond national laws. The significance of safe working conditions, equality, and workplace dignity has long been emphasized by the International Labour Organization (ILO).^{xix} Every person's right to a workplace free from sexual and gender-based harassment, as well as other forms of violence, is explicitly recognized by this convention. It takes a wide approach to defining the "world of work," encompassing both formal and informal employment, public and private venues, and travel and communications relevant to the workplace.

The Convention assigns employers the duty to put in place victim-centered remedies, complaint procedures, and preventive measures in addition to States' need to pass and enforce suitable legislation. These international developments demonstrate a growing worldwide consensus that strong legal frameworks, institutional accountability, and a shift towards preventive and rights-based approaches are necessary to address sexual harassment at work. These values have had a significant impact on domestic legislation, such as India's POSH Act, 2013.

VII. ROLE OF JUDICIARY

The judicial system serves as the protector of women's rights in the workplace, bridging the gap between the law and actual practice. The fact that it played a part in the formation of POSH jurisprudence highlights the transformational power of judicial activism in the fight against sexual harassment and the promotion of a culture that prioritizes safety, equality, and dignity in the workplace.



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The judiciary's revolutionary role commenced with the landmark ruling in **Vishaka v. State of Rajasthan**,^{xx} wherein the Supreme Court acknowledged sexual harassment as a manifestation of gender-based discrimination and a breach of fundamental rights. The Court used international commitments under CEDAW to make the Vishaka Guidelines, which were law under Article 141 until the right laws were passed. This ruling changed the way people thought about sexual harassment, going from seeing it as a private problem to seeing it as a public law wrong that institutions need to be held accountable for.

According to these guidelines,^{xxi} the complaints committee would be acknowledged as an inquiry authority under the Central Civil Services (Conduct) Rules, 1964. According to the CCS regulations, the report produced by the complaints committee will therefore be regarded as an inquiry report. The disciplinary authority will then act in accordance with the set regulations based on the report. Further, this was upheld in **Medha Kotwal Lele & Ors. v. Union of India & Ors.**,^{xxii} where the Court also highlighted the inadequacies in the implementation of the Vishaka Guidelines and directed the central and state governments to ensure compliance. The Court also emphasized how important it is for companies to quickly set up complaint panels.

A single judge bench led by Justice Sanjay Dwivedi of the Madhya Pradesh High Court ruled in a writ petition challenging the dismissal of an Assistant Professor at **Maulana Azad National Institute of Technology (NIT), Bhopal**,^{xxiii} due to student allegations of sexual harassment that the internal investigation was procedurally defective and violated natural justice. The court consequently revoked the professor's suspension orders and other disciplinary actions. In **Punjab and Sind Bank and Others v. Durgesh Kuwar**,^{xxiv} the Supreme Court of India by a bench composed of Justices Chandrachud and Rastogi dismissed civil appeal.^{xxv}

The court confirmed that, a woman's fundamental rights to equality and dignity are violated when she is sexually harassed at work. The Supreme Court underlined in the case of **Dr. Punita K. Sodhi v. Union of India**^{xxvi} the importance of carefully considering the viewpoints of both men and women in such situations. From a woman's perspective, remarks that a guy might consider inoffensive could be considered improper or obscene.

However, the Supreme Court highlighted several flaws in the POSH Act's implementation in a historic ruling in **Aureliano Fernandes v. State of Goa and Others**.^{xxvii} In this case, the Court has issued a number of directions directing State and non-State organizations, including private hospitals, nursing homes, and educational institutions, to strictly enforce the POSH Act. Maintaining the best interests of all working women and achieving the admirable goal for which the POSH Act was passed depend on this enforcement. In **Vidya Akhavé (the "Petitioner") v. Union of India and Others**,^{xxviii} the Bombay High Court decided not to get involved in the disciplinary action the Internal Complaints Committee was taking in relation to a sexual harassment complaint unless and until ruling unduly inconsistent. In **Saurabh Kumar Mallick v. Comptroller & Auditor General of India**,^{xxix} the respondent argued that sexual harassment claims were unfounded because the wrongdoing had place at an official mess rather than a place of employment. The Delhi High Court upheld the official mess's status as a workplace, ruling that this argument was erroneous. In **UNS Women Legal Association (Regd) v. Bar Council of India & Ors., Bombay High Court**^{xxx} ruled that Bar Councils are not employers of Advocates. As there is no employee- employer relationship between them. Hence, the POSH Act's requirement to form ICCs does not apply to them. Complaints involving Advocates should be handed via the Disciplinary Committee under section 35 of the Advocates Act.

Table 1.2
 Look at the Glance of Role of Judiciary

S. No	Name of Case	Court	Key Issues	Legal Principle
1	<i>Vishaka v. State of Rajasthan (1997)</i>	SC	Absence of law on workplace sexual harassment	Complaints Committee recognized as an inquiry authority under CCS (Conduct) Rules, 1964; its report to be treated as an inquiry report for disciplinary action
2	<i>Medha Kotwal Lele & Ors. v. Union of India & Ors. (2004)</i>	SC	Poor implementation of Vishaka Guidelines	Reaffirmed binding nature of Vishaka Guidelines; directed Central & State Governments to ensure strict compliance and prompt constitution of complaints committees
3	<i>Assistant Professor v. MANIT, Bhopal</i>	Madhya Pradesh HC	Procedural irregularities in internal inquiry	Inquiry violated principles of natural justice; suspension and disciplinary actions quashed
4	<i>Punjab & Sind Bank & Ors. v. Durgesh Kuwar (2020)</i>	SC	Sexual harassment at workplace	Sexual harassment violates fundamental rights under Articles 14 and 21 (equality and dignity)
5	<i>Dr. Punita K. Sodhi v. Union of India (2009)</i>	SC	Perspective in harassment cases	Conduct must be judged from a woman's viewpoint; what appears harmless to men may be inappropriate to women
6	<i>Aureliano Fernandes v. State of Goa & Ors.</i>	SC	Non-implementation of POSH Act	Highlighted systemic failures; issued binding directions to State and non-State entities for strict POSH enforcement
7	<i>Vidya Akhav v. Union of India & Ors. (2016)</i>	Bombay High Court	Judicial review of ICC decisions	Courts will not interfere with ICC disciplinary action unless punishment is shockingly disproportionate
8	<i>Saurabh Kumar Mallick v. CAG of India (2008)</i>	Delhi High Court	Definition of "workplace"	Official mess qualifies as a workplace; harassment need not occur in office premises only
9	<i>Anjali Kumari v. Yamuna Kumar Chauhan & Ors. (2023)</i>	Calcutta High Court	Conflict of interest	Respondent cannot evaluate complainant's performance; ICC empowered under Rule 8(a), POSH Rules
10	<i>P. v. Union of India & Ors. (2023)</i>	Delhi High Court	Delay in disposal of complaint	Institution held accountable; ₹1 lakh penalty imposed; emphasized seriousness and timely resolution
11	<i>CA Nitesh Parashar v. ICAI & Ors. (2023)</i>	Delhi High Court	Delay beyond 90 days in inquiry	Inquiry not vitiated merely due to delay under Section 11(4), POSH Act
12	<i>Ashok Kumar Singh v. University of Delhi (2017)</i>	Delhi High Court	ICC report requirements	ICC must record clear findings on guilt under Section 13(3); respondent must get opportunity to defend
13	<i>Johny Reberio v. Union of India & Ors. (2022)</i>	Delhi High Court	Legal representation before ICC	No lawyer or next friend allowed; Rule 7(6), POSH Rules ensures fairness to complainant
14	<i>DB Corp Ltd. v. Shailja Naqvi & Ors. (2022)</i>	Delhi High Court	Delay in filing appeal	Delay can be condoned; Section 5 of Limitation Act applies to appeals under Section 18, POSH Act
15	<i>Sushma Alaguvadival v. Union of India & Ors. (2021)</i>	Madras High Court	Administrative responsibility	Authorities must ensure expeditious disposal of sexual harassment complaints

VIII. GAPS UNDER POSH ACT

The Prevention of Sexual Harassment of Women at Workplace Act, 2013 (POSH Act) is a progressive piece of law, but its successful implementation still faces a number of procedural and structural obstacles. The Hon'ble Supreme Court highlighted significant flaws in Local Committees' (LCs') operations in **Aureliano Fernandes v. State of Goa**.^{xxxi} The Court underlined that in order to provide accessibility and prompt redress, especially for women employed in the unorganized and informal sectors, LCs must be more decentralized. The underutilization of the SHEBOX portal was also brought up by the bench made up of Justices B.V. Nagarathna and N.K. Singh, who emphasized that technological mechanisms must be efficiently utilized to enable timely complaint registration. The Court emphasized the pervasive non-compliance with the mandate to establish Internal Complaints Committees (ICCs) as a concerning issue. 16 out of 30 national sports federations have failed to create any ICCs at all, according to a study that was referenced throughout the proceedings. Undermining the legitimacy and impartiality of the redressal mechanism, many ICCs, even those that had been established, lacked the required number of members or did not contain the required external member.^{xxxii}

The unclear wording of some of the POSH Act's clauses is another serious problem. In its definition of "respondent," Section 2(m) does not mention gender; rather, it refers to an individual against whom a complaint has been lodged. Despite the Act's explicit recognition of only women as complainants, there is interpretive ambiguity due to the unclear respondent's gender, particularly in contrast to the Bharatiya Nyaya Sanhita (BNS), which expressly uses a gender-specific definition of sexual offenses. Similar to this, Section 2(n) of the POSH definition of sexual harassment does not specify the gender of the offender, which has resulted in differing interpretations.

It has also remained controversial to determine compensation under Section 15 of the Act. Sexual harassment is a violation of mental integrity and dignity as well as a pecuniary harm. Victims may experience trauma that cannot be sufficiently addressed by monetary compensation alone. A strictly compensatory strategy could not be as meaningful as other types of financial and psychological help, such as counseling and rehabilitation assistance. The decisions of ICCs are still recommended, even if they have investigative authority similar to that of a civil court.

Conflicts of interest frequently arise because the employer is ultimately responsible for putting these recommendations into practice. Moreover, the maximum penalty for violating the Act is ₹50,000, which is essentially nothing for big businesses. This lax enforcement system leads to little deterrence and little accountability.

The Act's limited gender scope—it solely protects women and excludes male employees—is one of its main drawbacks. The Act's lack of explicit statutory protection leaves men and other vulnerable groups without clear remedy, despite the fact that courts have occasionally given it a broad interpretation. The omission of third-gender and LGBTQIA+ individuals is also a notable disparity that goes against the equality and non-discrimination clauses of the constitution. The POSH framework does not explicitly provide legal protection for marginalized gender identities.

Due to the growing prevalence of remote and virtual jobs, the Act also confronts difficulties. POSH, which was implemented before the emergence of work-from-home models, does not explicitly handle inappropriate messaging, virtual meetings, cyber harassment, or other types of online misconduct. Employees, especially women, are at risk in digital workplaces due to the absence of clear norms. Furthermore, the three-month deadline for complaints, which might be extended to six months, frequently turns out to be unworkable. Strict timelines might deter sincere complaints or result in rushed investigations, and victims may put off reporting because of trauma, fear, or pressure from their jobs.

Inaccessibility for workers in the unorganized sector, which makes up a sizable portion of the labor force, is another issue. Lack of understanding keeps women from seeking remedies, and local committees meant to support these workers are frequently underfunded and inadequately trained. The Act's provisions regarding investigation and decision-making are unclear. It is unclear if a majority or unanimity is needed for ICC decisions, and the caliber of investigations is impacted by committee members' lack of legal expertise. If victims are unhappy with the ICC's conclusions, they frequently lack clarity about their options for remedies. Underreporting is still a major issue, too. Low reporting rates are caused by fears of reprisals, pressures from higher-ups, a lack of secrecy, and a lack of knowledge of ICCs. These factors replicate obstacles seen in the criminal justice system.

Table 1.3
STRENGTH v. WEAKNESS OF POSH ACT

S. No	Strength	Weakness
1	Provides the first comprehensive statutory framework to address workplace sexual harassment in India	Poor implementation due to lack of monitoring and enforcement mechanisms
2	Rooted in constitutional guarantees under Articles 14, 15, and 21	Excessive reliance on employers' sincerity , leading to conflict of interest
3	Covers both public and private sectors , including NGOs and educational institutions	Internal Committees (ICs) often lack independence and neutrality
4	Broad definition of " workplace ", including off-site locations and virtual spaces	Unorganised and informal sector women remain inadequately protected
5	Defines sexual harassment in a wide and inclusive manner , including non-physical acts	Limited awareness among employees, especially in rural areas
6	Mandates constitution of Internal Committees and Local Committees	Local Committees (LCs) remain largely non-functional in many districts
7	Ensures confidentiality of complainant and inquiry proceedings	Confidentiality sometimes misused to suppress transparency and accountability
8	Prescribes time-bound inquiry and complaint redressal process	Delays in inquiries due to administrative inefficiency
9	Allows conciliation at the request of the complainant , promoting autonomy	Risk of coercive conciliation in power-imbalanced workplaces
10	Recognises sexual harassment as misconduct , enabling disciplinary action	No uniform punishment framework , leading to inconsistent penalties
11	Employer's failure to comply attracts monetary penalties	Penalties are rarely imposed and lack deterrent impact
12	Incorporates preventive duties such as awareness and training programs	Preventive provisions are largely symbolic in practice
13	Protects complainant against victimisation and retaliation	Retaliation safeguards are weakly enforced
14	Judicial backing through landmark cases like Vishaka and Aureliano Fernandes	Over-dependence on judicial intervention due to executive apathy
15	Aligns domestic law with international conventions (CEDAW)	Does not explicitly cover male or LGBTQ+ victims
16	Enables online complaint mechanism through SHe-Box	Digital mechanisms under-utilised and poorly publicised

IX. HOW TO PLUG THE LOOPHOLES?

A number of adjustments are required to increase the POSH framework's efficacy. First, workers in the informal sector, such as domestic helpers, agricultural labourer's, gig workers, and daily wage earners, must be included in the Act's scope. These populations are still quite vulnerable, yet they are not given any institutional protection. Local committees need to be strengthened through regular audits, sufficient budget, and improved training. Reporting can be encouraged without fear of reprisal by streamlining complaint processes, such as permitting anonymous complaints and implementing whistleblower protections.

It should be required that employees participate in regular awareness workshops to learn about their rights and how ICCs and LCCs operate. The Act must take an intersectional approach by addressing the particular difficulties that marginalized groups—such as women from caste-oppressed communities and LGBTQ+ people—face. Fairness and credibility must be ensured by ICC members receiving mandatory and ongoing training that emphasizes empathy, confidentiality, and objective inquiry. Due to the growing popularity of remote work, the term "workplace" needs to be interpreted to include digital communication, virtual locations, and work-from-home arrangements.

Cyberstalking, offensive emails, and online abuse are examples of digital wrongdoing that should be specifically included in the definition of sexual harassment.

Retaliation against complainants must be met with severe penalties, and penalties for non-compliance should be further increased, particularly for large enterprises. Survivors' financial and emotional burdens might be lessened by establishing victim support networks, legal aid, and counselling services. Increased accountability and transparency can be achieved through the implementation of public compliance databases, anonymised data release, and third-party audits. The establishment of a centralized regulatory body is necessary to oversee consistent application of the Act and resolve procedural violations.

X. CONCLUDING REMARKS

The foregoing discussion leads to conclude that the POSH Act is a significant step forward in India's efforts to make workplaces safer for women. However, lack of institutional accountability, unclear legislation, and ineffective enforcement strategies continue to limit its revolutionary potential. Since the Act is a social welfare law, preventive and internal restitution are given more weight than punishment. In contrast to punitive regulations like the POCSO Act, POSH does not advise incarceration, which is consistent with its goal of using ICCs and LCCs to settle disputes within institutional frameworks.

However, the Bharatiya Nyaya Sanhita's penal law becomes crucial when internal systems break down or when the seriousness of the crime necessitates criminal prosecution. Sensitization and awareness are still essential for enabling women to report harassment fearlessly. A workplace that does not uphold safety and dignity has a negative impact on both personal and professional well-being.

Hence, the Honorable Supreme Court correctly noted that it is an insult to women's dignity to deny them control over their bodies and lives. Organizational responsibility, cultural change, and ongoing legislative reform are necessary to fully achieve the goals of the POSH Act. India can go closer to establishing workplaces where women feel safe, respected, and empowered by incorporating international best practices and filling in current gaps. This will build a stronger basis for a society that is just and equal.

To sum up, the POSH Act of 2013 is a noteworthy piece of social welfare legislation, but its effects are lessened by structural, procedural, and inclusion flaws. Reforms must concentrate on combating digital harassment, enhancing committee competency, improving enforcement, extending coverage to all genders, and putting victim-centric procedures into place if they are to genuinely guarantee safe and respectable workplaces. For the Act to fulfill its intended goal of shielding workers from sexual harassment in all job environments, inclusive and responsible implementation is crucial.

ⁱ 1997 (6) SCC 241

ⁱⁱ 2024 LiveLaw (SC) 959

ⁱⁱⁱ *Supra* note 1 at 253

^{iv} 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

^v AIRONLINE 2012 SC 632

^{vi} *Supra* note 3

^{vii} *Supra* note 1

^{viii} Sec 75. (1) A man committing any of the following acts:—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

^{ix} 2(n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

^x Sec 11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,— (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact

^{xi} Ruli Ram and Ann v. State of Haryana, AIR 2002 SC 3360

^{xii} Hardest Singh Sobal v. State of Punjab, (2004) Cr LJ 4637 (SC)

^{xiii} 523 U.S. 75 (1998)

^{xiv} U.S. Verma, Principal, D.P.S v. National Commission for Women & Ors., W.P. (C) No. 1733/2001

^{xv} W.P. No. 690 of 2019

^{xvi} (2006) 8 SCC 560

^{xvii} AIR 1967 SC 63

^{xviii} W.P. (C) No. 5643 of 2020 Judgement pronounced on 22 Jan., 2025

^{xix} See, The ratification of the Violence and Harassment Convention, 2019 (No. 190) and its companion Recommendation No. 206 represents a major advancement in this area.

^{xx} *Supra* note 1

^{xxi} *Supra* note 1 at 253

^{xxii} WP(C) No. 173 177 of 1999

^{xxiii}

https://www.scconline.com/blog/post/2024/11/21/internal-complaints-settle-sexual-harassment-case-before-starting-inquiry-mp-hc-scc-times/?utm_source=chatgpt.com

^{xxiv} dismissed on February 25, 2020

^{xxv} Civil Appeal No. 1809/2020

^{xxvi} (W.P. (C) 367/2009 & CMS 828, 11426/2009)

^{xxvii} *Supra* note 2

^{xxviii} Writ Petition No. 796 of 2015, decided around October 4, 2016

^{xxix} MANU/DE/0956/2008

^{xxx} 2025 SCC OnLine Bom 2647, decided on 7-7-2025

^{xxxi} *Supra* note 2

^{xxxii} Gursimran Kaur Bakshi, LiveLaw, “Supreme Court issues directions for Effective implementation of POSH Act”, Live Law, (Dec 03, 2024)