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## UNMASKING SILENCE: A LEGAL CRITIQUE OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (POSH) ACT, 2013

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### INTRODUCTION

The new Indian workplace, from the tech corridors to the courtroom hallways, usually masks its gendered power structure in professionalism. For most women, the specter of sexual harassment is not only a threat — it's business as usual. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) was enacted as a legislative response to this structural issue. But is the law sufficient? Or is it a legal band-aid on an underlying cultural injury?

### THE GENESIS OF THE POSH ACT: FROM BHANWARI DEVI TO PARLIAMENT

The genesis of the POSH Act lies in *Vishaka v. State of Rajasthan*, a pioneering Supreme Court ruling which translated outrage into law<sup>1</sup>. It followed the horrific gang rape of Bhanwari Devi, a grassroots activist penalized for foiling child marriage in rural Rajasthan. When the criminal law failed her, the Supreme Court completed the lacuna in the law by issuing the Vishaka Guidelines, applying international law (CEDAW) as binding under Article 51(c) of the Constitution. But India waited more than 16 years to pass an independent act. It took the Nirbhaya movement in 2012 to spur Parliament into legislation, leading to the POSH Act in 2013<sup>2</sup>.

### INSIDE THE POSH ACT: STRUCTURE, SCOPE & PROCESS

The Act is founded on three legs: prevention, prohibition, and redressal. It enunciates sexual harassment broadly — encompassing physical contact, sexually colored comments, display of pornography, and any other unwelcome behavior, verbal or non-verbal.<sup>3</sup>

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1 *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 SCC 241 (India).

2 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14, Acts of Parliament, 2013 (India).

3 *Id.* § 2(n).

## **MAIN PROVISIONS:**

- Internal Complaints Committees (ICCs): Compulsory in all workplaces employing 10+ employees (§4)
- Local Complaints Committees (LCCs): For unorganized sectors and small units (§6)
- Timely redressal: Complaint → Inquiry → Report within 90 days
- Penalties for employers: Default can draw penalties up to ₹50,000 and license revocation<sup>4</sup>

The Act is civil and permits conciliation but not penal prosecution unless under IPC provisions.

## **BEYOND PAPER: THE HARSH REALITY OF ENFORCEMENT**

Even with a strong legal framework, enforcement remains severely flawed.

### **Shocking Statistics:**

- 70% of women never make complaints of workplace harassment because they fear they will be retaliated against or disbelieved.<sup>5</sup>
- In a 2022 Ministry of Women and Child Development audit, more than 35% of private sector firms had failed to form ICCs.<sup>6</sup>
- She-Box platform has seen more than 1,200 complaints, primarily from IT, education, and health sectors, but hundreds of them still hang in the air.<sup>7</sup>
- In a 2023 LocalCircles survey, 82% of women respondents in tier-2 and tier-3 cities had no idea about their POSH rights.<sup>8</sup>

India's POSH Act is progressive in terms of definitional reach, but not independent in redress. In contrast to the US's EEOC or the Employment Tribunals in the UK, India outsources justice to ICCs — institutions commonly filled by the same employers who are accused.

## **WHEN THE JUDICIARY SPEAKS: KEY CASES**

### **1. Vishaka v. State of Rajasthan (1997)**

Pioneering recognition that sexual harassment is against basic rights under Articles 14, 15, and 21. It compelled all employers to create redressal mechanisms.

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4 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, §§ 13-16No. 14, Acts of Parliament, 2013 (India).

5 Indian Bar Ass'n, Survey on Sexual Harassment in Indian Workplaces (2017), <https://indianbarassociation.org/2017survey>.

6 Ministry of Women & Child Dev., Annual POSH Compliance Report (2022), <https://wcd.nic.in>.

7 Ministry of Women & Child Dev., She-Box Portal, <https://www.shebox.nic.in> (last visited July 12, 2025).

8 LocalCircles, POSH Awareness Survey (2023), <https://localcircles.com>.

## **2. Medha Kotwal Lele v. Union of India (2013)**

SC disciplined states and institutions for not following Vishaka guidelines, commenting that guidelines alone were not enough.<sup>9</sup>

## **3. T. Shobha v. State of Karnataka (2017)**

Revealed procedural bias within ICCs. The High Court also stressed that inquiry committees need to be independent, trained, and conflict-free.<sup>10</sup>

## **4. State v. Tarun Tejpal**

VIP criminal case against Tehelka's erstwhile editor-in-chief. ICC's tardy constitution and acrimonious internal dynamics revealed how power structures can undermine redressal.<sup>11</sup>

### **GROUND REALITY: A VIGNETTE FROM THE TECH SECTOR**

Riya, who was 27 and a junior engineer in a fintech startup in Bangalore, was bombarded with obscene jokes night after night on calls by a senior manager. When she registered a complaint, ICC was constituted the following week, with his mentor as Presiding Officer. Her complaint was brushed off as "lack of evidence." Riya quit soon. The ICC stayed on.

"This is not an outlier. It's a symptom.

### **RETHINKING THE FRAMEWORK: WHAT NEEDS REFORM?**

#### **1. External Supervision**

Establish a National POSH Commission within the National Commission for Women (NCW) to conduct audits of ICCs.

#### **2. Gender Neutral Legislation**

The Act is only protective of women. Changes are required to make it cover men, trans persons, and non-binary individuals, without losing sight of the gendered dynamic of harassment.

#### **3. POSH Tribunals**

Set up independent quasi-judicial POSH Tribunals to decide appeals and look into ICC conclusions.

#### **4. Annual Public Reporting**

Similar to CSR reports, companies must release POSH compliance audits, complaint statistics, and training statistics.

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9 Medha Kotwal Lele & Ors. v. Union of India & Ors., (2013) 1 S.C.C. 297 (India).

10 T. Shobha v. State of Karnataka, W.P. No. 30221/2017, (Karnataka HC, India).

11 State v. Tarun Tejpal, Sessions Case No. 22/2014, (District & Sessions Court, Goa, India).

### **FUTURE-READY: POSH MEETS LEGALTECH**

Redress will have a future in tech-enabled justice. Some of the tools that will help are:

- Blockchain records to maintain complaint secrecy
- AI-based chatbots for anonymous complaint submission
- E-learning modules with inbuilt quizzes for true awareness
- A national POSH app with real-time complaint tracking

Digital transformation can't just be a buzzword — it needs to become the new gateway to justice.

### **CONCLUSION: LAW IS THE BEGINNING, NOT THE RESOLUTION**

"A woman's dignity is not defended by silence, but by mechanisms that listen, act, and transform."

POSH Act was a milestone, but not the destination. Gaps in enforcement, internal prejudices, and organizational indolence still water down its promise. As law students, advocates, HR professionals, and citizens, we need to drive towards a world where workplace safety isn't a privilege — it's policy, it's culture, and it's non-negotiable.