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## GENDER, POWER, AND THE WORKPLACE : A CRITICAL ANALYSIS OF SEXUAL HARASSMENT LAW UNDER THE POSH ACT, 2013

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### ABSTRACT

Sexual harassment at the workplace is fundamentally a structural problem of gender power hierarchies that had long determined the organization of labor in India. The most significant legislative response by India to sexual harassment has been the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*; known colloquially and legally as the POSH Act. Arising from two decades of judicial pronouncements after the famous Vishaka v. State of Rajasthan ruling, the POSH Act seeks to provide mechanisms of prevention, complaint and redressal of sexual harassment. However, a decade into the POSH Act's implementation, institutional data, empirical researches, and case reports suggest profound systemic cracks in its implementation, such as, stifling of complaints, functioning or non-functioning ICs, marginalization of informal sector workers and pervasive power imbalances during the processes of complaint and dispute resolution. The present paper undertakes a holistic examination of the POSH Act through the intersecting perspectives of gender theory, power politics and legal realism, following its legal lineage from Vishaka to the statute, assessing the functioning of the Act and its architecture and suggesting ways in which law, policy and workplace culture can be reformed.

### INTRODUCTION & PROBLEM STATEMENT

The Indian workplace has long been a site of gendered contests. Formal inclusion of women into the workforce—from IT, to domestic work, to banking to agriculture—has not dismantled the

hierarchies into which women were introduced, but rather modified them through practices of coercion, exclusion, and sexual harassment rooted in both gender and positionality.

Sexual harassment at the workplace does more than immediate harm to its direct victim: it communicates to all women that they belong in the organization at the whim of those above them. It manufactures conformity and quiet exits; and through the disregard, the denial, and the trivialization of the experiences of women, it promulgates a regime in which the law is an assertion on paper, but absent in spirit. The POSH Act, 2013 aimed to break this pattern. Passed after over 15 years of Supreme Court directions under Vishaka operating as effective law, it mandates formal institutions within all covered workplaces, defines broadly proscribed behavior, and places affirmative duties on the employer. On paper, the legislation is ambitious.

However, by 2024, a frank assessment is needed. Data from the Ministry of Women and Child Development, civil society organizations like the Internet Freedom Foundation, iCall, and TISS have all confirmed that the majority of women who endure sexual harassment at the workplace do not even file a formal complaint-with a 2021 LocalCircles survey suggesting that 71% of victims did not. When complaints do proceed, ICCs are frequently convened without training, at the convenience of the respondent, and infused with the same systemic complicity as workplaces generally. At most small and medium enterprises, a formal ICC simply does not exist, a direct violation of the statute.

## **LITERATURE REVIEW**

The Indian academic literature on workplace sexual harassment draws from three main streams: feminist legal theory, socio-empirical workplace studies, and doctrinal legal analysis. The realm of feminist legal theory begins with Catharine MacKinnon's path-breaking work *Sexual Harassment of Working Women (1979)*, which established sexual harassment not as isolated individual conduct but as a practice of sex discrimination. This conceptualization- that harassment is a mechanism through which gender-based subordination is perpetuated- has strongly influenced the Indian literature on sexual harassment. One of the key feminist legal scholars in India, Flavia Agnes, used this structural lens when analyzing sexual harassment law in India and articulated that a legal response to workplace harassment can not be divorced from the broader patriarchal structuring of the workplace. In this context Raewyn Connell's concept of

"hegemonic masculinity" – the dominant configuration of masculine practice which secures male domination of women - provides a sociological vocabulary to understand why sexual harassment occurs as a systematic feature rather than as the result of aberrational conduct. The importance of intersectionality – Kimberl Crenshaw's term to denote how gender does not exist in a vacuum but rather interacts with caste, class, disability and religion to compound vulnerabilities which may not be recognized within the confines of purely gender based law- is also recognized in the literature on sexual harassment in India. In the area of socio-empirical workplace studies, researches conducted by the *Tata Institute of Social Sciences, International Center for Research on Women (ICRW)* and Society of Human Resource Management India have highlighted the disparity between compliance with law and redressal mechanisms. A landmark early study on this topic-the 2002 ICRW report, *Private Concerns, Public Interests*-remains an exhaustive empirical description of sexual harassment at the workplace in India, showing how organisational culture, threat of reprisal and financial dependency all contribute to an environment where employees refrain from reporting such harassment. Twenty years on, new research by iCall (2021) indicates that these dynamics have changed little since. In terms of doctrinal legal scholarship on the issue of sexual harassment at the workplace in India, the discussion has largely revolved around two intersecting axes: structural inadequacies of the POSH Act and a gap between the spirit of the Act and the reality of its implementation. The legislative history of the POSH Act, tracing it back to Vishaka, up to the 2013 legislation, has been extensively documented by Naina Kapur. In addition, several authors such as Saumya Uma have also examined specific provisions, such as the ICC mechanism and the Section 14 "false complaint" provision, and have highlighted how such provisions subvert the process of grievance redressal. An area that has been particularly under-explored is the application of the POSH Act to the gig economy; the rise of platform work in India has been significant since 2015 and the scope of the POSH Act in relation to workers hired on aggregator platforms- employment relations that are meticulously crafted to limit liability for the employer-remains a comparatively terra incognita, one of the few discussions of which is contained in a 2023 article by Anamika Bhatt in the Indian Journal of Law and Technology.

## **CONCEPTUAL FRAMEWORK: GENDER, POWER & HARASSMENT**

### **Gender as a Social Structure**

In contemporary sociological and legal theory, gender is not seen as biological, but as a structure as practices, norms and institutions through which resources, opportunities, rights and recognition are distributed on the basis of socially attributed sex-differences. The notion of hegemonic masculinity as articulated by Raewyn Connell is one productive example: it is the dominant pattern of masculine behavior which is carried out by relatively few men, yet which reinforces the entitlement of all men to have power over all women and non-dominant men. At work this becomes practices such as accepted informal understandings about what kind of man should be in charge, whose discomfort matters, what constitutes "normal" social interaction.

Catharine MacKinnon's work, which underpinned the legal development of the doctrine of sexual harassment in the U.S and indirectly in India, proposed that sexual harassment is not a question of individual misconduct but a form of sex discrimination. It is a way of subordinating women in the economic sphere. This framing is vital as it shifts from the register of discipline to that of structure, from the individual "bad actor" to the "bad system".

### **Power at the Workplace**

Organizational power, however, has multiple dimensions. French and Raven, in their seminal framework of social power, include five bases for power in the workplace: legitimate, reward, coercive, referent, and expert power. Several bases of power are present in harassment situations. Typically, the harasser is the victim's superior, that is, has positional authority over her (legitimate power), can influence her continued employment or promotion (reward and coercive power), and may even secure institutional loyalty from potential bystanders through organizational respect and affection (referent power). Quid pro quo harassment legal theory correlates with coercive and reward power, while hostile environment harassment correlates more broadly with coercive, referent and legitimate power used to foster a workplace in which women feel demeaned or threatened. What the conceptual map shows is that harassment cannot be conceptually isolated from power dynamics within organizations; to consider harassment merely a personal dispute amenable to resolution by a committee, rather than a structural issue, is akin to considering access to justice purely a matter of having courts.

### **Intersectionality**

Any gender-analysis of workplace harassment, therefore, has to be intersectional; to borrow from Kimberl Crenshaw, gender cannot stand on its own, and has to intersect with caste, class, disability, religion, sexual orientation etc. To create intensified vulnerabilities. Whether it is the Dalit woman domestic worker; the Muslim woman in a small manufacturing unit or the Transgender person in informal employment; each one faces not just the generic risk covered by POSH, but has an added layer of risk the law does not address well in its current form. The law states protection for 'women'; and in this sense, 'women', within this legislation, refers neither to trans women, nor to men.

## **METHODOLOGY**

The methodological approach taken in this paper is a socio-legal one. This involves a two-pronged approach. The first element consists of doctrinal legal analysis whereby I analyze the text and judicial construction of the POSH Act, 2013 and its predecessor, the framework provided by the Vishaka guidelines. The second element involves applying concepts of critical social theory from the fields of gender studies and organisation theory. These concepts are used to situate and inform the doctrinal analysis. In other words, they help establish the institutional framework within which harassment occurs and responses to allegations of harassment take shape. The primary sources relied on include the POSH Act, 2013, and its associated Rules, Supreme Court and High Court decisions, reports from the Ministry of Women and Child Development, and annual reports submitted pursuant to Section 21 of the Act. The secondary sources relied on include peer-reviewed journal articles, books, empirical research surveys and reports from civil society organisations. All legal citations are formatted according to Bluebook, Twentieth Edition.

This paper presents no original empirical data, but rather combines and analyzes empirical evidence from existing surveys, institutional reports, and individual case studies in order to generate

## **LEGAL EVOLUTION : VISHAKA TO POSH**

### **The Pre-Vishaka Landscape**

In the period prior to 1997, there was no specific legal provision in India on the issue of sexual harassment at the workplace. Victims had to seek relief under other provisions - S. 354 of the IPC 1860 (outraging the modesty of a woman) and S. 509 IPC (word, gesture or act intended to insult the modesty of a woman) as well as through the general principle of torts. However, these provisions were inadequate to address the situation in a workplace-it requires an element of criminal intent, are narrowly interpreted by the courts, and lack the positive remedy of an institutional mechanism at the workplace. Remedies through civil law (torts) were technically available but not attainable for most employed women. However, in the constitutional sphere there was hope: Articles 14, 15, 19(1)(g) and 21 provided a textual basis, for a constitutional right to an environment free from sexual harassment. Without the judiciary giving meaning to these provisions in a workplace context, they remained non-binding aspirational goals.

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

The case of Vishaka v. State of Rajasthan had its genesis in the vicious gang-rape of Bhanwari Devi, a social worker associated with the Women Development Programme of the Rajasthan state government who was attempting to stop an earlier child marriage. Upper caste men who carried out the rape, the insensitivity of the state in responding to the victim, her acquittal in the trial, and ultimately the institution of the petition by women's organizations to overcome the lacuna in the legal protection available to working women, led to this judgment. Chief Justice J.S. Verma, speaking for the Supreme Court, noting that a constitutional lacuna existed, passed binding directions in exercise of the jurisdiction under Art. 32 read with Art. 141 of the Constitution. Sexual harassment was given an expansive definition that encompassed any unwelcome physical or verbal contact or interaction with a sexual nature; any demand or request for sexual favors; sexually coloured remarks; show of pornographic matter; or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. Employers were ordered to set up a Complaints Committee at each workplace and awareness campaigns and explicit inclusion in service rules forbidding harassment. The importance of this decision is undeniable, in that it was judicial legislation filling a statutory lacuna with binding guidelines until Parliament amended the law. However, it was a flawed approach as the application was to organized sector employers, the enforcement was non-existent like any statute and that translated

into poor practice in the real world; many organisations either disregarded the directions or merely created nominal committees.

### **Post-Vishaka Developments**

Judicial interpretation and civil society activism slowly filled the 15 years between Vishaka and the POSH Act. The Supreme Court applied the Vishaka judgment in the case of Apparel Export Promotion Council v. A.K. Chopra, stating again that sexual harassment violated the right to gender equality and strengthening the interpretation of Vishaka. It also monitored the implementation of Vishaka guidelines through continuing mandamus proceedings, leading to the Court's order to the states to frame relevant rules in *Medha Kotwal Lele v. Union of India*.

On the international level, India's adoption of CEDAW created further pressure, through General Recommendation No.19, which stated that gender-based violence, including sexual harassment, amounted to discrimination against women under Article 1 of the Convention. In fact, the Vishaka Court looked to India's treaty obligations when creating its liberal interpretation of its constitutional provisions.

### **Enactment of the POSH Act, 2013**

Parliament passed this Act and it got the President's assent on April 22, 2013. This Act came into force on December 9, 2013 along with Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, which was framed under Section 29 of the Act.

The Act can be seen as a legislative validation of the Vishaka case law framework, although with increased institutional definitiveness. It had an expanded definition of the 'workplace,' it required the establishment of ICCs in every establishment employing ten or more employees, required establishment of LCCs through the District Officer where an employer employs less than ten workers or the respondent is the employer, it stipulated duties on employers with respect to awareness and sensitisation as well as reporting annually.

## **STATUTORY POLICY OF THE POSH ACT, 2013**

### **Definitional Architecture**

Definitions form the base for the scope of the Act. Section 2(n) defines 'sexual harassment' to include any one or more of the following unwanted acts or behavior whether directly or by implication: physical contact and advances; demand or request for sexual favours; sexually coloured remarks; showing pornography; and any other unwanted physical, verbal or non-verbal conduct of a sexual nature. Crucially Section 3 enlarges this scope to cover a few situations that do not explicitly constitute sexual harassment as defined above if such acts are done by taking undue advantage of: implied or explicit promise of preferential treatment, implied or explicit threat of detrimental treatment in the work place, implied or explicit threat about her present or future employment status in the work place, interference with her work or creating a hostile work environment, humiliating treatment likely to affect her health or safety.

This combined definition-that includes both overtly sexual conduct, and behavior driven by power and abuse within a sexually defined employment situation-is a genuine strength of the statute. It aligns with the internationally recognized distinction between "quid pro quo" and "hostile environment" harassment.

However the definitional scope of the Act is also its largest weakness. Section 2(a) defines an 'aggrieved woman' as any woman, of any age, whether employed or not, in an organization or dwelling house who alleges to have been subjected to sexual harassment. By these definitions, men and trans people are excluded as potential complainants under the Act, an omission pointed out time and again by detractors, and a lacuna in the law, considering that harassment is indeed an experience faced by all genders.

### **The Internal Complaints Committee**

Section 4 required every employer at a place of work employing 10 or more employees to form an ICC. The ICC would need a Presiding Officer who is a senior women employee; two or more other members from among employees who either hold convictions about women, or have experience in social work or have legal knowledge; and an external member either from a NGO or association working for the cause of women, or a person with knowledge of sexual harassment. The inclusion of an external member was a conscious effort to avoid institutional capture the problem of an internally appointed ICC being biased in favor of the institution rather than dispensing justice impartially, a real and research-backed worry in intra-institutional complaints mechanisms, which tends to favor the respondent (especially a superior employee), as

members of the internal committee could be afraid of repercussions and/or influenced by the bond of solidarity with fellow employees.

ICC Proceedings were granted the power of a civil court under Code of Civil Procedure, 1908 with respect to the summoning and examining of witnesses and requiring discovery and production of documents. It is this investigative power, not merely the power to "hear and suggest", that the ICC would wield.

### **Inquiry Procedure and Timeline**

The ICC is required under Section 7 to pursue conciliation, on the request of the complainant. Importantly, no monetary settlement is available through the conciliation process as it is a legal avenue prohibited under the Act, to ensure that the complainant is not 'forced into the arms of the violator under the pressure of obtaining money in exchange for silence' to hush up a grievance, with no punishment of the harasser and no alteration to the existing conditions in the workplace. Where no conciliation is sought or not entered into, the inquiry into the grievance shall be conducted under Section 11. An inquiry must be completed within 60 days from the date of the complaint. The ICC shall submit its report to the employer within ten days from the date of completion of the inquiry, containing its findings, and if found true, recommendations for necessary action.

Section 13 provides various measures that can be initiated where a complaint is upheld as a complaint of sexual harassment; written apology, warning, reprimand or censure, withholding of increment or promotion, termination of the service of the employee, undergone counselling, or rendering community service. Where the respondent is not an employee of the establishment, the ICC can direct the employer or appointing authority to take such action in accordance with applicable service rules. Interestingly, section 14 also makes provisions for action in case the complaint is found to be false or malicious. While it is good to have a provision against false claims, it can be seen to have an intimidating effect on complainants who would not want to risk being labelled 'malicious' should the ICC not find in their favour.

### **Employer Obligations**

The Act creates further duties for the employer which are beyond and above the constitution of an ICC. According to the mandate of Sec 19 every employer is supposed to ensure safe working

condition, publicly display the penal consequences of sexual harassment, arrange for workshops and orientation programs, make available suitable facility to ICC and submit Annual report to the District officer wherever applicable. These duties are all forward-looking and prevention oriented rather than the complaint and remedy oriented approach. An employer is not only an adjudicating body but a duty bearer responsible to ensure the conditions leading to harassment do not arise.

## **INSTITUTIONAL PRACTICE : ICCs, REPORTING, & ENFORCEMENT**

### **The Reality of ICC Formation and Functioning**

The past decade since the passing of the POSH Act has highlighted the huge gap between what the law intends to do and what actually happens on the ground. According to data released by the Ministry of Statistics and Programme Implementation's Periodic Labour Force Survey, a huge percentage of employment in India is in establishments with less than 10 workers and hence not subject to the ICC requirement. For those who are covered, compliance is erratic at best.

A 2017 survey of 160 companies across sectors, conducted by the Society for Human Resource Management India, revealed that only 36% of establishments had set up ICCs in compliance with the POSH Act. For sectors known to have high informality (agriculture, domestic work, construction), the figures are significantly lower. The LCC mechanism that aims to address this issue has the problem of being understaffed, being ill-resourced at the level of the District Officer, and widespread ignorance among informal sector workers about its existence.

Even where ICCs do exist, their quality is vastly different. The requirement of an external member is often bypassed, with the "external member" either being a personal acquaintance of the management or a person nominated by employers' associations without genuine independence. Appointees are often promoted to the position of Presiding Officer not for their commitment to gender equity, but on the basis of seniority in departments unrelated to HR or compliance. Training for ICC members is often inadequate or non-existent.

### **The Underreporting Crisis**

The biggest challenge in implementing the POSH Act is that, even amongst the affected, the cases that get reported form a miniscule proportion of actual incidents. The factors causing

under-reporting are multiple and mutually reinforcing and deeply rooted in the very power dynamics that allow for sexual harassment to occur in the first place. The fear of backlash: When the harasser is a superior, or even a senior peer with a presence in the institution, the complainants face a stark calculation where reporting could lead to the loss of her employment, career prospects, reputation and cordial relationships with colleagues. While interim measures are provided for under Section 12. Social stigma and victim-blaming: It continues to be a significant deterrent to reporting. ICall, a psychosocial helpline affiliated with TISS, documented in its research that even in the cases where women complained, they were often asked about reasons for not complaining earlier, about their dressing and whether the relationship with the perpetrator could be purely professional given certain conditions. This re-victimization process during the inquiry is a strong disincentive to complaining.

Economic dependence: The asymmetry of power becomes most palpable when the women are in contractual, part-time, or gig employment-the fastest growing sectors in India. Complaining here would not just mean loss of job, but income crucial for survival for the household. There is no specific protection offered to precarious workers within the POSH Act for their higher vulnerability.

### **Enforcement Deficits**

Penalties are set out in section 26 of the Act for employer non-compliance - up to 50,000 rupees for a first offense and for subsequent offenses either the cancelling of the license or registration. All believe these penalties to be absolutely inadequate deterrents to non-compliance. 50,000 rupees is negligible for any corporate employer, especially when weighed against the bureaucracy involved in POSH compliance. Given the lack of any empirical basis for the amount of times the penalty is applied due to poor supervision of the reporting and enforcement aspects of the Act, it is difficult to judge how often these penalties are actually issued.

Section 21 also calls for every employer to incorporate into its annual report the number of complaints received, disposed of and pending within its annual report. This is another poorly enforced compliance mechanism, with the National Annual Report on POSH submitted by states to the Central Government consistently reporting a low and inconsistent statistic, indicating a failure of many employers to submit and of the reporting, by those employers that do, to be accurate.

## **FINDINGS, GAPS AND BARRIERS**

### **Structural Gaps in the Act**

There are some fundamental structural shortcomings in the Act which needs to be addressed systematically.

First, the denial of 'aggrieved woman' status to men and transgenders creates a void in protection that directly contravenes the equal status mandated by the Constitution. In *National Legal Services Authority v. Union of India* the SC explicitly recognised the rights of transgender individuals; this makes the very dualist framework of the Act constitutionally vulnerable.

Second, although definitionally inclusive, the ambit of 'workplace' fails to adequately cover gig economy and remote work. Work relations involving platform work delivery, domestic workers through apps, ride-sharing platforms often feature a formal employment-like relationship between the employee and the platform owner that seems explicitly designed to minimize or negate employer liability. It is a contentious question if the 'aggregator' is an 'employer' as per Sec 2(g) of the Act, and it remains practically unanswered.

Third, the LCC mechanism suffers from being chronically under-resourced and under-implemented. District Officers don't have separate staff and budgets for LCC administration, and there is near zero awareness of LCCs among informal sector women workers; this leaves those most economically precarious and consequently least able to resist harassment with minimal access to remedies.

### **Institutional Barriers**

Besides the limits imposed by the text of the Act, additional institutional obstacles lead to under-reporting and to unfair determination. Organizational culture is perhaps the biggest impediment. ICCs function in institutions that are inherently antagonistic to the complainant in which there has been no true commitment to gender equality by the leadership. When a middle manager knows about the harassment, they may choose to "gatekeep" the complaint, asking women not to file complaints, mediating internally and in ways that protect the institution not the complainant, or framing harassment as a dispute between two people. This "gatekeeping"

function, that occurs prior to the formal adjudication process, is invisible to the parameters of the POSH Act.

The gendered nature of legal literacy is another impediment. The POSH Act places a series of procedural burdens on the complainant-written complaints, time-limits, and physical evidence. The Act inherently disadvantages women from disadvantaged social positions, lower levels of education or specific work environments with lower levels of literacy and without any institutionalised way of obtaining legal support from legal aid organisations. The Act doesn't guarantee the complainant representation.

### **Intersectional Vulnerabilities**

The one-size-fits-all approach adopted by the POSH Act proves particularly inappropriate for workers who suffer from complex vulnerabilities. While domestic workers numbering over 50 million in India and mostly women function within private households, which the POSH Act classifies as "workplaces", the LCC mechanism that covers them theoretically, remains ineffective. The fact that the first schedule to the Act recognizes domestic workers does not help as there is no mechanism for enforcement. Similarly, since Dalit women, the dominant workforce in many fields are the ones who face combined discrimination: the caste element makes them more susceptible to sexual harassment because the aggressor possesses both an employer position and the authority derived from caste structure; the POSH Act does not take caste into consideration and it remains unclear whether one should register under the POSH Act or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, or under both.

## **RECOMMENDATION FOR LAW, POLICY AND WORKPLACE PRACTICE**

### **Legislative Reforms**

Broaden the definition of aggrieved persons. Section 2(1) of the Act defines an 'aggrieved person' in terms of gender. However, in order to be inclusive of all, gender identities, men, transgender individuals and non-binary individuals must be covered as potential complainants, not just the purpose of doctrine but for it to be more in consonance with lived reality where harassment is an equal-opportunity issue.

Increase penalties for employer non-compliance. The current 50,000 rupees penalty is not enough. Penalties should be based on the size of the employer, and repeat or serious offenses such as no ICC despite having hundreds of employees should face penalties sufficient to deter continued non-compliance. Introduce a central digital compliance registry. Every employer that is subject to the Act must register their ICC with the respective government authority via a digital portal, publish the composition of their ICC publicly and must electronically file an annual compliance report. This would generate data of accountability currently missing.

Extend gig and platform workers' protection. An explicit section would have to deal with platform based work by extending 'employer' responsibility to aggregators so that they are accountable to constitute ICCs or participate in an industry wide complaint mechanism. Eliminate the chilling effect of Section 14. The clause of punishment of complainants in case of 'false or malicious' complaints should only be applied where the complaint is proven to be malicious by clear and convincing evidence, and not just by finding that the ICC was not persuaded of the substance of the complaint. The present language provides a systemic discouragement from complaining in good faith.

### **Policy Reforms**

Strengthen LCC mechanism. The Government should provision separate human and financial resources to LCCs at district level. District Officers should be provided with a dedicated POSH officer, equipped to carry out gender sensitive inquiry procedures. LCCs must be mandated to hold regular outreach camps in industrial complexes, construction sites and in communities of domestic workers. POSH to be integrated into labor inspection procedures. Routine labor inspections at workplaces must also include inspection of ICC establishment and implementation as part of mandated procedures. Non-compliance to the said must not be treated as a notice, rather, it must be duly noted and followed up. Mandatory national training curriculum for ICC members. The Ministry of Women and Child Development should prepare and mandate certification based training for the Presiding Officers and members of the ICC on subjects like gender sensitization, inquiry based techniques for a traumatised victim, principles of natural justice and confidentiality requirements of investigation and so on.

Gender disaggregated data collection. Agencies should be mandated to collect and make public information pertaining to the POSH complaints, categorized by sector, form of harassment,

outcome and profile of the victim. Such data are vital for policy decisions based on empirical evidence.

### **Reforms in Workplace Practice**

Organizational and senior management accountability for work culture. Boards and senior management must accept accountability for ICC's performance by being reported directly to on ICC's results to board sub-committees, and sexual harassment must be framed as a governance risk, not a mere HR compliance issue. Third-party audit of ICCs. A periodic external audit of ICC's composition, working and results should be carried out, and findings made available to all employees and to appropriate regulatory authorities.

Confidential emotional support for complaints. A counseling support mechanism independent of the ICC working should be provided to help complaints manage their experiences throughout the inquiry process and afterwards. This has been found to be an important and necessary support mechanism in organizations with strong POSH commitment, even though it is not specified in the Act. Bystander prevention training. Research clearly indicates that bystander intervention, by an observer who witnesses harassment, is one of the most effective mechanisms for stopping harassment. This must include training employees in appropriate intervention skills, as well as reporting behaviors and supporting colleagues.

Non-ICC reporting mechanisms for senior management complaints or when there is a lack of impartiality due to composition of ICC. It is crucial that organizations offer alternatives when the ICC involves senior managers, or is potentially compromised by the compositions in its dealing with complaints, and alternative mechanisms such as ombudsman, hotlines for anonymous reports or reporting directly to a board committee are necessary.

### **CONCLUSION**

The POSH Act, 2013 is a landmark legislative measure. It institutionalised two decades of constitutional rhetoric and judicial inventiveness into law, thereby providing a framework of rights, obligations of institutions and redressal. It gave working women a legal right to a workplace free from sexual harassment, and erected, albeit imperfect, an institutional mechanism for their enforcement. But law is never self-enacting. An institutional architecture of law cannot

dismantle the architecture of society within which it exists. A review of the ten years since the Act came into force provides ample evidence of sustained, structural resistance. The resistance follows a gender pattern and is more acute where power imbalances are greatest the small enterprise, the informal and domestic sphere, the arena of caste hierarchy and less where, due to scale and high public profiles, an organization has more to lose from being seen to violate POSH, like large formal companies. The core argument of this paper is that reform of workplace sexual harassment law has to engage with power and not just procedure. While procedural sufficiency is a prerequisite, it cannot be a substitute. The POSH Act needs to be strengthened-by increasing its scope, penal provisions, institutional provisions and enforcement architecture. But a legislative amendment will not succeed if organizations can approach POSH compliance as an exercise in tokenism, LCCs continue to be poorly resourced, and if the social and economic costs of reporting remain high for vulnerable workers.

The task ahead is primarily cultural. Law is influential on culture, but culture influences the ways in which legal norms are implemented. A comprehensive and sustained, multi-institutional effort is required of the government, civil society, employers and courts to work towards achieving workplace cultures that reflect genuine gender equity. The POSH Act lays the legislative ground for this. Now, the task is to build upon it with due seriousness, resources, and political will.

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