



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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Beyond Compliance: Reassessing the Effectiveness of the POSH Act, 2013

-Vrinda Rai

Introduction

India has borne witness to one of the most egregious acts in its history which had been taken place on August 9, 2012 at Kolkata's RG Kar Medical College. The Victim was the postgraduate trainee doctor who was being brutally raped and murdered inside the institute during her late duty hours. The constitution of India guarantees equality before the law and safeguards the dignity of individuals. Every individual has the constitutional right to practice any profession or occupation under Article 19(1)(g), subject to reasonable restrictions. A dedicated law was made by the Indian legislature Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 to protect the women from sexual harassment at workplace. Initially Hon'ble Apex court of India issued the Vishakha guidelines after the case of *Vishakha vs State of Rajasthan (1997)*, which paved the way for Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013. This framework to protect the women at workplace and ensuring effective redressal of complaints is highly progressive because it came after activist movement. Firstly, Bhanwari Devi was gang raped in a village in Rajasthan in 1992 because being a social activist she opposed child marriage and subjected to violence following to this two decades later gang rape of Jyoti Singh in 2012.¹ This act is not gender- neutral, it is women centric. This can be drawn from the theory of Institutionalism, which stipulates that the how social norms, rules and structure shape human behavior and organization. It is evident that most of the Indian organizations are

¹ VINITIA CHANDRA, INDIAN JOURNAL OF GENDER STUDIES VOLUME 33(1) 73 (2025)

embedded within the patriarchal structure which can easily explain why this act only includes protection of women not men. A conflict becomes apparent between foundational and hegemonic relation between men and women in the society and societal force to comply with the constitution of India.

2

Understanding Sexual Harassment

Sexual harassment refers to any unwelcome or inappropriate act or behavior of a sexual nature that implicitly or exclusively undermines the dignity of women and creates the intimidating, oppressive and unsafe working environment. The behavior can be through physical, verbal, non-verbal and digital.

Section 2(n) of the POSH act define sexual harassment to include:

(i) physical contact and advances; or (ii) a demand or request for sexual favors; or (iii) making sexually colored remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;³

Evolution of the act and process of filing

The roots of this act can be found after the case of *Vishakha vs State of Rajasthan (1997)*, Bhanwari Devi was a social activist. During her visit to Rajasthan to oppose the practice of child marriage which flared up the anger in the community and she had to face gang rape in the form of violence. After this event had happened in 1992, Vishakha a Non-Profit organization filed a public interest litigation in the Supreme Court in the year 1997. The court recognized that right to life with dignity and right to equality under Article 21, 14&15 has been infringed respectively. ⁴

² VINITIA CHANDRA, INDIAN JOURNAL OF GENDER STUDIES VOLUME 33(1) 76 (2025)

³ The POSH Act, 2013, §2(n), No.14, Act of Parliament, 1949 (India)

⁴ VINITIA CHANDRA, INDIAN JOURNAL OF GENDER STUDIES VOLUME 33(1)73 (2025)

Initially after the acknowledgement of the infringement of fundamental rights. Hon'ble Apex court initiated the Vishakha guidelines in the year 1997 till a vacuum being fulfilled by the legislature to enact a comprehensive legislation for Sexual harassment. Thereafter, Ministry of Women and Child Development introduced a bill in parliament in the year 2007 and after the J.S Verma committee report this bill become an act in 2013.⁵

The POSH Act, 2013, was enacted to give statutory force to these principles and strengthen workplace safety. This regulatory framework mandates employer with ten or more employees to constitute an Internal Committee (IC) and a Local Committee at a district level. To address the grievances mentioned by the women employees who faced the sexual harassment. The committee includes a woman Presiding Officer, qualified employees, an external member, and maintains at least 50% women representation.⁶

Time period to file a complaint with the committee is 3 months from the date of incident happened or 3 months after the last incident triggered a series of subsequent events given in section 9 of the act. It can made by the victim herself or any legal heir of the victim. IC possess power similar to the civil courts and it has to start the investigation after filing of the complaint and complete it within 90 days and must submit its findings to the employer in 10 days for the action according to section 11 & 13 respectively. Moreover section 14 of the act provides disciplinary actions against the malicious complaints by complainants according to the rules of the company by the employer.⁷

The Act covers regular employees, contractual workers, interns, trainees, domestic workers and, even visitors associated with the workplace.

Critical Analyses and Conclusion

The foundation serves as the cornerstone of any organization. In India most of the institution are built upon the patriarchy. Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013, this act alone is insufficient for adversarial interaction of structural

⁵ VINITIA CHANDRA, INDIAN JOURNAL OF GENDER STUDIES VOLUME 33(1)73 (2025)

⁶ The POSH Act, 2013, §4, No.14, Act of Parliament, 1949 (India)

⁷ The POSH Act, 2013, §9,11,13,14, No.14, Act of Parliament, 1949 (India)

patriarchy in the organization. To strike out sexual harassment from the workplace we have to normalize the fact that all genders are equal. It presupposes the radical rethinking in order to bring the change. The problem does not lie in the law but in the mindset of people. Sexual harassment is an acceptable culture in the Indian society in the organizations. Eliminating patriarchal attitudes is essential to creating safe and dignity of employees. Attaining financial independence reflects the sense of autonomy for the women conversely male regarded working women as their opportunity to access women. Acceptance of the simple rationality of men and women being equal will make the entire patriarchal institution dysfunctional. This law is mainly women centric it should include men and LGBTQIA+ as well.

Section 10 of the act gives recommendation of conciliation of the incident which can results in creating the pressure on female. This can be drawn from the act itself that foundation of the legislation in majorly patriarchal. Male hegemony is prevalent in the organizational structure. Gramscian concept of hegemony translate that dominant social forces make their own interests seems universal.⁸ Martha Farrell Foundation conducted a survey in 2018 which found that many districts had failed to establish the committees or constitute them in line with the legal provisions. Out of 655 districts in the country, 29% replied that they had formed Local Committees, while 15% had not done so. The majority (56%) did not respond. By May 2020, even in the capital, Delhi, only 8 out of 11 districts had constituted Local Committees.⁹

The cause of underreporting, stigma to file complaint, lack of awareness and a justice system hindered by systematic deficiencies. Even after filing the complaint no justice has been granted to women. They have to leave the job after complaint and perpetrator remain on work. The status quo which employers seek to maintain in organization mostly Senior management often influences inquiries. Ultimately, genuine conflict between law and culture remains the central point of the problem. Statutory reforms do not automatically translate into behavioral transformation.

⁸ VINITIA CHANDRA, INDIAN JOURNAL OF GENDER STUDIES VOLUME 33(1)75 (2025)

⁹ [Martha Farrell Foundation & Society for Participatory Research in Asia, 2018](#))

