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PROTECTED ON PAPER, VULNERABLE IN PRACTICE: THE POSH DILEMMA

Ayesha khan

Workplace sexual harassment is not merely an individual dispute; it concerns equality, dignity, professional security and the ability to participate in economic and public life.[1] Its constitutional dimensions are reflected in Articles 14, 15, 19(1)(g), and 21 of the Constitution of India, which protect equality, non-discrimination, freedom to practice a profession, and life and personal liberty.[2] The legal journey has been significant. In Vishaka v. State of Rajasthan, the Supreme Court recognized workplace sexual harassment as a violation of fundamental rights and issued guidelines when no specific legislation existed.[3] Parliament later enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, creating a statutory framework for prevention and redressal.[4] However, the existence of a law does not automatically ensure protection. This gap between legal protection and workplace reality lies at the heart of India's continuing POSH dilemma.

The law may provide a route to redress, while the workplace environment may make that route feel difficult to use. That is why the question cannot simply be, Does the

[1] *See* Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, pmbl. (India).
[2] INDIA CONST. arts. 14, 15, 19(1)(g), 21; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, ¶¶ 10–17.
[3] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, ¶¶ 10–17.
[4] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §§ 3–4, 9–11 (India).

organization have a POSH mechanism? The more meaningful question is, Would an employee trust that mechanism when she needs it? The difference between those two questions is the space in which protection
can become vulnerable in position.

FROM VISHAKA TO A STATUTORY FRAMEWORK

Vishaka marked a constitutional turning point. The Supreme Court connected workplace sexual harassment with guarantees of equality and dignity and formulated guidelines for employers until legislation was enacted.[5] The judgment made clear that workplace safety was not merely an internal administrative concern; it was connected with fundamental rights.

The POSH Act transformed that judicial framework into legislation. Its long title expressly focuses on protection against sexual harassment and on prevention and redressal of complaints.[6] The Act defines sexual harassment, establishes complaint mechanisms and assigns preventive responsibilities to employers.[7]

The transition from judicial guidelines to legislation therefore closed an important legal gap. But legislation does not implement itself.

THE LAW COVERS MORE THAN THE MOMENT OF HARASSMENT

The POSH Act is not confined to what happens after a complaint is made. Section prohibits sexual harassment and recognizes circumstances such as an implied or explicit promise of preferential treatment, a threat of detrimental treatment, a threat concerning employment status, or conduct creating an intimidating, offensive or hostile work environment.[8] The statute also establishes institutional machinery. Section 4 deals

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[5] *Vishaka*, (1997) 6 SCC at 249–53.

[6] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, pmbl., India Code (2013).

[7] Id. §§ 2(n), 3, 4, 9, 11, 19. The Act defines "sexual harassment," prohibits sexual harassment, establishes the Internal Committee, provides for complaints and inquiry, and imposes duties on employers.

[8] Id. § 3(1)–(2). Section 3 expressly prohibits sexual harassment and identifies, among other circumstances, promises or threats relating to employment and the creation of an intimidating, offensive, or hostile work environment.

with the Internal Complaints Committee, while sections 9 and 11 address complaints and inquiry.[9] Section 19 places duties on employers, including maintaining a safe working environment and undertaking awareness measures.[10]
This preventive dimension is crucial. A workplace should not wait for harm to occur before taking its responsibilities seriously.

THE COMPLIANCE TRAP

There is a difference, between having a mechanism and making that mechanism function properly. An organization may be able to demonstrate that a committee has been constituted. The organization may also produce a policy document or evidence of an awareness session. However these formal indicators do not on their own prove whether employees understand the process or trust the people administering.

Meaningful compliance requires accessibility. Employees should know where to complain, whom to approach what the inquiry process involves and what confidentiality protections the law provides.

WHEN POWER CHANGES THE MEANING OF A COMPLAINT

Workplace harassment often exists within a hierarchy. Workplace harassment often lives inside a hierarchy. It has been seen many employees face this problem when a person who controls assignments evaluates performance or holds a senior position is involved. That hierarchy can change how a legal right is experienced.

On paper the employee may have the right to complain. In practice the employee may calculate the consequences before exercising the complaint. If the alleged harasser is powerful the employee may fear isolation or professional disadvantage. Even when such consequences never occur, the perception that they might occur can discourage

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[9] Id. §§ 4, 9, 11. Section 4 concerns constitution of the Internal Committee; Section 9 concerns complaints; and Section 11 concerns inquiry into complaints.
[10] Id. § 19(a), (c)–(j). Section 19 requires employers, inter alia, to provide a safe working environment, conduct awareness programmes, provide facilities to the Internal Committee, and monitor timely submission of reports.

reporting. The principle should be simple: the position held by an accused person must not make the complaint mechanism weaker.

THE SUPREME COURT'S MESSAGE: IMPLEMENTATION MATTERS

The gap between law and implementation has repeatedly attracted judicial attention. In Vishaka, the Court created guidelines because a legislative framework was absent.[11] Later litigation reflected concerns about whether those directions were being implemented effectively. The Supreme Court's subsequent POSH jurisprudence demonstrates that statutory protection requires functioning institutions rather than formal compliance alone. Aureliano Fernandes v. state of Goa is particularly relevant because it highlights the importance of a procedurally sound inquiry.[12] The Court's decision reinforces that the POSH framework must operate consistently with natural justice and fairness.[13] The lesson is broader than any single case: legal protection is credible only when the institutions responsible for delivering it are capable, trained and accountable.

WHAT A STRONGER WORKPLACE CULTURE COULD LOOK LIKE

A stronger POSH framework should begin before a complaint arises. Organizations should treat awareness as continuous education, ensuring employees understand the Internal Committee and complaint process. Managers need specific training because they are often the first to receive informal concerns. Training should also cover professional boundaries, respectful communication and bystander responsibilities. The aim is not merely to respond to harassment but to prevent the conditions that enable it. Confidentiality must also be protected under Section 16.[14] Finally, accountability should extend beyond merely having an Internal Committee to ensuring that it functions independently, fairly and effectively.[15]

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[11] *Vishaka*, (1997) 6 SCC at 249–53.
[12] *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 621, ¶¶ 49–70 (May 12, 2023).
[13] *Aureliano Fernandes*, 2023 SCC OnLine SC 621, ¶¶ 70–80. The judgment addressed procedural defects in the inquiry and the requirements of procedural fairness. A later reported citation is (2024) 1 SCC 632.
[14] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 16, India Code (2013).
[15] Id. § 19(a), (c)–(j).

CONCLUSION

India's POSH framework reflects a strong legal commitment to workplace dignity, from Vishaka to the 2013 Act. However, laws are only the beginning of the solution. For true impact, these laws need to be implemented with vigor. In this context, the effectiveness of the POSH mechanism depends on how safe the employees feel while reporting harassment at the workplace. Thus, the effectiveness of the POSH mechanism rests not only on the law but also on the organizations adopting it and implementing it sincerely. Ultimately, POSH should not be measured by policies displayed on walls, but by the confidence of the person who needs its protection most.