



Critical Analysis of Loopholes in the Prevention of Sexual Harassment (POSH) Act: A Comprehensive Examination

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Abstract As more women enter the traditionally male-dominated profession in developing countries like India, workplace sexual harassment has become increasingly prevalent and severe for women. Sexual harassment refers to any unwelcome sexual behaviour or advances that are offensive, intimidating, or coercive in nature. It is regarded as a breach of a woman's inherent entitlement to equal treatment, as protected by Articles 14 and 15 of the Constitution. The issue of sexual harassment mostly stems from the societal assignment of gender roles and the ideas around male and female sexuality, rather than the biological distinctions between men and women. Gender inequality is both the root cause of sexual harassment and the subsequent outcome of it. Sexual harassment is not only an epidemic, but rather a pervasive pandemic that is happening on a daily basis and in all locations. Sexual harassment is widespread, affecting every institution and business without exception. As long as this attitude persists, women will not achieve complete equality with men. In order to address this problem, the Government of India has implemented the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, with the aim of ensuring a safe and protected work environment for women. Despite the passage of years since its implementation, the government has yet to provide any data about the efficacy of this law and its committees. However, assessments undertaken by private organisations emphasise the inadequate execution of the Act across the nation. This article provides a thorough analysis of the Act and its execution, while examining its development, goals, and key clauses.

Keywords Sexual harassment, Redressal mechanisms, Gender Equality, Fundamental rights, violation, Workplace, and Complaints Committees

1. Introduction

The POSH Act, which stands for the Prevention of Sexual Harassment Act, became operational in December of 2013. It is valid across the whole of India. In order to ensure that all women in India, whether they are employed in organised or unorganised capacities, have access to a secure working environment, this Act was enacted and put into effect. Harassment of a sexual nature is defined under the POSH Act as any unwanted physical, verbal, or non-verbal activity of a sexual character, including but not limited to making sexual approaches and physical contact, soliciting or demanding sexual favours, making sexually coloured comments, presenting pornography, or any other kind of sexual communication. According to the conventional approach, the process of settling criminal charges might take decades to complete. This particular Act was drafted with this circumstance in mind, with the intention of facilitating the expeditious resolution of sexual offences committed against women in the workplace. Nevertheless, a complaint against sexual harassment may still be filed with the police in accordance with the Indian Penal Code. Gender equality in all dimensions is a basic human right and the Constitution of India guarantees all its citizens "equality of status and opportunity"¹. Underreporting of all forms

¹ Article 14,15 and 16 of the Constitution of India



of violence makes the scale of the problem difficult to understand and complicates attempts to address the issue² The Prevention of Sexual Harassment (POSH) Act, enacted in 2013, marked a significant milestone in addressing issues related to workplace harassment in India. However, as with any legislation, the POSH Act is not without its shortcomings. This scholarly article aims to conduct a critical analysis of the loopholes present in the POSH Act, with a focus on areas that require refinement and enhancement. By examining these gaps, we seek to contribute to the ongoing discourse surrounding the improvement of legal frameworks for safeguarding workplace environments.

Background

The Rural Development Programme of the Government of Rajasthan was where Bhanwari Devi worked as a social worker prior to her retirement. It was in the year 1992 that she was subjected to a series of sexual assaults in front of her husband by men of higher castes who were enraged by her efforts to prevent child marriage within their family. In the Indian court system, she was able to evade capture. Instead of being charged with a more serious crime, the accused were found not guilty of committing rape. They were only had to serve a sentence of nine months in prison. At the time of her assault at her place of employment, both the state authorities and her employer denied any culpability for the incident.

As a result of this occurrence, there was a significant amount of public outcry, which ultimately led to the establishment of new regulations that restrict sexual harassment of women in the workplace. A Public Interest Litigation (PIL) was submitted to the Supreme Court by the social activists with the purpose of demanding safer working environments for women and for companies to accept responsibility for protecting their female workers at every stage of the process. Vishakha vs. State of Rajasthan, which took place in 1997, was the case in which the Supreme Court recognised the obvious deficiency and acted on this petition. It was inside this case that the Vishakha rules were established. In these recommendations, the Supreme Court declared it obligatory for every employer to take the appropriate efforts to safeguard women who are working at their companies from sexual harassment and to offer methods for mitigating the effects of such harassment. Through the passage of the POSH Act in 2013, India was able to safeguard female workers from being subjected to sexual harassment in both the official and informal sectors of the economy. For a long time, sexual harassment was not visible in society. Particularly with feminist movements, it has come to the forefront as a significant social problem, especially for women at the workplace³ The POSH Act was introduced to create a safer and more inclusive work environment by prohibiting and redressing sexual harassment at workplaces. Despite its noble intentions, certain deficiencies in the legislation have come to light, prompting the need for a thorough analysis and discussion.

Objectives of the Sexual Harassment Act 2013

The Act aims to accomplish a great deal of things. The following is a list of some of the goals and objectives that are included in the Preamble of the Act:

- A. Article 14 and Article 15 of the Constitution of India provide women the right to equality, while Article 21 of the Constitution guarantees them the right to live with dignity. To prevent the infringement of these basic rights. Every woman, regardless of her age or work position, has the right to a safe, secure, and enabling environment.
- B. To defend the right of women to practise any profession or to carry on any vocation, trade, or business. This right includes the right to a safe environment.
- C. To protect women from sexual harassment and to guarantee the right to work with dignity, this is a human right that is universally recognised by international conventions and instruments. One example of such a convention is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was ratified by the Government of India on June the 25th, 1993.

² Bhavya Jhaveri, Women in Indian Workplaces: Challenges in addressing workplace sexual harassment, globalpolicyreview.org

³ Anil Kumar, Sexual Harassment of Women at Workplace: How Far is Indian Law Protective? International Academic Journal of Law, available at <https://papers.ssrn.com/abstract=3818814>



- D. To create arrangements for the implementation of international treaties and instruments, such as those described above, for the purpose of protecting women against sexual harassment in the workplace. A framework for the redressal of allegations of sexual harassment is established as a result of this. Furthermore, it offers protections against allegations that are malicious or fabricated.

Loopholes

In the wake of the passage of this Act, a significant number of women have begun to voice their opposition to sexual harassment; nonetheless, this has been confined to the official sector. As far as the women who are working in the informal sector are concerned, there are complaints that it has not been the most helpful. Women in that region continue to have a difficult time reporting crimes of this kind due to the shame associated with doing so, the fear of losing their jobs, and a lack of faith in the legal system. There are several legislative, judicial, and operational holes in the Act that need to be addressed. These gaps need to be filled. Following are few-

- **Ambiguities in the Definition of Sexual Harassment:**

One of the primary concerns in the POSH Act is the ambiguity in the definition of sexual harassment. The lack of a clear and exhaustive definition opens the door for interpretation, potentially leading to inconsistent implementation. A critical examination of this aspect is crucial for providing clarity and reducing the scope for misinterpretation.

- **Inadequate Coverage of Non-Traditional Workspaces:**

The POSH Act primarily addresses sexual harassment within conventional office settings, leaving gaps in protection for individuals working in non-traditional or informal workspaces. The analysis will explore the limitations of the Act in adapting to the evolving nature of work environments, including remote work and gig economy arrangements.

- **Insufficient Provision for Third-Party Harassment:**

While the POSH Act emphasizes the responsibility of employers to prevent and address sexual harassment, it falls short in adequately addressing instances of harassment perpetrated by third parties, such as clients or vendors. This section will delve into the limitations of the Act in holding non-employers accountable for harassment within the workplace.

- **Lack of Effective Whistleblower Protection:**

Whistleblower protection is a critical component of any anti-harassment legislation. However, the POSH Act lacks robust provisions to safeguard individuals who report instances of sexual harassment. This analysis will evaluate the existing whistleblower protection mechanisms and propose enhancements to ensure a safe reporting environment.

- **Need for Streamlined and Expedited Redressal Mechanisms:**

The lengthy and cumbersome redressal procedures prescribed by the POSH Act pose a significant challenge in providing timely justice to victims of sexual harassment. The article will explore the need for streamlining these procedures to ensure a more expeditious resolution of complaints.

Another barrier to the reporting of workplace sexual harassment is the fear of dismissal as a result of making a complaint. In a study done of healthcare workers in Kolkata, it was found that in incidents where the perpetrator was in a position of relative authority, victims were less likely to report them as they did not think that any action would be taken against the perpetrator, and because of the possible consequences of making a complaint⁴

Efforts by Authorities

Justice J.S. Verma Committee on the amendments to criminal law dedicated a separate chapter (viz. chapter 4 of the report) to the issue of sexual harassment at workplace. The Committee in the said chapter suggested certain changes to the Bill **while it was pending before the Rajya Sabha**. The Committee proposed that Section 10(1) of the Bill, which suggests conciliation between the victim and the person charged must be done away with as

⁴ Chaudhuri, P., 2007. Experiences of sexual harassment of women health workers in four hospitals in Kolkata, India. *Reproductive health matters*, 15(30), pp.221-229.



such a provision, undermines the dignity of the women even more⁵. Secondly, the Committee observed that Section 14 of the Bill which punishes a woman for filing a false charge must be deleted as the provision might nullify the object of the Act. Thirdly, the Committee recommended the insertion of provisions granting compensation to the victim. Lastly, and most importantly, the Committee advised doing away with the internal complaint committee and establishing an employment tribunal instead to deal with the complaint under the Act, as the domestic committees could not be expected to implement the intent behind the law effectively. However, none of the suggestions given by the Committee were reflected in the Act on sexual harassment at workplaces.

Conclusion

This critical analysis of the POSH Act sheds light on the existing loopholes that hinder its effectiveness in combating sexual harassment in workplaces. By identifying these deficiencies, policymakers, legal experts, and stakeholders can work collaboratively to propose amendments that strengthen the Act, fostering a more secure and inclusive work environment for all. The aforementioned truth is made abundantly obvious by the fact that India is rated 140th out of 156 nations in the Global Gender Gap Report 2021, which was issued by the World Economic Forum. Notwithstanding the fact that the Act has been in effect since 2013, the awareness with respect to the repercussions of sexual harassment and the measures that may be taken to combat it, there are few options available. The successful implementation of the POSH Act involves not only the establishment of a setting in which women are able to voice their complaints without fear of retaliation and get justice, but it also necessitates the education of males on the manner in which women are treated in the workplace. It is of the utmost importance to acknowledge the fundamental human dignity that girls and women possess. The first step in solving this horrible crime is to ensure that they are respected by society; until then, no legislation will be able to effectively battle it. In addition, it is a well-established truth that any country that does not respect women and handles them as if they were things has always been doomed to a state of crisis and restriction.

⁵ Justice J.S.Verma ET. Al, Report of The Committee on amendments to Criminal Law, 15 (2013)

