

ANALYSIS AND MECHANISM OF PoSH ACT

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Abstract: PoSH (Protection of Women from Sexual Harassment) Act, 2013 The PoSH Act has been implemented to prevent and protect women from sexual harassment at the workplace and thereby ensure a safe working environment for women. This supreme court judgment defined the ambit of Sexual Harassment as including an uninvited or unwelcome sexual favour or sexual gestures from one gender towards the other gender The PoSH Act, as mandatory compliance, requires every company having more than ten employees to constitute an Internal Complaints Committee (ICC) in the prescribed manner to receive and address the complaints of any sort of sexual harassment from women in a time-bound and extremely confidential manner so this paper studies about key Provisions of POSH Act and comprehensive Study of the implementation and effectiveness of the Prevention of Sexual Harassment (POSH) Act in Indian workplaces.

Key words: Sexual Harassment, Workplace, Vishakha Guidelines

I. INTRODUCTION

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("POSH Rules"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which has criminalized offences such as sexual harassment, stalking and voyeurism. The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge. Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/ safeguards available to the victim, procedure of investigation, etc.

Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed; which underpins the need for greater awareness and greater enforcement

II. REVIEW OF LITERATURE

According to Zapf, D., Einarsen, S., Hoel, H. and Vartia, M.14 (2009), Organizational Climate is a driving force in the organization behavior which provides foundations to many physical and psychological phenomena to the employees. Bullying is one of the major under considered phenomenon, usually caused by the organizational climate. The objective of the study is to examine the relationship between organizational climates, workplace bullying and workers' health in selected higher education institutes of Pakistan.

The **Vishaka Guidelines** were a set of procedural guidelines for use in India in cases of sexual harassment. They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

Sexual Harassment under PoSH Act

Under the 2013 PoSH Act, committing any one or more of the following would constitute sexual harassment:


- Physical contact and advances
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- Under the PoSH Act, there are five circumstances that amount to sexual harassment:
- Implied or explicit promise of preferential treatment in her employment.
- Implied or explicit threat of detrimental treatment.
- Implied or explicit threat about the complainant’s present or future employment status.
- Interference with the complainant’s work or creating an offensive or hostile work environment.
- Humiliating treatment of the complainant that is likely to affect her health or safety

The **Sexual Harassment Act, 2013** also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner. Interim Reliefs : The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

Statutory Requirements under POSH Act The POSH Act is binding on all and mandates that all Public and Private Sector Organizations in India comply with certain statutory requirements. The onus to ensure PoSH at work for women lies on the employers and managements and for this, they are directed to: a) Form an Internal Committee, b) Provide Periodic PoSH Training on Sexual Harassment law, and c) Develop an effective Complaint lodging and Redressal Policy

POSH Act 2013

Context: The Indian Supreme Court has expressed concern over the "sorry state of affairs" in the implementation of the act.

Major Provisions of POSH Act 2013	
Sexual harassment defined	Sexual harassment includes "any one or more" of the following "unwelcome acts or behaviour" committed directly or by implication: <ul style="list-style-type: none"> • Physical contact and advances • A demand or request for sexual favours • Sexually coloured remarks • Showing pornography • Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature 
Obligation	Every employer is required to constitute an Internal Complaints Committee (ICC) at each office or branch with 10 or more employees.
Complaint Committees	ICC has powers similar to those of a civil court in respect of summoning and examining any person on oath and requiring the discovery and production of documents.
Members	It needs to have a minimum of four members with at least half of them women and one external member, preferably from an NGO or an association that works for women's empowerment or a person familiar with issues related to sexual harassment, like a lawyer.
Time	The complaint must be made "within three months from the date of the incident".
Conciliation	The ICC may (at the request of the aggrieved woman) allow the matter to be settled through conciliation (but no monetary settlement allowed)
Punishment	Non-compliance shall be punishable with a fine of up to Rs 50,000.
Compensation	Compensation is determined based on five aspects: <ul style="list-style-type: none"> • Suffering and emotional distress caused to the woman • Loss of career opportunity • Her medical expenses • Income and financial status of the respondent • The feasibility of such payment
Domestic Worker	Domestic workers are protected under the Act and have the right to seek redressal from the Local Complaints Committee (LCC)

Source : insightsonindia

III. OBJECTIVE OF THE STUDY

- To Study the key Provision of POSH Act.
- To conduct a comprehensive Study of implementation and effectiveness of the Prevention of Sexual Harassment (POSH) Act in Indian workplaces.

KEY PROVISION OF POSH ACT:

- The act provides a legal framework for preventing and addressing sexual harassment at workplaces and establishes mechanisms for the redressal of complaints.
- It applies to all workplaces, including the private sector, government organizations, and non-governmental organizations.
- The PoSH Act mandates the formation of internal complaints committees at workplaces, sets out procedures for filing complaints, investigation processes, and the penalties for non-compliance.
- A section of wrestlers were recently protesting, demanding the removal of the President of Wrestling Federation on the allegations of sexual harassment.
- Post the protest, the government had formed a committee led by boxer M C Mary Kom that was required to investigate the matter and provide a report to the government.
- The major finding of the committee is the absence of the ICC at the Wrestling Federation of India (WFI).
- The act aims to create a safe and respectful working environment for women and ensure that incidents of sexual harassment are effectively addressed and redressed.... Read more at: <https://www.studyiq.com/articles/prevention-of-sexual-harassment-act/>

As per the POSH Act refers to the Prevention of Sexual Harassment (POSH) Act, which was enacted by the Government of India in 2013. The primary objective of this act is to prevent and address incidents of sexual harassment at workplaces. It aims to create a safe and secure working environment for women, ensuring their dignity and well-being. Below are the key provisions of the POSH Act:

- 1. Definition of Sexual Harassment:** The POSH Act provides a comprehensive definition of sexual harassment. It includes unwelcome physical contact, making sexually colored remarks, showing pornography, making sexual demands, or any other unwelcome conduct of sexual nature that creates a hostile or intimidating work environment.
- 2. Applicability:** The act is applicable to all workplaces in India, whether in the public or private sector, including any organization, company, NGO, or governmental department, with ten or more employees.
- 3. Internal Complaints Committee (ICC):** The act mandates every covered workplace to constitute an Internal Complaints Committee. The ICC is responsible for receiving complaints of sexual harassment, conducting investigations, and taking appropriate actions against the offenders.
- 4. Local Complaints Committee (LCC):** In case a workplace does not have a sufficient number of employees to constitute an ICC, the act requires the formation of a Local Complaints Committee at the district level to address complaints.
- 5. Complaint Procedure:** The act outlines the procedure for filing complaints of sexual harassment, including the time frame for filing complaints and the steps involved in the investigation process.
- 6. Confidentiality:** The act ensures that the entire complaint process remains confidential to protect the identity and privacy of the complainant and the accused.
- 7. Protection against Retaliation:** The act prohibits any kind of retaliation or victimization against the complainant for filing a sexual harassment complaint.
- 8. Consequences for False Complaints:** The act also provides provisions for action against individuals who file false or malicious complaints of sexual harassment.
- 9. Awareness and Training:** Employers are required to organize awareness programs and training sessions to educate employees about the prevention of sexual harassment and the provisions of the POSH Act.
- 10. Penalties:** Non-compliance with the POSH Act can lead to penalties, which may include monetary fines or even cancellation of business licenses.

IMPLEMENTATION AND EFFECTIVENESS OF THE ACT

The objective of conducting a comprehensive analysis of the implementation and effectiveness of the Prevention of Sexual Harassment (POSH) Act in Indian workplaces is to critically examine how well the act has been put into practice and the extent to which it has achieved its intended goals.

1. **Scope of Analysis:** The analysis aims to cover all aspects related to the implementation of the POSH Act in Indian workplaces. This includes evaluating the extent of awareness and compliance among employers and employees, understanding the establishment and functioning of Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs), and assessing the overall responsiveness of workplaces to sexual harassment complaints.
2. **Assessment of Compliance:** The analysis seeks to evaluate the degree to which Indian workplaces have adhered to the legal requirements of the POSH Act. This involves examining whether employers have taken the necessary steps to establish ICCs and LCCs, provide regular awareness and training programs, and create a conducive environment for reporting incidents of sexual harassment.

Complaints mechanism

All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or un-organised sector come under the purview of these guidelines.

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor or other support services.
- A woman must head the complaints committee and no less than half its members should be women.
- The committee should include an NGO/individual familiar with the issue of sexual harassment.
- The complaints procedure must be time-bound.
- Confidentiality must be maintained.
- Complainants/witnesses should not experience victimization/discrimination during the process.

3. Effectiveness of ICCs and LCCs: The study aims to assess the effectiveness of Internal Complaints Committees and Local Complaints Committees in addressing sexual harassment complaints. It involves examining the process of complaint registration, investigation, and resolution to determine if these committees are fulfilling their roles impartially and effectively.

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter-alia, provide a safe working environment display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee organise workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee treat sexual harassment as a misconduct under the service rules and initiate action for misconduct. The employer is also required to monitor the timely submission of reports by the ICC

4. Reporting Mechanisms: The analysis seeks to understand the ease of reporting incidents of sexual harassment in Indian workplaces. It involves studying the procedures in place for reporting complaints and examining the level of confidentiality and protection offered to complainants.

5. Impact on Work Culture: The study aims to assess the impact of the POSH Act on the work culture within Indian workplaces. This includes evaluating whether the act has contributed to the creation of safer and more respectful work environments for women, and if there has been any change in attitudes and behaviors regarding sexual harassment.

6. Challenges and Gaps: The analysis also aims to identify any challenges, gaps, or shortcomings in the implementation of the POSH Act. This could involve looking into factors that hinder effective enforcement, low reporting rates, lack of awareness, or issues related to non-compliance.

7. Recommendations: Based on the findings of the analysis, the study may conclude with recommendations to improve the implementation and effectiveness of the POSH Act in Indian workplaces. These recommendations may address areas of improvement in policies, procedures, awareness campaigns, and enforcement mechanisms.

By conducting such a comprehensive analysis, policymakers, organizations, and stakeholders can gain valuable insights into the strengths and weaknesses of the current implementation of the POSH Act, helping them to formulate better strategies to combat sexual harassment and ensure safer work environments for all employees, particularly women.

**IV. CONCLUSION**

The POSH Act is a progressive step towards addressing sexual harassment in Indian workplaces. While it has improved awareness and created mechanisms for redressal, there are challenges that need to be addressed to enhance its effectiveness. Further efforts are required to ensure comprehensive awareness and training programs reach all workplaces, regardless of their size and location. Streamlining the legal procedures and ensuring timely resolution of cases is crucial to maintaining the Act's credibility and fostering safer work environments for all employees. Overall, the POSH Act remains an essential legislative instrument to combat sexual harassment at workplaces, but continued efforts and collaborations among employers, employees, and authorities are vital to realize its full potential.

REFERENCES

- [1]. Alok Bhasin (2007) "Sexual Harassment Work", Eastern Book Company Publishing (P) Ltd, Lucknow.
- [2]. A.S Anand (2003) "Justice for Women", Universal Law Publishing CO. Pvt. Ltd, G.T Karnal Road Delhi.
- [3]. Dr Charu Walikhanna (2009) "Law on Violence against Women", Serials Publications, New Delhi.
- [4]. Monica Chawla (2013) "Gender Justice", Deep and Deep Publications Pvt. Ltd, New Delhi.
- [5]. Sobha Saxena (2008) "Crimes against Women and Protective Laws", Deep and Deep Publications Pvt. Ltd, New Delhi.
- [6]. Tom Dannenbaum and Keya Jayram (2005) "Combating Sexual Harassment at Workplace", India Centre for Human Rights and Law, Mumbai.
- [7]. Curriculum and Gender Question : The Indian Experience, Saroj Pandey (Senior lecturer, DTEE, NCERT, New Delhi), Social Action, Vol. 46, Jan-Mar.1996.
- [8]. K D Gaur, "CRIMINAL LAW CASES AND MATERIALS", 3rd edition, 1999, BUTTERWORTHS INDIA,NEW DELHI
- [9]. K D Gaur, "A TEXTBOOK ON THE INDIAN PENAL CODE", 3rd edition, 2004, UNIVERSAL LAW PUBLISHING Co. Pvt. Ltd.
- [10]. Ratanlal and Dhirajlal, "THE INDIAN PENAL CODE", 30th edition, 2004, WADHWA AND COMPANY,NAGPUR
- [11]. "Gender Justice and The Supreme Court" by Indira Jaising in Supreme but not Infallible: Essays in Honour of the Supreme Court of India B.N.Kirpal, Ashok H. Desai, Gopal Subramaniam, Rajeev Dhavan and Raju Ramachandran (eds.) OUP, New Delhi 2000 .