
POSH ACT: SHIELD OR SWORD?

Jivitesh Sisodia, B.A. LL.B, Amity University, Patna

ABSTRACT

The POSH Act is a powerful tool that may be used to balance protection and responsibility in life's epic theatre and this paper titled POSH ACT: SHIELD OR SWORD? will delve into the different aspects of this preview. Imagine a legal drama in which the legislators are the actors, but the advocates and opponents of harmony in the workplace are also important players. In India, the Prevention of Sexual Harassment (POSH) Act is a powerful barrier designed to protect people's dignity in the workplace. It is the shield that protects workplaces from the sneaky threat of harassment.

However, this legal system is more than just a shield; it is a weapon that pierces the curtain of impunity and establishes responsibility. By enabling organisations to adopt a proactive approach and cut through the murkiness of harassment with a keen awareness and severe penalties. It becomes a shining example of justice, promoting a society in which responsibility is seen as a tangible, living reality rather than as an abstract idea.

Employers, employees, and justice guardians all dance to the beat of compliance in this legal theatre, understanding that the POSH Act creates a harmonious balance between duty and protection. It unfolds like a well-rehearsed drama, striking a balance between the heaviness of the sword and the shield, all the while working towards a resolution where workplaces are polite, safe, and devoid of the discordant notes of harassment.

INTRODUCTION:

Till, 2022 the total population of women are 3.95 Billion out of 7.95 Billion people living on the earth,¹ due to this they are placed into a variety of disadvantageous positions. They have suffered violence and exploitation from the male-dominated world. Since time women have experienced exploitation in India on social, political, educational, economic, physical, and psychological and on various aspects. The Theory of Gender Equality has been engraved into the walls of Indian history.

Women were valued by society and accorded the same treatment as men in ancient Indian culture. In Hindu scripts, women were referred to as Devi and also known as Janani, meaning mothers. In this civilization, men and women received the same treatment. All of their basic rights, including the ability to acquire an education, were previously available to them. Because they were willing to accompany their husbands in their spiritual endeavours, the wives of Rishis were also called the 'Ardhangini', or better half. At that period, women were permitted to lead lifestyles that were equally equal to those of men. Women in Indian history have been subjected to two unique experiences: subjugation and delivery. Though their functions have changed over time, in the Vedic period they were a complete symbol of protection and guardianship over death and morals.

Gender equality and integrity were permissible in the early Vedic period but were less prevalent in the later Vedic period in certain aspects. Specifically, this applied to women's status, which was equal in the early Vedic era but tended to be negatively viewed in the later Vedic era. Foreign conquest is credited as being the main reason behind the decline in women's status throughout that period. Denying women the right to study the Vedas, chant Vedic mantras, and participate in Vedic rites, the fairness and harmony that were fundamental to the Rig-Vedic principles have been compromised. Wives were expected to be married, take care of the home, and be completely devoted to their husbands. Having a girl child then made parents feel ashamed. There was a time when women's freedom was constrained by the "Pardah," a veil that covered their bodies. This is the reason it gave birth to several additional social issues that made life more challenging for women. Other bans covered child marriage, widow remarriage, Sati, Jauhar, and preventing

¹ Einar H. Dyvik, Global population 2000-2022, by gender, Economy & Politics (International), Statista, (Oct. 5, 2023.), Global population 2022 by gender | Statista.

women from attending school.

On June 26, 1975, Indira Gandhi, the then-Prime Minister of India, said at the United Nations Women's Conference in Mexico that women's lower status and fewer opportunities hindered human progress. The necessity of their independence and the need for better conditions to enable their full growth are made clear by this generalization. It was during the 20th century that women began to advocate for their rights. Their participation in nation-building is a prerequisite to determining their rights. The economic independence of women will lead to an increase in their status and a faster liberation. More Indian women than ever before are entering the formal workforce. Women's rights are more crucial than ever in light of this advancement, especially in the workplace. As part of the "Right to Work," there are safeguards against sexual harassment at work.

“Young men need to show women the respect they deserve and recognize sexual assault and to do their part to stop it.” – Barack Obama.

A woman's equality, life, and liberty are violated when she is subjected to sexual harassment at work. It puts women's potential to be economically and socially empowered as well as the objective of equitable growth at risk by fostering a hostile and insecure work environment that discourages women from taking up employment. The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 was drafted with this principle in mind.

The POSH ACT was created by the Indian government to protect women from being abused and exploited by men while they are at work. The POSH Act was passed by the Indian government in 2013 to address the problem of sexual harassment that women experience at work. This act's goals are to shield female employees from sexual harassment and to establish a favourable and secure work environment for them.

GENESIS:

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality....” Late Chief Justice J.S.

Verma, Supreme Court of India, Vishaka v. State of Rajasthan²

As everyone's equality before the law is guaranteed by Article 14 of the Constitution, the Preamble of the Indian Constitution declares that "equality of status and opportunity" must be provided for all of its citizens.

Therefore, a woman is entitled by law to a safe workplace. The Indian Constitution does contain the basic ideas of equality and personal liberty in Articles 14, 15, and 21. A person's right to individual liberty, protection against infringement on their life, equal treatment under the law, and immunity from discrimination based on any reason are all guaranteed by these articles. Additional proof of this may be found in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was endorsed by the UN General Assembly in 1979 and ratified by India. It calls for the equal treatment of men and women in the political, economic, social, cultural, and civic spheres about fundamental freedoms and human rights. It is additionally recognized as a worldwide women's bill of rights. It highlights how discrimination and attacks on women's dignity go against the concept of equality of rights.

The scope and enactment of the POSH Act started, when a Dalit woman (Bhanwari Devi), was engaged by the Rajasthan State Government as 'Sathin (friend)' in a rural development program to attempt to curb the evil practices of child marriage. During her work assigned, she prevented the marriage of a one-year-old girl in the community, but unfortunately during her work, she was raped brutally by the men of that community. She reported this to the local authorities, but no action was taken. Given that the same people went on to gang rape Bhanwari, it was an expensive error.

A Public Interest Litigation (PIL) was launched in the Indian Supreme Court against the State of Rajasthan and the Union of India by Vishaka and other women's groups in response to the events surrounding Bhanwari Devi's case. It was proposed that sexual harassment be recognized as such to safeguard women's fundamental right to equality and that all workplaces, institutions, and organizations should be held responsible for enforcing these rights.

² AIR 1997 SC 3011.

“In a landmark judgment, Vishaka vs. the State of Rajasthan, the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- ☐ *A definition of sexual harassment.*
- ☐ *Shifting accountability from individuals to institutions.*
- ☐ *Prioritizing prevention.*
- ☐ *Provision of an innovative redress mechanism.³*

OVERVIEW OF THE POSH ACT, 2013:

The POSH Act was ultimately enacted by the government in 2013. By adhering to the three components of prohibition, preventive, and remedy, the Act seeks to provide women equitable access to the workforce, free from sexual harassment, as mandated by Vishaka’s verdict. Moreover, the Act provides women with a legal recourse in addition to other current laws. As such, if a woman reports instances of sexual harassment at work, she is entitled to pursue both civil and criminal remedies.

The Indian government passed the Protection of Women from Sexual Harassment Act to combat sexual harassment and abuse of women in the workplace. This Act was created to shield women from sexual harassment at work and to provide them with a safe and secure environment, to address the issue of sexual harassment in the workplace that women confront. The goal of this legislation is to protect women from sexual harassment and to provide them with a secure and supportive work environment.

All workplaces in India are now obligated by law to provide a safe and secure working environment free of sexual harassment to all women.

³ Government of India Ministry of Women and Child Development. (2015, November), HANDBOOK On Sexual Harassment of Women at Workplace, wcd.nic.in., Last Visited on - November 26, 2023, from <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>.

KEY PROVISIONS OF THE POSH ACT:**□ AGGRIEVED WOMEN**

The term "aggrieved woman" under section 2(a) of the POSH Act, is broad and includes women of any age, whether employed or not, who claim to have been subjected to sexual harassment. Women working in both the organized and unorganized sectors, in public or private workplaces, and as domestic workers in homes are all covered. Regular, temporary, ad hoc, and daily pay employees, volunteers, contractual workers, probationers, trainees, and apprentices are all included in the phrase. This ensures that women in a wide range of employment settings have access to the POSH Act's protections.

The Act applies to all women who are subjected to sexual harassment at work, which is broadly defined to include every venue visited by the employee while on the job, including transportation.

□ WORKPLACE

Recognising that sexual harassment of women may not necessarily be limited to the primary place of employment, the Prevention of Workplace Sexual Harassment Act has introduced the concept of an 'extended workplace'. As per the statute, 'workplace' includes any place visited by the employee arising out of or during employment, including transportation provided by the employer to commute to and from the place of employment.⁴

Under Section 2 (o)(vi) of the act, the definition also includes 'dwelling place or house', which includes the employment of domestic workers under such circumstances. 'Domestic workers'⁵ are especially vulnerable to sexual harassment, which can take various forms, including physical, verbal, nonverbal, and visual misconduct. Unwanted touch, rape, obscene words, sexist jokes, demands for sexual favours, sexual compliments, suggestive gestures, and inappropriate staring are examples of such behaviour. Sexual harassment can be committed by

⁴ Indian Bar Association, What is POSH?, Last Visited on November 26, 2023 on what-is-POSH.pdf (indianbarassociation.org)

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(e), No. 14, 2013 (India).

anybody, not only the person who hires the domestic worker.

During the phase of COVID-19 the concept of 'work from home' became popular, and due to that the corporate world of India has shifted to the definition of workplace. However, the issue arises, whether or not virtual places will be considered as workplaces under the act.

*"It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and the advancement of information technology. A person can interact or do a business conference with another person while sitting in some other country by way of video conferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace' but at his 'residence' and get away with the same."*⁶

Similarly, the Rajasthan High Court ruled that *'separate geographical locations do not necessarily constitute different workplaces in a digital workplace setting.'*⁷

Considering the increased online communication between employees during the pandemic, it is crucial to determine whether sexually coloured or derogatory messages or emails exchanged online constitute sexual harassment in the workplace. In *Jahid Ali v. Union of India*⁸, the Delhi High Court held that an employee can be dismissed for sending messages of a sexual nature to a female superior officer.

Furthermore, in the case of *Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University*⁹, the court stated that *'the definition of 'workplace' under the POSH Act is inclusive and deliberately kept broad by the Parliament to ensure that any area where women may be subjected to sexual harassment is not overlooked'*.

Similarly, in the case of *Ayesha Khatun vs. The State of West Bengal and Ors.*¹⁰, the Calcutta

⁶ Saurabh Kumar Mallick vs. The Comptroller & Auditor General of India and Another, WP(C) No. 8649/2007.

⁷ Sanjeev Mishra v. Disciplinary Authority and General Manager, Bank of Baroda & Ors., S.B. Civil Writ Petition No. 150/2021.

⁸ W.P.(C) 11182/2015.

⁹ Writ Petition Nos. 3449, 3450 & 3451 of 2013.

¹⁰ W.P. No. 905 of 2011.

High Court stated, while analyzing the term 'workplace' in the context of the Vishakha guidelines, that 'workplace' cannot be given a restricted meaning and instead it should be given a broader meaning so that the guidelines can be applied where its application is required even beyond the compound of the 'workplace' for removal of any obstacle of like nature which prevents. In this case, the court also emphasized the need to create a proper and inviting atmosphere for women at work so that they can continue to serve with respect and dignity.

□ SEXUAL HARASSMENT

The Hon'ble Supreme Court defined, Sexual harassment as including such unwelcome sexually determined behaviour as physical contact and advances, sexually-coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints, procedures and remedies, including compensation, should be provided.¹¹

The act also provides the following circumstances, among other circumstances, if it occurs, or is present about or connected with any act or behaviour of sexual harassment that may amount to sexual harassment:—

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.¹²

However, in the case of Shanta Kumar vs CSIR, the Delhi High Court ruled that "undoubtedly, physical contact or advances would constitute sexual harassment provided such physical

¹¹ Vishaka vs. State of Rajasthan, AIR 1997 SC 3011.

¹² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 3(2), No. 14, 2013 (India).

contact is a part of the sexually determined behaviour. ...a physical contact which has no undertone of a sexual nature and is not occasioned by the gender of the complainant may not necessarily amount to sexual harassment."¹³

□ **EMPLOYEE**

“Employee” means a person employed at a workplace for any work on a regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working voluntarily or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.¹⁴

COMPLAINT COMMITTEE UNDER POSH ACT:

The POSH Act provides provision for the establishment of two kinds of complaint mechanisms i.e. Internal Complaint Committee (ICC) and Local Complaint Committee (LCC). All the complaint committees need to have half of the members as women. The committee members will hold their positions not exceeding three years from the date of appointment. Through this, the act also envisages the setting up of grievance redressal forums for both organized and unorganized sectors.

“The Complaints Committee should be headed by a woman and not less than half of its members should be women.

Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.”¹⁵

INTERNAL COMPLAINT COMMITTEE (ICC):

CHAPTER –II of the POSH Act, provides a mandate for every employer of a workplace to

¹³ 2017 SCC Online Del 11327.

¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(f), No. 14, 2013 (India).

¹⁵ Vishaka vs. State of Rajasthan, AIR 1997 SC 3011.

constitute an Internal Complaint Committee, to hear and resolve complaints about sexual harassment at each office or branch of a company with ten or more workers.

A. CONSTITUTION OF ICC.

- 1) The Act mandates that the **Presiding Officer** mandatorily be a woman, who is employed at a senior level at the workplace from amongst the employees. In case, if the senior-level woman employee is not available then the presiding officer shall be appointed from the other offices or administrative units of the employer.

According to Vishaka's guidelines, *the presiding officer must be a woman.*

*'Interpreting the term 'senior' as regards the provision for a female Presiding Officer, the Allahabad High Court clarified that there is no requirement that the Presiding Officer of the ICC also be senior in rank to the person against whom the accusation of sexual harassment is made.....'*¹⁶

*'the court affirmed that if the very constitution of the ICC is not by the statute, the inquiry is vitiated. The importance of a Senior woman employee as the Presiding Officer cannot be undermined and a mere three-member committee not satisfying this provision but fulfilling the other conditions, would not suffice.'*¹⁷

The Delhi High Court in its judgment in Ruchika Singh Chhabra vs M/s Air France India and Anr. "...directed that the ICC should be constituted in strict compliance with the requirements under law..."¹⁸

In Rashi vs Union of India¹⁹, the Delhi High Court *has laid down the broad guidelines on the constitution of the IC which read as follows:*

- i) *Members of the ICC must be impartial i.e. they should not have any personal knowledge or interest in the case or be connected to the case in any manner;*
- ii) *Members of the ICC should not have conflict with any of the parties involved;*

¹⁶ Shobha Goswami v. State of Uttar Pradesh, Civil Misc. Writ Petition No. 31659 of 2015.

¹⁷ Shardaben Murlibhai Gurjar v State of Gujarat, SPECIAL CIVIL APPLICATION NO. 5446 of 2015.

¹⁸ 2018 SCC Online Del 9340.

¹⁹ W.P. (C) 3396/2019.

- iii) Complete neutrality has to be observed in the proceedings;*
- iv) Objectivity needs to be maintained in the conduct of the proceedings;*
- v) There should be no cause for bias for or against any of the parties;*
- vi) Members of the ICC ought to possess blemish-less credentials;*
- vii) Independent members are needed on the ICC to aid, advise and assist the ICC fairly and impartially;*
- viii) An independent person should be someone external and cannot, for example, be the panel lawyer of a bank in a situation where the Complainant and the Respondent are employees of the bank;*
- ix) There should be no undue pressure and influence on the ICC from senior levels;*
- x) In cases where persons who have been at the helm of affairs are themselves the Respondents in a complaint, the ICC cannot be one of their choice or of persons who have worked under them;*
- xi) The ICC should follow a clear and precise procedure to deal with sexual harassment complaints;*
- xii) The principles of natural justice should be followed scrupulously;*
- xiii) The proceedings should lend confidence and assurance to the Complainant and make her comfortable;*
- xiv) The principles and guidelines laid down by the Supreme Court in Vishakha (supra) continue to guide the constitution of these Committees, even after the enactment of the statute. The said principles ought to be followed rigorously and not in a ritualistic manner;*
- xv) Women should not be the object of sympathy or pity but a Complainant who takes the courage to speak out against unwelcome behaviour regardless of whether the perpetrator is a survivor.*
- xvi) The inquiry proceedings should inspire the confidence of the Court.*

- 2) Not less than two Members from amongst employees preferably committed

to the cause of women or who have had experience in social work or have legal knowledge.

- 3) One member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

*'IC without the presence of an external member either dedicated to the cause of women or having experience in social work or have legal knowledge related to sexual harassment would be illegal and contrary to the provisions of the Act.'*²⁰

*The Supreme Court of India has held that there was a fundamental defect in the constitution of the IC as the external member of the IC was found not to be an independent third party by the provisions of Section 4(2)(c) of the PoSH Act as the external member on the IC was appearing on behalf of the employer bank as a panel lawyer and was therefore not an independent person.*²¹

*'The Bombay High Court abrogated the report of the IC by stating that the external member on the IC was not a member of any non-governmental organization or association committed to the cause of women or a person familiar with the issues relating to sexual harassment.'*²²

*'When the Court provided further clarity on the qualification of the External Member of a Committee and the qualifications of the internal members from the organization. It stated that an external member is not qualified by a degree of belonging to a profession or an organization working in a related field but must possess expertise in the field of workplace sexual harassment.'*²³

²⁰ Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University, Writ Petition Nos. 3449, 3450 & 3451 of 2013.

²¹ Punjab and Sind Bank and Others v. Durgesh Kuwar, AIR 2020 SC 3040.

²² Ruchika Kedia v. Internal Complaints, Goa Institute of Management, 2020 SCC Online BOM 139.

²³ Ruchika Singh Chhabra v. Air France India and Anr. (2018 SCC Online Del 9340).

B. POINTS TO REMEMBER

- 1) There must be at least half of its female representation on the ICC.
- 2) Membership in the ICC is limited to three terms of office.
- 3) The Presiding Officer is one of the three members of the ICC who must be present for the inquiry to be conducted.

LOCAL COMPLAINTS COMMITTEE (LCC):

Every district shall have an LCC established by the District Officer to provide a safe and harassment-free work environment for women employed by small companies or in the unorganized sector. The LCC will be the recipient of complaints:

- a) From women working in an organisation having less than 10 workers;
- b) When the complaint is against the employer himself;
- c) From domestic workers.

A. COMPOSITION OF LCC

- 1) Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- 2) One member to be nominated from amongst the women working in block, taluka tehsil ward or municipality in the district;
- 3) Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that:
 - i. At least one must be a woman.
 - ii. At least one must have a background in law or legal knowledge.
 - iii. At least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time.

- 4) The concerned officer dealing with the social welfare of women and child development in the district, shall be a member ex officio.

B. The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

POWER OF ICC/LCC:

If a claim of workplace sexual harassment is brought forward, the Prevention of Workplace Sexual Harassment Act grants the ICC and LCC the same jurisdiction as a civil court under the Code of Civil Procedure, 1908. This comprises the capacity to testify in court about:

- i. Summoning and enforcing the attendance of any person and examining him on oath;

*'The scheme of the Act does not require the committee to mechanically issue a notice upon receipt of a complaint. The Internal Complaints Committee has to apply its mind to determine whether a complaint relates to sexual harassment as defined under the Act of 2013 and whether an incident of sexual harassment occurred at the workplace. It is only based on such prima facie findings that it may attempt conciliation under Section 10, or begin an inquiry under Section 11.'*²⁴

- ii. Requiring the discovery and production of documents;

- iii. Any other matter which may be prescribed.

*'When the Court provided clarity on the approach towards preliminary inquiry and formal investigation. Several Internal Committee upon receipt of a complaint does not take note of various guidelines of the investigation such as documentation, quorum, timeliness, confidentiality and more. The Court through this judgment stated that the preliminary inquiry must follow all the guidelines of the formal investigation.'*²⁵

When conducting its investigation and using its authority, the ICC/LCC must maintain objectivity, adhere to the natural justice principle, and be precise.

²⁴ Shri Debdulal Maity v. National Insurance Company, WP No. 459 of 2014 with GA No. 1856 of 2014.

²⁵ Sibbu v. Air India Limited, ((2016) 2 KLJ 434).

*'The Delhi High Court held that the **principles of natural justice would include an opportunity for cross-examination**; interpreting the term broadly to ensure that the right is not just nominally extended but ensured. In support of its conclusions, it drew a parallel to the complaints committees created under the Vishaka guidelines which were to function by the Civil Services Conduct Rules and whereby actions by the disciplinary authority could only be taken by the rules. Thus, in this instant case, the preparation of a list of questions could not be considered a grant of the right to cross examine-as unlike verbal questioning, there would be no ability to reformulate the question or draw cohesive conclusions. Accordingly, the order was struck down.'*²⁶

*'According to the court's ruling, both the method used to reach a conclusion and the materials themselves must be treated fairly, sensibly, and objectively. Cross-examining witnesses shouldn't be forbidden; save in rare circumstances where doing so would put the victim or the security in danger. The investigation itself was tainted by the method used, which in this case barred the chance to question the witnesses on the stand. Natural justice holds that the right to cross-examine witnesses is an essential component, thus the petitioner argued that the Committee's method failed to provide him with this fundamental right violating the Constitution's Article 14 in the process.'*²⁷

*"The Supreme Court had explained the test of bias in the following words: The tests of "real likelihood" and "reasonable suspicion" are inconsistent with each other. We think that the reviewing authority must decide based on the whole evidence before it, whether a reasonable man would in the circumstances infer that there is a real likelihood of bias. The Court must look at the impression that other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is a real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry."*²⁸

*'When the Court provided clarity on maintaining the impartial and unbiased investigation approach during the proceedings. It further stated that individual members of the Committee investigating a certain matter if and when are under the supervision or direct authority of either of the parties, an impartial and fair investigation is difficult to achieve.'*²⁹

²⁶ Manjeet Singh v. Indraprastha Gas, W.P.(C) 6352/2016.

²⁷ Avinash Mishra v Union of India, (Delhi High Court, 2014 (215) DLT 714).

²⁸ S. Parthasarathi vs State Of Andhra Pradesh, 1973 AIR 2701, 1974 SCR (1) 697.

²⁹ M. Rajendran v. Daisyrani and Others ((2018) 3 MLJ 84).

"8. The petitioner seeks reconstitution of the entire ICC on the grounds of bias. To succeed, the petitioner would be required to establish that there is a real likelihood of bias. Mere apprehension in the petitioner's mind would be insufficient for securing such relief."³⁰

COMPLAINT MECHANISM:

An aggrieved woman who intends to file a complaint has to submit six copies of the written complaint, together with the supporting documents and the names and addresses of the witnesses, to the ICC or LCC within three months of the date of the incident, or three months of the last incident if a series of incidents occurred. The ICC/LCC may grant a three-month extension of the complaint filing date for proper explanation. Friends, relatives, coworkers, psychologists, psychiatrists, and other experts are also permitted to file a complaint on behalf of a disgruntled employee where the employee is unable to do so due to physical or mental incapacity or death.

*'When the Court provided clarity on the importance of a detailed Final Report prepared by the Committee members. It further stated that a Committee's report should not contain mere decisions of the members in the investigation but must also provide the basis and rationale for the same.'*³¹

CONCILIATION:

In compliance with Section 10 of the POSH Act, an Internal Committee or Local Committee may, upon request from the affected woman, attempt to mediate a complaint between the parties through conciliation by reaching a mutually accepted resolution. Conciliation is a non-formal way to resolve complaints before they become the subject of a formal investigation. Therefore, before initiating the inquiry process, the IC may be able to resolve sexual harassment claims by conciliation between the parties; nevertheless, financial settlements shouldn't serve as the basis for such mediation. Copies of the settlement should be given to the aggrieved lady and the respondent as soon as one has been reached. The settlement should be documented by the Internal Committee or Local Committee. It is not permitted for the IC to perform an investigation under the POSH Act after a settlement has been reached.

³⁰ Somaya Gupta v. Jawaharlal Nehru University and Anr., (2018) 159 FLR 390.

³¹ Ashok Kumar Singh v. University of Delhi (Delhi High Court WP 7371 of 2016).

FALSE OR MALICIOUS COMPLAINT AND FALSE EVIDENCE:

According to Section 14 of the POSH Act, there are repercussions for complainants who "falsely or maliciously" use the provisions. The POSH Act allows for disciplinary action to be taken against a complainant whose allegations are shown to be malicious, false, or made with knowledge that they are wrong, by the organization's service norms. The Act permits written regrets, cautions, admonition, censure, denial of promotions, denial of raises and increments, termination of employment, counselling, and community service in the absence of service restrictions. The POSH Act also makes clear that a complaint need not be malicious or false for there to be inadequate evidence to substantiate it.

The wording of Section 14 does seem to be a saving grace, even though it is believed to be a deterrent in character. One could conclude, from several perspectives, that although the provisions in Section 14, which are meant to penalize malicious or false complaints or false evidence, might deter baseless complaints, they might also deter sincere witnesses or complainants from gathering sufficient evidence to bolster their claims.

*'When the Court upheld the misuse of the rights provided to women under this law and levied a fine of INR 50,000 on the Complainant for filing a false complaint. A very important element is provided in the law to ensure the prevention of misuse under this law. Several organizations fail to educate their employees on this and various Internal Committees do not initiate investigations when they conclude a frivolous complaint.'*³²

*"Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is intended to have an equal standing for women in the workplace and to have a cordial workplace in which their dignity and self-respect are protected, it cannot be allowed to be misused by women to harass someone with exaggerated or non-existent allegations."*³³

CHALLENGES IN IMPLEMENTING POSH ACT:

The POSH Act 2013 was put into effect in India to stop sexual harassment of women at work. Despite its noble objectives, the Act has encountered several challenges in its implementation:

³² Anita Suresh vs. Union of India & Ors in W.P.(C) 5114/2015.

³³ Union of India v. Reema Srinivasan Iyengar, WP Nos. 10689, 24290 and 4339 of 2019.

- i. Because the Act is still not well recognized in some places, it may be difficult for victims to report offences.
- ii. Many firms lack proper grievance redressal procedures, or they have not yet made any effort to educate employees about their rights under the Act.
- iii. Workplace culture may have a major impact on the incidence of sexual harassment, thus organizations and employers need to address it.
- iv. With the right education and awareness campaigns, the POSH Act of 2013 can protect women from sexual harassment and improve workplace safety.

POSH, SILENT ON GENDER NEUTRALITY:

Other employees who could experience sexual harassment at work are not particularly covered by the Act. A woman who asserts that she was the victim of sexual harassment is deemed to have been harmed, according to the criteria. Since the Act exclusively covers complaints from women, this limits the reach to just women. This discrimination undermines the notion of workplace equality by perpetuating the myth that harassers are exclusively male and their victims are female. To address this issue, laws that are gender-neutral and mandate appropriate protocols for dealing with sexual harassment by males and LGBTQ+ individuals in the workplace are needed. For the LGBTQ+ group to be protected in the workplace, amendments to the POSH Act must be presented and approved. The ideas of the Transgender Person Protection of Rights Bill, which was presented to Parliament in 2016 and eventually approved by one of the Houses, ought to be adhered to by this law. One of the essential rights that Article 21 protects for both the LGBTQ community and all people is the 'Right to Livelihood'³⁴. It is an important and basic right.

CONCLUSION

sexual harassment is an increasingly prevalent issue in both developed and developing countries, affecting people of all genders, races, sexes, and colours. Harassment is caused by a variety of variables, including gender discrimination, inadequate distribution, favourable nature, and the harasser's worldview. It can also refer to psychological pressure caused by sexual assault, coercion, or unwanted attention.

³⁴ Bhagwati Charan Shukla v Provincial Government, A.I.R. 1947 Nagpur 1(India).

The Prevention of Sexual Harassment (POSH) Act should give clarity on applicability, accountability, implementation, and monitoring to encourage improved reporting. Employers and authorities should establish best practices for recognizing and reacting to workplace harassment to achieve high productivity. It is vital to advocate for initiatives that increase awareness and preventative activities.

With an increasing number of women in the labour sector, it is vital to implement the POSH Act's provisions. In addition to ordinary workplaces, the Act should be broadened to incorporate virtual workspaces and other non-traditional settings. Employers are legally mandated to provide a safe working environment, and understanding and adhering to a comprehensive interpretation of workplace standards aids in the effective prevention of sexual harassment and the construction of safer workplaces.

The POSH Act had a significant impact on Indian workplaces, providing legal protection for victims of sexual harassment. However, the Act's enforcement has to be strengthened. Employers and employees must work together to create a harassment-free workplace. The POSH Act aids in the creation of a safe and inclusive work environment that promotes the well-being of women.