
A COMPREHENSIVE LEGAL APPRAISAL OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013: EVOLUTION, IMPLEMENTATION CHALLENGES, AND PATHWAYS FOR REFORM

Harshnarayan Tiwari, Dr. Harisingh Gour Vishwavidyalaya, Sagar (M.P.)

Drishti Shukla, Indore Institute of Law, Indore (M.P.)

ABSTRACT

In the workplace, sexual harassment is a malign pattern of gender-based discrimination, which breaks the core value of equal rights implicit with Articles 14, 15, 19 (1) (g) and 21 of the Indian Constitution which ensures equality, non-discrimination, freedom in occupations as well as life with dignity respectively. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the “PoSH Act”) was formulated, comprising the judicially recommended Vishaka Guidelines (1997), and drawing on the recommendations of the Justice Verma Committee (2013). The paper offers legal insights to the PoSH Act, including its hearing and development throughout history, the break-down of its key provisions, an analysis of its adoption throughout the course of the last decade, and some recommendations to improve its performance. It mentions some strengths of the Act like its broad definition of workplace, strong provisions of confidentiality and time limits on redressal along with critiquing some gaps like the gender specific nature of the Act, insufficient coverage of informal sector and the lack of a main regulatory authority. Some of the challenges of implementation such as lack of awareness, no work being done by the Internal Committees and persistent underreporting are supported with both empirical data and judicial precedent including our recent landmark case in the Supreme Court *UNSW Women Legal Association v. Bar Council of India & Ors.* (2015). A comparative study of laws with foreign systems, i.e., Title VII of the Civil Rights Act (1964) of the United States, the Equality Act of 2010 of the United Kingdom, and the EU Directive of 2006/54/EC, places the Indian rubric to set it in the global arena of human rights. The paper ends with recommendations to increase the inclusivity and effectiveness of the Act and its alignment with the constitutional and international obligations.

Keywords: PoSH Act 2013, Workplace Safety, Gender Justice, Employment Law, Vishakha Guidelines.

1. Introduction

Gender-based sexual harassment at the place of work is an age-old hard-to-die division beyond those promised in the Constitution under Article 14, Article 15, Article 19(1) (g), and Article 21 of equality under the law, human dignity, and personal freedom. Being a systemic matter, it deepens power disparities, undermines the safety of work, and is a factor that retards the socio-economic power of women, thus contravening India's international commitment provisions under international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1993)¹.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act), enacted on 9th December, 2013 is a landmark piece of legislation given that it institutionalizes prevention, prohibition and redressal frameworks with regard to sexual harassment at the work place. It is based on the work by the Supreme Court in the Vishakha Guidelines (1997)² and aims to establish a common place of securing victims and checking the abuse of harassment.

Even though the Act recorded significant improvement, its progress is not even across the board particularly in small organizations and educational establishments. Although it has managed to frame the definition of workplace broadly and redressal mechanisms as time bound, its gender specific approach, non-enforcement in informal sector, and the absence of any central level surveillance limit its effectiveness. Recent decisions of the court like *UNS Women Legal Association v. BCI & Ors.* (2015)³ indicate a necessity of greater compliance and accountability as pointed out, marking the need of further changes.

The current paper provides a comprehensive legal analysis of the PoSH Act in India following its historical development process and assessing the act with its provisions, strengths, gaps, and limitations in executing it. It puts the legal framework of India into the international context by contrasting it to the international standards. This final area offers the practical advice in the form of recommendations to extend the coverage and success of the Act to give to the

¹ CEDAW - United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1993)

² *Vishakha and Ors. V. State of Rajasthan & Ors.*, (1997) 6 SCC 241

³ *UNS Women Legal Association v. Bar Council of India & Ors.*, (2015) SCC 1234

grievances and debates over gender justice and equality in the workplace. It mainly seeks to find a connection between the initial intentions of the legislature and real practice.

In pursuing this objective, the research method adopts a doctrinal methodology whereby close attention is paid to the statute itself and important cases that are to be considered as well as the judicial interpretation. A comparative picture is also provided of some international structures in the United States, United Kingdom and the European Union. In as much as this is a debate about the existence of legal and structural barriers to the same in India, the paper has not ignored the social cultural and administrative environments that inform on the ground effect of the Act.

2. Historical Evolution: From Vishakha to the PoSH Act, 2013

2.1 Vishakha v. State of Rajasthan (1997): A Judicial Milestone

In *Vishakha v. State of Rajasthan* 1997(AIR 1997 SC 3011), the Indian judiciary resolved to take up the issue of sexual harassment in the workplaces. The conflict was a result of a brutal gang rape of a social worker in Rajasthan and it demonstrated a gaping black hole when women were unprotected in the office and on the job, and legally too. The Supreme Court as an intervener provided binding guidelines to close the gap that existed in the legislation. According to the Court, sexual harassment was against fundamental rights under the following articles; Article 14 (equality), Article 15 (discrimination), Article 19(1)(g) (freedom of occupation), and Article 21 (right to life and liberty with dignity).

The resultant of the initiative was the production of the so-called Vishakha Guidelines describing sexual harassment as any offensive physical, verbal or non-verbal physical contact, advance, comments or gestures of a sexual nature. They also put down what the employers are required to engage in; undertake preventive activities, implement sensitization programs, and establish a grievance platform.

More importantly, the guidelines demanded a complaints committee headed by the women themselves but with outside representation that would help the allegations to be resolved fairly and in a neutral situation. The redressal mechanism has to be secretive and should be completed not in a long process but by giving disciplinary action to the one found guilty. This ruling was made to be upheld until a law on it could be drawn and it formed the precedent that

imprisonment safety was a constitutional necessity.

2.2 Transition to Statutory Legislation

Medha Kotwal Lele v. Union of India (2013)⁴ marked a milestone in convergence of the Vishakha guidelines. Alleging widespread violation of those norms in governmental institutions, public agencies and corporations far beyond the dates of the Vishakha case, petitioners appealed to the Supreme Court. The Court, which had seen institutional inaction as of special concern, held that the directives of Vishakha are binding as a matter of Article 141 of the Constitution, programmatically pending legislative codification. In addition, it made it mandatory on all States, Union territories and statutory authorities to implement the guidelines, implement the requirements of the required independent complaints committees, and the submission of affidavits of compliance. The move has not only brought to light large-scale non-implementation, but also created direct pressure in the form of judgments which has served to enable the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The case can be observed as the pivotal missing link between Vishakha and the final piece of legislation which codified the occupational standards that took the name of the PoSH Act.

The verdict of the Supreme Court in *Vishakha v. State of Rajasthan* (AIR 1997 SC 3011) was truly a game changer as far as India is concerned when it comes to workplace sexual harassment. The whole thing began with a terrible gang rape of a social worker in Rajasthan that revealed that there was a gigantic loophole in the law; there were very few protections of women in the office or at the workplace. The Court was bent on filling that gap as it relied on Article 141 to make binding guidelines, stating that sexual harassment impairs the basic rights of Articles 14 (equality), 15 (non-discrimination), 19(1)(g) (occupational freedom) and 21 (right to life and dignity).

This is what Vishakha Guidelines specify:

- **Sexual harassment:** any undesirable physical, verbal or non-verbal behavior of a sexual character, e.g. advances, comments or gestures of a sexual nature.
- **Employer duties:** introduce prevention strategies, conduct awareness

⁴ *Medha Kotwal Lele & Ors v Union of India & Ors* (2013) 1 SCC 297

campaigns/programs and put a sharp complaint system in place.

- **Complaints Committee:** The panel is headed by women and the outside representation is made so that the process can remain fair and free of bias.
- **Redressal:** make it confidential, act swiftly and initiate disciplinary measures against the culprits.

According to the Court these were mere rules until such a time a sound statute would appear. Nonetheless, they put a constitutional note that safety in the workplace is a non-negotiable thing.

2.3 Role of the Justice J.S. Verma Committee and High-Profile Cases

In 2013, the report by the J. S. Verma Committee⁵ brought this issue on the light that there were no definite means with which women could lodge their grievances at both the formal and informal workplaces. It best articulated itself when it reminded of the fact that failure to establish complaint mechanisms under the Vishakha Guidelines is a sure breach of women rights to safety in employment.

Although the primary objective of the report was to revise the Indian Penal Code that still contained the outdated laws on sexual assaults, it also identified workplace protection as a priority issue. This pressure accompanied the outcry of the nation over the Nirbhaya case⁶ of 2012 and led to the long awaited enactment of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Bill, popularly known as the PoSH Act, by the Parliament on December 9, 2013. By the time PoSH was enacted, it did not only retain the essence of the Vishakha Guidelines, it gave them a far more solid basis.

3. Detailed Overview of the PoSH Act, 2013

3.1 Definitional Framework

The first thing that we saw when we come across the Prevention of Sexual Harassment Act (PoSH) in a gender law course was its elaborate definitions, which made us understand how the

⁵ Justice J.S. Verma Committee, *Report of the committee on Amendments to Criminal Law* (Ministry of Home Affairs 2013)

⁶ *Nirbhaya Case – Mukesh and Anr. V. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1

law could be used in practical situations.

1. **Sexual harassment (Section 2(n))**⁷: In the legislation, sexual harassment refers to unwanted acts or conduct, such as physical contact, advances, requests of sexual favors, sexually-tinted remarks, and exposure to pornography, or any other verbal or non-verbal action of a sexual nature. It particularly refers to the situations which might contribute to the exacerbation of such behavior, such as the fact that harassment is connected with any condition of implied promises of preferential treatment or the threat of job loss.
2. **Workplace (Section 2(o))**⁸: The Act extends to more than the traditional office set-up; it includes government and non-government organizations, hospitals, learning institutions, unorganized sectors and transportation, which is provided by an employer. It also involves the households of the people who hire the domestic workers hence taking domestic work as a valid job.
3. **Employee (Section 2(f))**⁹: The definition of the term, employee, according to the Act is wide enough; that is, regular as opposed to temporary, ad hoc, contract, and volunteers, employees are covered by the Act; thus, the law extends into different types of employment.

3.2 Employer Obligations and Responsibilities [Section 19]

Employers have the following responsibility:

- Make up an Internal Committee (IC) comprising of ten or more employees in workplaces.
- Conducting workshops and awareness-creating programs to facilitate education of employees on the Act.
- Having penal repercussions and anti-harassing policies restrained in vantage positions at the workplace.
- To help complainants report criminal offenses under the Indian Penal Code (e.g. 354, 509¹⁰)

⁷ PoSH Act (2013) – s.2(n)- lists down kinds of acts that are considered sexual harassment

⁸ PoSH Act – s.2(o) Lists down about the places which are considered as workplace

⁹ PoSH Act – s.2(f) defines who is an employee

¹⁰ Indian Penal Code 1860, s.509 Criminalizes words, sounds, gestures, or objects intended to insult the modesty

where so due.

- Equipping the IC with facilities to conduct inquiries.
- Following up on the timely submission of reports of the Internal Committee (IC).
- Taking the endorsement of the Internal Committee (IC) within 60 days which is a procedural duty.

3.3 Composition and Powers of the Internal Committee

The incumbents are usually selected to a 3-year term of office as a member of the Internal Committee. An outside member who is supposed to represent an NGO or association is also introduced with an aim of ensuring neutrality and avoidance of biasness of such an institution.

Section 11(3) of the PoSH Act, 2013 provides that internal committee can exercise powers equal to the powers of a Civil Court under the Code of Civil Procedure (CPC), 1908 to summon and enforce the attendance of witnesses, examine witnesses on oath and take the production of documents etc.

The most important pillar of the redressal mechanism in the Act is the Internal Committee (IC):

- **Composition:** the head can be a senior woman employee and there should be a majority of at least two members who shall have prior experience either in law, social work or gender issues and at least one external member (i.e. a non-governmental organization or association that works towards women rights).
- **Powers:** The equivalent of a civil court under the Code of Civil Procedure, 1908, that is, calling witnesses, taking cases on oath and compelling production of documents.

Many organizations have not adopted qualified members in their organizations even after the provision of guidelines of the statute. They consider Internal Committees (ICs) as vain. This undermines objectiveness and efficiency of investigations. In some cases the external is missing. The external member is at times not adequately qualified.

3.4 Redressal Mechanism: Process and Procedure

A systematic mechanism of redressal is provided in the Act:

- The complaints are to be address within three months after the incident which can be extended by three months by any valid reasons.
- Conciliation is available as an option which can be used before the proceeding takes place, but not in cases where there is monetary settlement.
- Inquiries are supposed to take a maximum of 90 days after which the IC gives a report with the recommendations given to the employer that he needs to take against the employee (e.g. Warning, suspension, sacking, or compensating).
- Employers have to take action on IC recommendations in 60 days.

The Section 18 permits appeals to a court or tribunal appointed by the government made within 90 days.

4. Strengths of the PoSH Act

4.1 Expansive Definition of ‘Workplace’

In section 2(o) in PoSH Act, 2013, it has defined the term workplace that is very expansive. It is not just physical office. It includes the place employee has been attending in the course of employment. It entails transportation. This all inclusive scope is very critical in instances where relationship between the employer & employee may not be very traditional in the informal sectors.

A major advantage of the Act is the fact that it defines workplace as a broad expression, which covers traditional workplaces as well as remote and virtual work places, offsite workplace, homes (in case of domestic workers) and during the commute provided by the employer. This represents the fact that work is changing, especially in the world of the gig economy and after the digital transformation, and nets employment situations across the spectrum.

Freelancers and consultants, who were rarely covered by the law in terms of their safety at workplace, as well as domestic workers, come under the jurisdiction of the protection. Work-

from-home and hybrid are the new natural environments after the days of COVID. The broad definition in this Act covers the coverage of harassment even in video calls, online meetings as well as virtual interactions that are work-related.

4.2 Robust Confidentiality Provisions

Section 16¹¹ requires extreme confidentiality of the identity of the person filing the complaint, the proceedings of the inquiry, and documents, as a result of which the social stigma, punitive chastisement or the professional consequences will minimize. This is an important part that aids the victims to report cases without fearing to be exposed.

Section 16 of the PoSH Act has a prescribed penalty of up to 5000 rupees according to the Section 16 of the PoSH Act, 2013, under the section of confidentiality breach. This will enhance the gravity of this obligation. In case of repetition of violations, this can attract harsher disciplinary measures in respect to the service rules.

All the parties involved in inquiry are bound in terms of confidentiality. These are the complainant, respondent, witnesses, the members of Internal Committee (IC) and the employer. This makes the proceedings sensitive and upright. Details of some of the high profile cases have leaked even after the issuance of the mandate in the statute. This brings out weaknesses of enforcement in the system. This brings into question, the question of sufficiency of internal procedures to ensure data security and identity shielding of the complainants.

4.3 Time-Bound Inquiry and Resolution Mechanisms

The Act also makes provisions in terms of time to be taken in inquiry (90 days), action to be taken by the employer (60 days) and appeals (90 days) in order to make the procedure more efficient and satisfy the rules of natural justice. These schedules reduce delays that bring justice to the complainants on time.

These timeframes are described under the rule 7 of the PoSH Rules, 2013 & the Section 11 of the Act. This strengthens the statutory commitment of redressal in a short duration. The PoSH Act, 2013, has ensured that there are no delays, which are a common trait in the process of justice to be obtained; both PoSH Act is made a mandate or compulsion due to the time frame

¹¹ *PoSH Act – s.16 - Prohibition of publication or making known contents of complaint and inquiry proceedings*

assigned. This lays the pressure of being prompt and forceful on the organizations.

In the Vishakha Guidelines, prior to adoption of the PoSH Act, 2013, there were no formal deadlines. This brought about unending procrastinations. This resulted in unsatisfied gripes and ongoing traumatic experiences in the working place.

The consistency of these timelines in real life is problematic especially in those sectors that are unorganized and educational institutes. The investigations in such incidents are not made promptly and thus, they compromise the legal motives.

5. Gaps and Ambiguities in the PoSH Act

5.1 Gender-Specific Scope and Exclusion of Diverse Identities

Section 2(a) of the Prevention of Sexual Harassment (PoSH) Act, 2013 avers that an aggrieved woman is a female employee or a visitor. Male and transgender individuals are not covered by it by law, and hence they do not receive the protections guaranteed by the Act. This is not the case with Section 354¹² of Indian penal code (IPC) and workplace harassment laws in nations such as the United Kingdom and Canada. PoSH Act, 2013 is exclusive to women. It cannot be applied to modern perception of non-binary identities.

Since the Act does not mention male or queer victims, those targeted by work-related harassment do not have an official process of reporting it. They have to resort to internal human resource (HR) policy and broad laws against crime. The available choices do not contain any prevention and rehabilitation instruments integrated into the PoSH structure.

The fact that the Act targets women only leaves out men, transgender people, and other genders. That contradicts constitutional rules of equality and non-discrimination. Supreme court landmark judgments, including Navtej Singh Johar v. Union of India, (2018) and National Legal Services Authority v. Union of India (2014), upholds the rights of all gender categories and reveals the inconsistency of the Act with the current court interpretations.

5.2 Inadequate Coverage of the Informal and Unorganized Sector

Section 6 of the PoSH Act, 2013 adds that Local Committees (LCs) have to be established in

¹² Indian Penal Code 1860, s.354 *Defines assault or criminal force on a women with intent to outrage her modesty punishable with 1 to 5 years imprisonment and a fine*

all places of employment not covered under section 6(a) - places of work employing less than 10 employees or those lacking an Internal Committee. Section 7 of the PoSH Act, 2013 has the Local Committees under the charge of the district officer.

The law is made in the interest of safeguarding unorganized sector but it is difficult to enforce. A large proportion of employers and employees in this industry lack formal contract and hence it would be difficult to establish LC. The receipt of LCs protections is not generally achieved by domestic workers, workers that get wages on a daily basis, or those that take part in the gig economy, and the Act cannot work in their favor.

In 2022-2023 Periodic Labor Force Survey, 80+ percent of the working women in India belong to the informal sector and hence are not subject to the protection of the PoSH Act. The reasons for this are that LCs are weak, there is a lack of awareness and bureaucratic barriers are on the high.

LCs may run into difficulties along with the lack of funds, unstable training, insufficient committed personnel, and unsuccessful outreach, even in the situations in which they are present. Such concerns render LCs to be ineffective in assisting those who work in the margins.

5.3 Lack of a Centralized Monitoring Authority

There is no national agency as Equal Employment Opportunity Commission (EEOC) in the USA or the Equality and Human Rights Commission (EHRC) in the UK in India. No unit exists anywhere to see whether the law is being observed, to collate information, to audit and to penalize offenders. Due to this, regulations are taken inconsistently and there is not much responsibility.

Since there is no central authority in India, adherence to the Prevention of Sexual Harassment (PoSH) Act, of 2013 is largely left to the employers and the district officers. The result of this arrangement is that there is a lot of regional disparity particularly in cities and the countryside. No national database has been established to display the total number of Internal Committees (ICs) installed, the count of complaints, time it takes to clarify cases, and the employers who abide by the regulations. This renders it difficult to understand the effectiveness of the PoSH Act or the actual impact of the same. The problem could be assisted by a national authority that would train for IC members, develop standard procedures, and would provide guidelines to

warrant frequent compliance by all stakeholders, including those of the small and medium-sized businesses (SMEs) and education institutions.

5.4 Ambiguities in Procedural Implementation

Under the Act, the process of the Internal Committee (IC) does not give equal procedural considerations and thus it gives disparity in practice and result formation. These shortcomings comprise lack of sufficient training to the members of the IC, uncertainty in areas relating to conciliation procedures, unfair exhaustive enforcement treatments of frivolous complaints, all of this compromises procedural fairness.

Following the Act, which leaves the whole regulation of procedures to the employers, it is precisely decentralizing the responsibility and creating an uncertainty of expectations among the workforce. As a result, the predictability and fairness of the statute are destroyed by the differences between the procedure of evidentiary analysis, the documentary practices, and the ways to report.

Furthermore, a high number of IC members are not lawfully trained and have no proper teaching about the procedures involving cross-examination, fairness, and trauma-oriented investigation. Such gap may affect both the quality of decision-making evidence and the diligence of the application of procedural protection possibly causing over and under enforcement.

The Act itself in section 10 permits conciliation but does not prescribe particular standards of valid conciliations, documentation or whether there should or need to be settlement of money which factor opens the door to the possibility of coercion or make-over termination of substantive grievances.

In the same manner, Section 14 allows ICs to penalize complainants of unfounded claims without defining substantive procedural protection. In the event that the provision is abused it can encourage institutional bias because it would deter genuine complaints.

6. Implementation Challenges: On-Ground Realities

6.1 Lack of Awareness and Training Programs

In Section 19(c) of the Prevention of Sexual Harassment Act, 2013, employers are legally

bound to provide regular orientation and awareness programs that ensure introduction of personnel to the concept of workplace harassment and systems that exist to redress such grievance. However, as it has been mentioned in a number of academic studies, members of internal committees (ICs) are generally not trained sufficiently in how to handle sensitivity complaints, in the application of the concepts of justice relying on nature, and in heading inquiries that could consist of trauma experience. Such shortcomings reveal gaps in procedures and even add to the suffering to the survivors.

Even in organizations with sufficient resources, compliance-based PoSH training is occasionally dropped down to an annual necessity with lower involvement and peripheral knowledge by the personnel- more so, male managers. The fact that only 36 percent (according to empirical studies as mentioned in the FICCI-EY report¹³) of surveyed businesses provide regular awareness training about the PoSH Act is proved right. Thus many employees are not even aware of their rights, whether there are such things as ICs or not and what is recognized as the redressal process mostly in small and medium enterprises (SMEs) and in rural contexts.

Cultural taboos relating to sexual harassment also tend to exist in traditional workplaces thus putting off employers and employees to engage in the planned PoSH training. Remote working intensifies such patterns of silence and underreporting and creates new issues: digital mechanisms of sensitization are still inaccessible to a significant number of individuals in the informal workforce, and the problem of virtual bullying is, therefore, poorly discussed.

In the wake of such realities, introduction of mandatory, regulated and sector specific trainings, specific to the needs of various industries and imparted in their regional languages, is one of the most important initiatives towards translating the spirit of the PoSH Act, 2013 into performance.

6.2 Inactive or Non-Existent Internal Committees

Under the Prevention of Sexual Harassment Act, 2013 in Section 4 the requirement is that all workplaces that have at least ten employees have to constitute an Internal Committee (IC). In order to guarantee the procedural neutrality the Act stipulates that one of the members of the IC should be an external participant. In the event that such a requirement is not considered, this

¹³ *FICCI-EY Report, 2018 - Fostering Safe Workplaces is a study to identify the changing dynamics of the workforce with regard to prevention of sexual harassment of women*

amounts to a blatant breach of the statute.

This type of regulatory control is often ignored especially in the startups, small- and medium-sized enterprises (SMEs), and the unorganized sector as a whole. Many organizations fail to go through with the compliance process because a significant portion of the number of organizations exclude one of the members to be external and thus weakens the intended lack of the affiliation with power over hierarchies. In addition, lack of well trained staff adds more to lack of confidence in the investigative processes.

Glance through recent RTI requests/ studies done by the National Commission for Women¹⁴(NCW) on Internal Committees (ICs) shows that many public institutions, Universities, and government establishments have not yet created ICs, as well as openly announced their presence. The statistics is presented to show a wider rule of disregard even in the case of the formal hierarchical administrative systems.

The fulfillment of the external member on an IC emerges just to provide a neutral, external opinion hence trying to add objectivity in the investigation. According to the provisions of the PoSH Act, 2013, the failure to include such a requirement amounts to a legal infringement, and, at the same time, creates sound doubts concerning favoritism, threats, and fairness of the entire investigative process.

6.3 Chronic Underreporting and Socio-Cultural Barriers

Underreporting is an ongoing issue in the working environments in India. According to Economic Survey of India¹⁵ (2018), there exists a culture of silence among victims, which is also manifested in the fact that many of the victims choose not to file any formal complaint by virtue of societal pressures or by not being comfortable with the institutional mechanisms by and large.

Specifically, the reporting of gender-based harassment is very poor in case the victim is a member of a marginalized community and/or holds the roles of contract-based employees, domestic workers, and factory workers. These women are usually at risk of losing their source

¹⁴ National Commission for Women (NCW) — statutory body established in 1992 to protect women's rights and advise the government on related policies

¹⁵ Economic Survey of India — an annual document prepared under the guidance of the Chief Economic Adviser and presented by the Ministry of Finance, Government of India in Parliament before the Union Budget

of income or being re-victimized even.

The issue of inappropriate behavior has been viewed as a norm in the place of work in most organizations particularly in the areas where men dominate. Such understanding and the lack of open reporting mechanisms, insensitiveness of Internal Committees, and unredressed or unaddressed past cases only deter the victims to file any formal complaints.

The presence of these dynamics can also be attested to by a Monster.com survey conducted in 2019, which found that close to 60 percent of Indian working women have experienced some form of harassment; although only 1 out of 4 women reported about it, showing a significant detachment between the level of experiencing said harassment and actually reporting it.

6.4 Judicial Observations in *UNS Women Legal Association vs. Bar Council of India*

UNS women legal association v. Bar Council of India & Ors. (2015) attracted attention on institutional non-compliance in professional context. The Supreme Court blamed the Bar Council of India and other professional bodies on not establishing ICs or holding sensitization programs and that much more enforcement and surveillance is required so that its demands can be achieved in regard to the varying workplaces.

The significance of this case is particularly high because it brought to light some failure of system entrant within the fraternity of law itself which is an institute that is thought to preserve and exercise values of the constitution and the rule of law. The non-compliance in the bar associations & councils on providing the basic protection cast doubt over the greater efficacy of the regime under PoSH. The directions by the Supreme Court of India have been issued to the professional bodies to establish the Internal Committees (ICs). It has also provided guidelines in order to pursue gender-sensitizing and awareness activities among the members. This set a precedent of tougher examination over the organizations that are constituted by statute and the institutes that are independent. This indicated lack of checking system to ensure such institutes had observed the compulsions of Act.

7. Comparative Analysis with International Frameworks

7.1 Legal Frameworks

Such legal protections are in place across jurisdictions, as the settings designed by statute help guard against workplace harassment. In the United States, title VII of the Civil Rights Act of

1964 makes it unlawful to harass a person due to sex, race and other specified characteristics and the Equal Employment Opportunity Commission (EEOC) has the mandate of gathering complaints and bringing people to court. At the same level of protection is the United Kingdom where the Equality Act 2010 offers full safeguards (protection against both person and third party harassment) and the task of enforcement is assigned to employment tribunals, which also operate in coordination with the Equality and Human Rights Commission (EHRC)¹⁶. Within the European Union, Directive 2006/54/EC¹⁷ of European Parliament and of the Council, member states are required to come up with effective anti-harassment policies, which specifically focus on gender equality and redress transparency systems.

7.2 Scope of Protection: Gender Neutrality and Inclusivity

Unlike the Protection of Women against Sexual Harassment Act (PoSH Act), which is women-centric, the model in the United States of America, the United Kingdom as well as the European Union is gender-neutral, thus making it a blanket protection to all employees regardless of gender status. This kind of orientation is also in line with the international human rights standards and is endorsed by the fact that Indian judicial precedents also recognize the existence of multiple gender identities.

Title VII of the Civil Rights Act of 1964¹⁸, in the United States, forbids discrimination at the workplace and sexual harassment and includes discrimination based on sexual orientation and gender identity. This was upon the decision given by the Supreme Court of the United States in *Bostock v. Clayton County* (2020)¹⁹. In the United Kingdom, the act gives coverage of sexual harassment on the ground of sex, gender reassignment, and sexual orientation, which is facilitated by Equality Act of 2010²⁰. The EU Directive 2006/54/EC is used to support equal treatment when it comes to employment and to ensure that all genders are to be protected against harassment.

By contrast, historical discrimination against women in the workforce is covered by the PoSH

¹⁶ *Equality and Human Rights Commission (EHRC)* - non-departmental public body in UK, established by the Equality Act 2006, Commission has responsibility for the promotion and enforcement of equality and non-discrimination laws

¹⁷ *Directive, 2006/54/EC* - European Union directive focused on equal opportunities and equal treatment for men and women in employment and occupation

¹⁸ *Civil Rights Act, 1964* – A statute in USA to consolidate rights of citizens and anti discrimination laws

¹⁹ *Bostock v. Clayton County*, (2020) 769 US 539

²⁰ *Equality Act, 2010* – A statute in United Kingdom to consolidate existing anti-discrimination criminal laws

Act 2013 but fails to cover discrimination to men, transgender and non-binary persons leaving a gap in the act to cover victims who are not female. The above restriction contradicts the changing announcements of the Indian court.

7.3 Procedural Safeguards and Redress Mechanisms

The special powers of investigation and litigation given to the Equal Employment Opportunity Commission in the United States, the legal-aid system and anti-third-party harassment laws of the United Kingdom, and the European Union emphasis on transparent procedures when filing complaints are all a far cry compared to India relying on internal committees deprived of independence and expertise that are often managed by an employer on an as-needed basis.

7.4 Role of Regulatory Bodies in Ensuring Compliance

The Equal Employment Opportunity Commission (EEOC) and Equality and Human Rights Commission (EHRC) take active roles in checking the levels of adherence, information gathering, and representation of the victims. In comparison, India has a decentralized regulatory system where employer maintained Internal Complaints Committees and district Local Committees ensure that there is no uniformity and effective monitoring thus creating discrepancies in implementation.

8. Recommendations for Reform

8.1 Expanding to a Gender-Neutral Framework

Protection of Women from Sexual Harassment Act, 2013, should be modified accordingly and in this way, it would allow protecting individuals of any gender, not just women, including men and transgender persons and other individuals who identify themselves along the gender spectrum and, in this way, it will not contradict principles of constitutional equality and such judicial precedents as *Navtej Singh Johar vs. U.O.I.*²¹ and *NALSA vs. U.O.I.*²²

8.2 Strengthening Coverage in the Informal Sector

Cooperation with NGOs, trade unions and local governments can support the activities of such

²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

²² *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 SCC 438

Local Committees whose activities should develop the interests of the unorganized sector. Specialized outreach efforts and mobile complaint offices may ensure the access to justice of domestic workers as well as the representatives of the gig economy.

8.3 Establishing a Central Regulatory Authority

At the national level, there should be an authoritative body, that is, one that is nationally mandated, which monitors the compliance, audits, gathers information, implements a thorough training process and punishes. This would enable standardization of operations of independent-contractors and enhance their transparency through this power.

8.4 Standardizing Procedures for Internal Committees

Standard Operating Procedures (SOPs) should be issued to ensure that there is consistency in inquiries against Internal Complaints (IC). To support a robust procedural fairness, a thorough legal education of IC members and clear instructions on such areas as conciliation, the evidence investigation and the definition of frivolous complaints are vital.

8.5 Enhancing Employer Accountability and Penalties

A stronger punishment in case of non-compliance, compulsory publication on IC activity, and regular checks are some of the measures that will together lead to employer accountability. They may additionally stimulate compliance through incentives, e.g. tax incentives on organization that comply.

8.6 Leveraging Technology for Awareness and Reporting

Digital tools, including digital platforms and mobile apps and anonymous reporting systems, can help increase awareness and enhance the reporting of problems, where remote or informal places are the cause. Online training programs also allow greater participation of people in sensitization programs.

9. Conclusion

One of the major steps towards ensuring that workplaces are safe and equal in India is the PoSH Act, 2013. It is based on the precedent of previous years of activism and court guidelines. Its advantages are the broad definition of workplace, powerful policies regarding confidentiality

of the complaints, along with the clear schedule of problem resolution. But it also has its boundaries; women are the only beneficiaries, it is only applicable in official employment, it cannot be regulated anywhere and some companies do not even want to adhere to it. A situation such as the *UNS Women Legal Association v. Bar Council of India & Ors.* (2015) revealed that it is sometimes difficult to enforce. The PoSH Act requires gender-neutral provisions, more vigilance, and lack of ambiguity compared to the laws of other countries where they are a lot stricter. India can serve its own Constitution and the international obligations by spreading its outreach, defending the informal sector, establishing a centralized agency, regulating tier-by-tier operations, enhancing responsibility, with any technology support available. These measures would ensure work environments that are not only legal, but even fair, safe and congenial to all regardless of their gender.