THE POSH ACT IN PRACTICE: JUDICIAL TRENDS, IMPLEMENTATION GAPS, AND WORKPLACE REALITY

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INTRODUCTION

Sexual harassment affects women workers as well as students and constitutes a serious violation of women's right to equality and dignity (Constitution of India, arts. 14, 15, 21). Such conduct is not confined to a single sphere, and is experienced across workplaces, educational institutions, and other professional spaces. Among these, the workplace remains a primary site where women encounter sexual harassment. The law defines sexual harassment to include unwelcome acts or behaviour such as physical contact and advances, demands or requests for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature (Sexual Harassment of Women at Workplace Act, 2013, sec. 2[n]). The repeated occurrence of such acts affects women's personal and professional lives and also carries broader social costs. Fear, silence, and withdrawal from work or education are common consequences, which in turn affect women's participation in public life (International Labour Organization [ILO], 2018; UN Women, 2019).

The issue of workplace sexual harassment came into sharper focus following the incident involving Bhanwari Devi in Rajasthan. The matter led to the landmark judgment of the Supreme Court in *Vishaka v. State of Rajasthan* (1997), where the Court recognised sexual harassment at the workplace as a violation of fundamental rights. The Court observed that such incidents exposed the risks faced by working women and highlighted the urgent need for protective mechanisms in the absence of legislative measures (*Vishaka v. State of Rajasthan*, 1997). The *Vishaka* guidelines thus functioned as an interim framework to address workplace sexual harassment until statutory provisions were enacted.

In 2013, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act to provide a comprehensive legal framework for addressing sexual harassment (Sexual Harassment of Women at Workplace Act, 2013). The

Act aims to ensure that workplaces are free from sexual harassment and that women are provided with a safe and secure working environment. It places a clear obligation on employers to prevent and address sexual harassment and mandates the constitution of Internal Complaints Committees (ICCs) at workplaces (Sexual Harassment of Women at Workplace Act, 2013, sec. 3, 19). Importantly, the scope of the Act extends beyond regular employees to include interns, trainees, and research scholars (Ministry of Women and Child Development [MWCD], 2015).

The objectives of the POSH Act are closely linked to constitutional values of equality, dignity, and the right to work (Constitution of India, arts. 14, 15, 21). While the *Vishaka* guidelines marked an important judicial intervention, their non-statutory nature resulted in uneven compliance across institutions (*Vishaka v. State of Rajasthan*, 1997). The enactment of the POSH Act in 2013 is therefore regarded as a significant development in institutionalising workplace safety for women.

More than a decade has passed since the enforcement of the Act, making it necessary to assess how the law has functioned in practice. The gap between statutory provisions and their implementation at the workplace continues to raise concerns. The increasing number of disputes and judicial interventions under the POSH Act indicates that questions relating to effectiveness, procedural fairness, and enforcement remain relevant (Supreme Court of India; High Courts of India, 2013–2025). This calls for an examination of the law not merely as a formal framework, but as an operational mechanism.

Judicial interpretation has played an important role in shaping the application of the POSH Act. ICC decisions are frequently challenged before courts, where emphasis is placed on compliance with statutory procedures, principles of natural justice, and the role of employers in ensuring fair inquiries (Delhi High Court; Bombay High Court, 2015–2024). Through these decisions, courts have influenced how workplace sexual harassment complaints are addressed in practice.

Women's employment trends provide additional context to this analysis. Despite legal safeguards, women's labour force participation remains relatively low, and retention continues to be a challenge in many sectors (Ministry of Statistics and Programme Implementation [MoSPI], 2022). In several cases, unsafe or unsupportive work environments contribute to women exiting the workforce. The POSH Act must therefore be examined as part of a broader workplace and employment ecosystem.

A comparatively less examined but legally significant aspect of the POSH framework concerns its application to interns, trainees, and research scholars, particularly within educational and research institutions (Sexual Harassment of Women at Workplace Act, 2013, sec. 2[a], 2[o]). Limited awareness of rights and inadequate institutional mechanisms often restrict access to redress for these groups (MWCD, 2015). Recent disputes have highlighted gaps in institutional response, underscoring the need to examine POSH implementation beyond conventional employment relationships.

VISHAKHA GUIDELINES TO THE POSH ACT- LEGAL FRAMEWORK

Prior to the enactment of a specific statutory framework, workplace sexual harassment was not governed by a dedicated legal regime. There was no specific law dealing exclusively with workplace sexual harassment, and reliance was largely placed on general criminal law provisions. There was no mandatory institutional redressal mechanism at the workplace, no employer-specific statutory duty, and the absence of monitoring and enforcement mechanisms further weakened the response (Constitution of India; *Vishaka v. State of Rajasthan*, 1997).

Judicial intervention through *Vishaka v. State of Rajasthan* (1997) marked a foundational moment in this area of law. The Bhanwari Devi incident triggered judicial scrutiny, compelling the Court to step in due to the legislative vacuum. The Supreme Court recognised sexual harassment as a violation of fundamental rights under Articles 14, 15, and 21 of the Constitution (*Vishaka v. State of Rajasthan*, 1997). The Court also relied on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which emphasised the need for legal measures to eliminate discrimination against women (CEDAW, 1979).

The constitutional basis of the Vishaka guidelines was clearly articulated by the Supreme Court. In *Vishaka*, the Court located workplace sexual harassment within constitutional guarantees of equality, non-discrimination, and dignity, and viewed it as a denial of the right to life with dignity (Constitution of India, arts. 14, 15, 21). The guidelines were treated as binding in nature under Article 141 of the Constitution (*Vishaka v. State of Rajasthan*, 1997).

The Vishaka guidelines laid down preventive and remedial duties for employers. These included the obligation to prevent sexual harassment, the constitution of complaints committees with a focus on women, awareness measures, and disciplinary action. The guidelines were applicable to both public and private sector workplaces and were intended to operate as interim

law until comprehensive legislation was enacted (*Vishaka v. State of Rajasthan*, 1997).

Despite their importance, the Vishaka guidelines suffered from structural limitations. Their non-statutory nature, the absence of prescribed penalties, and lack of monitoring mechanisms resulted in uneven compliance. In many cases, implementation depended on the goodwill of employers, leading to inconsistent institutional responses (Vishaka v. State of Rajasthan, 1997).

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was a direct legislative response to the Vishaka guidelines. This marked the transition from judicially framed norms to a statutory framework with objectives of prevention, prohibition, and redressal, supported by binding statutory duties and legal enforceability (Sexual Harassment of Women at Workplace Act, 2013).

The POSH Act provides broad statutory definitions, including sexual harassment under Section 2(n), workplace under Section 2(o), and aggrieved woman under Section 2(a). It covers physical, verbal, and non-verbal conduct, gestures, and sexually coloured remarks, and applies beyond traditional office spaces (Sexual Harassment of Women at Workplace Act, 2013).

A central feature of the POSH Act is the establishment of Internal Complaints Committees. The ICC is envisaged as the primary redressal mechanism and is mandatory for workplaces employing ten or more persons. Its role is quasi-judicial in nature, with defined composition and inquiry powers (Sexual Harassment of Women at Workplace Act, 2013, sec. 4, 11).

The POSH Act places significant statutory responsibility on employers. Employer duties extend beyond complaint redressal and include providing a safe working environment, conducting awareness and training programmes, and assisting during inquiry proceedings. These obligations reflect both preventive and remedial responsibilities (Sexual Harassment of Women at Workplace Act, 2013, sec. 3, 19).

The scope of the POSH Act extends beyond formal employment relationships. Interns, trainees, and research scholars are also covered under the Act. Educational and research institutions fall within the definition of workplace, and interns, fellows, and researchers have the right to approach the ICC under the broad statutory framework (Sexual Harassment of Women at Workplace Act, 2013, sec. 2[a], 2[o]; Ministry of Women and Child Development [MWCD], 2015).

The shift from the Vishaka guidelines to the POSH Act reflects a clear legal evolution. Vishaka served as the foundational framework, while the POSH Act institutionalised these principles through legislation. The statutory framework has since been shaped by judicial interpretation, and subsequent decisions reveal how the law operates in practice (Supreme Court of India; High Courts of India, 2013–2025).

JUDICIAL TRENDS UNDER THE POSH ACT (2013–2025)

Early judicial decisions expanded the understanding of sexual harassment beyond physical acts and recognised the role of power and a hostile working environment. In *Apparel Export Promotion Council v. A.K. Chopra* (1999), the Court recognised that sexual harassment is not limited only to physical contact. Physical contact is not necessary for establishing sexual harassment. Even behaviour that creates a hostile work environment is sufficient. This judgment reinforced the understanding of sexual harassment as a form of sex-based discrimination and clarified that it should not depend only on physical contact or physical intimidation.

In relation to judicial monitoring of compliance, *Medha Kotwal Lele v. Union of India* (2013) is a significant decision. In this case, the Court closely monitored the implementation of the Vishaka guidelines and emphasised that substantive compliance is necessary, and not merely the constitution of symbolic committees. The Court clarified that mere formal compliance with guidelines or statutory provisions is insufficient without meaningful implementation.

With respect to procedural fairness and the functioning of Internal Complaints Committees, High Courts have consistently held that ICC inquiries must adhere to principles of natural justice, failing which their findings are liable to be set aside. Courts have treated ICCs as quasi-judicial bodies and have emphasised the requirement of fairness, reasoned findings, and proper constitution of ICCs, as mandated under the Act.

Judicial caution against misuse of the POSH framework is reflected in *Anita Suresh v. Union of India* (Delhi High Court, 2019). In this decision, the Court expressed concern regarding the misuse of the POSH framework and stressed the need for a balanced application of the law without undermining genuine complaints. While acknowledging that protection for women is necessary, the Court also warned against false complaints and emphasised that a balance between protection and fairness is an essential part of the framework.

The expansion of POSH jurisprudence to educational institutions and same-gender complaints is evident in *Malabika Bhattacharjee v. Vivekananda College* (Calcutta High Court, 2021). The Court clarified that the applicability of the POSH Act depends on the nature of the conduct and the existence of power imbalance, rather than the gender of the respondent. It recognised that sexual harassment is not limited by the gender of the respondent and that considerations of power, dignity, and workplace hierarchy are relevant. This judgment strongly supports the inclusion of interns and research scholars within the scope of POSH implementation.

Judicial scrutiny has also extended to employer retaliation and accountability. In *Punjab and Sind Bank v. Durgesh Kuwar* (2023), the Court examined employer conduct following complaints of sexual harassment, particularly in cases involving retaliatory action against complainants. The Court quashed retaliatory transfers and linked such actions to violations of dignity.

Recent Supreme Court interventions during 2024 and 2025 further reflect continuing judicial concern with implementation gaps. Directions relating to the mandatory constitution of Internal Complaints Committees and the use of mechanisms such as the SHe-Box for national-level monitoring indicate ongoing judicial engagement with enforcement and compliance issues under the POSH framework.

Internal Complaints Committee in Practice

The Internal Complaints Committee is a fundamental component of the POSH Act framework for addressing workplace sexual harassment. According to Section 4 of the POSH Act, 2013, every employer at a workplace employing ten or more persons is required to constitute an Internal Complaints Committee. However, courts have repeatedly noted deficiencies in the constitution of ICCs. In *Ruchika Singh Sabharwal v. Air France* (Delhi High Court, 2021) and *Shital Prasad Sharma v. State of Rajasthan* (Rajasthan High Court), the High Courts found that ICCs were improperly constituted, lacked external members, and were formed only after a complaint was filed. Such practices defeat the purpose of the Act, and these defects resulted in ICC findings being set aside.

In *Medha Kotwal Lele v. Union of India*, the Supreme Court emphasised that mere formal compliance with guidelines and statutory requirements is insufficient without substantive implementation. In several cases, courts have further observed employer interference, lack of

independence of ICCs, and an excessive focus on compliance rather than real workplace safety. The structural placement of ICCs within the employer's administrative control has often raised concerns regarding their autonomy. In *Ayesha Khatun v. State of West Bengal* (Calcutta High Court, 2019), the Court acknowledged that institutional hierarchies and power dynamics affect the independence and impartiality of ICC proceedings, thereby discouraging complainants from approaching the mechanism.

Procedural fairness has also been a recurring concern in ICC inquiries. In *Ashok Kumar Singh v. University of Delhi* (Delhi High Court, 2017) and *State Bank of India v. Jaya Kodate* (Bombay High Court, 2014), courts found that complainants or respondents were denied adequate opportunity of hearing and that statutory timelines were ignored. In such cases, courts intervened and quashed the ICC proceedings, highlighting that procedural lapses continue to undermine the effectiveness of ICC functioning.

Judicial scrutiny has further extended to employer conduct following the filing of sexual harassment complaints. In *Punjab and Sind Bank v. Durgesh Kuwar*, the Court examined retaliatory actions taken against the complainant, including transfers, and held that such measures undermine the dignity of the complainant and violate the spirit of the POSH Act. In several decisions, retaliation against complainants and the lack of effective institutional support mechanisms have been noted as serious concerns.

Courts have also clarified that the scope of the ICC and the POSH framework extend beyond traditional employment relationships. In *Malabika Bhattacharjee v. Vivekananda College* (Calcutta High Court), the Court held that the applicability of the POSH Act depends on the nature of the conduct and the existence of power imbalance rather than the gender of the respondent. This decision is particularly significant for educational and research institutions, as it recognises that interns, research scholars, fellows, and trainees are entitled to protection under the Act and have access to the ICC mechanism.

The effectiveness of the POSH framework is closely linked to the functioning of Internal Complaints Committees. ICCs play a critical role in determining whether workplace mechanisms contribute to women's employment continuity or reinforce exits from the workforce. Questions relating to retaliation, retention challenges, reduction of dropout rates, and whether the POSH framework has improved continuity of employment remain closely connected to the practical functioning of ICCs. These concerns point towards broader gaps and

challenges within the POSH Act framework and indicate areas for reform in the context of future workplace regulation towards 2047.

WOMEN'S EMPLOYMENT TRENDS AND POSH EFFECTIVENESS

Women's employment patterns are relevant while examining how the POSH framework operates in practice. Workplace safety affects not only women's entry into employment but also whether they are able to continue working overtime. The POSH Act provides a legal mechanism to address sexual harassment at the workplace. At the same time, the effectiveness of this mechanism cannot be examined on its own and needs to be read along with broader trends in women's employment and retention.

Government data shows that women's participation in the labour force has increased in recent years. According to information released by the Government of India, the Female Labour Force Participation Rate has shown improvement during the last few survey periods. This increase is often cited as an indicator of greater inclusion of women in the workforce. However, participation figures do not explain the type of work women are engaged in or the conditions under which they continue to work. Participation data by itself does not indicate whether workplaces are safe or supportive (Ministry of Labour and Employment, 2025).

Labour force data also shows that this increase is not uniform across sectors or regions. Periodic Labour Force Survey data indicates that a large proportion of women's work continues to be located in rural areas and informal settings. In many instances, women are engaged in unpaid family work or work with low remuneration. This raises questions about whether increased participation reflects improved employment opportunities or economic necessity. In such settings, access to formal workplace protection mechanisms, including those under the POSH Act, is often unclear or absent (Ministry of Statistics and Programme Implementation [MoSPI], 2022).

Retention continues to be a concern in women's employment. Government data indicates that many women enter the workforce but do not remain employed for long durations. These exits cannot be explained only by household responsibilities or personal choices. Workplace conditions also play a role. Lack of safety, fear of harassment, limited confidence in grievance mechanisms, and concern about retaliation can influence decisions to discontinue work (MoSPI, 2023). The functioning of institutional mechanisms becomes important in this context.

Judicial trends and the working of Internal Complaints Committees, discussed in the previous section, point to similar concerns. Where ICCs are not properly constituted or do not function independently, women may hesitate to raise complaints. In such situations, the presence of a legal framework does not always result in a feeling of security at the workplace. This has a direct bearing on employment continuity, particularly in workplaces marked by hierarchy or informality (MoSPI, 2023).

The link between POSH implementation and women's employment trends is not straightforward. While the Act provides an important legal framework, its impact depends on how it is applied at the institutional level. An increase in labour force participation does not necessarily mean that work environments have improved. Without effective implementation and accountability, legal protection alone may not be sufficient to support long-term continuation of work (Ministry of Labour and Employment, 2025).

Government employment data shows some improvement in women's participation, but concerns relating to retention and workplace safety remain. The POSH framework operates within this larger employment context, and its effectiveness depends on how grievance mechanisms function in practice. These issues highlight existing gaps and point towards the need for further examination of challenges within the POSH framework, which is taken up in the next section (MoSPI, 2023).

GAPS, CHALLENGES, AND AREAS FOR REFORM

More than ten years after the enactment of the POSH Act, several gaps and challenges are still visible in its implementation. Although the law provides a framework for prevention and redressal of workplace sexual harassment, its effectiveness depends largely on how institutions apply it in practice. Judicial decisions and government data show that the presence of the law by itself has not ensured safe or supportive workplaces for women (Medha Kotwal Lele v. Union of India, 2013; Ministry of Statistics and Programme Implementation [MoSPI], 2023).

One of the main concerns is uneven implementation of the POSH Act across workplaces. The Act clearly requires every employer to constitute an Internal Complaints Committee. However, in many workplaces, ICCs exist only on paper or are formed only after a complaint is raised. Such practices weaken the preventive purpose of the law and reduce trust in internal mechanisms (Ruchika Singh Sabharwal v. Air France, 2021). The lack of regular monitoring

and follow-up further adds to this problem (MoSPI, 2023).

Another issue relates to the independence and functioning of ICCs. In many cases, ICCs operate within the employer's administrative structure, which affects their autonomy. Courts have noted that institutional hierarchy, absence of external members, and lack of proper training influence the inquiry process. Fear of institutional consequences also affects decision-making. These factors limit the role of ICCs as effective grievance redressal bodies (Ayesha Khatun v. State of West Bengal, 2019).

Awareness remains a serious concern. Government reports and judicial observations indicate that many employees are not fully aware of their rights under the POSH Act, especially in informal settings and educational institutions. Interns, trainees, research scholars, and early-career workers are more vulnerable due to power imbalance and uncertainty about institutional support (Ministry of Women and Child Development [MWCD], 2015). Limited awareness and restricted access to grievance mechanisms discourage reporting.

The nature of women's employment in India also affects the reach of the POSH framework. A large number of women work in informal or semi-formal sectors where grievance mechanisms are weak or absent. Although the law applies broadly, implementation in such settings remains difficult. Government employment data indicates that legal protection does not always result in practical security at the workplace (MoSPI, 2022).

Looking towards 2047, improving the effectiveness of the POSH framework requires attention to these issues. Functional compliance, proper training of ICC members, awareness programmes, and regular monitoring are necessary steps (MWCD, 2015). Without addressing these gaps, the objectives of the POSH Act may remain only partly achieved.

CONCLUSION

The POSH Act is an important step in recognising workplace sexual harassment as a legal and constitutional issue. The Act was introduced to address the absence of a clear mechanism to deal with sexual harassment at the workplace. Through this law, an attempt was made to create safer and more dignified workplaces for women.

This chapter examined how the POSH framework works in practice. It looked at judicial decisions, the functioning of Internal Complaints Committees, and women's employment data

based on government sources. The discussion shows that although the law exists, its implementation is not uniform across workplaces. Courts have pointed out problems such as procedural lapses, lack of independence of ICCs, employer influence, and limited awareness among employees.

Employment data shows that women's participation in the workforce has improved in recent years. However, many women still face difficulties in continuing their employment. The presence of a legal framework has not always resulted in a feeling of safety at the workplace. Fear of retaliation, lack of confidence in complaint mechanisms, and weak institutional support continue to affect women's choices.

The effectiveness of the POSH Act therefore depends on how it is applied in everyday workplace situations. Legal provisions alone are not sufficient. Proper functioning of ICCs, better awareness, and stronger institutional support are necessary for the law to achieve its purpose. Without addressing these issues, the gap between the law and workplace reality is likely to remain.

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