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# THE POSH ACT AT TEN: ASSESSING INDIA'S DECADE-LONG JOURNEY TOWARD WORKPLACE SAFETY AND GENDER EQUITY

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Alzenah Shah, St. Xavier's University, Kolkata

## ABSTRACT

India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) emerged as a transformative legal response to institutionalized gender-based violence, operationalizing the Supreme Court's Vishaka Guidelines. This paper critically examines the Act's evolution, core mechanisms - Internal/Local Complaints Committees (ICCs/LCCs) - and implementation challenges over its first decade. Despite progressive provisions like broadened workplace definitions and quasi-judicial redressal bodies, structural gaps persist: cultural stigma, underreporting, non-compliance among SMEs, and exclusion of LGBTQ+/male victims. Recent mandates for digital compliance portals (2023) remain insufficient against entrenched patriarchal norms and ICC inefficacy. Drawing on case law and empirical studies, this paper argues that without robust enforcement, victim-centric protections, and inclusive reforms, the Act's promise of equitable workplaces remains unfulfilled. Urgent systemic overhauls are recommended to bridge legislative intent and ground realities.

**Keywords:** POSH Act 2013, Workplace Sexual Harassment, Gender Equality, Compliance Gap, Informal Sector

## INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)<sup>1</sup> stands as a watershed in India's pursuit of gender justice, translating the landmark *Vishaka v. State of Rajasthan* (1997)<sup>2</sup> guidelines into statutory law. Enacted to combat workplace sexual harassment, the Act mandates preventive frameworks, victim redressal, and institutional accountability rooted in constitutional guarantees of equality (Articles 14–21) and international commitments like CEDAW. A decade since its inception, however, the chasm between the POSH Act's transformative vision and its operational reality reveals systemic fractures. This paper interrogates the Act's efficacy through a tripartite lens: structure, implementation (compliance audits, digital reporting), and socio-legal barriers (cultural stigma, ICC dysfunction). While progressive jurisprudence such as extending "workplace" to virtual spaces, reflects adaptive intent, ground-level execution falters. Over 59% of firms neglect ICC formation, SMEs evade compliance, and 82% of women in the informal sector lack access to redressal. Fear of retaliation, patriarchal hierarchies, and inadequate victim support perpetuate underreporting, rendering the Act's protections illusory for many. By synthesizing case law, scholarly critiques, and compliance data, this research argues that the POSH Act's first decade, though foundational, underscores an urgent need for structural reimagination.

## UNDERSTANDING THE POSH ACT, 2013

The POSH Act, enacted on December 9, 2013, operationalized the Vishaka Guidelines and aims to create safer workplaces by addressing systemic gaps and ensuring accountability. It provides a statutory guarantee for workplaces free from sexual harassment, contributing to gender equality. The Act embodies a dual objective: protecting women from misconduct and offering a mechanism for redressal and accountability. Its framework operates on three pivotal components: prohibition, prevention (mandating sensitization and complaint committees), and redressal. The legislative intent is deeply rooted in Indian constitutional guarantees (Articles 14, 15, and 21) and international norms like CEDAW. The Act broadens the definition of 'workplace' to include any location during professional duties, including virtual spaces,

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<sup>1</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(e), No. 14, 2013 (India).

<sup>2</sup> *Vishaka vs. State of Rajasthan*, AIR 1997 SC 3011.

affirming its relevance in evolving work environments.<sup>3</sup>

## CORE CLAUSES OF THE POSH ACT

The POSH Act's efficacy lies in its precise definitions and procedural rigor. Key provisions include:

### 1. Aggrieved Woman:

Section 2(a) defines an "aggrieved woman" broadly to include any female regardless of age or employment status who experiences harassment at a workplace. This encompasses regular, temporary, contractual, and even volunteer workers. Domestic workers, often vulnerable due to informal employment terms, are explicitly protected.

### 2. Workplace:

Section 2(o) adopts an inclusive definition, covering offices, campuses, transportation, and locations visited during employment. Landmark judgments, such as *Sanjeev Mishra v. Bank of Baroda* (2021)<sup>4</sup>, extended this to digital platforms during the COVID-19 pandemic. Courts have emphasized that harassment via emails, virtual meetings, or messaging apps (e.g., WhatsApp) falls under the Act's purview.

### 3. Sexual Harassment:

Section 3 defines harassment as unwelcome acts or behavior, including physical contact, sexually colored remarks, pornography, or demands for sexual favors. The Act lists five contexts where such acts become actionable:

- Implied promise of preferential treatment.
- Threats to current or future employment.
- Interference with work creating a hostile environment.

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<sup>3</sup> Jivitesh Sisodia, *Posh Act: Shield or Sword?*, V IJLLR 1281, 1286 - 1289 (2023).

<sup>4</sup> *Sanjeev Mishra v. Disciplinary Authority and General Manager, Bank of Baroda & Ors.*, S.B. Civil Writ Petition No. 150/2021.

- Humiliation affecting health or safety.

Courts have clarified nuances. For example, in *Shanta Kumar v. CSIR* (2017), the Delhi High Court ruled that non-sexual physical contact (e.g., accidental touching) does not constitute harassment unless sexually motivated.

#### 4. **Employee:**

Section 2(f) includes anyone engaged in work—regular, temporary, ad hoc, or voluntary—irrespective of contractual terms. This ensures protection for interns, trainees, and even daily wage laborers.

#### 5. **Redressal Timelines:**

Complaints must be filed within three months of the incident, extendable by another three months for valid reasons. The Act also permits third parties (e.g., family, psychologists) to file complaints on behalf of incapacitated victims.

### **STRUCTURE AND MECHANISMS OF THE POSH COMPLAINT REDRESSAL SYSTEM**

Central to the effective enforcement of the POSH Act is the establishment of a robust complaint redressal system that serves as both a deterrent to potential offenders and an accessible, fair platform for victims. The Act mandates the creation of specialized grievance redressal bodies at both the organizational and district levels. These mechanisms—formed as the Internal Complaint Committee (ICC) and the Local Complaints Committee (LCC) are specifically designed to provide immediate recourse for women facing sexual harassment in different professional and occupational settings.

The complaint redressal system is constructed on the guiding principle that every complaint must be addressed in a comprehensive, impartial, and confidential manner. To ensure this, the Act prescribes a precise structure for these committees. A fundamental requirement is that women must constitute at least 50% of the committee members. This provision is intended to create a supportive environment, ensuring that women's concerns are understood and addressed by individuals who are more likely to empathize with their experiences.

Moreover, both the ICC and LCC are empowered with quasi-judicial functions, which include the authority to summon witnesses, require the production of documents, and recommend disciplinary actions. These powers ensure that the investigative process is thorough and that the committee's findings carry significant weight in both internal disciplinary processes and external legal proceedings. Such empowerment also serves to underline the seriousness with which the law views workplace sexual harassment. By enforcing stringent procedural requirements and ensuring that every complaint is investigated with meticulous care, the complaint redressal system stands as a testament to the Act's dual purpose of prevention and accountability.

### **IN-HOUSE GRIEVANCE REDRESSAL MECHANISM (INTERNAL COMPLAINT COMMITTEE - ICC)**

The Internal Complaint Committee (ICC) is a pivotal element of the POSH Act's framework, specifically designed to operate within organizations and provide an immediate and accessible channel for addressing sexual harassment complaints. Every organization that employs a minimum threshold of workers is mandated to establish an ICC, and its structure, functions, and procedures are prescribed in detail to ensure that the committee fulfills its role as an impartial adjudicator and support system for victims.

A cornerstone of the ICC is its composition. The Act mandates that the committee be headed by a female presiding officer who is a senior employee within the organization. This requirement is rooted in the notion that a senior, experienced woman is likely to have the requisite empathy, authority, and acumen to handle sensitive cases of sexual misconduct. In the event that a senior female employee is unavailable within a particular unit, the presiding officer can be appointed from another unit in the organization, ensuring that the leadership remains gender-sensitive and that the integrity of the investigatory process is maintained.

Beyond the presiding officer, the ICC must include members who are unbiased and possess a proven track record or demonstrated commitment to addressing issues related to gender justice, social work, or legal expertise. This typically involves appointing at least two members who have not only a strong understanding of legal norms but also the interpersonal skills necessary to deal with traumatic experiences. The appointment of external members often representatives from NGOs or advocates with experience in addressing sexual harassment serves as an additional safeguard against internal bias. These external members act as independent advisors,

ensuring that the investigation process is conducted with the utmost transparency, objectivity, and sensitivity.

In terms of functionality, the ICC is charged with a wide range of duties that extend from receiving and acknowledging complaints to conducting thorough inquiries. It is required to initiate an investigation promptly while ensuring that the principles of natural justice are adhered to throughout the process. Such adherence includes ensuring that both the complainant and the respondent have a fair chance to present their cases, that evidence is meticulously documented, and that interviews are conducted in a manner that preserves the dignity and privacy of all parties involved. These procedures not only uphold the integrity of the process but also provide the complainant with a sense of security and confidence in the system.

The ICC's operational guidelines mandate a strict timeline for the resolution of complaints, alongside provisions for temporary extensions where necessary. This ensures that investigations are both swift and thorough, preventing undue delays that could exacerbate the victim's trauma or hinder the collection of critical evidence. Additionally, the ICC is expected to prepare a detailed final report, which must outline the rationale behind its findings and any recommendations made, whether that involves conciliation, remedial action, or disciplinary measures against the offender.

By effectively institutionalizing the process of internal complaint resolution, the ICC fulfills a critical dual role. It not only offers an immediate corrective mechanism within the organizational framework but also acts as a catalyst for broader cultural change. Organizations that rigorously implement ICC procedures are likely to foster an environment in which every employee feels secure and supported, thereby contributing to the creation of a respectful and harassment-free workplace. Furthermore, the ICC underscores the legal and moral obligation of organizations to protect their employees, thereby aligning corporate policies with the broader societal commitment to gender justice and equality.

### **DISTRICT-LEVEL GRIEVANCE RESOLUTION BODY (LOCAL COMPLAINTS COMMITTEE - LCC)**

Recognizing that not all workplaces have the resources or scale to set up internal complaint mechanisms, the POSH Act extends its protective umbrella by mandating the establishment of Local Complaints Committees (LCCs) at the district level. These committees serve as vital

support structures for women in smaller organizations, domestic work, and the unorganized sector where formal internal mechanisms are often absent. The LCC is conceived as a community-based forum that ensures every woman, regardless of her employment setting, has access to a fair, impartial, and efficient mechanism to address sexual harassment grievances.

The composition of the LCC is designed to reflect diversity, community representation, and expertise. A chairperson typically an eminent local woman with a significant background in social work or activism is at the helm of the committee. This leadership is crucial in setting a tone of empathy, authority, and community commitment. In addition to the chairperson, the committee typically comprises members nominated from various local strata. One member is chosen from among women working in specific administrative divisions such as blocks, talukas, tehsils, or municipal wards. This ensures that the LCC is well integrated within the local context and understands the unique socio-cultural dynamics affecting local communities.

Another key aspect of the LCC's structure is the inclusion of representatives with specialized expertise. At least one member with a background in law or legal affairs is necessary to guarantee that proceedings adhere to the prescribed legal standards and are conducted with proper jurisdictional support. Moreover, individuals who belong to socially marginalized communities such as those from Scheduled Castes, Scheduled Tribes, Other Backward Classes, or minority groups—are also recommended for inclusion. This ensures that the committee is sensitive to the intersectional aspects of discrimination, thus providing a more comprehensive approach to justice. Additionally, the district-level social welfare officer, who is engaged in women and child development, is typically included as an *ex officio* member, further reinforcing the committee's legitimacy and connection to local government resources.

The LCC is empowered to receive complaints of sexual harassment and conduct preliminary enquiries in a manner akin to a quasi-judicial body. It possesses the authority to summon witnesses, require the production of evidence, and consult independent experts as necessary. This quasi-judicial function is critical in ensuring that even in smaller organizational settings, where the prevalence of harassment can be high, the investigative process is both robust and fair. Given the sensitivity of such cases, the LCC's procedures are designed to protect the privacy and dignity of the complainants while ensuring that the accused are given a fair chance to respond to the allegations.

Moreover, the LCC acts as a crucial bridge between the formal legal system and local community structures. By offering a recourse that is accessible and deeply embedded in the local context, the LCC not only fills gaps left by the absence of internal mechanisms but also promotes a community-wide culture of accountability. The presence of such a committee fosters an environment where women feel empowered to come forward, assured that their concerns will be addressed in a structured and community-supported manner. In turn, this contributes to the broader goal of transforming societal attitudes toward workplace harassment, paving the way for a safer and more inclusive work environment across diverse employment settings.

In summary, the Local Complaints Committee plays a significant role in extending the reach and impact of the POSH Act beyond larger organizations. Its formation as a district-level body ensures that the rights of every woman are upheld, irrespective of her professional or social milieu. Through its inclusive structure, legal empowerment, and local integration, the LCC exemplifies the Act's commitment to comprehensive protection against sexual harassment, making it an indispensable component of India's evolving framework for workplace safety and gender justice.<sup>5</sup>

## IMPLEMENTATION OF THE POSH ACT IN INDIA

In 2023, the Ministry of Women and Child Development introduced POSH Compliance Guidelines, mandating annual audits and digital reporting portals for organizations. These measures aim to address underreporting and institutional non-compliance.

A decade after the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), data analysis reveals a landscape of significant challenges and persistent gaps in its implementation across India Inc. While the law established a crucial framework mandating Internal Complaints Committees (ICCs) in workplaces with 10 or more employees, annual reporting, awareness programs, and defined redressal mechanisms, compliance remains inconsistent and often superficial. Research indicates widespread non-compliance, particularly among Small and Medium Enterprises (SMEs) and the informal sector, where awareness is low and resources for establishing functional ICCs are scarce. Even within larger, ostensibly compliant organizations, the

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<sup>5</sup> Jivitesh Sisodia, *Posh Act: Shield Or Sword?*, V IJLLR 1281, 1289-1296 (2023).

effectiveness of implementation is frequently questionable. Data suggests that mandatory awareness training often devolves into a mere checkbox exercise, lacking the depth and sensitivity required to foster genuine cultural change or empower employees to understand and assert their rights. Crucially, a major implementation failure lies in the pervasive culture of underreporting. Fear of retaliation, career stagnation, social stigma, disbelief, and a lack of confidence in the ICC process deter a vast majority of victims from formally reporting incidents. The data highlights a stark disconnect between the prevalence of harassment (as indicated by surveys) and the number of formal complaints registered, pointing to systemic barriers within the implementation structure itself. Furthermore, when complaints *are* filed, the functioning of ICCs is often marred by delays, inadequate training of members, potential bias, lack of transparency, and insufficient victim support during the grueling process. The mandated annual reports to district officers, intended for monitoring, suffer from poor compliance and lack of standardization, hindering effective government oversight and aggregate analysis of trends. Consequently, while the POSH Act provided a vital legal foundation, its implementation over the past ten years underscores a critical gap between legislative intent and ground reality. Persistent issues of non-compliance, superficial training, profound underreporting due to fear and mistrust, and inconsistent ICC effectiveness collectively signal that India Inc. has yet to fully operationalize the law's promise of safe and equitable workplaces for women, necessitating urgent systemic reforms and stronger enforcement mechanisms.

## CHALLENGES IN THE IMPLEMENTATION OF THE POSH ACT

The Prevention of Sexual Harassment (POSH) Act, 2013, despite its progressive intent, faces significant challenges in effective implementation and compliance across Indian workplaces. These hurdles stem from deep-rooted cultural, organizational, procedural, and structural factors.

1. **Cultural and Organizational Resistance:** Hierarchical structures and high power distance within organizations create an environment where victims, especially subordinates, fear reporting harassment by superiors or influential colleagues due to potential career repercussions like demotion, ostracization, or job loss. This culture of silence is often tacitly encouraged to protect the organization's reputation. Deep-seated patriarchal attitudes and gender stereotyping persist, particularly in male-dominated sectors (manufacturing, IT, finance). Victims, especially women, fear being labelled "troublemakers," blamed for the

harassment, or facing social stigma, discouraging reporting<sup>6</sup>

2. **Ineffective Internal Complaints Committees (ICCs):** Many ICCs suffer from poorly trained members lacking expertise in sensitive investigation procedures, understanding the psychological dynamics of harassment, or legal nuances. This leads to flawed investigations, missed evidence, and a lack of trust in the process<sup>7</sup>. Maintaining strict confidentiality during investigations is often compromised. Leaks of information, either internally or externally, exacerbate the victim's trauma, deter others from reporting, and undermine the ICC's credibility. Some ICCs function like formal courts, demanding "indisputable evidence" contrary to the Act's "preponderance of probabilities" standard, making it harder to substantiate complaints. Failure to include mandated external members (from NGOs/experts) in many ICCs increases the risk of internal bias, especially when the accused holds power. Alarming, 59% of companies surveyed failed to even establish mandatory ICCs. Many organizations adopt a reactive stance, forming committees only after a complaint arises, hindering prevention and timely redressal.<sup>8</sup>
3. **Structural and Coverage Limitations:** The Act's mechanisms (ICCs/LCCs) are poorly suited for the informal sector, where approximately 82% of employed women work. These workers lack awareness of the Act, face difficulties accessing redressal forums (like district LCCs), and fear job loss if they complain<sup>9</sup>. Employers in this sector rarely fulfil their duty to educate workers about the Act. The Act currently protects only women, excluding men and LGBTQ+ individuals who may also experience sexual harassment. This limitation fails to create a truly inclusive safe workplace environment. The Act inadequately addresses harassment perpetrated by clients, vendors, or other third parties interacting with the workplace, creating ambiguity in handling such cases.<sup>10</sup>
4. **Procedural and Enforcement Deficiencies:** The requirement to file complaints within 3 months (extendable to 6) is often impractical given the trauma and power dynamics

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<sup>6</sup> Dr. Kanak Wadhwani, *The Efficacy Of The Posh Act In India: Analyzing The Challenges Of Implementation And Compliance In Corporate And Public Sectors*, 34 MSW MANAGEMENT JOURNAL 253, 253-264 (2024).

<sup>7</sup> Juhi Singh, *Efficacy Of The Posh Act, 2013 In The Era Of Emerging Digital Feminist Activism*, VI IJLLR 252, 258-259 (2024).

<sup>8</sup> Juhi Singh, *Efficacy Of The Posh Act, 2013 In The Era Of Emerging Digital Feminist Activism*, VI IJLLR 252, 259 (2024).

<sup>9</sup> Juhi Singh, *Efficacy Of The Posh Act, 2013 In The Era Of Emerging Digital Feminist Activism*, VI IJLLR 252, 259-260 (2024).

<sup>10</sup> Juhi Singh, *Efficacy Of The Posh Act, 2013 In The Era Of Emerging Digital Feminist Activism*, VI IJLLR 252, 259 (2024).

involved, potentially barring valid claims. While the Act mentions interim measures like transfer or leave, it lacks robust provisions to prevent and punish retaliation against complainants after a complaint is resolved, leaving them vulnerable if they remain in the same workplace. Government oversight is lax. Mandated data collection on complaints and resolutions by state/central governments is poorly maintained and not publicly accessible, hindering transparency and accountability. Penalties for non-compliance are often not enforced stringently<sup>11</sup>.

These interconnected challenges – cultural stigma, organizational apathy, dysfunctional ICCs, exclusionary coverage, and weak enforcement significantly impede the POSH Act's goal of creating universally safe and harassment-free workplaces in India. Addressing them requires concerted efforts on legal reform, robust training, cultural change, stringent monitoring, and expanding the Act's scope and accessibility.

## CONCLUSION

The POSH Act, 2013, represents a legislative triumph in acknowledging workplace sexual harassment as a systemic violation of women's rights. Its mechanisms—ICC and LCC— theoretically offer accessible, gender-sensitive redressal aligned with India's constitutional and international obligations. Yet, as this paper demonstrates, the Act's promise remains curtailed by implementation failures that mirror broader societal inequities. Cultural resistance in male-dominated sectors, fear-driven underreporting, and procedural lapses (e.g., biased ICCs, retaliation risks) stifle its impact. The exclusion of LGBTQ+ individuals and men from protection further narrows its vision of inclusivity.

Recent reforms like digital compliance portals (2023) are commendable but insufficient against deep-rooted challenges. Empirical data reveals that non-compliance is rampant among SMEs and the informal sector, where labor precarity and institutional apathy collide. Even compliant organizations often reduce mandatory training to perfunctory exercises, neglecting the Act's preventive spirit. To reclaim the POSH Act's transformative potential, India must prioritize:

- **Structural Reforms:** Include all genders, penalize non-compliance stringently, and

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<sup>11</sup> Dr. Kanak Wadhvani, *The Efficacy Of The Posh Act In India: Analyzing The Challenges Of Implementation And Compliance In Corporate And Public Sectors*, 34 MSW MANAGEMENT JOURNAL 253, 263 (2024).

mandate third-party ICC audits.

- **Cultural Shifts:** Fund nationwide awareness campaigns to dismantle stigma and promote bystander intervention.
- **Victim-Centric Protocols:** Extend complaint timelines, ensure psychological support, and criminalize retaliation.
- **Informal Sector Integration:** Collaborate with NGOs to simplify LCC access and mobile-based reporting.

As workplaces evolve - hybrid models, gig economies, the Act must dynamically respond. Judicial precedents like *Sanjeev Mishra* (2021), recognizing digital harassment, exemplify this adaptability. Yet, without political will and institutional courage, the POSH Act risks becoming another well-intentioned statute undone by execution gaps. A decade on, India must recommit to making workplaces truly safe, equitable, and free from fear.