
ICC JURISDICTION POST *SOHAIL MALIK*: VICTIM ACCESS IN THE ABSENCE OF MULTI-EMPLOYER ACCOUNTABILITY

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ABSTRACT

Jurisprudence on sexual harassment at the workplace in India has advanced into a complete statutory law through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 also referred to as (POSH Act). Nonetheless the modern employment forms, characterized by inter-departmental movements, contractual labour, and the gig-economy, reveal structural gaps in enforcement. The Supreme Court ruling in *Sohail Malik v. Union of India* establishes the primacy of Internal Complaints Committee (ICC) in the workplace of the aggrieved woman supporting the victim-centric approach. However, at the same time, the verdict also demonstrates a serious gap in Section 13 of the POSH Act, wherein no light is shed on the accountability when the respondent is an employee of another employer or department. This paper argues that to achieve a significant redress on POSH, statutory change through a joint employer responsibility, more effective penalties, and built-in monitoring systems are needed through reviewing compliance trends, challenges of the gig-economy and judicial supervision in recent years.

Introduction

The 30 largest BSE listed companies have reported 958 sexual harassment complaints in the workplace in the year 2024- 25, an increment of 6 percent over the last year.¹ Distressingly, 21% of these complaints were unresolved, despite statutory deadlines and the Sexual Harassment Electronic Box (SHe-Box) platform² being implemented by June 2025. These figures reveal a consistent gap between the presence of redressal mechanisms and timely justice.

Thirty years after the Supreme Court recognised sexual harassment at the workplace as a breach of fundamental right, India still faces enforcement challenges. The increase in reporting through awareness and institutionalisation of ICCs, however, is not matched by the disposal rates implying systemic delay and administrative frailty. Contractual staffing, deputation, outsourcing and platform-based work have eroded the model of the traditional workplace, which POSH Act is built on the assumption of.³

In this changing employment environment, the Supreme Court ruling in *Sohail Malik* is significant. A dispute of jurisdiction of ICCs under POSH Act, the Court stated that the ICC in the place of workplace of the complainant still has the first control in carrying out the investigation. This decision enhances the accessibility of justice to the victim as it will not allow administrative hurdles to disrupt process.

The ruling however brings to light a deeper structural issue. Although it clarifies on who leads the inquiry, it does not provide answers as to who will oversee compliance when the respondent is working in another company. This paper suggests that *Sohail Malik* is a step in the right direction, but it reveals a statutory gap in cross-employer responsibility under Section 13 of the POSH Act.⁴

¹ Rica Bhattacharyya, *POSH compliance on rise: Sexual harassment complaints at top 30 firms up 6% in FY25*, ET (Jan. 28, 2026), https://economictimes.indiatimes.com/news/company/corporate-trends/posh-compliance-on-rise-sexual-harassment-complaints-at-top-30-firms-up-6-in-fy25/articleshow/123874292.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

² Aureliano Fernandes v. State of Goa & Ors., 2023 INSC 527.

³ Diva Devarsha, *Implementation of Vishaka Guidelines: Post Vishaka Judgement*, 1 INDIAN J.L. & PUB. POL'Y 104 (2015).

⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §13, No. 14, Acts of Parliament, 2013 (India).

Evolution of the Indian Legal Framework on Sexual Harassment at Workplace

A. *Vishaka* to POSH: A Rights-Based Path

The Indian law regarding sexual harassment at work dates back to *Vishaka v. State of Rajasthan*.⁵ Due to the lack of legislation, the Supreme Court formulated binding rules based on Articles 14, 15 and 21 of the Constitution.⁶ Sexual harassment was not only conceptualised as misconduct but as a crime against gender equality, dignity and right to work in a safe environment. More importantly, *Vishaka Guidelines*⁷ was corrective in nature. It conceptualized a chain of access, inquiry and accountability. Employers have been positioned as not only disciplinary but also constitutional agents to safeguard basic rights in workplaces.

B. Subsequent Jurisprudence

In *Apparel Export Promotion Council vs. A.K. Chopra*,⁸ the Court reiterated that criminal liability is not correlated with workplace dignity. Where criminal prosecution was unsuccessful, the departmental proceedings might support disciplinary action. This highlighted the independence and power of internal redressal mechanisms. These decisions, along with numerous others,⁹ created a rights-based, victim-centric approach in which procedural technicalities would not be able to overcome substantive justice.

C. Codification, POSH Act, 2013

The remedial framework that was developed in *Vishaka* was made a statutory obligation and codified through the POSH Act. Section 4¹⁰ stipulates the establishment of an Internal Complaints Committee (ICC) in every workplace thereby entrenching a redressal mechanism in an organisation. Section 9¹¹ establishes the complaint procedure and compulsory ICC investigation after a written complaint of sexual harassment has been submitted. Under Rule 7 of the POSH Rules,¹² mandates a 90-day deadline to complete inquiries to ensure timely justice.

⁵ *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

⁶ INDIAN CONST. art. 14, 15, 21.

⁷ *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

⁸ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁹ *Seema Lepcha v. State of Sikkim*, (2013) 11 SCC 647.

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §4, No. 14, Acts of Parliament, 2013 (India).

¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §9, No. 14, Acts of Parliament, 2013 (India).

¹² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, 2013 (India).

The inquiry scheme is also elaborated in the section 10 and 11, which offer conciliation and quasi-judicial inquiries respectively. These clauses reflect procedural fairness and confidentiality and sensitivity to the aggrieved woman as highlighted by *Vishaka*.¹³

D. Emergence of a Procedural Silos

At the enforcement stage, however, there is a structural limitation. Section 13¹⁴ obliges the ICC to provide the report to the “employer” who must consequently respond to its recommendations within 60 days. The statutory design assumes that the employer who is being reported to is that same employer which exercises disciplinary action over the respondent. The section does not mention cases of the respondent being in a separate employer, department or contractual entity.

This silence creates a limitation in the doctrine. Although *Vishaka* had a vision of a continuous chain of complaint to corrective action, the POSH Act forms procedural silos where there are more than two employers. The ICC can make a lawful investigation and determine an act of misconduct, but it is subject to implementation by another employer who is not directly under the institutional authority of the ICC.

The law effectively institutionalises access to inquiry but fails to ensure an enforceable accountability in the multi-employer environment. This gap is not an isolated phenomenon anymore but rather a systemic one as modern employment engages in exceeding deputation, outsourcing, inter-departmental transfers and platform-based work. This is the very weakness revealed by the *Sohail Malik* decision because jurisdiction is explained, and the liability is still divided.

Sohail Malik v. Union Of India

A. Factual Background

The conflict arose from an allegation of sexual harassment by a female employee who was employed under the Department of Food and Public Distribution. While the administrative body of the respondent was the Department of Revenue. This led to a jurisdictional challenge: the respondent claimed that the ICC of the complainant’s workplace could not issue any further

¹³ Aakarsh Saluja, *Prevention of Sexual Harassment of Women at Workplace (POSH Act 2013)*, 21 SUPREMO AMICUS 769 (2020).

¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §13, No. 14, Acts of Parliament, 2013 (India).

proceedings since the respondent was not a part of that department. The controversy thus brought a new and practical query, which is: which ICC has jurisdiction when parties are placed in varying or fluctuating employment arrangements?

B. Legal Issues

The case required the interpretation of the inquiry framework under POSH Act, specifically Sections 9, 11 and 13.¹⁵ The contention was whether the ICC jurisdiction would be based at the workplace of the complainant or controlling body of the respondent, given that both have separate workplaces.

C. The Court's Holding

The Supreme Court through a purposive interpretation¹⁶ and in light of the expanded definition of “workplace” in Section 2(o)(v)¹⁷ of the POSH Act stated that there is no bar restricting jurisdiction to only the ICC at the respondent’s workplace. The Court held the POSH Act as a social welfare law based on constitutional guarantees of dignity and equality, and it should be construed so as to maintain an efficient redress access. The Court noted that in case jurisdiction could follow the respondent wherever he went, it would obstruct the process and discourage victims to approach the Court. Consequently, the ICC¹⁸ at which the aggrieved suffered harassment was directed to complete the inquiry.

Meanwhile, the Court made it clear that the process of conducting a “fact-finding inquiry”¹⁹ would be the prerogative of the respondent’s employer to whom the ICC report may be reported under the Section 13, as part of its duties mandated by Section 19(f).²⁰

Analytical Review: Victim Access v. Enforcement

A. Doctrinal Contribution

¹⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

¹⁶ RBI v. Peerless General Finance & Investment Co. Ltd, (1987) 1 SCC 424.

¹⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §2(o)(v), No. 14, Acts of Parliament, 2013 (India).

¹⁸ Medha Kotwal Lele v. Union of India, (2013) 1 SCC 311.

¹⁹ Sohail Malik v. Union of India (UOI) and Ors, 2025 INSC 1415, ¶ 72.

²⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §19(f), No. 14, Acts of Parliament, 2013 (India).

The judgement upholds a victim-centric approach to the jurisdiction of the POSH Act. The Court emphasized accessibility, continuity and protection over procedural technicalities by defining the jurisdiction which rested upon the workplace of the complainant other than the administration control of the respondent.

The ruling is also representative of a wider judicial approach of the purposive interpretation of the POSH Act in accordance with its constitutional underpinnings in Articles 14, 15 and 21.²¹ The Court implicitly recognized the fact that the modern tendencies in the sphere of employment are dynamic besides being stratified and that the interpretation of law should be such that the intricacies in the structure do not subtract the statutory protection. At that, *Sohail Malik* defends the purity of procedural ICC inquiry and the fact that dignity in the working place is not some issue of bureaucratic subtleties.

B. Section 13 and the Issue of Compartmentalized Accountability

The POSH Act under Section 13²² dictates that the findings and recommendations of the ICC should be sent to the employer so that they can be implemented. Nonetheless, the clause is silent on cases whereby the respondent is working in another department, organisation, or contractual party to the complainant.

The Court in *Sohail Malik* acknowledged that the complainant could have the inquiry done by her ICC, but it was up to the employer of the respondent to implement the same. This is a sure way of separating authority to find facts and power to discipline. The ICC can define misconduct and make suggestions, but it is up to an external body that was not involved in the inquiry process to enforce the recommendations.

This kind of structure poses a threat to accountability. An employer who was not part of the ICC and may not feel institutionally obliged to its proceedings may slow down or water down acting on recommendations, especially where reputational or administrative interests are involved.

²¹ INDIAN CONST. art. 14, 15, 21.

²² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §13, No. 14, Acts of Parliament, 2013 (India).

C. Remedial Continuum to Procedural Silos

The Vishaka guidelines²³ envisaged a smooth process of complaint, inquiry, finding and consequences as appropriate. This vision was codified by the POSH Act but in cross-employer cases, it fragments the process into procedural silos.

The disparity in the doctrine can be condensed to the following form:

Section 9	Section 13
Mandates ICC inquiry and limits them with deadlines	Ensures ICC report to be issued to the employer

The statute however does not address the duties of a respondent's separate employer.

This makes *Sohail Malik* ensure the first half of the remedial process which is access to inquiry, but it foregoes the second half making it vulnerable to inter-institutional cooperation challenges.

D. Access without Accountability

The paradox that arises is at the core of modern POSH implementation, i.e., the legislation ensures that there is access to a forum but not necessarily consequence in a case where employment structures are fragmented.

In conventional workplaces ICC and disciplinary authority are under the same employer, forming a direct chain of enforcement. Contrastingly, the current systems of deputation, outsourcing or inter-departmental transfers spread the responsibility. In the absence of statutory mechanisms imposing the joint or coordinated liability, the effectiveness of ICC findings can rely on administrative goodwill. Therefore, *Sohail Malik* averts jurisdictional evasion but does not do away with the possibility of enforcement evasion.

Administrative Oversight and Compliance Concerns

The concern of implementation of POSH has also emerged in larger compliance contexts. The

²³ Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SC 3011.

mandate of constitution of ICCs and functional grievance mechanisms have been highlighted by the Courts.²⁴ Nevertheless, enforcement deficits cannot be fixed only by monitoring tools. In *Aureliano Fernandes v. State of Goa*,²⁵ the Supreme Court mandated nationwide ICC compliance district-wise audits. Although the existence of digital platforms like SHe-Box has made the reporting process more effective, it cannot influence action in situations where the responsibility is institutionally diffused.

The Gig Ecosystem and The Fragmented Workplace

One of the biggest challenges to POSH implementation is the gig economy. Workers are often categorized by their platforms as independent contractors, and the platforms refuse to take on responsibilities as employers. It is a structuring of contracts that enables companies to be in economic control without bearing legal responsibility.²⁶ This creates ambiguity in jurisdiction between platforms, contractors and local committees.

Approximately ninety percent²⁷ of the informal workforce in India is still not effectively served by the Local Committees²⁸ and consequently there are a large population of working women who are not covered by redressal frameworks. The gig economy is the most extreme stress test of POSH framework. Platform firms regularly treat workers as independent contractors,²⁹ disavowing the duties imposed on “employers” under the Act.³⁰ This categorization undermines the paradigm of the Act that there is indeed a formidably recognisable employer who is present to form an ICC and effect its results. Practically, the burden of redress is diluted across platforms, vendors, and intermediaries, which has resulted in a lack of jurisdiction and institutional evasion.

It is in this context that the Supreme Court ruling in *Sohail Malik*, highlights a crucial tension; that is, procedural access does not always mean that there is an enforceable accountability. In

²⁴ *Aureliano Fernandes v. State of Goa & Ors.*, 2023 INSC 527.

²⁵ *Ibid.*

²⁶ M. Cherry & A. Aloisi, *Dependent contractors in the gig economy: A comparative approach.*, AM. UL REV., 66, 635 (2016).

²⁷ Upala Basu, *Sexual Harassment of Women in Informal and Unorganised Sectors in India: An Analytical Study*, 8 NUJS J. Reg.Studies, 72 (2023).

²⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §6, No. 14, Acts of Parliament, 2013 (India).

²⁹ B. Rogers, *Employment rights in the platform economy: Getting back to basics*, HARV. L. & POL'Y REV., 10, 479 (2016).

³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §19, No. 14, Acts of Parliament, 2013 (India).

gig and outsourced work arrangements, the respondent in the report might reject any employment relationship in effect negating remedial impact of ICC findings. The women in such industries are already at a disadvantage due to precarious work, lack of collective bargaining and awareness of the law and therefore they are at even greater risk of having POSH laws that exist in theory but not practice.

Constitutional Dimensions and the Reality of Enforcement

The loopholes in enforcement that were exposed in *Sohail Malik* are not just aspects of statutory drafting, but they also have important constitutional ramifications. Article 21³¹ enshrines the right to dignified living³² which the Supreme Court has always understood to encompass that of safe and humane working conditions.³³ In the case where an ICC is able to come up with an inquiry but its recommendations cannot be practically implemented because of disjointed employer structures, the dignity of the complainant is still violated even when procedures have been adhered to. The right is made symbolic but not substantive.

The assurance of equality before the law as stipulated in article 14³⁴ is also affected. Women working in the traditional, hierarchical structured organisations are under more likelihood of enforceable remedies since the ICC and disciplinary authority are under the same institutional setting. Conversely, those in contractual, deputed or gig-based jobs tend to face diffused responsibility and unenforced actions. These discriminatory results simply because of the nature of employment may lead to arbitrary classification that compromises on an equal protection.

Article 19(1)(g)³⁵ that safeguards the right to practise any profession is also indirectly involved. A working environment in which harassment is not corrected because of enforcement weaknesses serves the effect of denying women an opportunity to dissimilarly engage in economic life. Without safety and dignity relying on the occupational structure chance, the promise of occupational freedom ensured by the constitution cannot be actualised.

These constitutional issues are supported by the current empirical trends in the implementation

³¹ INDIAN CONST. art. 21.

³² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³³ *Bandhua Mukti Morcha v. Union of India & Ors.*, AIR 1984 SC 802.

³⁴ INDIAN CONST. art. 14.

³⁵ INDIAN CONST. art. 19(1)(g).

of POSH. The reporting mechanisms have improved through digitisation of the complaint platforms but there remains a lag on disposal and enforcement.

Empirical Trends: Digital Redress, Pendency and Complaints³⁶

Metric	FY 2023–24	FY 2024–25	Trend
BSE-30 POSH Complaints	902	958	↑ 6%
Pendency Rate	12%	21%	↑ 75%
Rate of SHe-Box	—	40%	

The statistics indicate that there is an upsurge in the awareness and reporting levels; however, the institutional capability to address the complaints in a timely fashion is not responding. Although services like SHe-Box have intensified the visibility and access, there is systemic delay as shown in disposal rates. This gap between avenues of complaint and effective correction replicates the organizational issue in *Sohail Malik*, i.e., organizational access to procedural availability does not necessarily translate into substantive justice.

In this regard, the constitutional right to dignity and equality in the workplace³⁷ requires that redressal bodies are not only there, but there is also an enforcement structure that can transform the results into actions even in the context of fragmented employment relations.

Reform Proposals

A. Joint Employer Liability

Section 13³⁸ needs to be revised to make joint and several liability to both the employer and the employee of the complainant and the respondent in case of different entities. This would make the ICC findings enforceable.

³⁶ Rica Bhattacharyya, *POSH compliance on rise: Sexual harassment complaints at top 30 firms up 6% in FY25*, ET (Jan. 28, 2026), https://economictimes.indiatimes.com/news/company/corporate-trends/posh-compliance-on-rise-sexual-harassment-complaints-at-top-30-firms-up-6-in-fy25/articleshow/123874292.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

³⁷ *Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

³⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §13, No. 14, Acts of Parliament, 2013 (India).

B. Built-in Surveillance System

ICC-based national POSH compliance dashboard merged with digital reporting tools would allow the real-time monitoring of performance and lessening transparency in institutions.

C. Strengthening Penalties

There are small penalties that exist in case of non-compliance.³⁹ Increased financial and regulatory implications would encourage employers to take POSH obligations seriously.

D. Statutory clarification of Gig Worker Coverage

Platform companies should be clarified to have POSH obligations to the workers whose services they contract to use their systems a significant loophole in accountability would be closed.

Counter-Argument and Rebuttal

Arguably, the Supreme Court in *Sohail Malik* was exercising appropriate judicial restraint. Extending textual employer liability would amount to judicial legislation and would encroach on the legislative space. The Court maintained separation of powers by ensuring they limited themselves to the jurisdiction clarity. But such restraint causes the victims to rely upon a patchy enforcement framework. In cases where the statutory silence brings about systemic injustice, judicial interpretation should at least explain why there should be a change in the law. Absent such intervention access to inquiry becomes symbolic and not substantive.

CONCLUSION

*Sohail Malik v. Union of India*⁴⁰ is a significant move to elucidate ICC jurisdiction and ensure the access to procedure by complainants. However, the verdict also reveals one of the central flaws of the POSH model the lack of cross-employer responsibility. In a time of gigs, outsourcing, and mobile employment relations, the clarity of jurisdiction will never be sufficient to ensure justice. An enforcement architecture should be equivalent to a victim-centric one and not confined to the limits of an organisation. This needs to be amended through

³⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §26, No. 14, Acts of Parliament, 2013 (India).

⁴⁰ *Sohail Malik v. Union of India* (UOI) and Ors, 2025 INSC 1415.

legislative reform that proposes joint employer-liability, more powerful punitive measures, and in-built monitoring capabilities that will provide that the dignity following work be translated into reality and not a ritual.