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## **Judicial Approach to Sexual Harassment in India: An Examination of the POSH Act, 2013 and Landmark Judgements**

Author  
Ansh Jain



# **Judicial Approach to Sexual Harassment in India: An Examination of the POSH Act, 2013 and Landmark Judgements**

**Ansh Jain**  
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## **Abstract**

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter POSH Act), which came about after the groundbreaking Vishaka v. State of Rajasthan case (1997), stands out as one of the landmark legislations in the field of labour and gender justice in India. The current paper offers an analysis of the judicial approach to sexual harassment through a critical evaluation of the POSH Act, along with cases like Medha Kotwal Lele v. Union of India (2013), Apparel Export Promotion Council v. A.K. Chopra (1999), and Aureliano Fernandes v. State of Goa (2023).*

*Specific attention is paid to the evolution of sexual harassment laws from the Vishaka Guidelines, the POSH Act, and their implementation problems, including non-compliance in setting up Internal Complaints Committee, procedural delays, inadequate compensation, lack of protection for domestic workers and LGBTIQ+ persons.*

*The paper demonstrates that despite the progressive role played by courts in sexual harassment law, gaps remain in the effective implementation of its norms. Based on an analysis of the U.S. and UK practice, it suggests further legislative changes, including wider application of the law, strict monitoring of its compliance, introduction of third party audits, increased penalty, and POSH awareness training.*

## **Keywords**

Sexual Harassment; POSH Act, 2013; Vishaka Guidelines; Workplace Harassment; Internal Complaints Committee; Judicial Interpretation; Gender Justice; Aureliano Fernandes v. State of Goa; Medha Kotwal Lele v. Union of India; Employer Liability; India.

## Introduction

### 1.1. The Evolution of the Workplace and the Persistence of Sexual Harassment

There have been immense changes witnessed in the workplace over the past few decades as the workplace has changed from being male dominated and hierarchal to being one where there is diversity, service orientation, and digitalization. The liberalization of the Indian economy in 1991 has led to the growth of the private sector, multinationals, and the employment of many women in various forms of employment in both organized and unorganized workplaces. The figures of women working can be seen in the statistics of the Ministry of Labour and Employment, which reveals that the percentage of women working is increasing and as of 2024, women constitute about 24% of the organized labor force and the number keeps on growing in industries such as information technology, banking, healthcare, education, and business process outsourcing. This change has resulted in great opportunities for women economically and professionally but they are constantly faced with a challenge called workplace harassment, out of which sexual harassment happens to be one of the gravest.<sup>1</sup>

Despite many decades of feminism and legislation, sexual harassment in the workplace persists. The annual reports issued by the National Crime Records Bureau (NCRB) indicate several thousand instances of workplace sexual harassment in India every year. However, these figures can be taken only as indicative, as there is an underreporting problem associated with this issue. According to the 2019 ILO report, entitled 'Ending Violence and Harassment in the World of Work', more than one-third of women worldwide have been victims of sexual harassment, a large proportion of which occurs in workplace settings. According to CFTI and Equality Now Foundation studies, around 40-60% women in organised settings in India have reported having faced sexual harassment, varying from sexual comments or gestures to outright assault.<sup>2</sup>

Several reasons can be attributed to the prevalence of sexual harassment. For instance, patriarchal traditions prevalent within Indian society tend to undermine any harassing behavior as 'harmless teasing'. Asymmetries of power between organizational hierarchies generate situations in which victims, especially junior employees or contractual workers, are afraid of being victimized, professionally sabotaged, or dismissed from work as a result of maintaining their dignity\*\*, which is a constitutional right in the Indian Constitution. It further fuels gender discrimination through the creation of a hostile work environment, which obstructs the progress of women at work, diminishes productivity, and compels skilled women to quit working altogether.

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<sup>1</sup> Oommen, Stephin Sinu. "The Cost of Silence: Examining the Long-Term Impact of Sexual Exploitation on Women in the Workplace." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

<sup>2</sup> Debnath, Aninda, et al. "Workplace sexual harassment and violence among women: a systematic review and meta-analysis." *Women & Health* 65.4 (2025): 287-301.

The monetary implications are grave since harassed women have been found to be more susceptible to changing jobs, taking unpaid leaves, or quitting work altogether, thereby widening the existing gender disparity in the labor force. According to the World Bank, the financial implications of gender-based violence and harassment on the world economy are estimated to be about \$1.5 trillion per annum.

## **1.2. Understanding Sexual Harassment: Definition, Forms, and Manifestations**

Sexual harassment is a multidimensional subject, and there is no single concise definition that can encapsulate all the aspects of the phenomenon. In general terms, sexual harassment refers to any form of sexual conduct – be it physical, verbal, or non-verbal – that causes a hostile, intimidating, or offensive working environment or that serves as grounds for making employment decisions against the victim. According to Section 2(n) of the POSH Act, 2013, sexual harassment entails not only "quid pro quo" and "hostile work environment" harassment but also unwelcome physical behavior and advances, a demand or request for sexual favors, sexually colored remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal behavior of a sexual nature. Moreover, sexual harassment includes situations where the victim's reaction to such behavior is made the ground for employment decisions against her or where the said behavior interferes with her work performance or creates a hostile, intimidating, or offensive working environment.<sup>3</sup>

There are numerous forms and types of sexual harassment, which constantly evolve with time. Physically, sexual harassment may involve unwanted touching, groping, and brushing against the victim or forced sexual intercourse or assault. Verbal sexual harassment includes sexually suggestive statements, jokes, remarks, cat-calls, whistles, unwelcome questions about the individual's sex life or physique, etc. Non-verbal harassment consists of staring, ogling, gesturing, flashing pornographic pictures or posters, and sending sexually explicit emails, SMS, and other digital communications. As the modern workplace has shifted towards remote and hybrid working, digital sexual harassment has gained importance. This includes sending unsolicited explicit photographs, persistent messaging through professional communication platforms such as Slack or Microsoft Teams, and recording and sharing explicit images during virtual meetings. In the context of the POSH Rules, 2013, these acts constitute digital sexual harassment since the definition of workplace under

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<sup>3</sup> Wajahat, Johar, Rafia Naz Ali, and Mohammad Jan. "Sexual harassment in the workplace: a proportional examination of relevant legislation, with comparisons to two major asian countries: india and pakistan." *Pakistan Journal of Social Research* 4.03 (2022): 10-16.

the Act is broad enough to encompass places accessed by employees in relation to or during their employment, both physical and digital places.<sup>4</sup>

The most important aspect of differentiating sexual harassment from others involves recognizing the difference between quid pro quo harassment and hostile work environment harassment. Quid pro quo means 'this for that,' meaning that in quid pro quo harassment, an individual in a position of power either explicitly or implicitly makes the receipt of some employment benefit contingent upon the target's submission to the harasser's sexual advance or demand. This type of harassment generally occurs at the hands of the employer's superiors or those who have power over the victim in their careers. Hostile workplace harassment, however, involves any unwanted sexual behavior that is sufficiently pervasive or severe as to unreasonably interfere with someone's job performance or create an intimidating, hostile, or offensive environment to work in. This may occur when the unwanted behavior comes from co-workers, subordinates, and third parties including customers and clients. The judgment in the case *Apparel Export Promotion Council v. A.K. Chopra* (1999)<sup>5</sup>, which held that a supervisor's consistent physical advances were grounds for being fired, showed that a one-time incident could qualify as hostile workplace harassment as well.

### **1.3. The Legal Landscape: An Overview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

The POSH Act, 2013, is a complete piece of legislation consisting of thirty sections spread across eight chapters with the purpose of providing a comprehensive legal mechanism for preventing and prohibiting sexual harassment of women at the workplace. This Act applies to all women of India irrespective of their age and employment nature. According to this Act, "employee" is widely used to denote a person who works under the employer on regular, ad hoc, daily wages, apprenticeship, contract basis, as well as on voluntary basis as long as some form of remuneration is involved in their engagement. "Workplace" as per this Act includes all departments, organisations, undertakings, establishments, enterprises, institutions, offices or branches where the employer has his control or ownership, and any other place visited by employees in relation to or during the course of their employment including the travelling during the journey undertaken for and from such places.<sup>6</sup>

Chapter two of this Act makes it compulsory for every employer having more than ten employees to establish an Internal Complaints Committee at each of its

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<sup>4</sup> Gnanaselvam, Nancy Angeline, and Bobby Joseph. "Prevention of gender-based violence and harassment at workplace in India." *Indian journal of occupational and environmental medicine* 27.3 (2023): 193-196.

<sup>5</sup> *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

<sup>6</sup> Karra, Aditi Shree. "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)-A Detailed Analysis of POSH Act, 2013." *Jus Corpus LJ* 3 (2022): 622.

office or branch. For the ICC, there should be a Presiding Officer who should be a woman and working in a high-ranking position. There should be at least two other members from among the employees who support the cause of women or have legal expertise, and an additional member from a non-governmental organization or association supporting women's cause. At least 50% of the ICC members should be women. In this regard, the powers of a civil court shall vest upon the ICC for summoning witnesses and their attendance, discovery and production of documents, and taking evidence on affidavits. In places with less than ten employees or in those where the complaint is made against the employer, there shall be constituted a Local Complaints Committee (LCC) by the District Officer.

Chapter III discusses the process of complaints and investigations. A complaint can be filed against an employer when the employee feels wronged by the employer. After the investigation, the ICC shall submit the report to the employer within ten days, indicating whether the complaint is justified or unjustified.<sup>7</sup>

Chapter IV addresses the consequences and compensation. In case the complaint is found to be justified, the employer shall take appropriate measures in accordance with the service rules or any recommendations made by the ICC. Appropriate measures can include issuing an apology, a warning, or a reprimand. It could also involve depriving the employee of his/her promotion, demotion, suspension, or termination of employment. The ICC may make a recommendation for compensation to be paid to the complainant, and such compensation will be deducted from the salary of the respondent. However, in case the complaint is deemed to be malicious, and the complainant makes a false complaint or provides false evidence, the ICC may recommend action against the complainant in accordance with the service rules. However, it must be noted that failure to prove a complaint does not imply that the complaint was made maliciously.<sup>8</sup>

The obligations placed upon the employers under Chapter VI include ensuring that their workers have a safe work environment, displaying the penalty for sexual harassment, organising programs to raise awareness about sexual harassment, treating sexual harassment as misconduct, and monitoring whether the annual reports are submitted timely by the ICC. The section 26 of the Act states that if the employer does not form the ICC or violates any of the provisions of the Act, then the employer shall be fined ₹50,000 in case of the first violation and in case of any further violations, a fine of ₹1,00,000 shall be imposed, and even his/her license/registration can be revoked. In case of appeals, under section 28, any aggrieved person has the right to make an appeal

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<sup>7</sup> Jonsdottir, Svava Dogg, et al. "Risk factors for workplace sexual harassment and violence among a national cohort of women in Iceland: a cross-sectional study." *The Lancet Public Health* 7.9 (2022): e763-e774.

<sup>8</sup> Noor, Shamim, and Pawinee Iamtrakul. "Women's access to urban public transport: Toward addressing policy constraints in combating sexual harassment." *Transport policy* 137 (2023): 14-22.

against the recommendation of the ICC or the order of the employer before the concerned court/tribunal as per service rules or District Court in case there are no such rules.

#### **1.4. The Constitutional Framework: Articles 14, 15, 19(1)(g), and 21 of the Constitution of India**

The constitutional basis of the POSH Act and the overall anti-harassment system can be traced back to the constitutional guarantees of fundamental rights contained in Part III of the Indian Constitution. The relevant articles include Articles 14 (Right to Equality), 15 (Prohibition of Discrimination), 19(1)(g) (Right to Practise Any Profession), and 21 (Right to Life and Personal Liberty). These provisions together imply that there is a constitutional mandate for the prevention of sexual harassment at workplaces, which not only amounts to a statutory wrong but also constitutes a fundamental rights violation, which requires redressal through proactive state action.<sup>9</sup>

Article 14 provides for the guarantee of equality before the law and equal protection of the laws. Sexual harassment is a serious affront to gender equality in the workplace since it entails placing female workers in adverse circumstances of employment that are not faced by their male counterparts. As per the judgment in *Vishaka v. State of Rajasthan* (1997), sexual harassment constitutes a violation of the fundamental right to gender equality under Article 14. In other words, where there is sexual harassment against a woman, there will be no equal opportunity for her to work, advance, and compete like her male counterparts. Sexual harassment creates a hostile working environment, which discriminates against women by denying them their constitutional right to equality. Also, women being discriminated against through sexual harassment and forced out of jobs and career prospects are instances of indirect discrimination, violating their substantive rights of equality under Article 14.

Under Article 15(1), the Constitution prohibits any discrimination based on religion, race, caste, sex, or place of birth. Nevertheless, Article 15(3) allows the state to make special provisions for women and children. In this regard, the POSH Act is one such positive discrimination law made under Article 15(3) of the Constitution that recognizes the need for special protection against sexual harassment at workplaces, which is a unique form of discrimination against women. It has been made abundantly clear in *Anuj Garg v. Hotel Association of India* (2008)<sup>10</sup> that measures taken under Article 15(3) are required to be proportional and targeted, and the POSH Act satisfies this requirement in the

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<sup>9</sup> Thakur, Anita. "Conceptual Framework of Domestic Violence with Reference to Sexual Harassment." *Issue 5 Indian JL & Legal Rsch.* 4 (2022): 1.

<sup>10</sup> *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

sense that it provides a means of redress which does not unduly burden the employers.<sup>11</sup>

The right conferred under Article 19(1)(g) of our Constitution includes the right of a person to practice any profession or to carry on any occupation, trade, or business. Right to practise any profession also includes the right to practice in an atmosphere where there is no harassment, intimidation, or discrimination. If sexual harassment compels women to give up their employment or pursue their chosen profession, then it can be said that women's right to practice her profession as provided under Article 19(1)(g) of the Indian Constitution has been violated. Imposition of reasonable restriction under Article 19(6) on the right to practice any profession, occupation, trade, and business in the interests of the general public is included within the ambit of the state's obligations.

The 'soul and spirit' of the Constitution, Article 21 ensures the guarantee of life and personal liberty. Article 21 has been broadly interpreted by the Supreme Court in order to ensure that the right to live encompasses within itself the right to lead a life with dignity. In the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 1981<sup>12</sup>, the Court ruled that the right to life guaranteed under Article 21 included the right to live with human dignity and all that goes along with it, which includes dignity while working. Sexual harassment is a violation of the dignity of the female worker as she is made to feel like nothing more than an object of sexual gratification. The Court ruled in *Vishaka* that sexual harassment amounted to denial of the right to life guaranteed under Article 21 since it took away the victim's right to lead a life with dignity. Additionally, the right to privacy, which has been declared to be a fundamental right under Article 21 in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017<sup>13</sup>, comes into play when dealing with cases involving non-consensual recordings and procedural fairness towards the accused.

In the aftermath of the POSH Act, the judiciary has maintained its crucial position as far as the interpretation and expansion of its provisions are concerned. Thus, in the case of *Medha Kotwal Lele v. Union of India* (2013)<sup>14</sup>, the Supreme Court showed its readiness to use its contempt powers in ensuring enforcement of the law by establishing a committee for monitoring and asking all states and union territories to submit compliance affidavits. In another landmark case, the Supreme Court ruled in *Aureliano Fernandes v. State of Goa* (2023)<sup>15</sup> that the employers will be vicariously liable in cases where their employees commit acts of sexual harassment. As regards the issue of the limitation of time for filing the complaint, the Bombay High Court, in the case

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<sup>11</sup> Singh, Pallavi, and Radha Ranjan. "Sexual Harassment of Women at Work Place: A Study of Indian Legislation and Judicial Approach." *Issue 1 Indian JL & Legal Rsch.* 4 (2022): 1.

<sup>12</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

<sup>13</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>14</sup> *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

<sup>15</sup> *Aureliano Fernandes v. State of Goa*, (2023) SCC OnLine SC 1124.

of *Shital S. K. v. State of Maharashtra (2020)*<sup>16</sup>, stated that the limitation of three months was directory and not mandatory, giving the ICC full freedom to extend that period. In an important judgement, the Madras High Court ruled that the provisions of the POSH Act extended to campus communities in colleges and universities, since students frequently faced sexual harassment on part of faculty members.

## Literature Review

The literature surrounding sexual harassment in the workplace has increased dramatically over the last three decades as sexual harassment is seen worldwide as a human rights violation and a hindrance to achieving gender equality. International literature is rich in insights about sexual harassment in the workplace. The book *Sexual Harassment of Working Women: A Case of Sex Discrimination* by Catherine MacKinnon is considered seminal to feminist theory of law, where she posits that sexual harassment amounts to sex discrimination under Title VII of the Civil Rights Act.<sup>17</sup> Her categorization of two forms of sexual harassment – quid pro quo harassment and hostile environment harassment – have become universally accepted and have found expression even in the POSH Act, 2013. Louise F. Fitzgerald et al., in their article "The Incidence and Dimensions of Sexual Harassment in Academia and the Workplace", published in the *Journal of Vocational Behaviour* (1997) extended this framework further and introduced a threefold taxonomy of sexual harassment behaviors—gender harassment, unwanted sexual attention, and sexual coercion—which has been widely used in empirical research on sexual harassment.<sup>18</sup> Gender harassment, which involves sexist remarks and demeaning humor, was found to be the most common type of sexual harassment. In the Indian context, this theoretical framework has been criticized for its failure to acknowledge the intersectionality of caste, class, and religion, thus aggravating the already fragile situation of marginalized women.

The literature on the POSH Act, 2013, has been rich and varied. In his book *Law Relating to Sexual Harassment at Workplace* (2019), Poonam Saxena provides an exhaustive review of each of the provisions of the Act, with reference to the development of legislation since the Vishaka Guidelines and judgments till 2018.<sup>19</sup> Poonam Saxena's critical review of the definition of "workplace" suggests that although the broad wording of the statute has resulted in an extension of the meaning of the term through judicial interpretation, the same cannot be used to protect informal sector workers. The feminist critique of the POSH Act is clearly articulated by Flavia Agnes in her article, titled "The

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<sup>16</sup> *Shital S.K. v. State of Maharashtra*, 2020 SCC OnLine Bom 101.

<sup>17</sup> Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press, 1979).

<sup>18</sup> Louise F. Fitzgerald et al., "The Incidence and Dimensions of Sexual Harassment in Academia and the Workplace," 32 *Journal of Vocational Behavior* 152 (1988/1997 edn.).

<sup>19</sup> Poonam Saxena, *Law Relating to Sexual Harassment at Workplace* (LexisNexis, 2019).

Background of the Sexual Harassment Bill: A Feminist Critique," published in the *Economic and Political Weekly*. According to Agnes, the Act weakened the Vishaka Guidelines with provisions such as the time limit of three months and the possibility of disciplinary measures for false complaints.<sup>20</sup>

In "The Politics of Gender and the Body in the Indian Legal Discourse," a chapter by Ratna Kapur published in 2005, the issue of sexual harassment laws in India emerges as part of the wider struggle for gender justice and legal reform in the country.<sup>21</sup> Kapur identifies an ambivalent tendency in Indian jurisprudence to vacillate between a patriarchal stance based on protection of women and emancipation through the law, exemplified by the Vishaka judgment, after which judicial activism was stifled. Kapur's discourse analysis of the concept of "modesty of women" found in Indian case law, ranging from colonial Sections 354 and 509 IPC to more recent rulings under the POSH Act, points out that despite progressive tendencies, patriarchal constructions of feminine honor persist in shaping judicial thought. Such a criticism is also made by Nivedita Menon in "Recovering Subversion: Feminist Politics Beyond the Law" (2004).<sup>22</sup>

There have been several sociological and organizational studies that have shed light on the actual experiences of harassment at the workplace. According to the ILO's publication "Ending Violence and Harassment in the World of Work" (2019), based on surveys of more than 80 countries, about 35% of women all over the world have reported having been subjected to sexual harassment. In India, according to the study titled "Silence is not Golden: An Empirical Study of Workplace Sexual Harassment in India" (2019) by the Equality Now Foundation,<sup>23</sup> conducted among 1200 women employed in various sectors, both formal and informal, 58% have reportedly faced sexual harassment while only 12% complained formally. According to the study, fear of retribution, lack of faith in ICCs, and societal taboo were found to be the major impediments to complaining. In their paper entitled "Domestic Workers and the POSH Act: A Missing Link," published in the *Indian Journal of Gender Studies* in 2018, Nirmala George and Indu Agnihotri point out that domestic workers are excluded from the purview of the Act.<sup>24</sup>

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<sup>20</sup> Flavia Agnes, "The Background of the Sexual Harassment Bill: A Feminist Critique," *Economic and Political Weekly* (2013).

<sup>21</sup> Ratna Kapur, "The Politics of Gender and the Body in the Indian Legal Discourse," in *Gender and Politics in India* (2005).

<sup>22</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black, 2004).

<sup>23</sup> Equality Now Foundation, *Silence is Not Golden: An Empirical Study of Workplace Sexual Harassment in India* (2019).

<sup>24</sup> Nirmala George & Indu Agnihotri, "Domestic Workers and the POSH Act: A Missing Link," *Indian Journal of Gender Studies* (2018).

## **Research Gap**

Despite the wealth of critical literature analyzing sexual harassment legislation in India, there is one aspect of sexual harassment jurisprudence that needs further investigation: the development of the Indian legal system through the landmark rulings concerning sexual harassment law, from *Vishaka v. The State of Rajasthan* in 1997 to *Aureliano Fernandes v. Union of India* in 2023. The literature that currently exists provides either a general discussion of the POSH Act's content or an analysis of separate landmark judgments, but none of them explores the issue of the evolution of judicial doctrine through landmark rulings. To be more precise, there is no critical examination of how courts in India have addressed controversial topics like the three-month limitation period, malicious complaints, the vicarious liability of employers, and the protection of transgender individuals and domestic workers. Additionally, the relationship between constitutional provisions (Articles 14, 15, 19, and 21) and judicial rulings in relation to sexual harassment law remains understudied. As for the procedural challenges and limitations of ICC functioning, these issues also need further discussion. Hence, the present research focuses on the evolution of sexual harassment law through landmark judicial rulings, assessing its effectiveness in implementing the requirements of the POSH Act.

## **Research Objectives**

1. To critically analyze the legal regime in the light of POSH Act, 2013, by examining the definitions, procedures involved, and penal provisions prescribed, as well as its coherence, adequacy, and compatibility with the fundamental rights guaranteed by the Constitution of India, i.e., Articles 14, 15, 19(1)(g), and 21.
2. To undertake a study of leading judicial pronouncements concerning the POSH Act and Vishaka guidelines, such as *Vishaka v. State of Rajasthan* (1997), *Medha Kotwal Lele v. Union of India* (2013), *Apparel Export Promotion Council v. A.K. Chopra* (1999), and *Aureliano Fernandes v. State of Goa* (2023). The emphasis here would be on the evolution of judicial thinking on important aspects like the definition of "workplace," the burden of proof, vicarious liability of the employer, and rights of the accused.
3. To enumerate various problems faced by women in relation to the implementation of the POSH Act, which include non-compliance with regard to setting up ICCs, delay in redressing grievances, inadequate compensation, victim blaming, and omission of domestic workers and transgender persons within the purview of POSH Act.
4. To assess the judicial perspective on the balance between victim safety and process due process by studying judicial responses to difficult cases involving the three-month time limit, dealing with malicious claims, and the standards of proof for ICC cases.

5. To derive lessons from other countries like the USA and the UK, where mechanisms to prevent harassment are well-established and identify practical steps that can be replicated in India's laws.
6. To make specific recommendations regarding the need for legislative, procedural, and institutional changes to the current regime based on the results obtained during the research project.

### **Research Methodology**

The present study follows a doctrinal and analytical methodology, which is based on a careful evaluation of primary and secondary legal materials. Primary sources refer to the Prevention of Sexual Harassment of Women at Workplace (POSH) Act, 2013; POSH Rules, 2013; the Indian Constitution, especially Articles 14, 15, 19, and 21; and important case laws including *Vishaka v. State of Rajasthan* (1997), *Medha Kotwal Lele v. Union of India* (2013), *Apparel Export Promotion Council v. A.K. Chopra* (1999), and *Aureliano Fernandes v. State of Goa* (2023). Secondary sources include scholarly books and journals by renowned scholars, namely, Catherine MacKinnon, Flavia Agnes, Ratna Kapur, Poonam Saxena, and Aparna Chandra; as well as reports issued by the Law Commission of India, Justice Verma Committee, International Labour Organization, and National Crime Records Bureau. The present study makes use of a case law analysis method to understand the development of judicial pronouncements on important questions raised by the POSH Act. In addition, a comparative analysis is undertaken to gain valuable insights from the laws of the United States and the United Kingdom. The analytical method includes critical legal analysis to evaluate the judicial pronouncements on various points of law.

### **Research Findings**

The doctrinal study of the POSH Act, 2013, and the judicial case laws shows a highly complicated and contradictory picture. On the legislative side, the POSH Act provides a comprehensive legal structure regarding the prevention and remedy of workplace sexual harassment by adopting a wide definition of sexual harassment, setting up Internal Complaints Committee, and laying down a complete process. However, it has been discovered that there is a considerable mismatch between the legislative objective and its implementation. Firstly, the three months' limitation period for lodging complaints has been a major impediment, which dissuades the victims from filing a case since they take time in collecting evidence and overcoming trauma. Secondly, the provision regarding punishment for malicious complaints has also discouraged victims, despite its judicial curtailment. Lastly, the POSH Act's exemption of domestic workers and its binary understanding of gender identity have been a major flaw, which courts tried to overcome by judicial interpretation.

The interpretation of the law through judicial decisions has been the main driver of progress within this field. In the landmark case of *Vishaka v. State of Rajasthan* (1997), the Supreme Court issued directions that set down certain guidelines as binding rules in the absence of any legislation, placing the right to be free from workplace harassment under Articles 14, 15, 19(1)(g), and 21. More cases have built on and strengthened this doctrine. For instance, in *Apparel Export Promotion Council v. A.K. Chopra* (1999), the Court adopted a victim-centered approach in determining whether the behavior was unwelcome, without needing corroborative proof, and taking into account the subjectivity of the complainant. In another significant case, *Medha Kotwal Lele v. Union of India* (2013), the Court utilized its contempt power to ensure that the Vishaka Guidelines were followed, creating a mechanism that identified the lack of constitution of ICCs in most organizations. Most recently, in *Aureliano Fernandes v. State of Goa* (2023), the Court imposed vicarious liability upon the employers for the sexual harassment committed by their employees.

Despite these judicial measures, certain implementation issues have been identified through the research. The majority of companies in the informal sector and small companies do not adhere to the mandate of establishing an ICC in the organization. In addition, some organizations that have established an ICC do not have the trained personnel, independent outside representation, or enough resources to carry out thorough investigation of the complaints. The local complaints committee process, which is meant to cater for complaints when there is no ICC in the organizations, does not seem to work because it is not popular among employees. Judicial delay has worsened the situation of the victims, since the whole process takes too long. From a comparative perspective with the US and the UK, the process is efficient, but lacks implementation vigor and compensation adequacy.

## **Conclusion**

The study has analyzed the judicial stance on sexual harassment cases within India by discussing the interpretation and application of POSH Act, 2013, and other landmark cases which led to the development of the law. According to this study, it has been seen that the judiciary of India has made significant contributions to develop an appropriate legislation against sexual harassment at work places. The courts have shown their transformative contribution from the Vishaka guidelines where they created a set of rules based on the constitutional provisions to fill in the gaps in legislation to the recently delivered verdict in *Aureliano Fernandes*. Throughout these decisions, the judiciary has been successful in showing its commitment towards a victim-centric approach through various constitutional principles of equality, non-discrimination, and dignity. It was also seen that the judiciary has interpreted the term 'workplace' broadly, rejected technical evidences, and applied contempt jurisdiction and monitoring processes to implement such laws effectively. Therefore, there is

still scope for further amendments in legislation to increase the penalties and create an independent body for monitoring.

## **Recommendations**

### **1. Legislative Reforms**

The most fundamental recommendation emerging from this study is the need for immediate amendments to the POSH Act, 2013 to address its identified deficiencies. First, the three-month limitation period under Section 9(1) should be either removed entirely or made expressly directory with a proviso granting the Internal Complaints Committee (ICC) discretion to extend the period for reasons recorded in writing, up to a maximum of one year from the date of the incident. Second, Section 14, which provides for action against malicious complaints, should be amended to explicitly state that a mere inability to substantiate a complaint shall not be deemed malicious, and that a finding of malice must be based on clear, cogent, and specific evidence of deliberate falsehood with intent to harm. This would prevent the chilling effect that currently deters genuine complainants. Third, the definition of "employee" under Section 2(f) should be expanded to explicitly include domestic workers, contract labourers, gig workers, and persons in the informal sector, ensuring that the most vulnerable workforces are not excluded from statutory protection. Fourth, the gender-neutral application of the Act should be legislatively mandated, extending protections to transgender persons, non-binary individuals, and men, aligning with the constitutional mandate of equality under Article 14 and the recognition of transgender rights in *National Legal Services Authority v. Union of India* (2014).

### **2. Procedural and Evidentiary Reforms**

The process involved in ICC inquiries needs substantial improvement in order to ensure impartiality, efficiency, and victim-centeredness. There is need for changes in the membership of ICCs under Section 4 such that each ICC must have at least one member with experience in dealing with gender-based violence or with training on trauma-informed interviewing, while the other member (external member) must have attained a particular minimum professional qualification in either law or social work. Further, the time limit within which the inquiry must be completed under Section 11(4) needs to be shortened to sixty days from ninety days, with strict compliance to be ensured through regular reporting of progress to the District Officer. The standard of proof applicable in ICC inquiries ought to be explicitly provided as "preponderance of probabilities" and not "beyond reasonable doubt" as was held by the Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra* (1999). It should be incorporated into the Act itself to ensure that no ICC departs from the standard.

### **3. Institutional and Capacity-Building Measures**

There is an urgent need to build up institutional structures for the effective implementation of the POSH Act. Each district needs to have a POSH Cell, under the District Officer, with trained manpower who will monitor ICC compliance, offer technical assistance to employers, and conduct unannounced spot inspections. LCCs, which function under the POSH Act as the redress forum for employers having less than ten employees and against the employer, must be strengthened and provided with budgets, staffing, and compulsory quarterly meetings. The National Commission for Women should have the mandate to receive complaints of non-compliance from employers and ICCs and have powers to impose administrative sanctions as well as refer cases to prosecution. All ICC members must be mandatorily certified within three months of their appointment, covering the provisions of the POSH Act and natural justice, among others. It is recommended that the Commission continues its proactive work through setting up a POSH Compliance Monitoring Committee under the Supreme Court, in a manner similar to the committee formed in *Medha Kotwal Lele v. Union of India* (2013). Fast track courts should be designated for Section 18 appeals under the POSH Act.

### **Scope for Future Research**

Despite the thoroughness of the current study in its legal and case law analysis, there are various directions that can be taken for future scholarly research on the topic. First of all, empirical research into the reality of how ICCs function should be carried out using surveys and interviews of members of these bodies as well as victims and accused parties. Through this, some informal rules and dynamics affecting outcomes might be identified, as these are beyond what the formal legal system addresses. The comparison of the application of the POSH Act with how similar acts are implemented in Bangladesh, Pakistan, and Sri Lanka could provide insights into issues specific to South Asia. Lastly, sociological research focused on the experience of victims from various groups, taking into account intersections between caste, social class, religion, and sexual orientation in the victimization process, could enrich the field further.

### **Limitations**

This study, despite its exhaustive doctrinal and case law analysis, suffers from several limitations that should be pointed out. Firstly, the research utilizes a doctrinal approach, drawing primarily upon statutory provisions, judgments and secondary scholarly literature without using any primary empirical data collected via surveys, interviews or case files. This leads to the inability of the study to include into consideration the experiences of complainants, the process of working of ICCs, or the underlying dynamics at work during the procedure of hearing such cases by ICCs. Secondly, there is a limitation imposed by the scope of the case law considered, including only those cases which have

reached the Supreme Court and some selected High Courts; most of such complaints are solved in ICC procedures and settle without being recorded, thus leading to potential selection biases while identifying legal developments in case law. Thirdly, due to the fast pace of evolution in this field, the research is unable to cover certain developments which occurred after the time period of the research. Lastly, the comparative aspect is limited to the experience of US and UK only.

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