

## **“Implementation of the Sexual Harassment of Women at Workplace Act, 2013: An Institutional and Legal Analysis”**

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### **Abstract**

Sexual harassment at the workplace undermines women's right to equality, dignity, and a safe working environment, and continues to persist despite the existence of a comprehensive legal framework in India. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 marked a significant legislative intervention aimed at preventing harassment and providing effective redressal mechanisms through institutional structures. However, the success of the legislation largely depends on its implementation by employers and institutions. This paper undertakes a critical institutional and legal analysis of the implementation of the POSH Act, 2013 in India. It examines the statutory obligations imposed on employers, the constitution and functioning of Internal Committees, awareness and sensitization measures, and procedural safeguards provided to aggrieved women. Adopting a doctrinal research methodology supplemented by an analysis of judicial pronouncements and governmental reports, the study identifies key gaps in enforcement, including inadequate institutional compliance, lack of awareness among employees, procedural irregularities, and underreporting of complaints. The paper argues that the mere existence of legal provisions is insufficient to address workplace sexual harassment unless supported by effective institutional accountability and monitoring mechanisms. It concludes by proposing legal and policy-oriented recommendations to strengthen implementation, enhance transparency, and ensure meaningful protection for women at the workplace.

### **1. INTRODUCTION**

Sexual harassment at the workplace constitutes a serious violation of women's fundamental rights to equality, dignity, and personal liberty. It adversely affects the physical, psychological, and professional well-being of women and restricts their ability to participate in the workforce on equal terms. The Supreme Court of India has recognised workplace sexual harassment as a form of gender-based discrimination that violates the right to life and livelihood guaranteed under Article 21 of the Constitution of India.<sup>1</sup> Despite constitutional safeguards and international commitments, workplace sexual harassment continues to be widespread and significantly underreported across sectors.

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<sup>1</sup> *Vishaka v State of Rajasthan (1997) 6 SCC 241 (SC).*

In the absence of a specific statutory framework prior to 2013, the judiciary played a crucial role in addressing workplace sexual harassment. In *Vishaka v State of Rajasthan*, the Supreme Court laid down mandatory guidelines to prevent and redress sexual harassment at the workplace, treating them as law under Article 141 of the Constitution.<sup>2</sup> The Vishaka Guidelines remained operative for more than fifteen years and formed the normative foundation for subsequent legislative intervention. In fulfilment of India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and in response to judicial directives, Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.<sup>3</sup>

The POSH Act, 2013 seeks to create a safe and dignified working environment for women by providing a statutory definition of sexual harassment, expanding the scope of the workplace, and institutionalising grievance redressal mechanisms through Internal Committees.<sup>4</sup> The Act places affirmative obligations on employers to prevent sexual harassment, organise awareness and sensitisation programmes, and ensure prompt inquiry and redressal of complaints. Notwithstanding the comprehensive nature of the legislation, its implementation has remained uneven, marked by non-compliance, lack of awareness, improperly constituted Internal Committees, and fear of retaliation among complainants.<sup>5</sup>

The persistent gap between legal provisions and institutional practice underscores the need for a critical examination of the implementation framework of the POSH Act. While the Act establishes a robust legal mechanism for addressing workplace sexual harassment, its effectiveness is contingent upon institutional accountability and administrative enforcement. This paper undertakes an institutional and legal analysis of the implementation of the POSH Act, 2013, with a focus on employer obligations, functioning of Internal Committees, and enforcement challenges. Through an analysis of statutory provisions, judicial pronouncements, and institutional practices, the study evaluates the extent to which the POSH Act has succeeded in ensuring effective protection for women at the workplace.

## 2. RESEARCH OBJECTIVES

The present study is undertaken with the following objectives:

- To examine the legal framework governing sexual harassment of women at the workplace in India.
- To analyse the statutory provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with respect to institutional responsibilities.

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<sup>2</sup> Ibid.

<sup>3</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (India).

<sup>4</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ss 2(n), 4–6.

<sup>5</sup> National Commission for Women, Annual Report 2022–23 (Government of India).

- To assess the role and functioning of Internal Committees as envisaged under the POSH Act, 2013.
- To identify key challenges and gaps in the implementation and enforcement of the POSH Act at the institutional level.
- To suggest legal and policy-oriented measures for strengthening the effective implementation of the POSH Act, 2013.

### **3. RESEARCH METHODOLOGY**

The study adopts a doctrinal legal research methodology, supplemented by an analytical examination of institutional practices. Doctrinal research involves the systematic analysis of legal principles, statutory provisions, judicial decisions, and scholarly writings to understand the scope and effectiveness of the law relating to workplace sexual harassment.<sup>6</sup> The research primarily relies on secondary sources of data, including statutes, case laws, law commission reports, government publications, journal articles, and authoritative commentaries.

In addition, the study refers to reports and data published by statutory bodies and governmental institutions to assess the practical challenges in the implementation of the POSH Act, 2013. Judicial pronouncements of the Supreme Court of India and various High Courts have been analysed to understand the evolving interpretation of workplace sexual harassment laws and the obligations imposed on employers.<sup>7</sup> The research follows a qualitative analytical approach, focusing on identifying gaps between the legislative intent of the POSH Act and its institutional enforcement.

This methodology enables a comprehensive legal and institutional analysis of the POSH Act, 2013 and provides a robust foundation for evaluating its effectiveness in addressing workplace sexual harassment.

### **4. LEGAL FRAMEWORK GOVERNING SEXUAL HARASSMENT AT WORKPLACE IN INDIA**

The legal framework addressing sexual harassment of women at the workplace in India is grounded in constitutional guarantees, judicial interpretation, and statutory enactment. The Constitution of India ensures equality before law and prohibits discrimination on the basis of sex under Articles 14 and 15, while Article 21 guarantees the right to life with dignity, which includes the right to a safe working environment.<sup>8</sup> These constitutional provisions form the normative basis for legal protection against workplace sexual harassment.

Judicial recognition of workplace sexual harassment as a violation of fundamental rights was firmly established in *Vishaka v State of Rajasthan*, where the Supreme Court acknowledged

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<sup>6</sup> Terry Hutchinson and Nigel Duncan, *Legal Research and Writing* (3rd edn, Lawbook Co 2010).

<sup>7</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241 (SC); *Medha Kotwal Lele v Union of India* (2013) 1 SCC 297 (SC).

<sup>8</sup> Constitution of India arts 14, 15, 21.

the absence of specific legislation and framed binding guidelines to prevent and redress sexual harassment at the workplace.<sup>9</sup> The Court held that sexual harassment infringes upon women's rights under Articles 14, 15, 19(1)(g), and 21 of the Constitution, and directed employers to adopt preventive measures. The Vishaka Guidelines remained enforceable law until the enactment of a comprehensive statutory framework.

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 marked a significant legislative development. The Act provides a statutory definition of sexual harassment under section 2(n), encompassing physical contact, verbal and non-verbal conduct of a sexual nature.<sup>10</sup> It adopts a broad interpretation of the term "workplace" under section 2(o), extending protection beyond traditional office spaces to include hospitals, institutions, and any place visited by an employee during the course of employment.<sup>11</sup>

A key feature of the POSH Act is the institutionalisation of grievance redressal mechanisms through the mandatory constitution of Internal Committees in every organisation employing ten or more workers.<sup>12</sup> The Act prescribes the composition of Internal Committees to ensure independence and gender sensitivity, including the mandatory presence of an external member. Employers are further obligated to conduct awareness programmes, display information regarding the Act, and provide assistance to the Internal Committee during inquiry proceedings.<sup>13</sup>

The POSH Act also outlines procedural safeguards to ensure fairness, confidentiality, and time-bound inquiry. Sections 11 and 13 provide for inquiry into complaints and recommendatory powers of the Internal Committee, while section 16 mandates confidentiality of proceedings.<sup>14</sup> Despite the comprehensive legal framework, the effectiveness of these provisions depends largely on institutional compliance and enforcement, which remains a critical area of concern. The gap between statutory mandates and actual practice necessitates continuous monitoring, accountability, and sensitisation to ensure the realisation of the objectives of the POSH Act.

## **5. INSTITUTIONAL MECHANISM: ROLE AND FUNCTIONING OF INTERNAL COMMITTEES**

The effectiveness of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 largely depends on the proper constitution and functioning of Internal Committees (ICs). The IC serves as the primary institutional mechanism for the prevention, prohibition, and redressal of sexual harassment complaints within the workplace.

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<sup>9</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241 (SC).

<sup>10</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 2(n).

<sup>11</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 2(o).

<sup>12</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 4.

<sup>13</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 19.

<sup>14</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ss 11, 13, 16.

Recognising the power imbalance and vulnerability faced by women employees, the Act mandates a structured and gender-sensitive grievance redressal system.<sup>15</sup>

Section 4 of the POSH Act requires every employer employing ten or more workers to constitute an Internal Committee at each office or administrative unit. The prescribed composition reflects the legislature's intent to ensure independence, neutrality, and fairness. The IC must be headed by a woman as the Presiding Officer and must include at least two members committed to the cause of women or having experience in social work or legal knowledge. The inclusion of an external member from a non-governmental organisation or association working for women's rights is a crucial safeguard against institutional bias.<sup>16</sup>

The powers and functions of the Internal Committee are primarily investigative and recommendatory in nature. Under section 11, the IC is empowered to conduct an inquiry into complaints of sexual harassment in accordance with the principles of natural justice.<sup>17</sup> The inquiry process must be completed within a stipulated time frame, and the IC is required to submit its findings to the employer along with appropriate recommendations. Section 13 authorises the IC to recommend disciplinary action, compensation to the aggrieved woman, or other remedial measures, depending on the outcome of the inquiry.<sup>18</sup>

In addition to redressal, the IC plays a preventive role. Employers are mandated under section 19 to organise awareness and sensitisation programmes and provide necessary facilities to the IC for the effective discharge of its functions.<sup>19</sup> The IC is also responsible for submitting annual reports to the employer and the district officer, thereby ensuring institutional accountability and transparency.<sup>20</sup> Confidentiality of proceedings is protected under section 16 to safeguard the dignity and privacy of the parties involved.<sup>21</sup>

Despite the detailed statutory framework, studies and reports indicate that many institutions fail to constitute ICs in compliance with the Act or treat them as a mere formality. Lack of training, inadequate independence of members, fear of retaliation, and procedural irregularities often undermine the effectiveness of ICs. These challenges highlight the gap between statutory intent and institutional practice, necessitating stronger monitoring and enforcement mechanisms to ensure that Internal Committees function as effective instruments of justice rather than symbolic bodies.

## **6. CHALLENGES IN THE IMPLEMENTATION OF THE POSH ACT, 2013**

Despite the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, effective implementation continues to face significant

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<sup>15</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

<sup>16</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 4(2).

<sup>17</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 11.

<sup>18</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 13.

<sup>19</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 19.

<sup>20</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 21.

<sup>21</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 16.

institutional and structural challenges. One of the primary obstacles is the lack of awareness and sensitisation among employees and employers regarding the provisions of the Act. Many women employees remain unaware of the complaint mechanism, the role of Internal Committees, and the procedural safeguards available under the law, resulting in widespread underreporting of incidents of sexual harassment.<sup>22</sup>

Another major challenge is non-compliance with the mandatory requirement of constituting Internal Committees in accordance with statutory norms. In several institutions, Internal Committees are either not constituted at all or are improperly formed, lacking trained members or independent external representatives.<sup>23</sup> This undermines the credibility and impartiality of the grievance redressal process and discourages aggrieved women from approaching the committee.

Fear of retaliation and victimisation further contributes to the reluctance of women to report incidents of sexual harassment. Hierarchical workplace structures, particularly in public institutions, often place women employees in vulnerable positions, where filing a complaint may lead to adverse consequences such as transfer, denial of promotions, or social ostracism.<sup>24</sup> Although the POSH Act contains safeguards against retaliation, their enforcement remains weak in practice.

Procedural delays and lack of capacity-building among Internal Committee members also affect the effectiveness of the Act. In many cases, inquiries are not conducted within the prescribed time frame, and principles of natural justice are either misunderstood or inconsistently applied.<sup>25</sup> Additionally, the absence of regular monitoring and enforcement by appropriate government authorities results in minimal accountability for non-compliance by employers.

Confidentiality, while intended to protect the dignity of the parties, sometimes becomes a barrier to transparency. Overemphasis on confidentiality may prevent institutional learning and policy reform, as systemic issues remain undocumented and unaddressed.<sup>26</sup> These challenges highlight the persistent gap between the legislative intent of the POSH Act and its practical enforcement, underscoring the need for stronger institutional oversight, training, and accountability mechanisms.

## **7. JUDICIAL INTERPRETATION OF WORKPLACE SEXUAL HARASSMENT LAWS**

Judicial intervention has played a pivotal role in shaping and strengthening the legal framework governing sexual harassment of women at the workplace in India. The Supreme

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<sup>22</sup> Ministry of Women and Child Development, Handbook on Sexual Harassment of Women at Workplace (Government of India 2015).

<sup>23</sup> National Commission for Women, Annual Report 2022–23 (Government of India).

<sup>24</sup> *Medha Kotwal Lele v Union of India* (2013) 1 SCC 297 (SC).

<sup>25</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ss 11–13.

<sup>26</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 16.



Court's landmark decision in *Vishaka v State of Rajasthan* laid the foundation for recognising workplace sexual harassment as a violation of fundamental rights guaranteed under Articles 14, 15, 19(1)(g), and 21 of the Constitution.<sup>27</sup> The Court treated international conventions, particularly CEDAW, as enforceable norms in the absence of domestic legislation and mandated preventive and redressal mechanisms at workplaces.

Subsequent judicial pronouncements have reinforced the binding nature of the Vishaka Guidelines and emphasised institutional accountability. In *Medha Kotwal Lele v Union of India*, the Supreme Court expressed concern over the ineffective implementation of the Vishaka Guidelines and directed all states and institutions to ensure their strict compliance.<sup>28</sup> The Court underscored that failure to establish functional complaint committees amounted to a violation of women's fundamental rights.

Post-enactment of the POSH Act, 2013, courts have continued to play a supervisory role in ensuring effective enforcement. In *Apparel Export Promotion Council v A.K. Chopra*, the Supreme Court adopted a progressive interpretation of sexual harassment, holding that even unwelcome behaviour not involving physical contact could amount to sexual harassment.<sup>29</sup> This judgment continues to guide the interpretation of sexual harassment under the POSH Act.

High Courts have further clarified procedural aspects of the Act, emphasising adherence to principles of natural justice during inquiry proceedings. Judicial scrutiny has also extended to the composition and independence of Internal Committees, reiterating that non-compliance with statutory requirements undermines the fairness and credibility of the redressal mechanism.<sup>30</sup> These judicial interventions reflect the judiciary's consistent effort to bridge the gap between legislative intent and institutional practice, thereby reinforcing the normative and enforcement framework of the POSH Act.

## 8. FINDINGS AND RECOMMENDATIONS

### FINDINGS

The analysis of the legal and institutional framework governing the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 reveals that, despite a comprehensive statutory structure, effective enforcement remains inconsistent. One of the key findings is the widespread lack of awareness among women employees regarding their rights and the redressal mechanisms available under the Act. This lack of awareness significantly contributes to the underreporting of sexual harassment incidents.

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<sup>27</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241 (SC).

<sup>28</sup> *Medha Kotwal Lele v Union of India* (2013) 1 SCC 297 (SC).

<sup>29</sup> *Apparel Export Promotion Council v A.K. Chopra* (1999) 1 SCC 759 (SC).

<sup>30</sup> *Shital Prasad Sharma v State of Rajasthan* (2018) SCC OnLine Raj 2051.

The study further finds that the constitution and functioning of Internal Committees often fall short of statutory requirements. In several institutions, Internal Committees are either improperly constituted or lack trained and independent members, thereby undermining their credibility and effectiveness. Procedural lapses, including delays in inquiry and non-adherence to principles of natural justice, further weaken the grievance redressal process. Judicial observations have consistently highlighted that non-compliance with the statutory mandate of the POSH Act amounts to a violation of women's fundamental rights.<sup>31</sup>

Another significant finding is the persistent fear of retaliation and victimisation faced by complainants. Hierarchical workplace structures and power imbalances discourage women from reporting sexual harassment, even where formal mechanisms exist. Although the Act provides safeguards against victimisation, their enforcement remains inadequate in practice. These findings indicate a clear gap between the legislative intent of the POSH Act and its institutional implementation.

## RECOMMENDATIONS

To ensure effective implementation of the POSH Act, 2013, the following measures are recommended:

- **Strengthening Institutional Compliance:** Employers must ensure the mandatory constitution of Internal Committees strictly in accordance with statutory provisions, with trained members and independent external representatives.
- **Capacity Building and Sensitisation:** Regular awareness and training programmes should be conducted for employees and Internal Committee members to promote gender sensitivity and procedural competence.
- **Monitoring and Accountability:** Government authorities should establish robust monitoring mechanisms to ensure compliance, including periodic audits and penalties for non-compliance.
- **Protection against Retaliation:** Stronger enforcement of safeguards against victimisation is necessary to encourage reporting and protect complainants.
- **Transparency with Confidentiality:** While maintaining confidentiality, institutions should adopt anonymised reporting and documentation practices to identify systemic issues and promote institutional learning.

## 9. CONCLUSION

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents a significant legislative step towards safeguarding women's right to dignity, equality, and a safe working environment. The Act provides a comprehensive legal and institutional framework aimed at preventing workplace sexual harassment and ensuring effective redressal through Internal Committees. However, as this

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<sup>31</sup> *Medha Kotwal Lele v Union of India* (2013) 1 SCC 297 (SC).



study demonstrates, the existence of a statutory framework alone is insufficient to address the complex realities of workplace sexual harassment.

The analysis reveals that the primary challenge lies not in legislative inadequacy but in inconsistent institutional implementation, lack of awareness, and weak enforcement mechanisms. Non-compliance with statutory mandates, ineffective functioning of Internal Committees, procedural delays, and fear of retaliation continue to undermine the objectives of the POSH Act. Judicial interventions have played a crucial role in reinforcing accountability and emphasising the constitutional dimensions of workplace sexual harassment, yet sustained institutional commitment remains essential.

For the POSH Act to achieve its intended purpose, it must be supported by robust monitoring, regular sensitisation, and strict enforcement of employer obligations. A shift from formal compliance to substantive implementation is necessary to ensure that grievance redressal mechanisms function effectively and inspire confidence among women employees. Strengthening institutional accountability and fostering a culture of respect and gender sensitivity are imperative for translating the normative promises of the POSH Act into meaningful workplace protection.