

From Rights to Workplace Realities: A Critical Appraisal of Gender, Identity, and the POSH Act in India

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ABSTRACT

The constitutional commitment to equality and dignity under Articles 14, 15, and 21 of the Constitution of India provides the foundation for protecting individuals against discrimination and workplace harassment. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) represents a significant legislative milestone in translating these constitutional guarantees into an effective workplace protection framework. Despite this progressive legislation, a considerable gap continues to exist between the legal rights guaranteed under the Act and the realities experienced by many employees, particularly those belonging to socially and economically marginalized communities. This paper critically examines the POSH Act within the broader context of gender, identity, and legal reform in India through a socio-legal and intersectional perspective. It analyses how factors such as caste, class, religion, disability, gender identity, and employment status influence access to workplace justice and the effectiveness of institutional redressal mechanisms. Although the POSH Act establishes preventive and remedial measures through Internal Committees and employer obligations, its implementation often remains inconsistent due to inadequate awareness, organizational bias, procedural shortcomings, and unequal power relations within workplaces. The study draws upon constitutional principles, judicial decisions, statutory provisions, policy documents, and implementation reports to evaluate whether the POSH framework has achieved its objective of ensuring substantive gender justice. It argues that legal protection alone cannot eliminate workplace harassment unless accompanied by institutional accountability, gender-sensitive administration, effective complaint mechanisms, and broader cultural transformation. Particular attention is given to the challenges faced by women from marginalized communities, contractual and gig workers, interns, trainees, and other vulnerable groups whose experiences frequently remain underrepresented within existing implementation practices. The paper further evaluates the functioning of Internal Committees and identifies concerns relating to independence, impartiality, confidentiality, and professional competence. Institutional inertia, inadequate training, fear of retaliation, social stigma, and limited legal awareness continue to discourage survivors from reporting workplace harassment. At the same time, the study recognizes the contribution of judicial activism, feminist advocacy, legal aid initiatives, and workplace sensitization programmes in strengthening the implementation of the POSH Act and promoting safer work environments. The paper concludes that meaningful workplace gender justice requires moving beyond mere statutory compliance towards a rights-based and justice-oriented implementation model. Strengthening institutional oversight, enhancing accountability, adopting survivor-centred procedures, expanding protection to diverse categories of workers, and integrating intersectionality into workplace policies are essential for realizing the objectives of the POSH Act. Such reforms would bridge the gap between constitutional guarantees and workplace realities, enabling the law to function as an effective instrument for equality, dignity, and inclusive justice in contemporary India.

Keywords: POSH Act; Workplace Sexual Harassment; Gender Justice; Feminist Jurisprudence; Intersectionality; Workplace Equality; Constitutional Law; Internal Committee; Gender Identity; Labour Rights...

INTRODUCTION:

The pursuit of gender equality has emerged as one of the defining objectives of modern constitutional democracies. The workplace, as a critical site of economic participation and social interaction, must ensure equal opportunities, dignity, and protection from discrimination for all individuals. Despite significant constitutional guarantees and legislative reforms, gender-based harassment continues to constitute one of the most pervasive barriers to equal participation in the workforce. Sexual harassment is not merely an individual grievance but a manifestation of systemic inequality rooted in unequal power relations, patriarchal social structures, and institutional discrimination.

Globally, workplace sexual harassment has been recognized as a violation of fundamental human rights. International instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action, and the International Labour Organization (ILO) Convention No. 190 emphasize the responsibility of States to create workplaces that are safe, inclusive, and free from violence and harassment. These international developments have significantly influenced domestic legal reforms, including those undertaken in India.

The Indian Constitution provides a robust normative foundation for gender equality through Articles 14, 15, 16, 19(1)(g), and 21. Collectively, these provisions guarantee equality before the law, prohibit discrimination on the grounds of sex, ensure equal opportunity in public employment, protect the freedom to pursue any occupation, and recognize the right to life with dignity. Judicial interpretation has consistently expanded the scope of these constitutional guarantees to encompass the right to work in an environment free from sexual harassment and gender-based discrimination.

The landmark judgment in *Vishaka v. State of Rajasthan* (1997) represented a watershed moment in Indian constitutional jurisprudence. Faced with legislative vacuum, the Supreme Court invoked constitutional guarantees and international obligations under CEDAW to formulate legally binding guidelines for preventing workplace sexual harassment. The Vishaka Guidelines remained the governing framework until Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The POSH Act institutionalized employer responsibility by mandating the constitution of Internal Committees, prescribing complaint procedures, imposing preventive obligations, and recognizing sexual harassment as a violation of women's constitutional rights. The legislation represented a paradigm shift from treating workplace harassment merely as misconduct to recognizing it as discrimination that undermines equality and dignity. Nevertheless, legislative recognition alone has not ensured substantive justice.

More than a decade after its enactment, implementation of the POSH Act presents considerable challenges. Numerous studies indicate inadequate compliance with

statutory obligations, non-constitution of Internal Committees, lack of awareness among employees, insufficient training of committee members, procedural irregularities, and institutional conflicts of interest. Fear of victimization, reputational harm, workplace retaliation, and social stigma continue to discourage survivors from reporting incidents. Consequently, the gap between formal legal rights and practical workplace realities remains substantial.

The emergence of new forms of employment has further complicated implementation of the Act. Platform-based employment, remote work, hybrid workplaces, contractual engagements, internships, freelancing, and digital workspaces challenge traditional notions of workplace and employer-employee relationships. Questions concerning jurisdiction, accountability, confidentiality, and employer liability require renewed legal interpretation and policy intervention.

The experiences of workplace harassment also differ significantly across diverse social identities. Women belonging to Scheduled Castes, Scheduled Tribes, religious minorities, economically disadvantaged communities, persons with disabilities, migrant workers, contractual employees, domestic workers, and LGBTQIA+ individuals frequently encounter multiple and overlapping forms of discrimination. Traditional legal responses often fail to recognize these intersectional experiences, thereby limiting access to effective remedies.

Feminist jurisprudence offers an important analytical framework for understanding these limitations. Rather than viewing law as neutral, feminist scholars argue that legal institutions often reproduce existing social hierarchies unless structural inequalities are explicitly addressed. Accordingly, workplace harassment should be understood not merely as isolated misconduct but as an expression of systemic gendered power relations. The effectiveness of the POSH Act therefore depends upon its capacity to transform institutional cultures rather than merely establish procedural compliance mechanisms.

This paper argues that while the POSH Act constitutes a progressive legislative framework, its transformative potential remains unrealized due to persistent institutional, procedural, and socio-cultural barriers. Achieving meaningful workplace justice requires strengthening accountability mechanisms, improving institutional independence, expanding legal protection to emerging forms of employment, and adopting survivor-centred and intersectional approaches to implementation.

RESEARCH PROBLEM

The enactment of the POSH Act, 2013 was expected to significantly strengthen workplace protection against sexual harassment by creating legally enforceable preventive and redressal mechanisms. However, empirical studies, judicial observations, governmental reports, and organizational practices reveal that substantial deficiencies continue to affect its implementation. Compliance is frequently treated as a statutory formality rather than as a substantive commitment to workplace equality.

One of the central concerns lies in the functioning of Internal Committees. Questions regarding their independence, neutrality, procedural competence, and accountability continue to undermine confidence in the grievance redressal process. In many organizations, committee members receive limited training, resulting in inconsistent interpretation of statutory provisions and procedural irregularities during inquiries.

Another significant concern relates to under-reporting. Fear of retaliation, career repercussions, workplace isolation, victim blaming, confidentiality breaches, and social stigma continue to discourage survivors from initiating complaints. This problem becomes more acute for women occupying vulnerable employment positions, including contractual workers, interns, domestic workers, gig workers, and employees in the informal sector.

Further, the existing statutory framework has not adequately adapted to changing workplace structures shaped by digitalization, platform-based employment, hybrid work models, and artificial intelligence-driven management systems. Consequently, important questions concerning employer responsibility, jurisdiction, evidence, and procedural fairness remain insufficiently addressed.

The principal research problem therefore concerns whether the POSH Act has succeeded in translating constitutional guarantees of equality and dignity into meaningful workplace justice or whether significant institutional and structural barriers continue to limit its transformative potential.

RESEARCH OBJECTIVES

The study seeks to achieve the following objectives:

To examine the constitutional and jurisprudential foundations of workplace gender justice in India.

To critically analyse the evolution of workplace sexual harassment law from the Vishaka Guidelines to the POSH Act, 2013.

To evaluate the effectiveness of the implementation framework established under the POSH Act.

To examine the role and functioning of Internal Committees in ensuring fair and impartial redressal of complaints.

RESEARCH METHODOLOGY

The present study adopts a qualitative doctrinal and socio-legal research methodology. The doctrinal component involves a critical examination of constitutional provisions, statutory enactments, judicial decisions, governmental notifications, parliamentary debates, and international legal instruments relating to workplace sexual harassment. Particular emphasis is placed on the constitutional interpretation of Articles 14, 15, 16, 19, and 21; the Vishaka judgment; the POSH Act, 2013; and subsequent judicial developments.

The socio-legal component examines the practical operation of the POSH framework by analysing implementation reports, government publications, annual corporate disclosures, empirical studies, reports of the

National Commission for Women, Ministry of Women and Child Development, International Labour Organization, and UN Women. This interdisciplinary approach enables an assessment of the gap between legal norms and workplace realities.

The study further employs feminist jurisprudence and intersectionality theory as analytical frameworks to evaluate whether the POSH Act advances substantive equality and accommodates the diverse experiences of women and other vulnerable workers. Comparative references to international legal standards and selected foreign jurisdictions are also incorporated to identify best practices and inform recommendations for reform.

LITERATURE REVIEW

The scholarship on workplace sexual harassment in India has expanded significantly following the enactment of the POSH Act, 2013. Early studies primarily focused on the historical evolution of legal protections from the Vishaka Guidelines to statutory enactment, emphasizing the constitutional recognition of workplace dignity as an integral component of gender equality. These works generally viewed the Act as a landmark legislative achievement but acknowledged that effective implementation would depend upon institutional commitment and organizational culture.

Subsequent research shifted attention toward implementation challenges. Empirical studies have consistently reported inadequate compliance with statutory obligations, including the absence of properly constituted Internal Committees, limited employee awareness, insufficient training of committee members, procedural delays, and poor record maintenance. Several authors argue that organizations often prioritize formal compliance over meaningful prevention, thereby weakening the deterrent and remedial objectives of the legislation.

A growing body of feminist legal scholarship critiques the POSH framework for emphasizing procedural mechanisms while paying comparatively less attention to structural inequalities that facilitate workplace harassment. Scholars contend that workplace harassment is embedded within broader systems of patriarchy, occupational segregation, unequal economic dependence, and organizational hierarchies. Accordingly, legal reform must address institutional cultures rather than merely prescribe complaint procedures.

Intersectionality has emerged as another important dimension of contemporary scholarship. Researchers have demonstrated that workplace experiences vary significantly depending upon caste, class, religion, disability, sexual orientation, and employment status. Women belonging to marginalized communities frequently encounter compounded discrimination and greater barriers in accessing legal remedies. These findings suggest that uniform legal responses may fail to adequately protect individuals experiencing multiple forms of disadvantage.

Recent literature has also highlighted the challenges created by technological transformation and changing

employment relationships. Gig workers, freelancers, domestic workers, interns, platform employees, and remote workers frequently fall outside traditional organizational structures, raising important questions regarding employer liability, jurisdiction, and institutional accountability. Existing legal frameworks remain insufficiently equipped to address these emerging workplace realities.

Despite the considerable growth of scholarship, a significant research gap remains. Much of the existing literature evaluates statutory compliance or judicial interpretation in isolation. Relatively few studies integrate constitutional theory, feminist jurisprudence, intersectionality, institutional accountability, and contemporary workplace transformations into a comprehensive analysis of the POSH Act. This paper seeks to address that gap by offering a holistic appraisal of the Act through the interconnected lenses of gender, identity, and workplace justice, while proposing reforms aimed at realizing substantive equality rather than mere procedural compliance.

Constitutional Framework for Workplace Gender Justice

The constitutional framework of India establishes the normative foundation for gender equality and protection against workplace discrimination. Although the Constitution does not expressly mention sexual harassment at the workplace, judicial interpretation has consistently recognized such conduct as a violation of fundamental rights. The Constitution envisages equality not merely as formal legal equality but as substantive equality that enables individuals to participate in economic and social life with dignity.

Article 14 guarantees equality before the law and equal protection of laws. The Supreme Court has repeatedly held that equality extends beyond identical treatment and requires protection against arbitrary and discriminatory practices. Workplace sexual harassment creates unequal working conditions by disproportionately affecting women's ability to access employment, career advancement, and economic independence. Consequently, failure to prevent harassment constitutes a denial of equal protection under Article 14.

Article 15(1) prohibits discrimination on the ground of sex, while Article 15(3) empowers the State to enact special legislation for women. The POSH Act derives constitutional legitimacy from this enabling provision, reflecting the State's obligation to remove structural barriers that impede women's participation in the workforce. Rather than conferring preferential treatment, the legislation seeks to correct historically unequal social conditions that expose women to gender-based violence and discrimination.

Article 16, guaranteeing equality of opportunity in public employment, further reinforces the constitutional obligation to provide safe workplaces. A hostile work environment limits equal employment opportunities and undermines merit-based advancement. Thus, workplace harassment is not merely an interpersonal dispute but an institutional obstacle to equal participation.

The Supreme Court has also interpreted Article 19(1)(g) the freedom to practice any profession or carry on any occupation—to include the right to pursue employment in an environment free from intimidation and discrimination. Women cannot meaningfully exercise occupational freedom where fear of harassment becomes an occupational risk.

Perhaps the most significant constitutional provision is Article 21, which guarantees the right to life and personal liberty. Judicial interpretation has progressively expanded Article 21 to include the right to live with dignity, bodily integrity, mental well-being, privacy, and safe working conditions. Sexual harassment directly infringes these constitutional values by undermining an individual's autonomy and psychological security.

Directive Principles of State Policy further strengthen the constitutional commitment to gender justice. Article 39(a) promotes equal livelihood opportunities, while Articles 39(d) and 42 require humane working conditions and protection of workers. Although non-justiciable, these principles have significantly influenced judicial interpretation and legislative policy concerning workplace equality.

The constitutional scheme therefore establishes that workplace safety is not merely an employment concern but a constitutional obligation flowing from equality, dignity, liberty, and social justice.

Evolution of Workplace Sexual Harassment Law: From Vishaka to the POSH Act

Prior to 2013, India lacked specific legislation addressing workplace sexual harassment. Victims were compelled to rely upon scattered provisions of the Indian Penal Code, service rules, or general labour laws, none of which adequately recognized workplace harassment as a violation of constitutional rights.

The legal vacuum came into sharp focus following the brutal gang rape of Bhanwari Devi, a grassroots social worker in Rajasthan, in 1992. Bhanwari Devi faced sexual violence after attempting to prevent child marriage as part of her official duties. The incident exposed the absence of legal mechanisms protecting women from workplace-related sexual violence and prompted several women's organizations to approach the Supreme Court through public interest litigation.

The landmark judgment in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 transformed Indian constitutional jurisprudence. Recognizing the legislative vacuum, the Supreme Court invoked Articles 14, 15, 19, and 21 of the Constitution, together with India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to formulate legally enforceable guidelines for preventing workplace sexual harassment.

The Court defined sexual harassment broadly to include:

- physical contact and advances;
- demand or request for sexual favours;
- sexually coloured remarks;

showing pornography; and

any unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

The Vishaka Guidelines imposed several mandatory obligations upon employers, including:

prevention of sexual harassment;

establishment of complaint committees headed by women;

inclusion of external members in inquiry committees;

maintenance of confidentiality;

awareness programmes; and

prompt inquiry into complaints.

The judgment represented a remarkable example of judicial activism. Rather than waiting for legislative intervention, the Court treated international human rights norms as integral to constitutional interpretation. Importantly, the judgment conceptualized sexual harassment as discrimination violating women's fundamental rights rather than merely misconduct.

For sixteen years, the Vishaka Guidelines functioned as the primary legal framework governing workplace harassment. Their eventual codification through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 marked the transition from judicial guidelines to statutory protection.

The POSH Act, 2013: A Legislative Response

The enactment of the POSH Act represented one of India's most significant gender justice legislations. Unlike earlier approaches that treated harassment as isolated misconduct, the Act recognizes workplace sexual harassment as a violation of constitutional equality and dignity.

The legislation adopts a three-fold strategy:

Prevention

Prohibition

Redressal

Its objectives extend beyond punishment to creating institutional mechanisms that foster safe working environments.

The Act defines sexual harassment broadly and includes both direct and indirect forms of unwelcome conduct. Importantly, it recognizes the creation of a hostile work environment as actionable even in the absence of physical assault.

One of the Act's most important innovations is its expansive definition of workplace. It extends protection beyond traditional offices to include:

educational institutions;

hospitals;

sports facilities;

transportation;

dwelling places;

virtual workspaces connected with employment; and

locations visited during employment.

Similarly, the definition of aggrieved woman includes women employed on permanent, temporary, contractual, trainee, apprentice, or voluntary basis.

The legislation imposes mandatory obligations upon employers, including:

constitution of Internal Committees (ICs);

awareness and sensitization programmes;

display of statutory notices;

assistance during criminal proceedings;

protection against retaliation;

annual reporting obligations; and

confidentiality of proceedings.

The Internal Committee serves as the central institutional mechanism under the Act. Every establishment employing ten or more workers must constitute an IC comprising:

a Presiding Officer who is a senior woman employee;

at least two employee members;

one external member possessing expertise in women's rights or social work.

Where establishments employ fewer than ten workers, complaints may be filed before the Local Committee constituted by the District Officer.

The Act therefore institutionalizes employer accountability while attempting to provide accessible grievance mechanisms within workplaces.

Gender, Identity, and Workplace Justice

Although the POSH Act focuses specifically upon women, workplace harassment cannot be understood exclusively through gender. Contemporary scholarship increasingly emphasizes intersectionality, a concept developed by Kimberlé Crenshaw, which explains how multiple identities interact to produce distinct forms of discrimination.

In the Indian context, workplace experiences are shaped not only by gender but also by caste, religion, disability, class, language, region, age, employment status, and sexual orientation. Consequently, workplace harassment frequently reflects multiple overlapping power structures rather than gender alone.

Women belonging to Scheduled Castes and Scheduled Tribes often experience both caste-based humiliation and sexual harassment simultaneously. Migrant workers employed in domestic work, manufacturing, hospitality, and construction frequently remain outside formal complaint mechanisms. Contractual employees may hesitate to report harassment due to fear of termination or non-renewal of contracts.

Similarly, women with disabilities face unique vulnerabilities arising from dependence upon caregivers or supervisors. Their complaints frequently remain

unreported because of accessibility barriers and communication difficulties.

The emergence of gig work has introduced additional complexities. Platform workers employed through digital applications often lack identifiable workplaces or clearly defined employers. Consequently, determining institutional responsibility under the POSH Act becomes legally challenging.

Remote working arrangements introduced after the COVID-19 pandemic have similarly transformed workplace interactions. Online meetings, messaging platforms, virtual conferences, and social media communication have expanded opportunities for digital harassment while simultaneously complicating evidentiary and jurisdictional questions.

Another important concern relates to gender identity. The POSH Act specifically protects women but does not expressly include transgender persons, non-binary individuals, or male victims of workplace sexual harassment. Although the Supreme Court's decision in *National Legal Services Authority (NALSA) v. Union of India* (2014) recognized gender identity as a fundamental constitutional right, statutory protection under the POSH Act remains largely binary.

Critical Appraisal of the POSH Act

Despite its progressive objectives, the implementation of the POSH Act reveals several structural and institutional limitations.

The first concern relates to procedural compliance replacing substantive justice. Numerous organizations establish Internal Committees merely to satisfy statutory requirements without ensuring independence, professional competence, or survivor-sensitive inquiry procedures. Committee members often lack specialized legal training, psychological understanding, or experience in handling workplace harassment complaints.

Secondly, the Internal Committee structure raises concerns regarding institutional independence. Since committee members are appointed by employers, questions frequently arise regarding impartiality where complaints involve senior management. Employees may perceive ICs as extensions of organizational hierarchy rather than independent adjudicatory bodies.

Thirdly, under-reporting remains one of the greatest implementation challenges. Fear of retaliation, adverse performance evaluations, professional isolation, reputational damage, and victim blaming continue to discourage survivors from filing complaints. Confidentiality breaches further reduce confidence in institutional mechanisms.

The Act also provides for conciliation before formal inquiry, provided monetary settlement is excluded. While intended to facilitate amicable resolution, critics argue that conciliation may reinforce unequal bargaining power, particularly where complainants occupy subordinate employment positions. Without adequate safeguards ensuring informed and voluntary consent, conciliation risks prioritizing institutional harmony over justice.

Another significant concern involves implementation within the informal sector. Nearly ninety percent of India's female workforce is employed outside the organized sector. Domestic workers, agricultural labourers, home-based workers, and self-employed women frequently lack effective access to Local Committees established under the Act. Administrative weaknesses and limited public awareness significantly reduce the effectiveness of district-level complaint mechanisms.

The legislation also inadequately addresses emerging employment models. Gig workers, freelancers, digital creators, consultants, volunteers, and interns frequently occupy ambiguous legal positions regarding employer responsibility and workplace jurisdiction. The changing nature of work therefore necessitates legislative clarification.

Awareness constitutes another persistent weakness. Many employees remain unfamiliar with complaint procedures, timelines, rights, and institutional safeguards. Awareness programmes, where conducted, often become routine compliance exercises rather than meaningful educational interventions aimed at transforming workplace culture.

Confidentiality provisions similarly require strengthening. Although the Act prohibits disclosure of complaint proceedings, enforcement remains inconsistent. Unauthorized disclosure can expose complainants to reputational harm, online abuse, workplace ostracism, and psychological trauma. Stronger statutory consequences for confidentiality breaches would significantly improve confidence in reporting mechanisms.

Finally, the Act largely emphasizes procedural mechanisms while paying comparatively less attention to organizational culture. Workplace safety cannot be achieved solely through complaint committees. It requires sustained leadership commitment, gender-sensitive organizational policies, transparent accountability, regular capacity-building programmes, periodic compliance audits, and institutional willingness to challenge entrenched power hierarchies.

From the perspective of feminist jurisprudence, therefore, the POSH Act represents an important but incomplete step toward workplace gender justice. While it establishes a comprehensive legal framework, its transformative potential depends upon shifting from procedural compliance to substantive equality, survivor-centred implementation, and institutional accountability. The challenge is no longer the absence of law but the effective realization of the constitutional promise of dignity, equality, and safe workplaces for every individual.

Judicial Trends: Strengthening Workplace Gender Justice under the POSH Act

Since the enactment of the POSH Act, 2013, Indian courts have played a significant role in interpreting its provisions and reinforcing the constitutional principles of equality, dignity, and safe working conditions. Judicial decisions have gradually shifted the discourse from treating workplace sexual harassment as an issue of employee misconduct to recognizing it as a violation of fundamental rights guaranteed under Articles 14, 15, 19(1)(g), and 21

of the Constitution. Courts have emphasized that the effectiveness of the POSH Act depends not merely on the existence of statutory mechanisms but also on their fair, transparent, and survivor-sensitive implementation.

One of the most significant judicial developments remains *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, wherein the Supreme Court acknowledged that sexual harassment at the workplace violates women's constitutional rights to equality, dignity, and freedom to practice any profession. The Court relied upon Articles 14, 15, 19, and 21 of the Constitution and incorporated India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to formulate the Vishaka Guidelines. The judgment marked a transformative moment in Indian constitutional law by recognizing workplace sexual harassment as a form of gender discrimination rather than merely a disciplinary issue.

Subsequent judicial pronouncements have consistently reinforced the principles laid down in *Vishaka*. In *Medha Kotwal Lele v. Union of India* (2013) 1 SCC 297, the Supreme Court expressed concern regarding the widespread non-compliance with the Vishaka Guidelines across public and private institutions. The Court directed governments and employers to ensure strict implementation until statutory legislation came into force. The judgment underscored that the absence of institutional mechanisms undermines women's constitutional right to work with dignity and safety.

Following the enactment of the POSH Act, courts have increasingly scrutinized the functioning of Internal Committees (ICs). In *Aureliano Fernandes v. State of Goa* (2023) 6 SCC 105, the Supreme Court observed that many institutions either failed to constitute Internal Committees or constituted them in violation of statutory requirements. The Court noted that mere formal compliance with the Act is insufficient and emphasized that committee members must receive adequate training to conduct fair and impartial inquiries. It directed educational institutions, government departments, and employers to ensure strict adherence to the provisions of the Act, recognizing workplace safety as an indispensable component of constitutional governance.

High Courts have also contributed significantly to the development of POSH jurisprudence. The Bombay High Court has repeatedly emphasized adherence to principles of natural justice during Internal Committee proceedings. While recognizing that IC inquiries are not criminal trials, the Court has held that procedural fairness, confidentiality, and impartiality remain essential to preserving institutional credibility. Similarly, the Delhi High Court has clarified that judicial review of Internal Committee findings is generally limited to instances involving procedural irregularity, bias, or violation of statutory provisions, thereby respecting the specialized fact-finding role assigned to Internal Committees.

Another emerging judicial trend concerns the expansion of the concept of "workplace." Courts have acknowledged that technological developments, hybrid work arrangements, and virtual communication platforms have altered the traditional understanding of employment

relationships. Incidents occurring during official travel, online meetings, virtual interactions, and work-related social events may also fall within the scope of workplace harassment where a sufficient employment nexus exists.

Judicial decisions have further highlighted the importance of confidentiality. Courts have observed that unauthorized disclosure of complaints or inquiry proceedings may discourage victims from reporting incidents and undermine the objectives of the Act. Consequently, employers have been reminded of their statutory obligation to maintain confidentiality throughout the complaint process.

Collectively, judicial developments demonstrate a gradual movement towards strengthening institutional accountability while balancing procedural fairness and the rights of both complainants and respondents. Nevertheless, courts continue to encounter recurring issues relating to delayed inquiries, inadequate training of Internal Committee members, conflicts of interest, and organizational reluctance to address complaints involving senior officials. These trends indicate that judicial intervention, though significant, cannot substitute for robust institutional compliance and organizational commitment to workplace equality.

COMPARATIVE ANALYSIS

A comparative examination of international legal frameworks reveals that while India has developed a comprehensive statutory mechanism through the POSH Act, several jurisdictions have adopted broader approaches that may offer valuable lessons for future reforms.

UNITED KINGDOM

The United Kingdom primarily addresses workplace sexual harassment through the Equality Act 2010, which prohibits discrimination, harassment, and victimization based on protected characteristics, including sex. Unlike the Indian framework, protection is not limited to women but extends to all employees irrespective of gender. Employers may be held vicariously liable for acts of harassment committed by employees unless they demonstrate that reasonable preventive measures were implemented. This proactive approach places greater emphasis on employer responsibility rather than solely on complaint resolution.

Recent legislative reforms in the United Kingdom further require employers to take reasonable steps to prevent workplace sexual harassment before complaints arise. Preventive compliance is therefore viewed as a continuing organizational obligation rather than a reactive legal requirement.

CANADA

Canadian provinces regulate workplace harassment through human rights legislation and occupational health and safety statutes. The Canadian approach integrates psychological safety, workplace violence, and sexual harassment within a broader framework of healthy workplaces. Several provinces require employers to conduct regular workplace risk assessments, establish

written anti-harassment policies, provide mandatory employee training, and undertake periodic reviews of complaint mechanisms.

Independent external investigation is frequently encouraged where internal impartiality may be compromised. Such mechanisms enhance institutional credibility and reduce perceptions of organizational bias.

AUSTRALIA

Australia regulates workplace sexual harassment under the Sex Discrimination Act 1984 and the Fair Work Act 2009. The Australian Human Rights Commission has increasingly advocated a positive duty requiring employers to actively eliminate sexual harassment rather than merely responding after complaints arise. This represents a significant departure from complaint-based regulatory models.

The Respect@Work Report (2020) further recommended integrating organizational culture, leadership accountability, regular audits, and preventive education into workplace governance. These recommendations have influenced recent legislative amendments emphasizing prevention rather than litigation.

ILO Convention No. 190

The International Labour Organization Convention No. 190 concerning Violence and Harassment in the World of Work (2019) represents the most comprehensive international instrument addressing workplace violence and harassment. The Convention adopts an inclusive understanding of workers by covering employees, trainees, interns, apprentices, volunteers, job seekers, and individuals exercising the authority of an employer.

Importantly, Convention No. 190 recognizes that violence and harassment may occur not only within physical workplaces but also during work-related travel, employer-provided accommodation, social events, digital communication, and commuting. It further emphasizes gender-responsive policies, victim protection, confidentiality, awareness programmes, and effective remedies.

Although India has enacted the POSH Act, it has not yet aligned every aspect of domestic legislation with the broader protections contemplated under Convention No. 190, particularly regarding gender inclusivity, gig workers, and preventive employer obligations.

COMPARATIVE ASSESSMENT

Compared with these jurisdictions, the POSH Act possesses several notable strengths, including a dedicated complaint mechanism through Internal Committees, statutory timelines for inquiry, employer accountability, and recognition of hostile work environments. However, important differences remain.

First, India's framework continues to rely heavily upon Internal Committees appointed by employers, creating concerns regarding independence and institutional neutrality. Several foreign jurisdictions increasingly favour external oversight and independent investigation in sensitive cases.

Secondly, while the POSH Act primarily protects women, many jurisdictions adopt gender-neutral legislation without diminishing protection for women. Future reforms in India may consider broader coverage consistent with constitutional equality while retaining special safeguards for historically disadvantaged groups.

Thirdly, preventive obligations in India remain relatively compliance-oriented. Comparative experience demonstrates that periodic audits, organizational accountability, leadership evaluation, and workplace culture assessments significantly improve prevention.

Finally, international practice increasingly recognizes changing employment relationships, including gig work, digital labour platforms, remote employment, and non-traditional workspaces. India's legal framework would benefit from clearer statutory recognition of these emerging workplace realities.

RECOMMENDATIONS

The findings of this study indicate that strengthening workplace gender justice requires reforms extending beyond statutory amendments. A comprehensive and rights-based implementation strategy should include the following measures:

1. Strengthen Institutional Independence

Internal Committees should function independently of organizational management. External experts with legal, psychological, and gender studies expertise should play a greater role in inquiry proceedings, particularly where complaints involve senior management.

2. Mandatory Professional Certification

All Internal Committee members should undergo mandatory certification and periodic refresher training in gender sensitivity, principles of natural justice, trauma-informed interviewing, confidentiality, evidence appreciation, and inquiry procedures.

3. Expand Coverage to Emerging Forms of Employment

The statutory definitions of "employee" and "workplace" should expressly include gig workers, freelancers, consultants, interns, domestic workers, volunteers, platform workers, and remote employees to reflect contemporary labour market realities.

4. Integrate Intersectionality into Implementation

Complaint mechanisms should recognize that experiences of workplace harassment vary according to caste, disability, religion, class, ethnicity, age, sexual orientation, gender identity, and employment status. Institutional policies should incorporate intersectional sensitivity rather than adopting uniform procedural responses.

5. Improve Accessibility of Local Committees

District-level Local Committees should receive adequate financial resources, trained personnel, technological infrastructure, and awareness support to effectively serve workers employed in the informal sector and small establishments.

6. Strengthen Confidentiality Safeguards

Clear statutory penalties should be prescribed for unauthorized disclosure of complaint proceedings. Secure digital record management systems should also be adopted to protect sensitive information.

7. Promote Organizational Accountability

Annual independent audits of POSH compliance, anonymous workplace climate surveys, periodic policy evaluations, and public reporting of anonymized compliance statistics should become integral components of organizational governance.

8. Enhance Legal Literacy

Regular awareness programmes should move beyond formal compliance sessions and include interactive training, scenario-based learning, leadership engagement, and digital learning modules to improve employee understanding of rights and responsibilities.

9. Establish Independent Appellate Mechanisms

Independent appellate authorities or specialized workplace equality tribunals may strengthen confidence in grievance redressal by providing impartial review of Internal Committee decisions.

10. Align Domestic Law with International Standards

India should progressively harmonize the POSH framework with international developments, particularly the principles embodied in ILO Convention No. 190, while preserving the constitutional objective of substantive gender equality and protection against workplace discrimination.

These reforms would contribute to transforming the POSH Act from a compliance-oriented regulatory framework into a comprehensive instrument of workplace justice, institutional accountability, and inclusive gender equality.

CONCLUSION

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents one of the most significant legislative developments in the evolution of gender justice in India. By codifying the constitutional principles articulated in *Vishaka v. State of Rajasthan*, the Act transformed workplace sexual harassment from an issue of individual misconduct into a violation of equality, dignity, and the fundamental right to work in a safe environment. It imposed affirmative obligations on employers to prevent harassment, establish institutional redressal mechanisms, and cultivate workplaces founded on respect and non-discrimination. More than a decade after its enactment, however, the effectiveness of the Act continues to depend not only on its legal provisions but also on the quality of its implementation.

This study demonstrates that the POSH Act has substantially strengthened the legal framework governing workplace safety for women. The establishment of Internal Committees, mandatory awareness programmes, employer accountability, confidentiality provisions, and structured inquiry procedures has significantly improved institutional responses to workplace sexual harassment.

Judicial decisions, particularly *Vishaka*, *Medha Kotwal Lele*, and *Aureliano Fernandes*, have further reinforced the constitutional obligation to ensure safe working environments and have emphasized that compliance with the Act is an essential component of good governance and responsible employment practices.

Despite these achievements, considerable challenges continue to impede the realization of substantive workplace justice. Many organisations continue to approach compliance as a procedural requirement rather than as a commitment to gender equality. Internal Committees often face concerns relating to independence, expertise, transparency, and impartiality. Under-reporting remains widespread due to fear of retaliation, social stigma, professional repercussions, and lack of confidence in institutional mechanisms. These barriers are particularly acute for women employed in the informal sector, contractual workers, domestic workers, gig workers, interns, and employees occupying vulnerable social and economic positions.

The study also highlights the importance of adopting an intersectional understanding of workplace harassment. Experiences of discrimination are shaped not only by gender but also by caste, class, religion, disability, age, sexual orientation, gender identity, migration status, and employment arrangements. A uniform legal framework may therefore fail to address the distinct vulnerabilities faced by marginalized communities. Integrating intersectionality into policy design, inquiry procedures, and institutional training would enable a more equitable and inclusive approach to workplace justice.

Changing patterns of employment further necessitate a re-evaluation of the existing legal framework. The growth of digital workplaces, hybrid work models, platform-based employment, freelancing, and artificial intelligence-enabled management systems has blurred traditional notions of workplace and employer responsibility. The statutory framework must evolve to ensure that emerging categories of workers receive effective protection against workplace harassment irrespective of the form or location of employment.

Comparative analysis demonstrates that many jurisdictions increasingly emphasize preventive obligations, organizational accountability, independent investigations, and workplace culture alongside legal remedies. These developments suggest that effective regulation requires more than complaint-based mechanisms. Preventive governance, regular compliance audits, leadership accountability, gender-sensitive organizational culture, and continuous capacity building are essential for achieving lasting institutional change.

From the perspective of feminist jurisprudence, the POSH Act should not be viewed merely as a procedural statute but as an instrument for dismantling structural inequalities that perpetuate workplace discrimination. Its success should therefore be measured not solely by the number of Internal Committees constituted or complaints resolved but by its ability to create workplaces where equality, dignity, and inclusion are genuinely experienced by all employees.

Ultimately, bridging the gap between constitutional rights and workplace realities requires sustained collaboration among legislators, employers, courts, educational institutions, civil society organizations, and employees themselves. Strengthening institutional independence, expanding protection to non-traditional forms of employment, improving legal awareness, ensuring survivor-centered inquiry procedures, and aligning domestic law with evolving international standards will significantly enhance the effectiveness of the POSH framework. Such reforms will enable the Act to fulfil its transformative constitutional purpose and contribute meaningfully to the creation of workplaces that are safe, equitable, and respectful of the dignity of every individual

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