



## GENDER JUSTICE AND SEXUAL HARASSMENT LAW IN THE WORKPLACE: A STUDY OF THE POSH ACT, 2013

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### INTRODUCTION:

Sexual harassment is a violation of fundamental human rights, including the rights to equality, dignity, and personal liberty. In workplaces and educational institutions, sexual harassment functions as a structural barrier that restricts women's participation, safety, and advancement. Recognizing this, many legal systems have developed statutory frameworks to prevent sexual harassment and promote gender justice. In India, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (commonly known as the POSH Act) represents a landmark legislative effort to institutionalize gender justice within professional and organizational spaces.<sup>1</sup>

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) is both an anti-discrimination statute and a key instrument of gender justice in India, grounded in constitutional guarantees of equality and dignity. Sexual harassment is treated as a form of gender-based discrimination that violates women's fundamental rights under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India, and the Act operationalizes these guarantees in everyday working life.<sup>1</sup>

### CONCEPT OF GENDER JUSTICE:

Gender justice refers to the fair treatment of individuals of all genders, with particular attention to correcting historical and structural disadvantages faced by women and gender minorities. It goes beyond formal equality to address substantive inequalities arising from social norms, power relations, and discrimination. Sexual harassment is not merely an individual wrongdoing but a manifestation of gendered power imbalances. Addressing it through law is therefore essential to achieving gender justice, as it ensures equal access to opportunities, safe environments, and meaningful participation in public life.

### CONSTITUTIONAL FRAMEWORK ON SEXUAL HARASSMENT AND GENDER JUSTICE:

Sexual harassment at the workplace is now widely recognized as a human rights violation, a form of discrimination that restricts women's substantive equality and participation in public life. It entrenches power hierarchies, reinforces patriarchal norms, and undermines women's capability to work with dignity and autonomy, thereby implicating the core idea of gender justice.<sup>2</sup>

In the constitutional scheme, gender justice encompasses not only formal equality but also protection from gender-based violence and the creation of just and humane conditions of work. The Justice Verma Committee and subsequent jurisprudence explicitly located workplace sexual harassment within this broader framework of discrimination, dignity, and social justice.<sup>3</sup> The POSH Act is grounded in the Constitution of India, particularly:

- Article 14 which guarantees Right to Equality,
- Article 15 which Prohibits the discrimination on grounds of sex),

<sup>1</sup> <https://ejournals.ncert.gov.in/index.php/jie/article/download/1819/1742>

<sup>2</sup> <https://blog.ipleaders.in/sexual-harassment-dealt-constitution-india/>

<https://ejournals.ncert.gov.in/index.php/jie/article/download/1819/1742> <https://visionias.in/current-affairs/monthly-magazine/2024-10-17/social-issues/sexual-harassment-of-women-at-workplace>

[https://www.nja.gov.in/Concluded\\_Programmes/2021-22/SE-03\\_2021\\_PPTs/5.Role Of Legislature and Judiciary in Securing Gender Justice.pdf](https://www.nja.gov.in/Concluded_Programmes/2021-22/SE-03_2021_PPTs/5.Role Of Legislature and Judiciary in Securing Gender Justice.pdf)

<sup>3</sup> <https://clpr.org.in/blog/sexual-harassment-at-the-workplace-in-the-view-of-the-justice-verma-committee/>

<https://journal.lawmantra.co.in/wp-content/uploads/2015/08/71.pdf>

- Article 21 which protect the Right to life and personal liberty, including dignity.

#### **INTERNATIONAL FRAMEWORK ON SEXUAL HARASSMENT AND GENDER JUSTICE:**

The POSH Act also draws authority from international obligations, especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires states to eliminate discrimination against women in employment and public life.<sup>4</sup>

The Supreme Court of India, in *Vishaka v. State of Rajasthan* (1997), recognized sexual harassment as a violation of fundamental rights and laid down binding guidelines in the absence of legislation.<sup>5</sup> These guidelines later formed the basis of the POSH Act.

#### **HISTORICAL BACKGROUND OF POSH ACT:**

The Supreme Court's decision in *Vishaka and Others v. State of Rajasthan*<sup>4</sup> arose from the gang rape of Bhanwari Devi, a Dalit social worker assaulted in retaliation for her work against child marriage. The Court held that sexual harassment at the workplace violates Articles 14, 15, 19(1)(g) and 21, and that gender equality includes protection from sexual harassment and the right to work with dignity.

In the absence of legislation, the Court framed the Vishaka Guidelines, drawing on CEDAW and other international norms, and directed all employers to create complaints committees and adopt preventive measures. These guidelines, binding under Article 141, constituted an early judicial articulation of gender-just workplace norms, and remained in force until Parliament enacted the POSH Act in 2013.<sup>5</sup>

Persistent implementation gaps and rising female labour participation highlighted the need for a comprehensive statute, leading to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013., which is usually known as POSH Act. The Act codified and expanded the Vishaka guidelines, transforming what began as judicial directions into a detailed legislative framework that concretely links gender justice to workplace governance.<sup>6</sup>

#### **SALIENT FEATURES OF THE (SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

- **Key objectives:** Key objectives of The POSH Act are<sup>7</sup>:
  1. **Prevention:** Proactive measures like training and awareness programs.
  2. **Prohibition:** Zero tolerance for unwelcome physical contact, sexual advances, sexually coloured remarks, pornography, or creating a hostile environment.
  3. **Redressal:** Formal complaint mechanisms (ICC/LCC) for time-bound resolution.
- **Scope:** The law applies to<sup>8</sup>:
  - i. public and private sector organizations,
  - ii. organized and unorganized workplaces,
  - iii. educational and healthcare institutions, NGOs, and even dwelling places where domestic workers are employed.

This wide scope reflects an understanding that gender justice must extend beyond traditional office spaces.

- **Definition:**

- An “aggrieved woman” under the Act includes any woman, of any age or employment status, who alleges sexual harassment at a workplace, including clients, contractual staff and domestic workers, reflecting recognition of diverse employment relations.<sup>9</sup>

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<sup>4</sup> (1997) 6 SCC 241 or AIR 1997 SC 3011

<sup>5</sup> <https://www.ilms.academy/blog/does-the-posh-act-2013-protect-only-women-complete-legal-explanation>  
<https://gptsoraba.in/english/doc/vishakaguidelines.pdf>

<sup>6</sup> <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/view/2868>

<https://ebooks.inflibnet.ac.in/hrdp05/chapter/national-legislative-framework-sexual-harassment-of-women/>

<sup>7</sup> Objects of POSH Act, 2013.

<sup>8</sup> Statement of Objects and Reasons, POSH Act, 2013.

<sup>9</sup> Section 2(a) of POSH Act, 2013

- The Act defines “**sexual harassment**” to include
  - Unwelcome physical contact and advances,
  - A demands or requests for sexual favours,
  - Making sexually coloured remarks,
  - Showing pornography, and
  - Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- o It further identifies hostile-environment situations in which employment decisions, threats, or interference with work are linked to such conduct, thereby capturing both quid pro quo and hostile work environment harassment.<sup>10</sup>

#### **INSTITUTIONAL MECHANISMS AND PROCEDURES:**

- **Internal and Local Committees:** The POSH Act mandates the establishment of<sup>11</sup>:
  - o **Internal Complaints Committees (ICCs):** Every workplace with ten or more employees must constitute an Internal Committee (IC), headed by a senior woman and including members with legal or social-work expertise and an external NGO member.
  - o **Local Complaints Committees (LCCs):** For the unorganized sector, small establishments, and cases involving the employer, Local Committees at the district level provide an accessible forum, under the supervision of a District Officer.

These bodies are designed to provide accessible, confidential, and timely redressal.

These committees have powers similar to a civil court for summoning witnesses and documents, and are tasked with conducting fair, time-bound inquiries into complaints while maintaining confidentiality and ensuring non-retaliation.

- **Complaint, Inquiry Process and Redressal:** The Act emphasizes principles of natural justice, including fair hearing and confidentiality. It also provides for interim relief, such as transfer or leave, to protect the complainant during the inquiry process.<sup>12</sup>

The Act prescribes a limitation period (ordinarily three months from the last incident, extendable on sufficient cause) for filing written complaints, with provision for representation where the woman is unable to file herself. Conciliation may be attempted at the aggrieved woman’s request, but monetary settlement cannot be the sole basis, reflecting concern for non-commodification of dignity.

Upon proof, the Committee may recommend disciplinary action under service rules, monetary compensation based on factors such as mental trauma and career impact, and other corrective measures. The Act also permits action for malicious complaints, while clarifying that mere failure to prove allegations does not amount to mala fides, aiming to balance deterrence with protection for good-faith complainants.

#### **POSH ACT AS AN INSTRUMENT OF GENDER JUSTICE:**

The POSH Act advances gender justice in several ways:

- It recognizes sexual harassment as a systemic issue rather than a private grievance.
- It shifts responsibility from the individual to institutions and employers.
- It promotes preventive measures such as awareness programs and training.<sup>13</sup>

By embedding accountability within workplace structures, the Act contributes to transforming organizational cultures and challenging patriarchal norms.

While the Act was consciously drafted as a woman-specific statute in light of disproportionate victimization and systemic discrimination against women, this design has attracted criticism for excluding male and non-binary victims. Commentators argue that a gender-just legal framework should simultaneously recognize women’s heightened vulnerability and provide inclusive remedies for all genders facing sexual harassment.

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<sup>10</sup> Section 2(n) of POSH Act, 2013

<sup>11</sup> Sections 4, 5 & 6 of POSH Act, 2013

<sup>12</sup> Sections 10, 11 & 12, POSH Act, 2013

<sup>13</sup> Ministry of Women and Child Development, Government of India, Handbook on Sexual Harassment of Women at Workplace (2015).

Courts have acknowledged that any expansion of coverage requires legislative action, but some judicial observations have suggested reconsideration of the law's scope in light of evolving understandings of gender and sexuality. This debate illustrates the dynamic nature of gender justice, situated between targeted protection and universal, gender-neutral rights frameworks.

#### **REALIZING SUBSTANTIVE EQUALITY:**

Sexual harassment restricts women's access to safe employment, reinforces occupational segregation, and perpetuates economic dependence, thereby undermining substantive equality. By obligating employers to prevent and redress harassment, the POSH Act aims to dismantle structural barriers and enable women's participation in the workforce on equal terms.<sup>[1][16][3][13]</sup>

The Act thus translates formal constitutional equality into concrete obligations—such as awareness programmes, policy display, and mandatory committees—that re-shape institutional cultures. This shift from purely punitive criminal responses to preventive and remedial mechanisms aligns with feminist understandings of gender justice as transforming power relations rather than merely punishing individual offenders.<sup>[5][17][7][16]</sup>

#### **DUTIES OF EMPLOYERS AND THE STATE:**

Section 19 and related provisions require employers to create a safe working environment, organize training and sensitization, assist women in filing police complaints where necessary, and report compliance in annual reports. State authorities, through District Officers and Local Committees, are tasked with monitoring implementation, collecting data and conducting outreach, thus embedding gender justice obligations within governance structures.

Judicial pronouncements after 2013, including directions calling for audits of POSH compliance, publication of IC details, and strict adherence to procedure, reinforce that workplace safety is integral to constitutional gender equality.

#### **BEST PRACTICES: TOWARDS A GENDER-JUST WORKPLACE:**

Institutions that approach POSH compliance as part of a broader gender-equality agenda, rather than a mere legal formality, tend to adopt more effective practices. Such practices include clear written policies, active leadership endorsement, regular gender-sensitization, bystander-intervention training, and support services such as counselling and legal aid.<sup>14</sup>

Integrating POSH norms into recruitment, appraisal, promotion, and grievance-redressal systems, and ensuring intersectional sensitivity, can help embed gender justice into organizational culture. Transparent monitoring, anonymized data disclosure, and participatory review of policies with worker and student representation further strengthen trust and accountability.<sup>15</sup>

**CHALLENGES AND CRITICISMS:** Despite its progressive framework, the POSH Act faces several challenges<sup>16</sup>:

- Underreporting due to fear of retaliation or stigma,
- Improper constitution or functioning of ICCs,
- Lack of awareness among employees and employers.

Critics also argue that effective gender justice requires not only legal compliance but deeper cultural change and intersectional approaches that consider caste, class, disability, and other factors.

#### **CONCLUSION:**

The Prevention of Sexual Harassment Act, 2013 represents a significant step toward institutionalizing gender justice in India. By recognizing sexual harassment as a violation of constitutional rights and providing structured mechanisms for prevention and redressal, the Act strengthens women's access to safe and dignified workplaces. However, its success ultimately depends on effective implementation, continuous education, and a broader societal commitment to gender equality.

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<sup>15</sup> <https://www.maheshwariandco.com/blog/legal-analysis-implementation/>

<sup>16</sup> Flavia Agnes, *Law and Gender Inequality* (Oxford University Press, 1999)



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