
EVALUATING THE EFFICACY OF THE POSH ACT: INTERPRETATIONS, CHALLENGES AND FUTURE DIRECTIONS

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ABSTRACT

Women safety at any place cannot be a topic of negotiation. Every time when such frivolous situation arises, there comes laws and new enactments to prevent the repetition of the same. It's that's how the POSH legislation was also evolved. If not the walls of the Supreme Court had heard the voice of Bhanwari Devi, we wouldn't have had POSH legislation in hand by now. The objective of the research paper is to study the workability of the POSH Act and its stand for future requirements. The research paper also studies the evolution of Act, to make us understand the key approaches of the legislation since it is a gender specific Act. The methodology used for this research is Doctrinal research with descriptive approach. The research is taken on the ground of reality basis and from legal perspective with the incorporation of case laws at significant points. While *Vishaka v. State of Rajasthan* of 1997 marks the need for a legislation to protect women from sexual harassment at workplaces, the *Aureliano Fernandes v. State of Goa* of 2023 signifies the need for robust change in the POSH legislation. The study makes us to analyze the wider scope provided to the definition of sexual harassment in POSH Act. The findings provide that while the impact based approach used in the POSH legislation exempts the General Principles of Criminal Law, the judicial pronouncements upholding the reasonable person test, quid pro quo test, modesty and decency test strives to foster assurance despite exemption in decision making. The progressive interpretation of the statute enables us to strike a balance even in this gender biased legislation. The research paper has also made an attempt to recognize the future challenges in regard to inclusivity of the persons under this legislation and accountability of the Internal Complaints Committee.

Keywords: Sexual Harassment, Impact, Reasonable Test, Progressive Interpretation, Internal Complaints Committee.

INTRODUCTION:

For a woman to realize her full potential, she must feel unencumbered by the societal and personal barriers. True empowerment for women lies in their liberty to do what they seek for, with no societal constraints. Occupation in women's lives has always been a hard won fight for them to take in hand. When occupation, the source of empowerment itself turns to oppress women, hinder her capabilities, there prevails a failed and unsupportive environment. Protection to women against sexual offences were primarily dealt under Indian Penal Code of 1860. In the year of 1992, Bhanwari Devi, a social activist, who was working against child marriages in Rajasthan was gang raped by five men. Since the accused involved in the case had high societal influence, the filling of case was much delayed. Subsequently all the accused were acquitted by the Trial Court. Bhanwari Devi with the support of various NGO's for women, together filed a Public Interest Litigation in the name of Vishaka. Article 14, 15, 19 and 21 of the constitution was challenged before the Hon'ble Supreme Court. It is an undeniable fact that the incident was a violation of Right to Equality, Right to Equal Opportunities, Right to Freedom of Occupation and Right to Liberty.

The Hon'ble Supreme Court felt the need for a special legislation to govern sexual harassment of women at workplace. The Hon'ble Supreme Court also observed the Convention on Elimination of All form of Discrimination against Women, which was ratified by India in the year of 1993. The Hon'ble SC apart from convicting the accused, had also issued certain guidelines to be followed by all institutions until a specific law is enacted. It was those guidelines, familiarly known as the Vishaka guidelines. The *Vishaka v. State of Rajasthan* also marks as a landmark judgment not only because of its root for the enactment of POSH Act, but also for Judicial Activism by the Judiciary. The guidelines issued by court by means of its power under Article 142 acted as a law until POSH was enacted. There was a prolonged delay on part of the government in enacting POSH Act. The POSH Act was enacted in the year of 2013, which is almost a decade after the case was decided. Now after more than a decade of its enactment, we are in a need to assess its efficacy so as to keep it in pace with time.¹

¹ Pranav Sethi, *Case behind the Development of POSH 2013*, Ipleaders, (Jan 25, 2021), <https://blog.ipleaders.in/case-behind-development-posh-act-2013/>

REVIEW OF LITERATURE:

POSH has always been a topic of discussion since the time of its enactment. Every time when a workplace harassment incident strikes public's attention, there arises a debate questioning the workability of the POSH legislation. Apart from POSH has also mandated a set up of statutory body called Internal Complaint Committee in every institution.

Review of POSH time and again plays an important role in its functioning. Research scholars have studies the scope of precedents in shaping the POSH and also the adverse effects of the Act.² The researches have also been taken in context to awareness of POSH legislation among employees of hospitals in specific location.³ The research articles covered the contemporary challenges faced during the time of covid crises.⁴ A general review of the POSH Act has also been done by various scholars.⁵ Awareness of POSH legislation in service sector had been studied to analyze the workplace behavior.⁶ Research papers revolving around POSH provides lack of training to ICC members as a shortcoming.⁷ The data analysis of the POSH implementation has also been presented.⁸

Having all these research papers existing, the present research paper will focus on few specific aspects which has not been discussed widely. The research paper would deal about the Impact approach followed in the sexual harassment definition. The paper would analyze the role of

² Md. Imran Wahab, *The POSH Act: A Critical Analysis of its Limitations and Impact*, Vol.6, Issue 6, IJFMR, 1-4, (Nov – Dec, 2024),

<https://www.ijfmr.com/papers/2024/6/32697.pdf>

³ Dr. V. Uma, M. Kartika, *A Study on Employee Awareness of Anti- Sexual Harassment Policy (POSH)*, in one of the leading Hospitals in Vellore, Vol.10, Issue 5, IJCRT, 346-348, (May 2022),

<https://ijcrt.org/papers/IJCRT2205374.pdf>

⁴ Pulkit Raj, Gargi A Singh, Deeksha Agrawal, *Addressing Workplace Harassment: The Role of POSH Committees*, SSRN, 1-2 (Nov 30, 2024),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4637149

(Last visited on May 3, 2025)

⁵ Rashmi, *Sexual Harassment at Workplace Act, 2013: A Review*, Vol.2, Issue 2, IJRAR, 146-148, (May 2015),

<https://www.ijrar.org/papers/IJRAR19D1534.pdf>

⁶ Sidhu KK, Satheesh Kumar Rangasamy, *A Study on awareness and the influence of the POSH Act on the work Environment in the Service Sector*, Vol.12, pdf.ipinnovative.com Management Research and Analysis, IP

Innovative, 28, (Mar 05, 2025)

<https://pdf.ipinnovative.com/pdf/24115>

⁷ Rachan Sareen, Saurabhi Dhingra, *The POSH Act in India: Progress, Shortcomings and the Path Forward*, Vol.12, Issue 2, International Journal of Advances in Social Sciences, (2024)

<https://ijassonline.in/HTMLPaper.aspx?Journal=International%20Journal%20of%20Advances%20in%20Social%20Sciences;PID=2024-12-2-1>

⁸ Akshi Chawla, *Strengthening the Implementation of the POSH Act- The Critical Role of Data*, Ashoka Education, (Aug 22, 2024),

<https://icpp.ashoka.edu.in/strengthening-the-implementation-of-the-posh-act-the-critical-role-of-data/>
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Mens rea in POSH cases. The research paper would focus on the type of interpretation to be used while coming across Section 14 of the Act. The paper would also provide certain specific challenges to be addressed widely in near future.

SEXUAL HARASSMENT-WIDER SCOPE:

The wider scope given to the sexual harassment definition in POSH legislation can be understood, only when it is compared with the definitions of sexual harassment definition under Bharatiya Nyaya Sanhita 2023 and POCSO Act of 2012.

- Sexual harassment definition under section 2(n) of the POSH Act provides:

"sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely physical contact and advances, or a demand or request for sexual favors; or making sexually colored remarks, or showing pornography, or any other unwelcome physical, verbal or non verbal conduct of sexual nature.⁹

- Sexual harassment definition under section 75 of the BNS Act provides:

A man committing any of the following acts such as the physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favors, or showing pornography against the will of a woman, or making sexually colored remarks, shall be guilty of the offence of sexual harassment.¹⁰

Upon comparing both the definitions, it can be understood that:

- Mere physical advances and contact is far enough to state sexual harassment under POSH, while under BNS, such physical contact should involve explicit sexual overtures.
- Showing pornography itself amounts to sexual harassment under POSH, while showing pornography against the will of the women only amounts to sexual harassment under BNS.

⁹ Prevention of Sexual Harassment of Women at Workplace Act, 2013, Sec. 2(n), No.14, Acts of Parliament, 2013 (India)

¹⁰ Bharatiya Nyaya Sanhita, 2023, Sec 75, No.45, Acts of Parliament, 2023 (India)

- The definition of Sexual harassment is silent about the intent of the perpetrator, while the definition of sexual harassment under POCSO itself begins by saying that, 'An act is said to be said to be sexual harassment when done with sexual intent'.¹¹

The definition of sexual harassment under the POSH Act gets a wider scope, since neglects the intent on part of the perpetrator. The sexual harassment definition under the POSH wholly depends upon how the women perceives it. The definition focuses on the impact of the act done to a woman. If a woman feels that any act done to her is unwelcoming in nature, then she can make a complaint to the Internal Complaints Committee (ICC). The report of the committee on Amendments to Criminal Law headed by Justice J.S. Verma has also provided that the definition gives weight to the subjective perception of the complainant.¹² The handbook on Sexual Harassment of Women at Workplace given by the Ministry of Women and Child Development provides that the sexual harassment under POSH is a subjective experience, it is the impact important not the intent.¹³

ROLE OF MENS REA IN POSH ACT:

Crime is generally defined as the commission of an act that is prohibited by law or omission of an act that is obligated by law. The commission of an act against law becomes crime. Generally to arrive at a crime, there are certain stages to be completed. Crime includes four stages namely the intention, preparation, attempt and accomplishment. The above four stages could be divided based on the physical and mental act. It shall also be seen that based on the above mentioned stages, the elements of crime are categorized. Among the four stages of crime, intention comes under the Mental element. The other stages such as preparation, attempt and accomplishment comes under the Physical element. The physical element of a crime is called as Actus reus and the mental element of a crime is called as Mens rea. There is a legal principle 'actus non facit reum nisi mens sit rea', meaning an act does not make one guilty unless the mind is also legally blameworthy'.¹⁴

From the above principle it can be understood that Mens rea is an important part of criminal law. Without mens rea, there exists no crime. But the role of such mens rea in POSH legislation

¹¹ Protection of Children from Sexual Offences Act, 2012, Sec. 11. No.32, Acts of Parliament, 2012, (India)]

¹² Report of the Committee on Amendments to Criminal Law, January 23, 2013.

¹³ Handbook on Sexual Harassment of Women at Workplace, November, 2015.

¹⁴ PSA PILLAI, CRIMINAL LAW 40-47, (Lexis Nexis 2021)

gets undermined. Since no intent is considered under the POSH, its role also gets extinguished. The sexual harassment definition under the POSH stands as an exemption to the General Principles of Criminal Law. Such an exemption has also been validated in various other offences such as offences against state, dowry death, offences where vicarious liability is used. However, it shall also be noted that the above offences are of such in nature that the act itself is much sufficient to exhibit the intent. But sexual harassment cannot be brought under such a nature.

It is at this juncture we will have to look into purpose of excluding the mens rea from sexual harassment definition of POSH. In general the accused is presumed to be innocent and the burden of proof falls over the prosecution to prove that the accused had the intent to do crime as well as accused did the crime. Only in exceptional cases, the accused is presumed to be not innocent and the burden of proof shifts from prosecution to the defendant. In such cases, the court presumes that the accused did had evil intent and now it is the burden of the accused to prove that he did no act of crime. In such cases the intent of accused is presumed to bad and it makes the accused to prove only whether he had committed the act or not. It for this same purpose, the definition has removed the intent and made impact as parameter to determine the sexual harassment. The workplace might always have a male dominant power matrix, which might make it difficult for the aggrieved women to prove her grievance. In order to prevent this, mens rea gets no role in POSH.

DETERMINATION OF QUANTUM OF PENALTY:

Having known that sexual harassment under the POSH has no mens rea, we must be able to know the adverse effects arising out of the same. Mens rea helps us in understanding the gravity of offence and makes a person criminally liable in regard to their gravity of mens rea as well as gravity of actus reus. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of crime.¹⁵ Mens rea can turn an offence from simple to grave based on its motive. Motive is the reason for an action. Motive is the ulterior intent that reveals the nature of the intention for committing a particular act. Thus, mens rea becomes inevitable in determining the quantum of penalty.¹⁶

¹⁵ Ruli Ram and Anr v. State of Haryana, AIR 2002 SC 3360

¹⁶ Hardest Singh Sobal v. State of Punjab, (2004) Cr LJ 4637 (SC)

It is in order to overcome this shortcoming, the sexual harassment cases under POSH is determined based on certain tests. Tests such as the reasonable person test, quid pro quo test, test of modesty and decency helps in the assessment of gravity of offence.

- **Reasonable Person Test:** In order to test whether a reasonable person would perceive the behavior as unwelcome or harassing as the victim perceived, the Reasonable person test is adopted. In the case of *U.S. Verma, Principal, D.P.S. vs National Commission For Women & Ors.*, the Reasonable Person Test was upheld by referring to a case *Joseph Oncale v. Sundowner Offshore Services*, wherein it was given, ‘we believe that in evaluating the severity and pervasiveness of sexual harassment, we should focus on the perspective of the victim. Courts should consider the victim’s perspective and not stereotyped notions of acceptable behaviour. Conduct that many men consider unobjectionable may offend many women. Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object”. The characteristically male view depicts sexual harassment as comparatively harmless amusement.”¹⁷
- **Quid pro Quo Test:** This test assesses whether the harasser explicitly or implicitly linked to the victim’s harassment either by way of job benefit or by imposing irrational penalty. In the case of *Ruchika Kedia vs. The Internal Complaints, Goa Institute of Management and Ors*, the court held that Quid pro quo test shall be made known to all, so that the impact of sexual harassment arising from such a quid pro quo sexual favour shall not get escaped.¹⁸
- **Test of Modesty and Decency:** The Hon'ble SC in the case of *Tarkeshwar Sahu v. State of Bihar* held that the ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.”¹⁹ The same was also upheld in the case of *State of Punjab v. Major Singh*.²⁰

¹⁷ U.S. Verma, Principal, D.P.S v. National Commission for Women & Ors., W.P. (C) No. 1733/2001

¹⁸ Ruchika Kedia vs. The Integral Complaints, Goa Institute of Management and Ors., W.P. No. 690 of 2019

¹⁹ Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560

²⁰ State of Punjab v. Major Singh, AIR 1967 SC 63

However, it shall be noted that the definition of sexual harassment under POSH is considered only when it implies penalties under the Service Rules of the Institution. Whenever criminal liability is fostered, the definition of sexual harassment under BNS steps in requiring the complaint to prove mens rea. This was further made clear by the recent judgment of Madras High Court in the case of *HCL Technologies Ltd. v. X*.²¹

PROGRESSIVE INTERPRETATION IN UNILATERAL LAWS:

Progressivism is a dynamic concept of bringing comprehensive development to the society by elevating its position from poverty, illiteracy, backwardness, exploitation, discriminations and deprivations to a higher level of people's access to all the good things of life, overcoming the exploitative social hierarchy and creating enduring happiness and harmony. It is an instrument of multifaceted justice. If not the progressive interpretation, then the penal laws of certain offences wouldn't have reached a wider scope. Landmark judgments such as *Naz Foundation v. Government of NCT Delhi*²², *Navtej Singh Johar v. Union of India*²³ are significant instances of progressive interpretation of law. Unilateral provisions of the penal code were also significantly interpreted according to the changing dynamics. The Hon'ble SC stated that the Constitution is "dynamic and ever-growing" and it evolves with the evolution of society and hence the economic and cultural rights. In order to conserve these. It relies on the doctrine of progressive realization. Unilateral laws being a law that specifically giving importance to a certain section of people, judiciary has made timely interpretations in ensuring that the rights of other section of people doesn't get affected.

For an instance POCSO Act 2012 being a law that aims that protecting children from sexual offences, provides that any sexual activity with a child less than 18 years is a punishable offence. The legal age of consent for sexual activity has been given as 18 years.

While due to changing culture, the Court has witnessed a shift of cases from forceful sexual offences to consensual sexual offence cases. In such cases, the Judiciary takes a progressive and dynamic interpretation to look the offences beyond the Act and consider the facts of the case. The Court perused the history of bringing POCSO Act into operation, the need for a special law to protect children under the age of 18 years against any kind of abuse. There is no

²¹ HCL Technologies Ltd. V. X, W.P. No. 5643 of 2020

²² Naz Foundation v. Government of NCT Delhi, W.P. (C) No. 7455/2001

²³ Navtej Singh Johar v. Union of India, 2009 (6) SCC 712

scope of consent since consent to sexual intercourse by a girl below 18 years must be ignored, and the other party shall be guilty of offence under POCSO Act. According to the Court, such provision created a gray area resulting in criminalizing consensual adolescence/teenage relationship by raising the age of consent from 16 to 18 years.

In the case of *XYZ v. State of Maharashtra*, the court considering the facts of the case had the age of consent necessarily has to be distinguished from the age of marriage as sexual acts do not happen only in the confines of marriage and not only the society, but the judicial system must take of this important aspect. Having said this the court set aside the judgment passed by Special Judge and acquitted the accused of charges levelled against him.²⁴ Similar circumstances were also identified in cases such as *Sabari v. Inspector of Police*²⁵, *Ranjit Rajbanshi v. State of W.B.*²⁶, *State of Karnataka v. Basavraj*,²⁷ etc. Duty of the legislation is not only to protect certain section of people, but also to ensure that the privilege given to them is not misused.

In the case of *Deepak Choudhary v. State & Anr*, it was given by the court that it is the duty of the court to ensure there is no misuse or perpetuated false complaints from social welfare legislations such as SC and ST Act.²⁸ Such similar false complaints were also found in Matrimonial Disputes in the cases of *Prateek & Ors. V. State NCT of Delhi and Anr.*,²⁹ *Devesh Yadav v. Smt. Meenal*.³⁰

Section 14 of the POSH Act deals with punishment for false complaints. The section provides that if the Respondent proves that the complaint given by the complainant is malicious, then actions would be taken against the complainant. In general the interpretation of any statute would be done in accordance to the purpose of the Legislation. The purpose of POSH Act itself is ultimately for the benefit of the woman. While Section 14 is against the benefit of the women. However in order to maintain an equilibrium in a gender biased law such as POSH, it is pertinent to have a progressive interpretation. It is only by way of progressive interpretation

²⁴ *XYZ v. State of Maharashtra*, 2023 SCC OnLine Bom 1930

²⁵ *Sabari v. Inspector of Police*, 2019 SCC OnLine Mad 18850

²⁶ *Ranjit Rajbanshi v. State of W.B.*, 2022 SCC OnLine Cal 2470

²⁷ *State of Karnataka v. Basavraj*, 2022 SCC OnLine Kar 1608

²⁸ *Deepak Choudhary v. State & Anr*, 2025 LiveLaw (Del) 105

²⁹ *Prateek & Ors. V. State NCT of Delhi and Anr.*, 2024 LiveLaw (Del) 1029

³⁰ *Devesh Yadav v. Smt. Meenal*, 2022 LiveLaw (PH) 66

Section 14 would get life.³¹

CHALLENGES IN POSH ACT:

In the case of *Aureliano Fernandes v. State of Goa*,³² the Hon'ble Supreme Court has found that the formation of Local Committee must be much more decentralized for its effective implementation. Hon'ble Justice BV Nagarathna and Justice NK Singh has also emphasized the better use of SHEBOX portal to receive complaints from aggrieved women with no delay. Further more, the Court also addressed that in a recent report given by a national daily it was stated that out of the 30 national sports federations in the country, 16 have not constituted an Internal Complaints Committee till date. Where the ICC have been found to be in place, they do not have the stipulated number of members or lack the mandatory external member.³³

Apart from the above challenges, there are also certain areas in POSH legislation which requires attention.

- The definition for 'Respondent' under Section 2(m) of the POSH Act provides that, it means a person against whom the aggrieved woman has made a complaint.³⁴ While the Act makes it clear that the complainant would always be an aggrieved woman, the Act is silent about which gender that it specifies when it refers to Respondent. Neither the definition of sexual harassment under Section 2(n) of the POSH Act has specifies the gender unlike the sexual harassment definition under BNS. Lack of proper explanation to the term Respondent brings legal ambiguity.
- Section 15 which deals with the determination of compensation it highly a debatable topic since the enactment of the Act. Since sexual harassment is not an act to be compensated by monetary value, an effective alternative can be facilitated to assist the

³¹ Prevention of Sexual Harassment of Women at Workplace Act, 2013, Sec 14, No.14, Acts of Parliament, 2013, (India)

³² Aureliano Fernandes v. State of Goa, 2024 LiveLaw (SC) 959

³³ Gursimran Kaur Bakshi, LiveLaw, *Supreme Court issues Directions for Effective implementation of POSH Act*, Live Law, (Dec 03, 2024) <https://www.livelaw.in/top-stories/supreme-court-issues-directions-for-effective-implementation-of-posh-act-277139>

(Last visited on May 3, 2025)

³⁴ Prevention of Sexual Harassment of Women at Workplace Act, 2013, Sec 2(m), No.14, Acts of Parliament, 2013, (India)

aggrieved woman financially rather than compensation.³⁵

- ICC is provided with the powers equal to that of a civil court. However, the decisions of the ICC are only in form of recommendations. The duty to implement the recommendations is vested with the employer. The penalty imposed for non compliance of the Act is only upto Rs.50,000. For companies with huge turnovers the penalty amount would be of much trivial which would lead to lack of accountability. Hence, the ceiling amount of penalty should be increased.

SUGGESTIONS:

- At present the timeline for filling the complaints is 3 months. A woman might be undergoing many mental trauma before making a complaint. Extended the duration would facilitate the aggrieved woman to report her grievance.
- Enhanced authority for ICCs and LCs should be provided. Strengthening the enforcement unit would reflect in effective reach of POSH as well.
- A standardized investigation framework should be developed, applicable across all organizations, to eliminate inconsistencies and improve the fairness of the complaint-handling process.
- Companies and organizations should be required to submit annual reports detailing the sexual harassment cases filed, outcomes, and the preventive measures implemented to the relevant authorities.
- The POSH Rules merely provides actions to be against Respondent as written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service. The rules could be much more specific by providing actions alongside with gravity of offence. This would foster uniformity in decision making.

³⁵ Prevention of Sexual Harassment of Women at Workplace Act, 2013, Sec 15, No.14, Acts of Parliament, 2013, (India)

CONCLUSION:

Enactment of POSH legislation was one of the milestone in history of India. To have thus single Enactment, people had to wait for more than 10 years. The wait for this POSH was all for its effective functioning. POSH is a social welfare legislation rather than a penal legislation. Unlike Special Acts such as POCSO, POSH is not provided with statutes for imprisonment. The aim of the legislation is only to set up an unit within the institution to hear the problems faced by women. To be precise POSH mandates mainly for the set up ICC and LC only. The Act focuses on the functions of ICC and LC. If the aggrieved woman is satisfied with the actions of the ICC and LC, then the problem ceases there within the institution itself. But however if the aggrieved woman is not satisfied with the actions of ICC and LC or if she wants the matter to be dealt under Penal Law or if the ICC and LC itself finds that the matter needs police attention, then charges are made under BNS and further court proceedings are initiated.

The objective of the legislation itself is to prevent sexual harassment at Workplace and redress the grievances. Employees must be provided with awareness programme in regard to POSH legislation. Employees must be made known to the fact that they can raise voice against any discomfort in their workplace. The POSH under Section 3 provides the prevention of sexual harassment by including circumstances such as any act or sexual behavior of implicit or explicit preferential treatment; or detrimental treatment; or threatening present or future employment; or intimidating by creating hostile environment; or humiliating. As early mentioned, workplace is a place where woman should feel empowered, insecurity in workplace would have negative consequences in both her personal and professional life. As rightly stated by the Hon'ble Supreme Court, depriving women of autonomy not only over their bodies but also over their lives would be an affront to their dignity.