
BEYOND COMPLIANCE: INSTITUTIONAL ACCOUNTABILITY IN THE IMPLEMENTATION OF THE POSH ACT, 2013

Anusha K, LL.M., Department of Law, Sathyabama Institute of Science and Technology,
School of Law, Chennai, India.

Shanmuga Nayaki S, LL.M., Department of Law, Sathyabama Institute of Science and
Technology, School of Law, Chennai, India.

ABSTRACT

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) marked a significant milestone in ensuring a safe and dignified workplace for women in India. Enacted pursuant to the principles laid down by the Supreme Court in *Vishaka v. State of Rajasthan*, the Act establishes a comprehensive legal framework for the Prevention, prohibition, and redressal of workplace sexual harassment. It imposes statutory obligations on employers, mandates the constitution of Internal Committees, and prescribes a mechanism for the resolution of complaints. However, despite the existing legal framework, incidents of sexual harassment in workplaces are being reported in numerous spheres of activity in both public and private sectors, raising concerns regarding the effectiveness of its implementation.

The article provides a critical analysis of the difficulties in implementation as set by the POSH Act, 2013. This analysis particularly focuses on employer compliance, functioning of the internal committee, under-reporting of complaints, confidentiality issues, as well as difficulties that arise in hybrid and digital workplaces. The study adopts a doctrinal research methodology based on an analysis of the statutory provisions, judicial decisions, scholarly literature, and selected professional commentaries. It has been argued that even though the Act provides a sufficient legal framework for ensuring protections to women against sexual harassment, the goals cannot be achieved merely through compliance.

The paper concludes by outlining that for the goals set out by the Act to be met, there is a need for greater accountability on the part of institutions, regular training and sensitization programs, the effective operation of Internal Committees, and the existence of monitoring systems. It is also suggested that companies should adopt a proactive approach to ensuring compliance with the Act assisted by the appropriate rulings of courts and regulatory authorities.

Keywords: POSH Act, Workplace Sexual Harassment, Institutional Accountability, Employer Compliance, Internal Committees, Women's Workplace Rights.

1. INTRODUCTION:

Sexual harassment continues to persist in the workplace, it is posing a challenge to gender equality, and safe workplaces in India because such acts violate the dignity and equality of women and their rights. Such acts adversely affect women's career prospects, mental health and working capacities. A workplace should be free from sexual harassment as it not only is a legal requirement but also a guarantee of fair and equal employment conditions. In this regard, the Supreme Court of India laid down the Vishaka Guidelines in *Vishaka v. State of Rajasthan* which subsequently formed the basis for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.¹

The POSH Act establishes a legal framework for the prevention, prohibition, and redressal of workplace sexual harassment. It imposes certain responsibilities on the employers, mandates the constitution of Internal Committees, and provides for suitable means for quick resolution of complaints. However, more than a decade after the coming into force of the Act, the actual implementation is uneven. Various organisations find it difficult to comply with the legal requirements because of lack of awareness, procedural loopholes, under-reporting of cases, and inconsistent working of Internal Committees. All such difficulties suggest that the mere legal compliance is not sufficient for achieving the objectives of the Act.

Although the existing body of research has studied the provisions of the POSH Act and the rights of women employees in great detail, there are few studies focusing on the institutional accountability in making implementation successful. This article examines the issues related to implementation of the POSH Act with special reference to the employer's compliance with the law, the role of Internal Committees, and the emerging issues in the workplace. The methodology of the research consists of doctrinal study which integrates the analysis of legal provisions and case laws as well as analysis of academic writings. The findings suggest that institutional accountability is needed to ensure that the law is meaningfully implemented in practice.

¹ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

2. EVOLUTION OF THE LAW AND LEGAL FRAMEWORK UNDER THE POSH ACT, 2013:

The recognition of workplace sexual harassment as a violation of women's rights developed through judicial intervention before the enactment of specific legislation in India. The Constitution of India guarantees equality before the law in Article 14, the prohibition of discrimination on ground of sex under Article 15, the right to choose a profession in Article 19(1)(g), and the right to personal liberty in Article 21, amongst others. This legal protection is the very core of ensuring safe workplaces for women.²

Before the introduction of the POSH Act, the lack of a precise legal framework addressing workplace sexual harassment was dealt with via the Supreme Court's decision in the case of *Vishaka v. State of Rajasthan*. The case arose from the gang rape of Bhanwari Devi, a social worker in Rajasthan, which exposed the absence of an effective legal framework to address workplace sexual harassment.³

Employers have been given many responsibilities following the Vishaka Guidelines. These responsibilities include setting up a complaint mechanism and preventive measures, and conducting awareness programs to educate employees regarding workplace sexual harassment. The stipulations that the guidelines brought forth were made based on India's international commitments it made under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which obliges countries to take appropriate measures to abolish discrimination against women.⁴

Later, the Indian Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with the intention of creating a detailed statutory procedure to deal with an issue of sexual harassment in the workplace. The Act not only aims to make the necessary remedies to people who have suffered from the mentioned crimes but also aims at preventing sexual harassment at the workplace. It requires the employers to provide a safe environment in the workplace and organize awareness programs

² INDIA CONST. arts. 14, 15, 19(1)(g), 21.

³ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

⁴ Convention on the Elimination of All Forms of Discrimination Against Women art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13.

for impacting the staff as well as establish Internal Committees in the workplaces where applicable.⁵

The Internal Committee functions as the key institutional channel for addressing sexual harassment complaints. The legislation defines its composition, powers, and obligations to ensure a fair inquiry process. The employers are obliged to support the Internal Committee by assisting with the inquiry process and ensuring compliance with the recommendations under this Act.⁶ Thus, the success of the POSH mechanism fully relies on the willingness and accountability of institutions responsible for enforcing those obligations.

Although this Act is a step forward in the area of workplace protection, the mere existence of the legislation does not ensure effective application of the act in practice. The ongoing problems of awareness, compliance, Internal Committees functioning and accountability illustrate the need to understand better the practical implementation of the Act outside the framework of legal compliance.

3. IMPLEMENTATION CHALLENGES AND INSTITUTIONAL ACCOUNTABILITY UNDER THE POSH ACT, 2013

3.1 Employer Compliance and Institutional Accountability:

The effectiveness of the POSH Act, 2013 depends not merely on the existence of statutory provisions but also on the commitment of employers to implement them effectively. The law mandates employers to create the work environment safe, set up Internal Committees as per the requirements, organize regular training and awareness programmes, follow the prompt and fair procedure of addressing complaints.⁷ In spite of the obligations of law, organizations do not show uniformity with regard to compliance. At many workplaces, the provisions of the law are considered as just formalities rather than a need for continuous efforts aimed at keeping the workplace free from sexual harassment.

⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, India Code.

⁶ Id. §§ 4, 19.

⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §§ 4, 19, India Code.

There are many organisations which set up Internal Committees just to comply with the law and are not concerned with the functioning of these committees. Lack of sufficient training among the members of the committee, ignorance of the employees about the complaint mechanism and absence of regular awareness programmes hinder the working of the measures introduced by the Act. Therefore, employees may not know their rights or may doubt the efficacy of the complaint handling system. All this shows that compliance cannot be only defined by the establishment of an Internal Committee but by its proper functioning and accessibility as well.

Institutional accountability requires employers to move beyond formal compliance and actively promote a workplace culture based on equality, dignity, and respect. This implies forming proper policies, conducting training programmes, keeping the confidentiality during investigation and preventing victims of harassment from any repercussions. Effective implementation of these duties increases the confidence of employees and helps achieve the goals of the POSH Act.

3.2 Challenges in the Functioning of Internal Committees:

The Internal Committees have been established by the POSH Act of 2013 as the basic mechanism for making complaints about sexual harassment in the workplace and investigating and resolving these complaints. The POSH Act details the composition, powers, and duties of the Internal Committee but still the functioning of Internal Committees in many organisations has been affected by various challenges.⁸

Incorrect composition of Internal Committees continues to be a significant issue. While some organisations do not follow the mandatory provisions regarding the appointment of external members and gender representation in Internal Committees, other organisations appoint members to these committees who lack any special training in handling such cases. Such defects may lead to inappropriate functioning of the internal committee and delay the whole process of investigation.

A further issue has to do with the problem of keeping information confidential. If a complainant's identity is made public or if information about the complaints process is

⁸ Id. §§ 4–13.

revealed, a person may feel discouraged from lodging a sexual harassment complaint. Although the Act states that there has to be confidentiality while complaints are being handled, However, breaches of confidentiality continue to be reported in practice, particularly in smaller organisations where maintaining anonymity may be more difficult. Thus, it is very important to strengthen the independence, competence, and accountability of Internal Committees so that the Act can be properly implemented.

3.3 Under-reporting of Complaints and Confidentiality Concerns:

One of the major obstacles faced in the implementation of the POSH Act is under-reporting of sexual harassment at the workplace. In spite of having the provision of a legal means of complaint, many incidents remain unreported due to fear of retaliation, social stigma, workplace hierarchy, and concerns regarding career progression. Employees may hesitate to file complaints against senior colleagues or employers due to concerns regarding victimisation, discrimination, or adverse professional consequences. As a result, in reality the occurrence of sexual harassment at the workplaces is much greater than what is reflected in the complaints registered.⁹

Confidentiality plays a key role in instilling confidence in victims to come forward with their complaints against incidents of sexual harassment. The POSH Act requires that the details of the complainant, respondent, witnesses and inquiry proceedings are kept confidential. Confidentiality of information ensures the privacy of the concerned parties besides protecting the integrity of the proceedings. Nevertheless, instances of violation of confidentiality still occur in practice especially in organizations where there is low awareness about the law.

In addressing the matter of under-reporting, it is important to note that mere legal tools will not suffice. The development of an organization's culture is necessary first and foremost in terms of creating a safe environment for employees who report misconduct. Regular training on safety issues, transparent complaint procedures, access to psychological support, and adherence to confidentiality principles will increase people's confidence in procedures to ensure compliance with POSH.

⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 16, India Code.

3.4 Digital and Hybrid Workplace Challenges:

The integration of digital technology and the hybrid model of working in today's employment has resulted in the emergence of some new types of sexual harassment at the workplace. Unwanted messages and emails, unsought video calls, sharing of inappropriate materials, and similar forms of harassment via digital platforms are now becoming serious problems. Although the POSH Act was enacted before the widespread adoption of hybrid work models, its provisions extend to workplace-related incidents occurring through electronic means.¹⁰

The digital models of work present serious problems both when it comes to the gathering of digital evidence and the issues of privacy observance, confidentiality maintenance, and internal investigation. Therefore, Internal Committees are expected to improve their capability to deal with the digital evidence while keeping the law and confidentiality intact. In addition, employers should revise their policies at work to cope with the issues of online misconduct by applying necessary means and providing cases for increasing the digital awareness of employees.

Hybrid workplaces signal a new era where compliance with the POSH Act changes from being a one-time obligation to a continuing duty. Organizations must be constantly keeping up with organizational policies and processes in relation to changes in the workplace environment and technologies. A proactive institutional approach is essential to ensure that the objectives of the POSH Act are effectively achieved in both physical and virtual workplaces.

3.5 Moving Beyond Formal Compliance: Strengthening Institutional Accountability:

To successfully implement the POSH Act, employers must go beyond merely following rules and laws, and instead proactively pursue a goal of safety and gender equality at work place. The creation of Internal Committees and establishment of workplace policies are legal obligations but their presence is not enough to ensure a workplace that is free from harassment. Institutional accountability requires a continuous commitment by the employers to create a corporate environment based on respect, equality, honesty, and transparency.

¹⁰ See The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §§ 2(o), 3, India Code.

An accountable organization must ensure that the provisions of the POSH Act are implemented in both letter and spirit. To do this it must organize regular awareness and sensitization trainings, provide specialised training to members of the Internal Committee, ensure timely consideration of complaints, and maintain confidentiality of the whole process. Organizations have to review their internal policies and complaint procedures from time to time to ensure they are effective in view of new developments in the workplace environment, including those arising from digital and hybrid work environments.¹¹

Along with that, institutional accountability implies that organisations should motivate workers to inform about incidents of sexual harassment at the workplace without fear of reprisals or discrimination. Adoption of open complaints procedures, protection against victimisation, and rapid implementation of the recommendations made by Internal Committees greatly helps to create the belief in the redressal instrument. Not only does this allow companies to comply with the requirements of the POSH Act, but it also contributes to establishing a secure, inclusive, and respectful workplace culture.

According to this, for the POSH Act to be effective in the long-run, it is not enough for legal provisions to be in place; the institutions also must be ready and willing to implement those provisions. A responsive and committed system of institutions is essential for achieving the goals of this Act, and providing every employee of the organization with a working atmosphere that is free from harassment and where they can work with dignity.

4. CONCLUSION:

The introduction of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 marks an important milestone in the quest for a safe workplace for women in India. It brings into existence a comprehensive legal regime to prevent, prohibit and redress instances of sexual harassment against women in workplaces and fixes the responsibility on employers as well as creates the institutional structure for redressing grievances. However, to ensure that the Act achieves its objectives, it is the implementation of the law in practice rather than its mere existence on paper which determines its efficacy.

¹¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, §§ 4, 19, India Code.

This piece has analyzed some of the prominent challenges faced in the execution of the Act such as erratic compliance of employer, shortcomings in functioning of Internal Committees, non-reporting of grievances, confidentiality issues and other new challenges arising out of the advent of digital hybrid workspaces. The challenges underscore the fact that legal compliance is not sufficient to fulfill the objectives of the Act.

Accountability of the institutions, therefore, is key to the effective implementation of the POSH Act. Employers need to stop perceiving compliance with the law as a one-off legal duty but need to treat it as a continuous enterprise involving the creation of dignity and respect within the workplace. A workplace culture that incentivises people to report incidents, ensures confidentiality, and guarantees fairness of inquiries will help significantly to prevent sexual harassment and protect employees' rights.

Victory of the POSH Act depends not only on its legal clauses but also on the readiness of the institutions to put them into practice. By enhancing institutional responsibility we will be able to achieve the goals of the Act.