

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **THE EFFECTIVENESS OF SEXUAL HARASSMENT LAWS IN SAFEGUARDING WOMEN IN THE LEGAL PROFESSION**

AUTHORED BY - PRAGATI SHREYA

## **ABSTRACT**

This empirical research examines the effectiveness of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act (POSH) in addressing workplace harassment, with a specific focus on the legal profession in India. The study identifies significant gaps in implementation and awareness, highlighting issues such as ineffective Internal Complaints Committees (ICCs), lack of retroactive application, inadequate training, and insufficient evidence rules. Socio-cultural barriers, including fear of retaliation and victim-blaming, further exacerbate the problem, discouraging women from reporting incidents.

The research employs primary data collection through structured questionnaires targeting law students, litigators, and legal professionals, with the goal of analyzing the Act's shortcomings and proposing actionable recommendations. Key findings emphasize the need for robust implementation, behavioral change, gender neutrality in laws, and improved workplace culture. Suggestions include mandatory anti-harassment policies, regular training programs, and amendments to Bar Council rules to explicitly prohibit sexual harassment as professional misconduct. This study aims to foster a safer, more inclusive environment for women in the workplace, contributing to greater gender equality and workplace dignity.

**Keywords:** Sexual Harassment, Legal Profession, Workplace Safety, Gender Neutrality, POSH Implementation

## CHAPTER I: INTRODUCTION

### 1.1 INTRODUCTION

As feminism and globalisation have grown, women have taken up remarkably impressive roles in many spheres of society, including defence. Due to the gender prejudice that still exists in society, women who take the initiative and leave the house are facing significant reaction. When someone violates another person's dignity in any way, it is a breach of many rights, including the right to privacy, the right to life, and the dignity of a person. Sexual harassment, bullying, and gender discrimination are considered the worst kind of workplace violations. The attacker is often a man, while the victim is typically a woman. In the world of competition, having a safe and secure workplace seems more like a pipe dream than a reality.

A disrupted workplace has an impact on each employee's performance, the company's overall performance, each person's social and economic development, and it causes pain. When the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act<sup>1</sup> was approved in 2013, India demonstrated its support for this cause. The Supreme Court established guidelines and instructed the Union of India to create laws that would address this type of situation in the seminal ruling of Vishaka vs. State of Rajasthan<sup>2</sup>. The case's facts include Bhanwari Devi, a Dalit lady who worked for the Rajasthani government's 1992 Rural Development Project. She was viciously gang raped to apprehend her for her hard efforts to end the practice of child marriage. The problem that women are unsafe at work and require special protection only became apparent after this instance. The Vishaka Guidelines were created by the Apex court because it believed that this violated human rights.

Additionally, a criminal code modification was implemented that strengthened penalties for sexual harassment, voyeurism, stalking, and other offences and recognised new ones<sup>3</sup>. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013 were also implemented by the Ministry of Women and Child Development. Being the first of its sort, the act has contributed to the establishment of a standard and the crowd's knowledge that their voice will not be ignored. It offers protection to all women in the workplace from all types of harassment. Both the Act and the standards were shaped by the

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<sup>1</sup> Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013, No 14, Acts of Parliament, 2013 (India).

<sup>2</sup> Vishaka v State of Rajasthan ((1997) 6 SCC 241)

<sup>3</sup> The Criminal Law (Amendment) Act, 2013 (No. 13). Acts of Parliament, 2013, India.

Convention on the Elimination of All Forms of Discrimination Against Women<sup>4</sup>. The Industrial Employment (Standing orders) Act, 1946, is a key law that requires employers to publish and offer consistent working conditions of employment in addition to the POSH Act. Next is the IPC, 1860, which lists a number of offences related to this that aren't specifically related to the workplace, such as insulting a woman's modesty, sexual harassment by a man, assault with the intent to disrobing, voyeurism, stalking, and outraging a woman's modesty.

In the legal field, it is often observed that women working within the system hesitate to report incidents of sexual harassment to authorities, viewing it as a last resort. There is a prevailing concern that lodging such complaints could harm their professional reputation, create a disruptive work environment, and challenge the authority of their employers or senior colleagues. Consequently, many women choose to remain silent about their experiences. A significant issue arises in the context of the Prevention of Sexual Harassment (POSH) Act, as the workers in the legal system, including law clerks, junior associates, and other support staff, are often not adequately protected under this legislation. This lack of protection stems from a variety of factors, including insufficient institutional mechanisms to address harassment within legal offices, and the prevailing belief that the legal system, itself a pillar of justice, may not fully safeguard the rights of those working within it. Furthermore, courts have taken a concerning stance in cases of harassment, often refusing to intervene in the decisions made by Internal Committees or reconsider the evidence they reviewed, leaving many victims with limited recourse for justice.

## 1.2 STATEMENT OF PROBLEM

Sexual harassment is a serious offense that requires careful handling, especially when cases resurface after years, often due to the #MeToo movement or new legislation. However, the law has two significant limitations: it does not apply retrospectively, and there is a time limit for filing cases. In the legal field, the composition of the Internal Complaints Committee (ICC) often complicates matters, particularly when high-ranking individuals are involved, creating bias and making it difficult for female employees to seek justice. The ICC's decision-making, typically resulting in termination, demotion, or transfer of the accused, contrasts with the more stringent criminal law, which provides for prosecution. Despite being in force for years, there is no data on the effectiveness of the committees, especially in informal sectors. Moreover, the

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<sup>4</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180.

lack of clarity on key issues like what constitutes sexual harassment, victim safeguards, and the role of courts leaves the implementation of the Act ineffective and creates confusion and distress for victims.

### **1.3 HYPOTHESIS**

The regulations pertaining to sexual harassment are incredibly efficient in addressing the issue and reducing the volume of complaints about it.

The lack of procedures and implementation strategies in the legislation pertaining to sexual harassment leaves victims in a state of silent misery and anguish.

### **1.4 RESEARCH OBJECTIVE**

1. To assess how well the regulations related to the prevention of sexual harassment are being implemented in workplaces, particularly in the legal profession.
2. To analyze the role, efficiency, and challenges faced by the Internal Complaints Committees (ICCs) in addressing cases of sexual harassment.
3. To investigate whether the shortcomings of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act hinder its goal of providing a safe and secure workplace for female employees.
4. To propose actionable suggestions for improving the implementation and impact of the POSH Act and related mechanisms to ensure a harassment-free workplace.

### **1.5 RESEARCH QUESTIONS**

The following queries have been addressed in this research report in order to meet the goals of the study:

1. How well are the regulations pertaining to the prevention of sexual harassment being applied?
2. Does the International Criminal Court achieve its mission and obligations?
3. Whether or not the Act's shortcomings are preventing it from achieving its goal of giving female employees a safe workplace?

### **1.6 RESEARCH METHODOLOGY**

1. Sources of Data: Primary Source (Law Students, Litigators, Law Professors, Legal Consultants working in Companies)
2. Method of Data Collection: Structured Questionnaire

3. Sampling Plan: Purposive Sampling
4. Tools and Techniques used for Data Collection: Google Forms

### **1.7 SCOPE AND LIMITATION OF STUDY**

Even with the rapid pace of globalisation, the largest gap in society's operation has been related to women's safety. An individual will not perform well or live in peace until and until they feel safe in a location. According to the laws, the ICC is the governing body and has the primary responsibility for execution. However, do you know if the ICC's operations are being watched? The study's scope includes analysing the government's and the ICC's implementation procedure in order to comprehend how they are being implemented. The researcher examines the information gathered from the survey because they have identified two hypotheses that cannot both be true at the same time.

The study's limitation is the little number of viewpoints that could be gathered because of time constraints. Due of limited access, workers from different industries could not be contacted. The main research drawback was the lack of information concerning efficacy that could be obtained in government databases.

### **1.8 SIGNIFICANCE OF STUDY**

By highlighting the shortcomings in the current system and which procedures are not fulfilling their duties, the study can help women by providing them with a work environment that is welcoming, non-discriminatory, and does not view women as any sexual object. The goal of the research is to use statistical evidence to empower the general population to speak out against the government and the corporation.

### **1.9. CHAPTERIZATION**

The study has been divided into 5 chapters:

Chapter 1 which talks about the Introduction and highlights the research question, methods, and scope of study.

Chapter II is the Review of Relevant Literature with respect to the topic taken for analysis.

Chapter III deals with the Theoretical Framework which talks about the relevant provisions and the position of the law.

Chapter IV speaks about Analysis of the Data collected during the research.

Chapter V highlights the Suggestions and Conclusions.

## CHAPTER II: REVIEW OF RELEVANT LITERATURE

The following articles needed careful consideration in light of the research's goals and problems, as the main goal of this study is to examine the application of the same provisions rather than only comprehend theoretical notions.

**Role of employer:** The responsibility of the employer has been thoroughly covered in EEPICINDIA's guidebook<sup>5</sup>, which also provides answers to some of the frequently asked issues. There are references to current national and international regulatory measures such as the UDHR, ICESCR, and CEDAW. The POSH Act's Section 19 outlines the obligations of employers, whereas Section 16 outlines the penalties. The handbook's section 4 offers a thorough explanation of the employer's responsibilities and emphasises figuring out the victim's motivation for remaining silent. The employer's main responsibility is to recognise that providing a safe workplace is both their legal and moral duty.

According to Nishith Desai's research,<sup>6</sup> the employer's responsibilities revolve around the maxim that prevention is preferable to treatment. It offers a list of 23 definitions that clarify what constitutes sexual harassment. It is mandatory for each organisation with more than ten workers to establish an internal committee, with an IC in each branch or office. According to the ruling in *Om Kumar v. UOI*<sup>7</sup>, the court's involvement is subject to judicial restriction under Article 226. Although the victim does not have to file the complaint, the employer's responsibility is to receive it and take appropriate action.

**Effectiveness of Sexual Harassment:** According to a KelpHR survey<sup>8</sup> included in their industry report, 28% of their staff members think that the victim would have a better understanding of the issue if it is clear which external party will be selected to the ICC committee. According to 46% of respondents, the Act might have been more comprehensive if its definitions had been clearer and if occurrences that occurred outside of the workplace had been addressed better. 51 percent of respondents said that efficient case management would help reduce the number of sexual harassment claims, and 71 percent thought that creating a

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<sup>5</sup> EEPICINDIA, "Guidebook to Preventing Sexual harassment at workplace" 2014, <https://www.eepicindia.org/download/Book-on-Preventing-Sexual-Harassment-at-Workplace150914215511.pdf>

<sup>6</sup> Nishith Desai, "Prevention of Sexual Harassment at workplace (POSH)" Dec 2020 [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Prevention\\_of\\_Sexual\\_Harassment\\_at\\_Workplace.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf)

<sup>7</sup> *Om Kumar v UOI*, (2001) 2 SCC 386.

<sup>8</sup> KelpHR, "Prevention of Sexual Harassment at workplace" *Journal of Corporate Law*, 22(3): 132-39

strong corporate culture would assist.

Although sexual harassment is very hard to quantify, author Kaushik Basu<sup>9</sup> points out that it is an unsubstantiated theory that while the number of workplace sexual harassment cases has declined, more incidents are being reported as a result of greater awareness. According to the author, there was less reporting in the past when there were more cases, but there is now more reporting when there are less cases. However, the research contradicts the hypothesis because the author has not supported the same data with any validated theory.

### CHAPTER III: THEORETICAL FRAMEWORK

There is a need to protect women in the workplace after a social activist who was employed by the Rajasthan government was viciously gang-raped. In this instance, the lower court cleared the suspects and prosecuted them for a crime with a far less penalty. An appeal is still pending even after 28 years of this. Due to the fact that the rape was not "conducted within the workplace," the employer averted responsibility after the incident. A public interest petition calling for a safe workplace and environment as a right for all working women was then submitted. Due to widespread public indignation over these occurrences, the POSH Act was passed in 2013 and the Vishaka recommendations were adopted in 1997.

It is impossible to go beyond the Vishaka standards when studying the POSH legislation. The following are examples of inappropriate sexually determined behaviour (whether directly or indirectly) that is recognised by the rules as sexual harassment:

1. Advances and physical touch.
2. A sexual favour request or demands.
3. Sexually suggestive comments.
4. Displaying explicit material.
5. Any more unwanted sexually suggestive verbal, nonverbal, or physical behaviour.

Following the country's vocal support for Vishaka, the ruling in the Apparel Exports Promotion Council vs. A.K. Chopra<sup>10</sup> case expanded the definition of sexual harassment by declaring that physical contact is not a prerequisite. The issue of the Vishaka guidelines' implementation also

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<sup>9</sup> Basu, Kaushik. 2003. "The Economics and Law of Sexual Harassment in the Workplace." *Journal of Economic Perspectives*, 17 (3): 141-157.

<sup>10</sup> Apparel Exports Promotion Council vs. A.K. Chopra (1999) I SCC 759

came up in the *Medha Kotwal & Ors. vs. UOI* case. It was argued that the guidelines were only in form and that their spirit was dead. The SC was not satisfied with the implementation process and ordered the States to provide mechanisms to guarantee implementation. Additionally, it states that the relevant high courts may be contacted in the event of non-compliance.

During the recent me-too movement, when many complaints were made and women nationwide turned to social media and websites to share their stories, there was a significant surge in instances. One such post was made against an Indian artist, who filed a defamation lawsuit in response. The Delhi High Court's ruling ordered the social networking site to remove the post, prohibit future posts against the artist, and identify the author of the post. According to the court, one simply cannot go around hurling cases at one another without any legal support. Any complaint that is filed after the statute of limitations has passed could not even be considered.<sup>11</sup>

An aggrieved woman<sup>12</sup> may be of any age, whether or not she is working, in accordance with the terms of this Act. The act's benefit is that it does not limit its scope to women who work for the firm alone. It also covers clients, consumers, contractual employees, trainees, domestic workers, interns, and even guests. Notably, the law exclusively applies to women and is not gender neutral, meaning that male victims lack a grievance redressal method.

The POSH Act's definition of sexual harassment<sup>13</sup> is consistent with the Vishaka recommendations.<sup>14</sup> According to the final clause, any further behaviour that is offensive in any way—verbal, physical, or nonverbal—may be considered an infraction. In this case, the law gave the ICC the authority to determine whether a specific incidence qualifies as sexual behaviour. Some behaviours, such as displaying pornography or sexual assault, appear to be covered by the act on the surface, but there is no similar fine line of testing. In the 2010 case of *Dr. Punita K. Sodhi vs. UOI & Ors.*<sup>15</sup>, the Delhi High Court held that sexual harassment is a highly subjective and individualised experience that defies easy categorisation. Therefore, the only prerequisite is to fully comprehend the victim's situation.

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<sup>11</sup> Hunt, C.M., Davidson, M.J., Fielden, S.L. and Hoel, H. (2010), "Reviewing sexual harassment in the workplace – an intervention model", *Personnel Review*, Vol. 39 No. 5, pp. 655-673.

<sup>12</sup> Section 2(a) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

<sup>13</sup> Section 3(2) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013.

<sup>14</sup> Geeta Pandey, "Bhanwari Devi: The rape that led to India's sexual harassment law," BBC, March 17, 2017, <https://www.bbc.com/news/world-asia-india-39265653> (accessed Dec 4, 2020).

<sup>15</sup> *Dr. Punita K. Sodhi v. Union of India & Ors.* W.P. (C) 367/2009 & CMS 828, 11426/2009.

Every company with more than ten workers must have an ICC (grievance redressal forum) established at each office or branch.<sup>16</sup> The following is the makeup of ICC:

- a) The presiding officer is a woman holding a senior position.
- b) Two staff members.
- c) An outsider (usually from an organisation or organisation that supports causes pertaining to women)

There are no set rules for who should be a member of the ICC, and more than half of its members must be women. However, ideally someone with legal expertise or a dedication to campaigning for women's rights. A minimum of three members, including the presiding officer, must be present for an investigation to be conducted, and committee members are not permitted to serve for more than three years. This leads me to a crucial question: who will make up the IC? There are no clear rules about this, and there is also no examination of the members' credentials, terms, etc. The governments of Telangana and Mumbai issued circulars requiring all ICCs to register with the state government in order to establish a system of checks and balances.

In Mumbai, the IC of a firm must be physically registered with the office of the district women and child development officer, while in Telangana, there is an online platform called T-She Box.<sup>17</sup> In addition to the IC, an LC is established that considers victims of the unorganised sector as well as employees without IC since they do not employ more than ten people. In the following circumstances, LC exercises cognisance:

- a. When the victim works as a domestic worker;
- b. When the employer is the target of the complaint; and
- c. When a third person who is not an employee of the victim's employer is the target of the complaint.<sup>18</sup>

According to the CPC, 1908, the IC and LC have the same authority as a civil judgement judge. Any woman who feels wronged and wants to register a complaint must do so within three months and provide six copies of the complaint, supporting documentation, and a list of witnesses. If the victim is physically unable of filing a complaint, friends, relatives, coworkers,

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<sup>16</sup> Section 4 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013.

<sup>17</sup> <https://tshebox.tgwdcw.in/>

<sup>18</sup> Section 5 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013.

psychologists, and psychiatrists may do so on their behalf. Access to justice and prompt case resolution are the primary goals of an IC. Since POSH complaints are criminal cases, they will continue for years, but they do not prevent someone from making a complaint under the IPC. Additionally, according to Article 20 of the Indian Constitution of 1950, this does not constitute double jeopardy.

The employer's responsibilities extend beyond establishing an IC; it also includes ensuring a gender-sensitive workplace and eliminating any factors that could lead to a hostile work environment; developing an internal policy regarding this; clearly disclosing all information about IC members; holding workshops and awareness programs for staff members; providing all the facilities the IC requires; preparing an annual report detailing the number of cases filed and their disposition with the district office; and treating sexual harassment as misconduct and handling it in accordance with service rules.

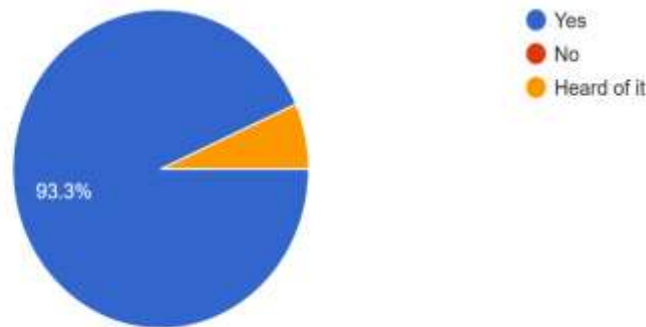
In 2017, the Indian National Bar Association conducted a survey with a sample size of over 6000 employees from a variety of job sectors. The survey found that sexual harassment can range from a variety of activities, such as sexually suggestive remarks, to the point where it involves direct demands for sex in exchange for a promotion, transfer, termination of employment, or demotion. The survey revealed that despite legislative protection for the same, the majority of women chose not to report the case for a variety of reasons, including fear of embarrassment, retaliation, unemployment, ignorance of the procedures and policies for filing complaints, and lack of trust in the legal system, whether it be the judicial, IC, or LC. There hasn't been any research done up to this point that would demonstrate the connection between sexual harassment and women quitting their employment. According to the author's understanding, the HR department, the employer, the IC, and the LC have a greater responsibility for implementing the Act than the government does. They also have a responsibility to encourage their own female employees to speak up. "We have your back" should be a powerful and unambiguous statement.

## CHAPTER IV: ANALYSIS OF THE DATA

Following the distribution of Google Forms, 15 responses in total were recorded using a standardised questionnaire; an analysis of the replies is provided here.

Are you aware of the Sexual Harassment of women at workplace(Prevention, Prohibition and Redressal), Act 2013 ?

15 responses

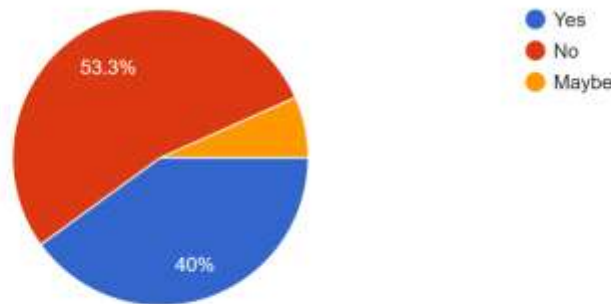


This simple inquiry revealed that a noteworthy 93.3% of respondents were aware that such legislation existed. This Act's roots may be found in the Vishaka recommendations; it is seen as a replacement for those guidelines' penalty and grants victims the legal right to challenge indifferent treatment. There are other acts that address sexual harassment accusations than POSH. The IPC, 1860, lists a number of offences that are punishable by law.

Let's look at a comparable scenario to get a sense of the function of legislation and how it affects our lives. In a recent statute, the local government created legislation pertaining to Salt Lake. Small plots were offered by the government to those who were not wealthy at a discounted fee. However, the legislators forbade any landowner from selling their property because they were concerned that the wealthy would abuse the same laws. Therefore, economists would contend that no one would benefit from such a regulation. However, a comparable scenario under US law states that a company cannot give a job contract with nice perks and high compensation, but the employer retains the right to harass the employee sexually.

Does your workplace or where you've done your internship in the past or currently have given any training on Posh Act ?

15 responses



Section 19 of the POSH Act, which outlines an employer's obligation, stipulates in its c subclause that the employer shall regularly host workshops and awareness campaigns to educate its staff on the Act's requirements. Additionally, follow the guidelines for conducting the orientation sessions for each member of the internal committee.

Despite the fact that the question was optional, 15 replies were recorded, and 50% of respondents chose not to get any POSH act instruction. Ten percent selected the "maybe" choice, while forty-one percent stated that they had received the training. The response may not have made much sense in this case, but two possible explanations are that the training was delayed because of the COVID-19 situation, which caused complete disruption in the corporate sector, or that the individuals who joined recently have not yet finished the awareness program. The primary first step that all employers must do is raising awareness. Although it may seem like a little obligation, this is the most important one for the employer. How would workers understand the thin line separating cordial business conduct and sexual assault that might offend a woman's feelings if the company does not assume responsibility for taking any action to develop an awareness program? Additionally, this won't raise awareness of women's rights. This phase fits into two theories: first, it should educate the employees about proper behaviour, and second, it should raise awareness of women's rights. One of the benefits of educating employees, according to a report, is that it keeps honest workers and boosts their regard for their employers by a factor of 10.

It might just give idea to the employees to indulge in any activity which they otherwise would not have if not provided with training. According to Section 19(c) of the POSH Act, every

employer if not complying with the provision, then a penalty up to Rs. 50, 000 can be levied upon the company.

Second, the employer thinks that this may just inspire workers to engage in any activity that they otherwise wouldn't have if they weren't trained. Section 19(c) of the POSH Act states that any employer who violates the clause faces a fine of up to Rs. 50,000.

The purpose of the awareness campaigns is to make it clear that, regardless of your position within the organisation, making mild to moderate sexual jokes about your employees is a violation that will result in disciplinary action. All workers of the organisation, regardless of gender or title, must participate in the training. By offering training, the business can make sure that its reputation won't be damaged in the future.<sup>19</sup> The first step in improper employer implementation is the failure to give training, and the government should monitor this.

If training is not given, a woman will often not approach the police, but if the attack goes beyond what is acceptable and results in a criminal case, the company's image will suffer and a punishment will be imposed. There are two Lacunae that can be located:

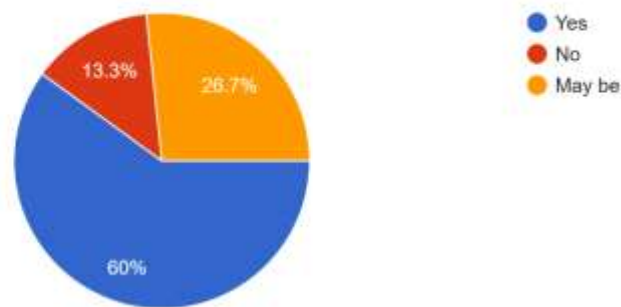
- a) If a female employee in the unorganised sector experiences any sort of harassment, she lacks the authority to denounce it, the power, and typically the strength to defend herself; even when it occurs, these situations go unchecked.
- b) The only remaining options for any business with less than ten workers are to file a complaint with the court or the local committee. Going to court will cause the judicial system to move at the same sluggish speed as before.

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<sup>19</sup> Geeta Pandey, "Bhanwari Devi: The rape that led to India's sexual harassment law," BBC, March 17, 2017, <https://www.bbc.com/news/world-asia-india-39265653>.

Is not being given enough training or comfortable zone leading to not reporting cases?

15 responses



A survey reveals that 60% of respondents believe the lack of adequate training or a comfortable environment contributes to the underreporting of cases under the POSH (Prevention of Sexual Harassment) Act, 2013, while 26.7% are uncertain, and only 13.3% disagree. This issue is especially pronounced in the legal profession, where training on the POSH Act is often insufficient. Many legal professionals, particularly independent female litigators, struggle with various barriers in reporting harassment. These difficulties include isolation in their work environment, lack of awareness about their rights, fear of retaliation, and the absence of clear support systems. The legal profession's hierarchical structure, often dominated by senior male colleagues, can also discourage women from coming forward.

#### **Several reasons explain why such training is not adequately provided in the legal profession:**

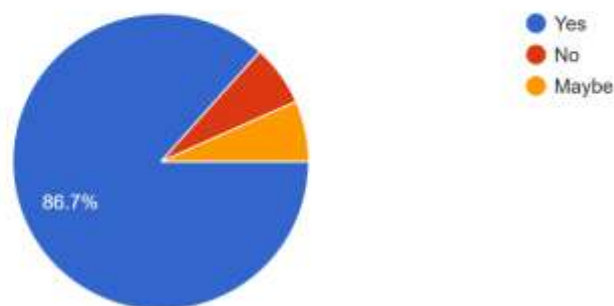
1. **Lack of Institutional Priority:** Law firms and courts may not prioritize mandatory POSH training due to competing administrative concerns.
2. **Limited Resources:** Some organizations, particularly smaller firms, may lack the resources to implement comprehensive training programs.
3. **Cultural Barriers:** There may be a lack of awareness about sexual harassment issues, and a culture that downplays or ignores such concerns.
4. **Fear of Retaliation:** Employees, including junior lawyers and female litigators, may fear retaliation or damage to their professional reputation if they report harassment.
5. **Inadequate Reporting Mechanisms:** Many legal workplaces do not have clear, accessible, or confidential channels for reporting harassment, making it harder for victims to come forward.

6. Resistance to Change: Traditional, patriarchal structures in the legal profession may resist implementing policies or training that challenge entrenched norms, leading to complacency.

These factors collectively contribute to a lack of training, thereby hindering the reporting of harassment and the effective implementation of the POSH Act in the legal field.

The act does not specifically provides for what qualifies as an evidence for sexual harassment. Do you see that as a loop hole or shortfall of the act?

15 responses



Evidence is crucial in deciding the outcome of a case or complaint, and the authorities must accept it in order to support the legitimate complaint of the harmed women. However, given the nature of the conduct, it takes into account the crimes, which frequently include a communication between two persons and are hard to establish. Due to the possibility of someone requesting sexual favours in a shared elevator with no third party present and no cameras, the exchange is not captured on video. What justification does the ICC need to accept the veracity of the complaint, then? Similarly, it will be quite simple to make a baseless complaint. Because what we are discussing is so private and not every woman walks around with a spy camera or recording device, there cannot be a system of checks and balances on this. So how can a lady demonstrate that the worker was making her feel uncomfortable by gazing at her all the time? During lunch, the worker attempted to snatch the woman from beneath the table rather than her thighs. The boss verbally requested sexual favours; there was no text or email exchange, and it is difficult to prove the offence in such a case. POSH acknowledges offences that occur in isolation, and according to 64.5 percent of survey respondents, one of the act's shortcomings is the lack of appropriate rules for gathering evidence.

Although POSH acknowledges evidence, the ICC has the last say over what constitutes evidence and what does not because the Indian Evidence Act does not apply in this case. There is no appropriate procedure for gathering, storing, documenting, etc. the evidence. The Indian

Evidence Act of 1872 was created with the goal of demonstrating the need for proof to establish the presence of a crime. The POSH Act does not mandate this condition. As a result, a complaint can be filed without any supporting documentation, and victim testimonies are frequently used to file a case or complaint.

There are two ways to dispute this matter: from the victim's perspective and from the accused's. From the victim's perspective, this is a huge advantage since the sheer occurrence of sexual harassment is sufficient evidence to accept a charge of sexual harassment.

Because the law is based on the idea of natural justice, it is not necessary to establish beyond a reasonable doubt that sexual harassment occurred; rather, the mere possibility of it happening is sufficient.

The ICC must follow the rules of natural justice, and both parties are given an equal chance to tell their experiences in accordance with Section 7(4) of the POSH Act<sup>20</sup>. Should the complainant have presented any witnesses, they will be subject to cross-examination. The natural justice theories are personal guidelines that judges have articulated as safeguarding human rights while preventing arbitrary actions that might be taken by judicial or quasi-judicial authorities to restrict such rights.

The ICC will not make a judgement until both parties have properly presented their cases, according to the adage "audi altera partem," which guarantees a right to a fair hearing. The natural justice concept must be strictly adhered to in the *Debjani Sengupta vs. Institute of Cost Accountants of India*<sup>21</sup> case; otherwise, the ruling would be deemed invalid. Sexual harassment complaints are often handled with accuracy and the highest attention since they elicit the victim's preferred viewpoint and comprehension. The inability to provide evidence should not prevent the harmed party from speaking up. The reply frequently uses the women's character as justification to refute the charge. In the *State of Maharashtra vs. Mudukar Mardikar*<sup>22</sup> case, the Supreme Court made plain its 1991 ruling. The court flatly rejected the claim that a woman's evidence should not be recognised because she was unchaste. The SC overruled the Bombay High Court's rejection of the woman's evidence.

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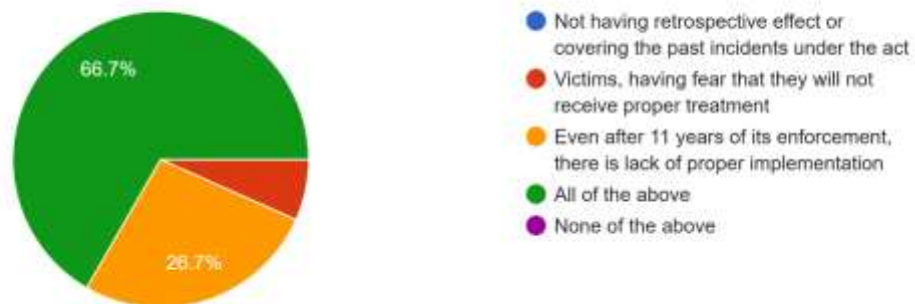
<sup>20</sup> Section 7(4) of the Sexual Harassment at Workplace (prevention, Prohibition and Redressal) Act, 2013.

<sup>21</sup> *Debjani Sengupta v. Institute of Cost Accountants of India* 2019 SC OnLine Cal 734.

<sup>22</sup> *State of Maharashtra vs. Mudukar Mardikar* , AIR 1991 SC 207.

The ICC has the right to call witnesses and present supporting documentation if it is not persuaded by the Complainant's testimony. The committee may also carry out an internal investigation if they believe there is reason to doubt the accuser's account. The Respondent must provide evidence to support these charges against the lady if, in this case, they cast doubt on the Complainant's deposition for motivational reasons, personal grievances, or a relationship that has since soured.

What according to you is shortcoming of the act, which results in the increase number of cases?  
15 responses



It is difficult to accept that women are adopting the techniques provided to them in order to report incidents, considering the ongoing decline in the number of cases reported. According to the designers of the Vishaka guidelines, one of the main shortcomings of the legislation is that it does not cover the instances retroactively. While the POSH Act covers a timeline of three months, or three months from the last occurrence of an incident of that kind, the criminal law allows for a period of limitation of two to three years.

The majority of sexual harassment occurs against an individual, who frequently reacts by launching countercomplaints, terminating the complainant's employment, or, in certain cases, deliberately fostering a hostile work environment. Women who approach the system have a difficult decision since, in addition to receiving justice and punishing the wrongdoer, they run the risk of losing their jobs, their self-respect, etc. It is difficult to approach the system when there are no provisions for this. According to 40 recorded comments, the failure of the act may be attributed to all of the previously listed factors: the Act's execution, its lack of retroactive impact, and the fear of not being treated fairly. Only one vote indicated that none of the aforementioned points amounted to the act's inadequacies. The fact that employers bear the implementation burden and the state has absolved itself of any responsibility is another obvious reason why the implementation phase has failed. State is majorly out of the purview of

responsibility, the companies which had to register with the state is only implemented in the state of Telangana and Maharashtra. The time frame for LCC to be notified about the case, punishment for government officials failing to comply has no mention in the act. The role of the state especially the state government is negligible in terms of ensuring the enforceability of the Act.

Some significant incidences of sexual harassment at work were documented between 1997 and 2017. The fight and the power of the people are of utmost importance in the many industries, which include the private sector, government agencies, media outlets, IT sectors, etc. To mention a few of the cases:

- a. An air hostess committed herself and accused former Haryana Minister Gopal Kanda of sexual harassment; the minister was subsequently charged with preventing suicide. The minister then submitted his resignation. The unfortunate thing is that sexual harassment at work was not utilised as a method, and the accused is currently free on bail under the penal code.<sup>23</sup>
- b. The former law student intern uploaded a blog post criticising Ashok Kumar Ganguly<sup>24</sup>, the former SC judge. Since the judge was already retired, no action could be taken under the POSH act, even though the SC took cognisance of the blog and ordered an investigation after no complaint was filed.

Other notable examples include Shaimak Davar, the Bollywood choreographer; David, the chief of Penguin's Canada branch; Phaneesh Murthy, an Infosys executive; and KPS Gill, the former director general of police for Punjab. The Sexual Harassment Act emphasises that there is no change in the manner that coworkers are intimidated. The Indian National Bar Association conducted a poll by posing questions to 6,047 respondents across many cities. When asked if the ICC handled the complaints that were brought to them fairly, 67 percent of respondents said "no" to one of the survey's questions.<sup>25</sup>

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<sup>23</sup> India Today webdesk, "airhostesses committed suicide amidst sexual harassment complaint" (25 Oct 2019) <https://www.indiatoday.in/india/story/geetika-sharma-air-hostess-suicide-gopal-kanda-harassment-1612964-2019-10-25>.

<sup>24</sup> Apoorva, "Supreme Court gags media from reporting MP judge sexual harassment case," Livemint, October 28, 2014, <https://www.livemint.com/Politics/Lcsq8tvm5VHNJLmvg95xIN/Supreme-Court-gags-media-from-reporting-MP-judge-sexualhara.html> (accessed Nov 23, 2020).

<sup>25</sup> NBA, "Sexual Harassment at Workplace", Indian national Bar association, 2017 <https://www.indianbarassociation.org/wp-content/uploads/2017/07/Garima-1INBAs-Book.pdf>.

## CHAPTER V: CONCLUSION AND SUGGESTIONS

### 5.1 ANALYSIS OF THE DATA COLLECTED

The analysis of the data reveals several significant gaps in the implementation and effectiveness of the Prevention of Sexual Harassment (POSH) Act, 2013. Here are three major loopholes identified:

- 1. Lack of Adequate Training and Awareness:** A notable 50% of respondents in the survey reported not receiving any POSH Act training, which is a clear violation of Section 19 of the Act. While training is mandatory to ensure that employees understand what constitutes harassment and how to report it, the low participation rate suggests poor enforcement of this requirement.
- 2. Challenges in Evidence Collection and Documentation:** According to the data, 64.5% of respondents identified a major flaw in the POSH Act: the lack of appropriate rules for gathering and verifying evidence. Sexual harassment cases often involve private incidents with no witnesses, making it difficult to gather concrete evidence. The POSH Act allows complaints to be filed without substantial supporting documentation, which can lead to false claims or the dismissal of legitimate complaints. The absence of clear guidelines for handling evidence creates a disparity in how complaints are investigated and adjudicated, undermining the effectiveness of the Act.
- 3. Limited Scope for the Unorganized Sector and Smaller Enterprises:** The POSH Act's focus on employers with more than ten employees leaves a significant gap in protecting workers in the unorganized sector or small businesses. These workers often lack the resources or authority to report incidents, and there are no clear reporting mechanisms for them. Furthermore, the failure of state governments, especially in areas like Telangana and Maharashtra, to ensure the enforceability of the Act exacerbates this issue, leaving vulnerable workers unprotected.

These loopholes point to the need for stronger enforcement, better training, and a more inclusive approach to extend protection to all workers.

### 5.2 SUGGESTIONS

1. Proper Implementation of POSH
  - Ensure the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH) is implemented effectively among legal professionals in India.
2. The Bar Council should mandate all law firms to:
  - Provide internal policies on sexual harassment.

- Conduct multiple training sessions such as workshops, seminars, and experiential learning programs.
  - Incorporate video and internet-based training on sexual harassment.
  - Submit proof of compliance.
3. Foster Behavioral Change
- Regularly educate both male and female professionals on issues of sexual harassment.
  - Discuss these issues during State and National Bar Council meetings and office forums.
  - Display anti-harassment handbooks prominently in workplaces.
  - Treat all complaints seriously to reduce victim blaming and encourage reporting.
4. Promote Gender Neutrality
- Amend the POSH to make it gender-neutral for comprehensive justice.
5. Organizational Intolerance
- The Bar Council of India should emphasize zero tolerance for sexual harassment in all law firms.
  - Law firms must:
    - Provide clear anti-harassment policies and handbooks.
    - Establish clear reporting mechanisms.
6. Promote Gender Egalitarianism
- Encourage equal representation of male and female advocates in leadership positions to counter male dominance and cultural patriarchy.
7. Respectful Workplace Culture
- Lawyers should foster a workplace environment rooted in mutual respect, free of harassment.
  - Senior lawyers and influential figures ("rainmakers") should lead training initiatives to emphasize the importance of participation.
8. Confidential Self-Evaluation
- The Bar Council of India should periodically conduct confidential assessments to evaluate the prevalence of sexual harassment and the organizational environment.

### 9. Amend Bar Council Rules

- Expand the duties of advocates under Section IV (36) of the Bar Council of India Rules (per Section 49(1)(e) of the Advocates Act, 1961) to explicitly prohibit sexual harassment.
- Violations should be treated as professional misconduct under Chapter V, Section 35 of the Advocates Act, 1961.

These measures collectively aim to prevent, address, and ultimately eradicate sexual harassment in the legal profession.

### 5.3 CONCLUSION

The enactment of the POSH Act and related guidelines marked a pivotal step towards safeguarding women from workplace sexual harassment in India. Despite its comprehensive framework and the emphasis on inclusivity, implementation gaps and socio-cultural barriers persist, especially in sectors like the legal profession. Fear of retaliation, lack of awareness, and insufficient institutional mechanisms deter victims from reporting incidents, highlighting the need for a more robust, inclusive, and accessible system to uphold workplace dignity.

To address these challenges, fostering behavioral change, promoting gender neutrality, and ensuring strict compliance with anti-harassment policies are imperative. Institutions like the Bar Council of India and individual employers must take proactive steps to create a safe and respectful workplace culture through training, equal representation, and zero tolerance for misconduct. By addressing these systemic issues and reinforcing accountability, India can move closer to achieving workplaces that are truly inclusive and free of harassment.