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ISSUES AND THE POSH ACT'S **EFFECTIVENESS, WITH A FOCUS** **ON THE HEALTH FIELD**

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Given its patriarchal culture, India has the unfortunate honour of having a long history of sexual harassment.

In the past, women were largely restricted to the confines of their houses and were not allowed to pursue education or employment. Although there were many cases of workplace harassment, the women were forced to remain silent and take the brunt of it because speaking up would damage their reputations.

Given that there was no legislation protecting the dignity of women, those who committed such crimes were frequently not punished.

BACKGROUND OF POSH ACT:

The community gradually opened up and began focusing on the education of girl children. Women eventually began working in a variety of organisations. Through education, women in India gained more agency and a foothold in the workforce, but paradoxically, workplace sexual harassment incidents were frequent and pervasive.

All facets of society called for a strict sexual harassment legislation to stop these crimes. Here, we'll quickly go over the POSH Act of 2013, which was introduced as a weapon to end workplace harassment against women.

1. Vishakha v St. of Rajasthan 1997

The foundation of this law against abuse of women, known as the POSH Act, was established by the Supreme Court in its seminal decision in Vishaka v. State of Rajasthan. (1997).

Bhanwari Devi was another instance.

Bhateri, a village in Rajasthan, was home to Bhanwari Devi, who belonged to a lower caste household. She signed up in 1985 to work as a "saathin" (friend), or community organizer, as a part of the Women's Development Project (WDP) operated by the Rajasthani government.

Bhanwari Devi's work included educating the villagers about problems with land, water, literacy, health, etc. In 1992, Bhanwari raised the problem of child marriage, which although prohibited, was still prevalent in rural areas.

Bhanwari intervened and attempted to prevent the marriage of a nine-month-old who was the daughter of one Ram Karan Gurjar during her crusade against child marriage. She was able to break up this union on the wedding date with the assistance of the police and officials. (although it took place the very next day).

Bhanwari's selfless deed was not well received by the Gurjar community's males, and she and her family were subjected to a social and economic boycott. Her spouse was assaulted in addition to her employer in an effort to teach her a lesson. She was consequently forced to leave her employment.

But on September 22, 1992, Bhanwari Devi was viciously attacked by a group of five men, all of whom were from the Gurjar family whose daughter's child marriage she had been trying to prevent. The men who were accused of the crimes were detained and put on trial, but police and lawmakers strongly backed them. Only after her predicament was brought to the attention of the print media did women's groups and other social organisations step forward to take up her cause.

Despite her best efforts to obtain justice, the Jaipur district and sessions court delivered its ruling on November 15, 1995, by dropping the case and clearing all five of the defendants.

Under the umbrella of Vishaka, disgruntled women's activists and attorneys launched a Public Interest Litigation (PIL) in the Supreme Court of India. The Vishaka Guidelines were created as a consequence of the August 1997 judgement on this PIL, which for the first time provided the fundamental definitions of workplace sexual harassment of women and provided guidelines to deal with it. The 2013 POSH Act was built on the primary goal of the SC, which was to provide a platform for complaint and redress methods against workplace sexual harassment.

2. CEDAW 1993

The POSH Act has incorporated elements of gender equality, gender-specific violence, and unwelcome sexually charged behaviour from this convention in order to create a strong legislative framework.

3. Article 14, 15 and 21 of Constitution of India

The Act is based on the Indian Constitution's particular clauses guaranteeing the right to life and liberty. (Article 21)

- Opposing prejudice (Article 14)
- The unrestricted exercise of any craft or profession (Article 19(1)(g)).

The POSH Act 2013 was designed as a strong, protective sexual harassment legislation for working women of all strata by drawing on these three key sources.

OBJECT OF THE POSH ACT

When a person, a group, or a section of society engages in behaviour that is harmful to another person, group, or part of society and the current social system is unable to prevent such behavior, special laws are required. To act as a deterrent through fines, sentences, or other penalties, etc., such circumstances necessitate laws, which are enacted and enforced through the state apparatus. As more women entered the workforce and encountered new challenges at work, it became essential to implement the current Act.

Any statute's introduction and "Statements of Objects and Reasons," which go into more detail about the justifications for the statute's creation, can be studied to understand and interpret it. Sexual harassment specifically infringes on women's fundamental rights to equality, life, and liberty under Articles 14 and 15 of the Indian Constitution as well as their right to life and dignity under Article 21 of the Constitution, according to the Statement of Objects and Reasons for this Act. It is also crucial to keep in mind that sexual harassment can be seen as a violation of a person's freedom to engage in any profession or conduct out any occupation, trade, or business, including the freedom from sexual harassment at work.

Article 11 of CEDAW, which mandates States Parties to take all necessary steps to end prejudice against women in the workplace, is incorporated into the Act's Statement of Objects and Reasons. One such instance of gendered violence that gravely threatens women's employment equality is sexual harassment. This legislation also includes safeguards for all

women, independent of their employment status. The Statement of Objects and Reasons also recognises that until the proper legislation is passed, the Supreme Court has offered guidelines to address this problem.

ADVANTAGES OF POSH ACT 2013

In three ways

1. Avoiding toxic workplace environments

A woman's sense of security, health, and emotional stability are all impacted when she is subjected to sexual advances and harassment. When it happens frequently, it can harm a woman psychologically over time, which could result in an unstable, unhealthy existence. This is where the POSH Law and different rulings have come to the rescue.

2. Recognizing inappropriate conduct

The argument over whether or not advances are welcome is one that will never stop. Some claim that it is subjective in nature and depends on the woman's sense of reason, but the POSH Law made it clear that a test was required to determine whether unwanted conduct had occurred. Unwelcome behaviour was addressed as the following in the Report of the Committee on Amendments to Criminal Law, which was led by the late Justice J.S. Verma (author of the Vishakha Judgement). In order to ensure that women with different perceptions and comfort levels are given the appropriate protection, it is important to note that the definition needs some clarification because any interpretation of the word "unwelcome" as contained in the said definition must give due weight to both objective and subjective criteria. Therefore, we propose that the following explanation be added after the definition of sexual harassment: In determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due weight shall be the complainant's subjective view.

3. Demand-Prompt Harassment

Quid Pro Quo harassment is when a request for a sexual favour is made under fear of repercussions for the task at hand. Threats are typically made by someone in a higher level, and the results could be anything from a reduction in status or pay to the loss of maternity benefits, among other things. Example: Akshay instructs Radhika to engage in carnal activity. Radhika objects, but Akshay threatens to demote her and reduce her pay if she doesn't comply. This is a blatant instance of retaliatory abuse. This crucial element was

acknowledged by the Vishaka decision. Now that the POSH Law is in effect, all the woman must show is that the threat was ever issued.

DISADVANTAGES OF POSH ACT 2013

1. Making the Act non-sexist

According to data, 5% or less of masculine employees experience sexual harassment at work. Unfortunately, unlike their female peers, male employees are unable to file sexual harassment claims under the PoSH Act because it only protects female employees. The organisation that implements the PoSH Act with greater male employee buy-in will benefit from the inclusion of male workers under its purview.

2. Addressing concerns after the initial six-month window

Sexual harassment claims must be made within three months of the alleged event, with the window of time being extended if necessary to six months. However, the six-month window needs to be extended further because sexual harassment is a serious incident that has a lasting impact on the victim's life. This will help the victim get through the subsequent trauma and submit a complaint.

3. Government auditing and compliance

Only 539 charges were documented under the PoSH Act in 2017 due to a lack of government compliance checks. This appears to be a debatable reflection of the truth on the ground and translates to two incidents of harassment per day across corporate India.

The Government must implement strict audits regarding the Act's compliance in order for it to have more significance. It will result in a strong legislation when combined with the internal complaints committee's mandatory disclosure requirements.

4. Addressing grievances

The handling of sexual harassment incidents based on proof but without written complaints from complainants needs to be made clearer by the PoSH Act.

Likewise, procedures for handling concerns that are anonymous are necessary.

In addition, a centralised way of reporting complaints ought to be required for better tracking within organisations.

5. Tough anti-retaliation policies

Despite the PoSH Act and the SHE-Box, only 62% of workplace sexual harassment incidents are recorded. The top four excuses given for not reporting are embarrassment (45%), waiting for the problem to go away on its own (38%), dread of reprisals (35%), and anxiety (24%).

To allay the worry of retaliation for reporting sexual harassment, the Act must detail strict anti-retaliation measures.

To guarantee a harmonious and harassment-free workplace for all employees, sexual harassment at the workplace is a very sensitive problem that must be handled with the utmost care, patience, and understanding. As a result, the complaints must be resolved as quickly as possible.

It is therefore imperative that the Justice Verma panel's suggestions be adopted and the act be updated.

SEXUAL HARASSMENT IN THE HEALTH SECTOR

During the COVID-19 pandemic, when people were vying for access to healthcare services like oxygen cylinders, hospital beds, plasma donors, and volunteers who were doing their best to facilitate resources. We heard rumours of sexual harassment taking place in institutions, along with rations for those in need to survive. An ambulance attendant allegedly inappropriately harassed a 38-year-old female COVID patient as she was being driven to a scanning facility.

In another instance, while tending to her ill husband, a female family member of a COVID-positive patient was touched around the waist and exposed to sexual harassment. One can simply pause and reflect on her predicament and choice regarding whether or not to complain in case it influences how her spouse is treated.

Patients abusing other patients started to show up in the COVID -19 isolation unit. Even the doctors, whose care one frequently and unquestioningly relinquishes control over, were involved in these offences. In one especially horrifying case, the attending physician outraged the modesty of a 25-year-old female COVID-19 patient for two days in a row.

These incidents haven't just involved medical personnel and patients; one good Samaritan who posted her personal phone number online to assist those looking for COVID resources was inundated with offensive messages and requests for sexual activity.

Even though women are disproportionately the victims of such unwanted actions, they are not the only ones who have to deal with them. A male covid 19 patient who was sexually assaulted by a doctor while being treated in the critical care unit of a private hospital in Mumbai was one such case that came to light.

On the other hand there have also been cases of sexual harassment against health professionals by those they are attempting to help. For instance a young person assaulted an ASHA health worker while they were on covid duty. These are just few of the incidents that made national news and show how contrary to expectations, sexual harassment has become more common during the epidemic.

These instances make it more important to consider why sexual harassment is so common and what causes it in a time when humanity should be at the forefront.

According to data, sexual violence tends to increase in times of crisis, including war, natural catastrophes, and medical crises. There is an increase in violence against women, which is attributed to a number of factors, including stress and uncertainty about basic needs like food, employment, or economic stability, which can result in inadequate coping mechanisms, a feeling of helplessness, and a loss of control, some of which manifest themselves in violence against women, including sexual harassment, as highlighted in the news articles above.

What we have observed during the pandemic is the pervasive frequency of quid pro quo sexual harassment, which is defined as "this for that." Simply put, it refers to the act of a person in a position of authority holding someone at ransom in order to wield their influence over someone perceived to be weaker. The powerful take advantage of their status to demand (explicitly or implicitly) sexual favours in return for the necessary help or assistance. In the current situation, news reports have mentioned a man in Delhi who has openly requested sexual activity in return for giving those in need an oxygen cylinder. It had been difficult for them to speak out against it because they were afraid of being refused medical care in the wake of other incidents, such as a doctor abusing a patient or medical staff harassing the attendant.

An overwhelming feeling of helplessness would be the overall effect of such harassing behaviour from healthcare workers towards patients and attendants. Since it is essentially a trade-off, if they don't speak up about the wrongdoings, they might be able to save their own

life or the life of a loved one who is in danger. Because we are less guarded around physicians and medical personnel because we expect them to overcome our usual physical barriers for medical examination, it may at times be difficult to understand the indiscretion.

Sexual assault on medical personnel

Internal conflict may occur in doctors and medical personnel when they experience sexual harassment from patients. Even if the person is inappropriate, they still owe them a duty of care, so it may not immediately be void. Additionally, they are frequently taught to understand their patients' frustration and powerlessness as they attempt to regain control of the situation by taking such actions, which is obviously not a reason to treat them similarly. When faced with sexual harassment, medical professionals frequently rationalise it or prioritise the requirements of their patients over their own. This puts them in a challenging position where they might worry about their own safety but might also feel a strong sense of obligation and guilt for not fulfilling it.

What circumstances might result in sexual harassment?

There have been numerous efforts to clarify and focus on the causes of such frequent instances of sexual harassment.

The socialisation of gender roles, which basically means the promotion of male dominance, sexual objectification of women, and the cultural acceptance of violence against women, is seen from a social and cultural perspective as having led to sexual harassment. The social cultural perspective also views sexual harassment as a tool to gain or keep power arising from a sense of entitlement felt by powerful people. There is a theory that those with less social, cultural, and organisational power—typically women or minorities, such as those who identify as sexual or religious—are more vulnerable to being sexually assaulted by those with more power.

Hospital sexual harassment's negative effects

Even though we might not want to acknowledge it, sexual harassment occurs frequently in hospitals, nursing homes, and other settings where healthcare services are provided, just like it does everywhere else. This is true even in the face of the aforementioned documented incidents.

Additionally, institutions like hospitals and nursing homes exhibit the same risk factors for sexual harassment as other workplaces, including hierarchical structures, environments where men predominate (especially in positions of power), and cultures that tolerate violations, especially when they are carried out by those in positions of authority.

Both those who work there, such as female physicians, nurses, and technicians, as well as those who use these services, such as patients and attendants, must deal with sexual harassment. (those accompanying the patients).

