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POWER DYNAMICS UNDER POSH ACT, 2013: **A MENACE FOR WOMEN**

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ABSTRACT

Ruth Bader Ginsburg, who became the second female justice of the U.S. Supreme Court, famously said that “*women belong in all places where decisions are made... It shouldn't be that women are the exception.*”

But contrary to this and many other sayings, since ancient times, women have been suppressed under the commonly held beliefs of patriarchy and a male-dominated society. This problem has persisted in our society until now, and women are considered weak and vulnerable. The majority of the population in our country is comprised of women, but they are the most disadvantageous group in our society because they often have to leave many great opportunities due to old beliefs and customs followed by our society. But many women of today's generation are trying to break the superstitious norms and be independent by working.

No doubt the major steps taken by women have helped them in every aspect, but sadly, they are also subjected to harassment at the workplace. They do not have the freedom to make decisions and are victims of power dynamics. Sexual harassment faced by women at the workplace is a type of gender violence that lowers the self-esteem, self-confidence, respect, and dignity of women, causing them physical as well as mental pain. Undoubtedly, the quickly changing dynamics of the workplace have brought attention to the subject of sexual harassment in the workplace. In India, this is governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act). The Act protects women against sexual harassment in the workplace. Because of a phenomenon known as power dynamics, women are still frequently the victims of serious sexual harassment at work, even after the passage of this Act. Therefore, the purpose of this article is to critically analyse the POSH Act

of 2013 and the landmark ruling in order to shed light on this phenomenon and how it affects women. It also offers some recommendations for how to solve this issue.

KEYWORDS: *Patriarchy, Power Dynamics, Sexual Harassment, POSH Act, Workplace*

INTRODUCTION

Contrary to ancient times, women have taken a major step in the field of education and have started working worldwide for famous companies. They began to fight for their individual identities while refusing to hide behind the curtain of a male-dominated society. But as it is constantly proven through various cases that women are not safe anywhere, they started facing sexual harassment and other forms of harassment at the workplace as well. It is a serious issue that tortures women, thereby affecting their mental and physical health. They face continuous torture as the offender has direct and daily access to the victims.

Thus, to curb this issue, the honourable Supreme Court, in the landmark judgment of **Vishakha v. State of Rajasthan**¹, laid down the framework for sexual harassment at the workplace. In this case, Bhanwari Devi, a social worker, was gang raped by men after she tried to protest against the child marriage of a one-year-old girl. The Rajasthan High Court gave a disappointing judgment by acquitting the accused. This caused a serious outrage in public, leading to massive protests against the judgment in support of Bhanwari Devi's rights. Due to this protest, the petition was moved to the Supreme Court, and they formulated guidelines to combat sexual harassment at the workplace. These guidelines' primary goal was to give victims of workplace sexual harassment a forum for grievance procedures and remedies. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH) was created with these rules as its driving force. The Act is significant because it addresses the different forms of sexual harassment and the channels through which a woman can file a complaint.

Even after these guidelines and the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, women are still facing the problem of sexual harassment at the workplace. According to the Forbes Report, there is a rise in the number of sexual harassment cases in India's top companies. It said that even after a decade of the implementation of the Act, sexual harassment continues to threaten the safety of women.

¹ Air 1997 Sc 3011

According to the reports, the total number of sexual harassment complaints at workplaces climbed by 27 percent in the financial year ending March 2022 compared to the previous year, according to data analysis compiled by anti-sexual harassment advisory Complykaro.com based on company annual reports.² Data showed that these companies registered 759 cases in FY22, compared to 595 reported in FY21. Vishal Kedia, POSH expert and founder of Complykaro Services, said in the reports that “*work-from-home had resulted in a considerable reduction in sexual harassment complaints, but they have again begun to rise due to the opening of offices. The higher cases are due to the partial lifting of lockdowns compared to last year.*”³

Thus, there are many hurdles to the proper implementation of the Act, like non-compliance with the rules and regulations of the Act, a lack of accountability about who is responsible for the conduct of their employees, etc. The bigger problem persisting in the workplace is power dynamics. Power dynamics provide more dominating power to people in higher positions, and while misusing this power, women often fall into the hands of powerful people and face sexual harassment. Powerful people, mostly men in higher positions, abuse their power and, in exchange for sexual favour, harass women at the workplace. Hence, even in this developed society, sexual harassment still robs people of their dignity in Indian workplaces, despite growing public awareness and corporate initiatives to sensitize staff.

OVERVIEW OF POSH ACT, 2013

The POSH Act, 2013 came after the landmark judgement given by the honourable Supreme Court in the case of *Vishakha v. the State of Rajasthan (1997)*⁴. In this judgement the court defined the sexual harassment which was included in the section 2(n) of the POSH Act, 2013. It states that “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

- i. *physical contact and advances; or*
- ii. *a demand or request for sexual favours; or*
- iii. *making sexually coloured remarks; or*
- iv. *showing pornography; or*

² The analysis has considered only companies in the BSE 100 index which account for over 65 percent of total market capitalisation of listed firms in India. (<https://www.forbesindia.com/>)

³ Sultana, N. (2022, October 21). Rise in sexual harassment cases in India’s top companies shows dichotomy. Forbes India. <https://www.forbesindia.com/article/take-one-big-story-of-the-day/rise-in-sexual-harassment-cases-in-indias-top-companies-shows-dichotomy/80721/1>

⁴ Air 1997 Sc 3011

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature⁵

The important definitions under POSH Act, 2013 is employee and a workplace. The Act expanded the scope of the definitions so as to provide the benefit to large number of victims facing sexual harassment.

- Definition of employee is provided under section 2(f) of the POSH Act, 2013. It states that “employee” means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name”⁶
- Definition of Workplace is provided under section 2(o) of the POSH Act, 2013. It states that workplace is any department, undertaking, establishment, office, institution, etc, wholly or substantially controlled and financed by the appropriate government, any private sector organisation, undertaking, trust, NGO’s, any hospitals, nursing homes, any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey, etc.⁷

Some of the key provisions of the act includes:

1. The employer is required to forbid and prevent sexual harassment in the workplace
2. To ensure that women have a safe workplace, the employer is also required to regularly organize awareness campaigns.
3. In order to handle allegations of sexual harassment, the employer is obligated to form an internal complaints committee. Appropriate complaint procedures ought to be used.
4. The act carries fines and penalties for noncompliance.

Sexual harassment can involve more than just asking for sexual favours or unwelcome physical contact; it can also involve the emotional burden that the harasser suffers as a result of coercion,

⁵ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. (2013, April 22). https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362

⁶ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. (2013, April 22). https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362

⁷ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. (2013, April 22). https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362

sexual assault, or unwanted attention. In order to attain high workplace productivity, it is critical that authorities and employers embrace, put into practice, and support best practices for identifying and handling workplace harassment.

POWER DYNAMICS AND SEXUAL HARASSMENT AT WORKPLACE: CONNECTING LINK

Sexual harassment at workplace occurs due to many causes but one of the major causes of this issue is power dynamics. Workplace often maintains the hierarchy of work according to the distribution of powers, and position of employee, thus, power dynamics in a workplace is nothing but distribution and exercise of power among individuals in different positions. Thus, it is a relationship between people in the organization. Power is the ability to influence and direct others to do something or not to do something. Basically, powerful people can govern others at every level. When power is distributed appropriately by giving others the equal opportunity of being heard and valuing their perspectives, it can be considered a good thing. But an unequal and disproportionate distribution of power can convert it into an oppressive force. It can be called coercive power, which is used to control another person. It is a well-known concept in our traditional society that those who have more power often dominate others by formulating their own standards, policies, etc. It is evident that in a patriarchal society, most power lies with men, whether in the household or workplace.

Various studies and journals showcase that sexual harassment is primarily about power dynamics. A survey conducted by the Equal Employment Opportunity Commission (EEOC) in the United States found that over 75% of workplace harassment incidents involve a power dynamic, where the harasser holds authority over the victim.⁸ Also, a study published in a journal on *Organizational Behaviour and Human Decision Processes*⁹ revealed that sexual harassment is often perpetrated by individuals seeking to assert dominance rather than being driven by romantic interest. These findings underline that sexual harassment is a manifestation of unequal power relationships, fostering an environment of fear and exploitation.¹⁰

⁸ Narayan, A. (2023, September 12). Unveiling the Power Dynamics: Exploring the Connection between Power and Sexual Harassment in the Workplace. KelpHR. <https://www.kelphr.com/blogs/unveiling-the-power-dynamics-exploring-the-connection-between-power-and-sexual-harassment-in-the-workplace/>

⁹ Kray, L. J., Kennedy, J. A., & Rosenblum, M. (2022, September). Who do they think they are?: A social-cognitive account of gender differences in social sexual identity and behavior at work. *Organizational Behavior and Human Decision Processes*, 172, 104186. <https://doi.org/10.1016/j.obhdp.2022.104186>

¹⁰ Narayan, A. (2023, September 12). Unveiling the Power Dynamics: Exploring the Connection between Power

Thus, many people in a workplace, that are mostly men often misuse power dynamics and instigate sexual harassment. These dynamics have a big impact on sexual harassment incidents as powerful employer has a considerable influence upon the powerless victims. Powerful individuals thus, abuse their position to commit such wrongdoing, fostering a hostile environment. Women are frequently viewed as a vulnerable group and thus believed to be more likely to become entangled in the web of power dynamics. Using this power dynamics the offender can request for any sexual favours from the victim, harass the victim physically or verbally by any behaviour of sexual nature, etc.

CONCEPT OF QUID PRO QUO:

It is a situation where all the decisions about employment are based on exchanging sexual favours. It exploits the power imbalance between the offender and the victim. The offender takes advantage of power dynamics to influence the victim to do them a sexual favour. The offender has the direct control over the victim through superior authority. Some of the situations of Quid Pro Quo are:

- asking sexual favours in exchange of promotion or a raise
- making all the employment decisions based on the sexual relationship between the offender and the victim.
- a manager or supervisor making sexual attempts towards a worker in exchange for a job offer
- abusing the power of authority and making the victim uncomfortable by commenting sexually about the victim and behaving in sexual nature, etc.

The use of power dynamics in sexual harassment fosters a hostile and unhealthy work atmosphere. It affects the morale and productivity of the sufferers, which is problematic. The victims live in perpetual anxiety, which creates an uncomfortable atmosphere and undermines their faith in higher authorities. The victims endure physical and mental scarring, which exacerbates anxiety, despair, stress, and other problems.

Due to the dynamics of power, the victims' decisions about their employment are influenced by

the authorities; as a result, the victims are afraid of reprisal and choose not to disclose the occurrence of workplace sexual harassment. The victims live in continual terror of losing their jobs, having their reputations ruined, suffering career-related consequences, etc. As a result, victims frequently decide to suffer in quiet because they do not want to take revenge on the higher authorities. The main reason of why the women is subjected to risk of sexual harassment through power dynamics is because the higher authorities are generally male. As women are tied to the chains of the old belief of patriarchy, women lack leadership positions.

To prevent sexual harassment arising out of power dynamics, senior leadership should understand the impact of their power and use it in the right direction. They must be aware of the severity of sexual harassment committed against the victims, and the workplace should properly communicate the policies regarding sexual harassment committed against the victims by higher authorities. There must be a proper procedure for taking disciplinary action against the higher-ups, which should encourage the victims to bring the case against the higher authorities. Maintaining a proper work-power balance and establishing strict procedures for punishment will help curb this issue in the future.

SUGGESTIONS TO CURB THE ISSUE

Some suggestions on how this serious issue of sexual harassment at the workplace due to power dynamics can be eliminated are:

1. Training program: it should be mandatory in every organization to conduct training and awareness programs so as to make its employees aware of the prevention of sexual harassment at the workplace, workplace ethics and behaviour, the issue of power dynamics and how power should be equally divided among men and women, etc. This will help to build a safe working environment and a culture of respect in the organization.
2. Strict penalties: if a case of sexual harassment at the workplace comes up, then stricter penalties need to be imposed upon the wrongdoer so as to create fear among the people to not repeat this act again and also to provide fair justice to the victims.
3. Protection of whistleblowers: most of the victims do not report cases of sexual harassment because, due to power dynamics, they fear losing their job and their respect and dignity. Thus, organizations should make a provision regarding the protection of whistleblowers so that more reliable cases can be reported and action can be taken in a

speedy manner.

4. **Complaint committee:** As per the guidelines of the Supreme Court in the Vishakha judgment, every company having more than 10 employees must constitute an internal complaints committee to address the problem of sexual harassment at the workplace. But even after that, most companies have not complied with it. So inspections should be done regarding the same, and stricter penalties should be imposed on the organization that hasn't complied with the rules.
5. **Changing culture:** Our society is developing at a fast pace, and thus organizations must adapt to the change and should forget about the patriarchal society. Women should also be provided with the opportunity to be the leaders of the organization. This will change the concept of power dynamics by changing the evolution of power in the organization.
6. **Rigid rules:** Create and implement robust anti-harassment rules that safeguard all staff members, regardless of their position or gender. Strong and unambiguous policy must be supported by equally strong and unambiguous execution. Evaluate and modify these policies on a regular basis to address changing demands.

LANDMARK JUDGEMENT

UNION OF INDIA AND ORS V. MUDRIKA SINGH, SUPREME COURT, 2021¹¹

FACTS: The victim in this case was a constable in the Border Security Force. The complainant was on a night duty on April 16, 2006. The other day in the morning that is on April 17, 2006 the head constable in the Border Security Force named Mudrika Singh committed an act of sexual offence that is sodomy on the complainant. The commandant upon investigations found that there were discrepancies regarding the date on which the incident has occurred, subsequently the Summary Security Force found the respondent guilty and demoted him to the position of constable as a punishment. The respondent moved to the Calcutta High Court.

The Union of India and representatives of the Border Security Force approached the Supreme Court of India to challenge the Calcutta High Court's judgement, which cleared the accused of all charges against him. They also sought to have the "hyper-technical view" adopted by the Single Judge and Division Bench of the Calcutta High Court while making their decision reviewed.

¹¹ Civil Appeal No. 6859 of 2021

ISSUE: whether the accused is liable for committing the sexual offence on the complainant?

HELD: The Honourable Supreme Court held that *“deeming such a trivial aspect to be of monumental relevance, while invalidating the entirety of the disciplinary proceedings against the superior and reinstating him to his position renders the complainant ‘s remedy at nought.”*¹² The court further held that *“We implore courts to interpret service rules and statutory regulations governing the prevention of sexual harassment at the workplace in a manner that metes out procedural and substantive justice to all the parties.”*

The Supreme Court in this case also observed the important concept of power dynamics at workplace which leads to sexual harassment. The court by pronouncing the judgement said that *“It is also important to be mindful of the power dynamics that are mired in sexual harassment at the workplace. There are several considerations and deterrents that a subordinate aggrieved of sexual harassment has to face when they consider reporting sexual misconduct of their superior.”*¹³

After observing all the concerned facts and data and analysing the matter the Honourable Supreme Court set aside the impugned judgement and order pronounced by the Calcutta High Court.

CONCLUSION

The frequency of sexual harassment in the workplace is rising daily. Those who have considerable influence on the employee are abusing their authority and committing the act of sexual exploitation under the defence blanket of higher authority and power. Most of the victims remain silent on the topic and refuse to seek justice due to constant intimidation from the higher authorities, who have the power to destroy their careers. As it is famously said by Martin Luther King Jr. that *“Our lives begin to end the day we become silent about things that matter.”* Hence, it's high time that our society should address such important and serious issue without any fear and should work towards providing justice to the victims who suffer silently.

¹² SCC Online® | The Surest Way To Legal Research. (n.d.). SCC Online® | the Surest Way to Legal Research. <https://www.sconline.com/>

¹³ SCC Online® | The Surest Way To Legal Research. (n.d.). SCC Online® | the Surest Way to Legal Research. <https://www.sconline.com/>

In order to curb this issue, it becomes very important to understand the power dynamics at the workplace. Through its analysis, it becomes easy to comprehend why sexual harassment occurs and how it might be avoided by looking out for red flags. Changing the power dynamics in a workplace will help to eliminate the issue of sexual harassment as it is the root of all the problem. It's time that every workplace considers this issue with severity and acts upon it on an urgent basis by implementing proper rules and regulations about the power imbalance within the workplace and establishing guidelines for taking immediate action against the wrongdoers.

