INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

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ISSN: 2582-6433

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ISSN: 2582-6433

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INVISIBLE YET PERVASIVE: SEXUAL HARASSMENT AND THE LIMITS OF LAW

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1. Abstract

Sexual harassment, often dismissed as an individual transgression, is a deeply entrenched, systemic issue that undermines fundamental constitutional guarantees of equality and the right to a dignified life. In India, the legal journey from judicial activism to statutory enactment, marked by the landmark Vishaka Guidelines and culminating in The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), represents a pivotal, yet incomplete, commitment to gender justice. This paper explores the evolution of this legal framework, identifying its foundational strengths in establishing a statutory redressal mechanism. Crucially, it critiques the inherent limitations of the law, including its gendered scope, rigid complaint deadlines, and critical gaps in implementation, particularly in the unorganized sector. By analyzing leading judicial pronouncements, this research asserts that while the law has made the phenomenon visible in legal discourse, its pervasiveness remains unchecked, constrained by procedural hurdles, the fear of victimisation, and a legislative tunnel vision that fails to address the intersectional nature of harassment or encompass all genders. The paper concludes with suggestions for a substantive shift towards a gender-neutral, intersectional, and implementation-focused legal paradigm.

Keywords: Sexual Harassment, POSH Act 2013, Indian Law, Vishaka Guidelines, Gender Justice, Workplace Harassment, social retaliation.

2. Introduction

The promise of a democratic and egalitarian society, enshrined in the Constitution of India, rests fundamentally on the guarantee that every citizen can live and work with dignity. Yet, for countless women, this promise is severely compromised by the insidious and ubiquitous threat of sexual harassment, an unwelcome conduct of a sexual nature that creates a hostile, intimidating, or offensive environment. While the existence of law Implies a mechanism for redressal, the reality is that sexual harassment is often an invisible yet pervasive reality,

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shielded by cultural silence, institutional apathy, and the inherent power dynamics of the workplace.

The legal response to this pervasive issue in India is a story of judicial innovation preceding legislative mandate. Prior to 1997, the phenomenon of workplace sexual harassment lacked a specific civil remedy, being addressed only obliquely under the Indian Penal Code, 1860, often failing to capture its full socio-legal dimensions. The landmark ruling of the Supreme Court in Vishaka v. State of Rajasthan[1], became the watershed moment. Confronted with a glaring legislative vacuum, the Court courageously invoked Articles (14, 15, 19(1)(g), and 21)[2] of the Constitution, along with international conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[3] , to mandate the creation of the Vishaka Guidelines. These guidelines, enforced under Article 141[4] of the Constitution, effectively provided the first enforceable framework for prevention, prohibition, and redressal, setting the stage for formal legislation.

This judicial intervention culminated in the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)[5]. The Act, now the primary statute on the subject, sought to provide a robust, comprehensive, and institutional mechanism, mandating the constitution of an Internal Complaints Committee (ICC) at every workplace with ten or more employees. It broadened the definition of 'workplace' to include not just the physical office but also transportation and dwellings, thereby acknowledging the fluid nature of modern professional engagement.

Despite this statutory victory, the pervasive nature of harassment suggests that the law has reached its practical limits. The Act, while revolutionary in intent, is currently perceived to be stymied by challenges in its application and its inherent structural flaws. This paper argues that the POSH Act's limitations—its focus on a specific gender, its rigid procedural timelines, and inconsistent implementation—are what allow sexual harassment to remain invisible in official records and yet pervasive in lived experience. The legal framework provides the scaffold, but

[1] Vishaka v. State of Rajasthan(1997) 6 SCC 241
[2] INDIA CONSTI .art. 14, 15, 19(1)(g), and 21
[3] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 11, 24, adopted Dec. 18, 1979
[4] INDIA CONSTI .art. 141
[5] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013).

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a host of social, cultural, and political factors prevent the structure from being fully realized, thereby limiting the efficacy of the law in achieving true gender parity and safety in the workplace. The paper is therefore a critical examination of the chasm between the law on the books and the law in action within the Indian context.

3. Research Methodology

This paper adopts a doctrinal research methodology, focusing on the existing legal texts, statutes, and judicial precedents concerning sexual harassment in India. The study Is primarily analytical and critical, aiming to deconstruct the current legal framework, notably the POSH Act, 2013, and its preceding guidelines, to assess their efficacy and inherent limitations.

Sources of Data:

Primary Legal Sources: The Constitution of India (specifically Articles 14, 15, 19, and 21), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and landmark judgments of the Supreme Court of India and High Courts.

Secondary Sources: Scholarly articles, academic books, reports from non-governmental organizations (NGOs), law commission reports, and authoritative commentary on the subject.

Approach and Analysis:

The research employs a case-study approach to analyse key judicial pronouncements, starting with the foundational Vishaka decision and progressing to post-POSH Act interpretations. This involves:

Historical Analysis: Tracing the legal evolution from a state of legislative void to judicial intervention and finally to statutory enactment.

Statutory Interpretation: Critically examining the definitions and procedural provisions within the POSH Act, such as ‘aggrieved woman,’ ‘workplace,’ and the limitation period under Section 9.

Critical Legal Study: Evaluating the law against the ideals of social justice and gender equality, focusing on its gender-specific nature and implementation hurdles, which often disproportionately affect marginalized women.

4. Review of Literature

The literature on sexual harassment in India can be broadly categorised into three phases: pre-Vishaka, post-Vishaka/pre-POSH, and post-POSH.

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Pre- and Post-Vishaka Era

Prior to 1997, legal scholarship primarily addressed sexual violence through the lens of the Indian Penal Code (IPC), 1860, specifically offences like 'outraging the modesty of a woman' (Section 354 or 'rape' Section 375)[6]now BNS 2023 sec 74 and 63 .The literature revealed a glaring gap in civil remedy for workplace harassment, which often did not meet the high threshold of criminal statutes. Medha Kotwal Lele's work, which led to a subsequent Supreme Court petition, highlighted the widespread non-compliance with the Guidelines.[7] Scholars like Flavia Agnes noted that the Guidelines, while revolutionary, were ad-hoc and lacked statutory backing, leading to inconsistent application and enforcement difficulties. This literature established the core argument: the law existed as a judicial directive, but institutional resistance made it difficult to penetrate the pervasive silence surrounding harassment.

Post-POSH Act Literature (2013 Onwards)

The enactment of the POSH Act, 2013 shifted the focus of legal critique. The literature lauded the legislation for institutionalizing the complaint mechanism (ICC and LCC) and expanding the definition of 'workplace' (e.g., Prasad, 2014). However, a significant body of academic work has since focused on the limits of the law.

A prominent criticism Is the gender-specific nature of the Act. Numerous scholars (Menon, 2015; Sharma, 2017) have argued that by defining 'aggrieved person' strictly as a 'woman,' the Act fails to protect men and transgender individuals, thus reinforcing a binary understanding of sexual harassment and undermining the principle of gender neutrality. This critique is crucial for understanding the Act's failure to adapt to a modern, inclusive understanding of gender.

Another major theme is implementation failure. Studies and reports consistently point to the failure of many small and medium enterprises (SMEs) to constitute ICCs, the near-total nonfunctioning of Local Complaints Committees (LCCs) vital for the unorganized sector, and the lack of training for committee members. This gap between 'law on paper' and 'law in practice' is considered a primary reason for the invisibility of the problem.

Furthermore, procedural limitations, notably the strict three-month limitation period (Section 9), have been heavily scrutinized. Judicial decisions like the one in Vishwesh Dayal Shrivastava v. Vishaka[8] and others have been cited to illustrate the judiciary's strict

[6] Indian Penal Code, No. 45 of 1860, §§ 354, 375
[7] Indian Journal of Law and Justice, Vol. 15, No. 02, 2025, at 45,
[8] Vishwesh Dayal Shrivastava v. Union of India, W.P. No. 13763 of 2015 (All. HC 2015).

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interpretation, which often dismisses valid, albeit delayed, complaints, ignoring the psychological trauma and fear of reprisal that cause delay. This procedural rigour, academics argue, inadvertently victimizes the survivor again by prioritizing administrative timeline over substantive justice.

The review of literature, therefore, establishes a consensus: while the POSH Act provides a necessary legal recourse, its narrow scope and structural flaws in implementation mean that the law addresses the symptom but not the root cause, leaving a large part of the pervasive problem outside the ambit of effective legal intervention. This paper builds on this critical tradition, utilizing leading case laws to illustrate these systemic boundaries.

5. Methods

This research paper's method is one of critical legal analysis, grounded in the study of authoritative Indian case law to substantiate the claim that the current legal framework is both essential and fundamentally limited. The method is structured around three key analytical steps: Deconstruction, Illustration, and Evaluation.

1. **Deconstruction of the Legal Framework**

   The POSH Act, 2013, and its preceding guidelines are deconstructed to identify their core strengths and intrinsic weaknesses. The analysis focuses on:

   Definition of Sexual Harassment: Understanding how the law conceptualizes the offence, including 'quid pro quo' and 'hostile work environment.'

   The Redressal Mechanism: Scrutinising the structure and powers of the ICC and LCC.

   Procedural Limitations: Detailed examination of the three-month limitation period for filing a complaint (Section 9)[9] and the strict confidentiality clause (Section 16)[10].

2. **Illustration through Leading Case Laws**

   Key judicial precedents are used as empirical evidence to illustrate both the triumph and the failure of the law. The citation of these cases adheres strictly to the 20th Bluebook format for Indian legal material, primarily using the Supreme Court Cases (SCC) reporter.

   A. The Foundational Case (The Genesis of Legal Obligation)

   The Vishaka judgment is analyzed to highlight the principle of judicial legislation

[9] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 9
[10] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 16

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and the constitutional roots of the right to be free from sexual harassment.

Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

Focus: Establishment of the Guidelines; invocation of Articles 14, 15, 19(1)(g), and 21 of the Constitution. The case demonstrates the Judiciary stepping in to fill a legislative vacuum.

B. The Expansion and Enforcement (The Scope of Harassment)

Cases that clarified the scope of 'sexual harassment' and the employer's liability are used to demonstrate the law's attempt to cover the pervasive nature of the conduct.

Apparel Export Promotion Council v. A.K. Chopra,[11] Upheld the dismissal of the accused and clarified that a sense of sexual harassment alone is sufficient to constitute the offence; physical contact is not essential. This landmark judgment significantly expanded the legal understanding of sexual harassment, recognizing that harassment can manifest through words, gestures, or behavior that create an intimidating, hostile, or offensive work environment. By doing so, the Court acknowledged the psychological and emotional dimensions of harassment, emphasizing that the law must protect the dignity of employees even in the absence of physical acts. This principle laid the groundwork for later frameworks, including the Vishaka Guidelines and the POSH Act, by establishing that harassment encompasses both tangible and intangible forms of abuse in the workplace.

Medha Kotwal Lele v. Union of India, [12] Mandated strict compliance with the Vishaka Guidelines and directed active monitoring by the Supreme Court, highlighting the initial struggles with enforcement that ultimately paved the way for the POSH Act.The judgment underscored the systemic challenges in implementing workplace sexual harassment safeguards, noting widespread non-compliance across government institutions and organizations. By emphasizing judicial oversight, the Court sought to ensure that the principles laid down in the Vishaka Guidelines were not merely aspirational but operationally effective. This decision illuminated the gap between law and practice, reinforcing the necessity for statutory backing—which was later realized through the enactment of the POSH Act, 2013—thereby institutionalizing complaint mechanisms and creating accountability at all levels of the workplace.

[11] Apparel Export Promotion Council v. A.K. Chopra(1999) 1 SCC 759
[12] Medha Kotwal Lele v. Union of India, (2012) 1 SCC 297

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C. The Procedural and Substantive Limits (The Failure of Implementation)

Recent judgments demonstrating the rigidity and limitations of the POSH Act are critical to the argument of the law's limits.

Vishwesh Dayal Shrivastava v. Vishaka and others,[13] emphasized a strict interpretation of the three-month limitation period, resulting in the dismissal of complaints filed after the statutory deadline. This ruling highlights the rigid procedural approach that often prevents survivors from seeking justice when delays are caused by fear, trauma, or threats of. The judgment Illustrates the limitations of the legal framework in addressing the lived realities of harassment victims, particularly the psychological barriers that inhibit timely reporting. By prioritizing administrative timelines over substantive justice, the case underscores the gap between the "law on paper" and the "law in practice", demonstrating the need for more sensitive procedural mechanisms that recognize the complexities of reporting harassment and the impact of power dynamics in workplaces.

Aureliano Fernandes v State of goa[14] reaffirmed the gender-specific nature of the POSH Act, underscoring that the law protects only women, thereby excluding male and transgender complainants. This decision highlighted the Act's limitations in moving toward gender neutrality despite evolving understandings of gender and workplace harassment.

3. Evaluation and Synthesis

The final step is to synthesize the findings from the deconstruction and case illustrations. This involves evaluating the current legal landscape against the ideal of effective gender justice. The method seeks to move beyond simply noting the limitations to providing a reasoned argument for structural and substantive legal reforms, forming the basis for the Suggestion and Conclusion sections.

6. Suggestion

To effectively bridge the chasm between the law's noble intent and its limited impact, thereby confronting the invisible yet pervasive nature of sexual harassment, the following suggestions are proposed for reform of the POSH Act, 2013, and its implementation:

[13] Vishwesh Dayal Shrivastava v. Union of India, W.P. No. 13763 of 2015 (All. HC 2015).
[14] Aureliano Fernandes v. State of Goa, (2023) SCC OnLine SC 62

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1. **Mandate Gender-Neutrality and Inclusivity**

   Amend the Definition of 'Aggrieved Person': The Act must be amended to replace the term 'aggrieved woman' in Section 2(a) with a gender-neutral term like 'aggrieved person.' This legislative step is essential to protect all genders, including men and transgender persons, who currently face a legal vacuum. This would bring the law in line with modern understandings of harassment and prevent the gendered weaponization of the statute.

   Establish a Code of Conduct for All Employees: Employers should be mandated to implement a gender-neutral anti-harassment policy that covers non-sexual misconduct, microaggressions, and bullying, thereby addressing the pervasive hostile work environment that often precedes overt sexual harassment.

2. **Reform Procedural Rigidity and Implementation**

   Relaxation of Limitation Period (Section 9): The three-month limitation period must be relaxed to allow the ICC greater discretion to admit complaints where exceptional circumstances, such as fear of retaliation, psychological trauma, or an inability to file due to ongoing power dynamics, are proven. The law should prioritize substantive justice over strict, arbitrary procedural deadlines, in line with the spirit of Articles 14 and 21.

   Strengthening Local Complaints Committees (LCCs): The government must allocate dedicated budgets and resources to ensure the mandatory constitution and effective functioning of LCCs at the district level. LCCs are the only viable redressal mechanism for the vast unorganised sector (e.g., domestic workers, construction labourers), which constitutes a majority of the Indian workforce. Non-constitution of an LCC must be subject to a substantial penalty on the State government.

   Mandatory, Standardized Training: Make the training of all ICC members, especially external members, mandatory, standardized, and recurring. This training should focus on procedural fairness, trauma-informed investigation techniques, and a deep understanding of intersectional discrimination (caste, class, gender).

3. **Enhancing Accountability and Oversight**

   Centralized Database for ICC/LCC Constitution: The Ministry of Women and Child Development should maintain and publicly audit a centralized, state-wise database of all workplaces with an ICC/LCC. Failure to register and constitute a

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committee should result in punitive action, moving beyond symbolic fines to potential operational sanctions.

Protection Against Victimisation (Section 16): While the Act emphasizes confidentiality, a separate provision must specifically address the post-complaint period, mandating strict and immediate action against any form of retaliation or victimisation (e.g., adverse transfer, denial of promotion) faced by the complainant or witnesses.

Judicial Directive on Implementation: The Supreme Court should consider issuing fresh guidelines or directions, akin to the Vishaka decision, to monitor and ensure the substantive implementation of the POSH Act by all State governments and private bodies, particularly in light of the non-functioning of LCCs and the strict application of the limitation clause.

7. Conclusion

The legal landscape concerning sexual harassment in India is defined by a significant duality: the triumph of legal recognition and the tragedy of implementation failure. The journey from judicial decree in Vishaka v. State of Rajasthan,[15] (1997) 6 SCC 241, to the statutory mandate of the POSH Act, 2013, cemented the fundamental right of a woman to a workplace free from harassment. This evolution successfully brought the problem from the realm of personal shame into the sphere of public, legal discourse. However, the analysis of the legal framework reveals the persistent constraints that allow sexual harassment to remain invisible yet pervasive. The invisibility stems from procedural barriers, such as the strict application of the three-month limitation period, which discounts the psychological and social factors that delay reporting. The failure of courts, as seen in cases like Vishwesh Dayal Shrivastava, to adopt a flexible interpretation of time limits inadvertently protects perpetrators and proceduralizes injustice. Furthermore, the inherent gender specificity of the Act, which excludes male and transgender employees—a limitation affirmed by the judiciary in certain High Court rulings—creates significant legal gaps, undermining the law's moral and constitutional basis in equality.The pervasiveness of the problem is maintained by the widespread non-compliance, particularly in the unorganised sector, evidenced by the non-functioning or improper constitution of Local Complaints Committees. The lack of standardized, specialized, and trauma-informed training for ICCs turns the redressal mechanism into a mere bureaucratic hurdle rather than a safe haven.

[15] Vishaka & Ors. V. State of Rajasthan & Ors., (1997) 6 SCC 241

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Ultimately, the law, as it stands, is a crucial but incomplete shield. It has successfully made the offence a corporate and constitutional liability, but it has not fully dismantled the power structures and systemic apathy that enable its prevalence. Moving forward requires a political will to enact genderneutral amendments, a commitment to resource-intensive LCC operationalisation, and a judicial shift towards a substantive, victim-centric interpretation of the law. Only through these concerted efforts can India move past the limits of its current legislation and truly fulfil the constitutional guarantee of dignity and equality for every individual in the workplace.

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