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“PROFESSIONAL INDEPENDENCE AND GENDER PROTECTION- A LEGAL ANALYSIS”

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ABSTRACT

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, contributed to fulfilling the constitutional essentials of gender equality and to ensuring employees' entitlement to dignified employment conditions. In furtherance of this objective, a petition, *UNS Women Legal Association v. Bar Council of India*, 2025, was filed before the Bombay High Court seeking protection under the POSH Act for Women Advocates. However, the Court dismissed the petition, holding that no employer-employee relationship exists between the Bar Council and the practicing advocates. This Paper contends that the Judgement has failed on some of the fundamental doctrines. Firstly, it applied a narrow, formalistic approach to interpreting the statutory provisions, contrary to the established principles of purposive construction employed by the Supreme Court in various cases involving vulnerable classes. Secondly, it fails to follow and apply binding precedent as set out in the *Medha Kotwal Lele case* and the *Vishaka Guidelines*. Thirdly, the Court has abdicated its constitutional duty to advance Gender Equality, a duty inherent in it. This paper analyses the judgment, examines its merits and shortcomings. Subsequently, situates it within the jurisprudence of statutory interpretation and constitutional equality. It further contends that the Institutional Independence of the Bar Council and the constitutional duty to protect gender equality are not adverse; rather, they form a necessary complementarity in a constitutional democracy, essential to strengthening the integrity and legitimacy of the Profession. And lastly, proposes doctrinal reform pathways through comparative study and Constitutional principles.

KEYWORDS: Workplace sexual harassment, Bar Council of India, Gender equality, POSH Act, Women advocates

INTRODUCTION

The legal profession in India stands at a moment of institutional reckoning. The profession whose practitioners defend constitutional rights remains internally hierarchical, male dominated, and substantially resistant to accountability for gender-based harm. The Bombay High Court's judgment in *UNS Women Legal Association v. Bar Council of India*¹ exemplifies this paradox. A court interprets a statute designed to protect all women workers by reading out of its protective ambit an entire category of professional women. The judgement represents complementary constitutional commitments and treats independence of judiciary and gender equality as incompatible values.

This paper commences a reexamination process of the judgment's reasoning and doctrinal implications. The decision given by Bombay High Court is restrictive in nature and do not support purposive doctrine established in Indian constitutional jurisprudence, most notably in the Supreme Court's foundational work in *Vishaka v. State of Rajasthan*² and the subsequent interpretations in *Medha Kotwal Lele v. Union of India*³. The judgment reflects a structural misunderstanding of the constitutional duty that statutory regulatory bodies bear toward substantive equality⁴. The Bar Council of India does not exercise purely private authority rather it derives its jurisdiction from statute, exercises delegated public powers, and accordingly must be understood as bearing fiduciary duties to the constitutional order itself⁵.

The judgment's treatment of the employer-employee relationship requirement in the POSH Act exemplifies a narrow formalism. The Supreme Court has repeatedly rejected such formalism in contexts involving vulnerable classes and protective legislation. Indian courts have established through sustained jurisprudence that the definitions operative in worker protective statutes must be interpreted purposively, regarding the social mischief the statute addresses and the breadth of beneficiary classes that the legislative scheme envisions. This judgment moves in the opposite direction⁶.

¹ *UNS Women Legal Association v. Bar Council of India* (2025) Bombay HC [unpublished] (July 7, 2025).

² *Vishaka and Ors. v. State of Rajasthan and Ors.*, (1997) 6 SCC 241.

³ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

⁴ Rana, S.S., "Applicability of the POSH Act to Female Advocates: A Legal and Judicial Overview," July 29, 2025.

⁵ Law Gratis, "Bar Council of India as a Regulatory Body," September 15, 2025.

⁶ Rainmaker, 'Decoding conflict of interest at the workplace' <https://rainmaker.co.in/decoding-conflict-of-interest-at-the-workplace/> (accessed 6 December 2025).

THE CASE

Factual Background and Legal Framework

The UNS Women Legal Association, a registered society established under the Societies Registration Act, 1860⁷, filed a public interest litigation in the Bombay High Court in 2017 seeking directions to establish permanent Internal Complaints Committees for women advocates in accordance with the POSH Act⁸. The petitioner invoked the Supreme Court's directives in *Medha Kotwal Lele v. Union of India*, directing the Bar Council of India to ensure that all bar associations follow the Vishaka guidelines on sexual harassment prevention⁹. The petitioner also counted on the statutory framework of the POSH Act, enacted in 2013, which expresses that the constitution of Internal Complaints Committees by all employers with ten or more employees is necessary¹⁰.

The petition was animated by a foundational grievance where women advocate in India's legal profession had no institutional mechanism designed specifically to address complaints of sexual harassment against fellow advocates. Bar councils possessed disciplinary authority under Section 35 of the Advocates Act, 1961¹¹, however, the petitioner contended that this mechanism was insufficient and categorically different from the protections that the POSH Act provides. The absence of specialized trauma-informed procedures, lack of confidentiality protections, absence of interim relief measures, and potential for conflict of interest rendered Section 35 an inadequate redressal forum for sexual harassment claims¹².

The petitioner emphasized that power imbalance is not limited to non-legal professions only women advocate also faced the same risks at their workplace. The Bar Council of India had never had a single woman member in its history, and eleven of eighteen State Bar Councils had zero women members. Out of 441 representatives across State Bar Councils, only nine

⁷ Societies Registration Act, 1860.

⁸ UNS Women Legal Association (Regd) v Bar Council of India and Others, 2025 SCC OnLine Bom 2647 (Bom HC, 7 July 2025).

⁹ *Medha Kotwal Lele v Union of India*, (2013) 1 SCC 297.

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 27 of 2013, Acts of Parliament (India) ss 4, 6, 7, 9, 10–18 <https://cltri.gov.in/POSHACT.pdf>.

¹¹ Advocates Act 1961, No 25 of 1961, Acts of Parliament (India) s 35.

¹² S.S. Rana & Co, 'Applicability of the POSH Act to Female Advocates: A Legal and Judicial Overview' (29 July 2025) <https://ssrana.in/posh-law/articles/applicability-of-the-posh-act-to-female-advocates-a-legal-and-judicial-overview/>.

were women, representing 2.04 percent of the total¹³. This demographic reality mapped onto the substantive conditions that women advocate face in practice.

Respondent's Arguments and Counter-Contentions

The Bar Council, referring to employer-employee relation clearly distinguished advocates from the purview of employment relationship due to no remuneration being paid to advocates by Bar Council. The respondents contended that independent and self-regulatory professions stand outside from any protection mechanism imposed for employees. They relied upon section 35 of the Advocates Act, 1961 referring that it provides existing disciplinary authority addressing all forms of misconduct, including sexual harassment, rendering the POSH guidelines as duplicative¹⁴. Section 35 enables State Bar Councils to refer misconduct complaints to disciplinary committees, which may reprimand, suspend, or remove advocates from rolls after providing hearing opportunities.

Court's Judgment and Holding

On 7 July 2025, a Division Bench of the Bombay High Court comprising Chief Justice Alok Aradhe and Justice Sandeep Marne rendered its decision. The bench in accordance accepted the respondents' construction of the POSH Act holding that "the provisions of the Act is simply applicable to places where the relationship of employer and employee exists but neither Bar Council of India nor Bar Council of Maharashtra and Goa can be said to be employer of women advocates."¹⁵ The court rejected the petition's argument that the POSH Act's provisions should be extended through purposive interpretation. The court clarified that women advocates are "not remediless" since they can file complaints under Section 35 of the Advocates Act¹⁶. The PIL was disposed of without any directions. A petition filed by the UNS Women Legal Association challenging the judgement of HC, was admitted by Supreme Court, signaling that the view of Apex Court was raising concerns regarding substantial question of law and constitutional importance. As of late 2025, matter is still in question before Supreme Court.

¹³ Bar & Bench, 'No more a men's club: Supreme Court directs 30% reservation for women in State Bar Councils' (3 December 2025) <https://www.barandbench.com/news/no-more-a-mens-club-supreme-court-directs-30-reservation-for-women-in-state-bar-councils>.

¹⁴ UNS Women Legal Association v. Bar Council of India, (2025) SCC OnLine Bom 2647 (Bombay High Court, 7 July 2025), available at <https://www.sconline.com/blog/post/2025/07/17/bom-hc-advocates-not-covered-under-posh-act-not-employees-of-bar-council/> (last accessed 29 January 2026).

¹⁵ Bar & Bench, 'Advocates not employees of bar councils: Bombay High Court junks PIL for POSH ICCs in bar bodies' (6 July 2025) <https://www.barandbench.com/news/advocates-not-employees-of-bar-councils-bombay-high-court-junks-pil-for-posh-iccs-in-bar-bodies>.

¹⁶ Bar & Bench, 'Advocates not employees of bar councils: Bombay High Court junks PIL for POSH ICCs in bar bodies' (6 July 2025).

THE ANALYSIS

Critical Analysis of the Court's Reasoning

The Bombay High Court's reasoning presents three principal analytical moves, each requiring critical examination. First, the court's central holding was that the POSH Act applies only where an employer-employee relationship exists as defined in Sections 2(g) and 2(f) of the statute¹⁷. Since advocates are independent professionals who practice on their own account and are not paid by bar councils, the court reasoned that no such relationship exists.

This reasoning exhibits several critical deficiencies. The definitions in Sections 2(f) and 2(g) acts as restrictive categories rather than as expansive formulations designed to capture diverse working relationships. In legal terms, particularly the use of "includes" rather than "means solely," signals an intention to encompass working arrangements beyond the paradigmatic employment relationship. The court did not grapple with the Karnataka High Court's careful analysis in the ridesharing context, in which that court explicitly held that despite ola calling drivers independent contractor, ola is an employer under the POSH Act and must answer sexual harassment complaints by passenger through its Internal Complaint Committee (ICC). Henceforth, the breadth of the definitions was intentional and that courts must refuse to permit contractual structures to circumvent protective coverage¹⁸.

The court applied a formalistic, binary understanding of the employer function without engaging with the functional test that courts have applied in analogous contexts. The statutory definition of "employer" specifies "any person responsible for the management, supervision and control of the workplace," with the explicit explanation that "management" includes "the person or board or committee responsible for formulation and administration of policies for such organization." Bar councils, under the Advocates Act, 1961, exercise substantial powers over the profession. They set standards of professional conduct, establish rules governing bar associations, maintain disciplinary authority, and frame rules regarding legal education¹⁹. These functions fall squarely within the definition of "management" and "formulation and administration of policies."

¹⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 27 of 2013, Acts of Parliament (India) ss 2(f), 2(g).

¹⁸ Ms. (X) v. Internal Complaints Committee, ANI Technologies Pvt. Ltd. and Ors., WP No. 8127 of 2019 (GM-RES), (Karnataka HC, 30 September 2024).

¹⁹ Advocates Act 1961, No 25 of 1961, Acts of Parliament (India).

Second, the court's statement that women advocates are "not remediless" because they can file complaint under section 35 of Advocates Act is incompetent to recognize the fundamental structural problem, which reflects that availability of forum does not guarantee adequate protection. Section 35 is a general misconduct provision that operates on disciplinary sanctions such as reprimand, suspension, or removal from the rolls, which fails to provide victim centric redressal. This provision is framed in terms of "professional or other misconduct", which is a broad category and does not define sexual harassment as a distinct form of harm requiring special attention.

In *U. Dakshinamoorthy v. The Commission of Inquiry, 1979*, the High Court adopted a broad interpretation of "misconduct," which enables the section 35 to deal with cases of sexual harassment under the ambit of "other misconduct". Subsequently, the Bombay High Court also clarified that the complaints of sexual harassment may be addressed under section 35²⁰. However, the mere capacity to lodge a complaint does not translate into substantive protection. Henceforth, the POSH Act requires constitutive committees with specific membership requirements including gender composition, trauma informed investigation procedures with witness protection and confidentiality safeguards, interim protective measures, time-bound inquiry procedures typically concluding within ninety days, victim support including counseling and rehabilitation, and explicit prohibitions on retaliation against complainants²¹.

In contrast, the disciplinary machinery under Section 35 operates as a general misconduct forum. Complaints lack trauma sensitive processes, often encounter institutional apathy, provide no interim protections, and offer no specialized mechanism protecting against victimization. A sexual harassment complaint is processed under the same rubric as allegations of professional misconduct such as failure to appear in court or breach of confidentiality. The Supreme Court in *Medha Kotwal Lele* explicitly rejected "symbolic or superficial compliance" with gender protective obligations and emphasized that actual, functional redressal mechanisms are necessary. This language indicated that the existence of formal mechanisms is insufficient, however, the mechanisms must be substantive and effective.

Third, the court's reasoning relied upon an supposition about the scope of institutional

²⁰ Swathi G, 'Applicability of the POSH Act to the Bar Council of India (BCI): Statutory Provisions and Judicial Perspectives' (2025) 4(4) Journal of Legal Research and Juridical Sciences 1301.

²¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 27 of 2013, Acts of Parliament (India) ss 4–18.

regulatory authority. The court held that the advocates are "independent professionals" receiving no remuneration from bar councils, the court treated the regulatory role of Bar Council as narrow in nature, gatekeeping function rather than as a source of institutional accountability for conditions affecting the profession. The Supreme Court in *Medha Kotwal Lele* did not treat the Bar Council of India's professional autonomy as a barrier to imposing gender protective obligations. Nonetheless, the court put such requirements within the context of the bar council as a protector of the integrity of the profession defining the constitution and positive application of women committees in all State Bar Councils and the Bar Council of India and subsequently the POSH Act was enacted, which prevented sexual harassment of women in the place of work since it contravened the right of women to equality, life, and liberty²². In the context of the legal profession, judicial independence and the independence of the legal profession are understood as instrumentally valuable because they serve the rule of law and the administration of justice²³. If the profession itself becomes a site of gender-based harm and inequality, professional independence becomes compromised.

Additionally, it is equally important to note that despite the court's reasoning and analysis discussed above, it ignored a concerning issue affecting safety of women associates working in law firms. The Bombay High Court's judgment does not address the status of female associates employed by law firms with ten or more members. This silence reveals a critical weakness in the court's formalist approach. Under the POSH Act, the definition of "workplace" in Section 2(o) clearly covers law firms as "organizations" and "offices." The definition of "employee" in Section 2(f) covers "any person employed at a workplace for any work on regular, temporary, ad hoc or daily basis." The female associates employed by law firms fall within this definition as they receive remuneration, work under firm supervision, and perform integral work for the firm. Therefore, according to the definition as mentioned under POSH Act, the employer-employee relationship exists between the associate and the law firm, not the Bar Council.

This outcome contradicts the statute's intent. The POSH Act defines "aggrieved woman" as "any woman regardless of her age or employment status" as mentioned in Section 2(a). Parliament intentionally used language "regardless of employment status" to widen the scope

²² *UNS Women Legal Association v. Bar Council of India*, (2025) SCC OnLine Bom 2647 (Bombay High Court, 7 July 2025), available at <https://www.sconline.com/blog/post/2025/07/17/bom-hc-advocates-not-covered-under-posh-act-not-employees-of-bar-council/> (last accessed 29 January 2026).

²³ *Justice K.S. Puttaswamy v. Union of India*, (2018) 1 SCC 40.

of women protection.

Significantly, major law firms have already reached this conclusion. The Vaish Associates Advocates POSH Policy (2026) explicitly defines "Employee" to include "partners, associates, advocates, coworkers" and other practitioners working within the firm. These firms acting as modern law firms recognized the functioning of law firm as workplaces governed by employment law, regardless of nominal independence²⁴. Henceforth, it may be stated that women working as associates in law firms are already treated as employees, and therefore, POSH protections should unambiguously apply to them as well.

Jurisprudential Analysis of the Case

The judgment fails to comply with the idea of substantive equality. Rather than addressing constitutional responsibility, the court reduced the issue to a narrow procedural definition. This represents a doctrinal regression from the principles articulated in Justice K.S. Puttaswamy v. Union of India, which established that constitutional rights operate as binding constraints on all institutional actors exercising significant authority.

The evolutionary equality jurisprudence development through cases like Sabarimala and Navtej Singh Johar was contradicted by the court's view of formal neutrality. The Sabarimala case²⁵ struck down the neutral temple entry ban on women aged 10-50, recognizing it disseminated gender discrimination despite religious claims, advancing the substantive equality rights under Article 14, Article 15 and 25. Similarly in Navtej Singh Johar case²⁶ invalidates Section 377 IPC and rejected the formal discrimination against LGBTQ+ referring to contextual harm under Article 14.

These decisions without considering the specific institutional contexts only recognizes the literal words of the legislation which causes systematic disadvantage to vulnerable groups. Women advocates operate within hierarchical professional structures not in employment contract but in gatekeeping mechanism of professional network and supervision of regulatory

²⁴ Vaish Associates Advocates, 'POSH Policy 2026 to 2028' (2026) <https://www.vaishlaw.com/wp-content/uploads/2026/01/Vaish-Associates-Advocates-POSH-Policy-2026-to-2028.pdf>

²⁵ Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors., WP (C) 373/2006 (India) (Sept. 28, 2018), (2019) 11 SCC 1.

²⁶ Navtej Singh Johar and Ors. v. Union of India through Secretary Ministry of Law and Justice, Writ Petition (Criminal) No. 76 of 2016 (India) (decided Sept. 6, 2018), (2019) 10 SCC 1.

body. The POSH Act's protective ambit extends precisely to such contexts of structural vulnerability²⁷.

This judgement fails to incorporate the special provisions from Indian Constitution under Article 15(4) and Article 16 (4) which empowers legislative bodies to enact protective measures for disadvantaged groups. The POSH Act functions as such remedial legislation. When bar councils exercise governance over a profession substantially closed to women's equal participation, their regulatory authority simultaneously creates institutional responsibility for addressing gendered harm within that domain. Professional autonomy becomes constitutionally problematic when exercised to shield vulnerable populations from protective frameworks²⁸.

Additionally, the decision overlooks the fiduciary nature of regulatory authority in democratic systems. Bar councils hold their regulatory powers in trust for public benefit and professional integrity. When institutional cultures permit extreme gender underrepresentation, the councils themselves become instruments of structural inequality. The judgment's logic permits regulatory bodies to weaponize their independence against the very constituencies they purport to serve²⁹.

Constitutional Duty and Comparative Analysis

The Constitution of India does not impose obligations on private parties directly, rather gender-based duties on the state. However, courts have long recognized that statutory bodies exercising delegated authority are bound by constitutional norms when they exercise substantial public power.

The Supreme Court in *Medha Kotwal Lele* framed that the bar council's obligation is not a discretionary matter but acts as an inherent aspect of its regulatory function. The Court observed that the bar council's role is not restricted merely to the formulation and enforcement

²⁷ Bakshi, K. (2025). Marriage, courts, and substantive equality: A transformative interpretation. *Michigan Law Review*, 123(3), 519–550. Retrieved from <https://repository.law.umich.edu/mlr/vol123/iss3/4>.

²⁸ Khanna, V. (2022). Indirect discrimination and substantive equality in *Nitisha*: Easier said than done under Indian constitutional jurisprudence. *International Journal of Discrimination and the Law*, 22(1), 74–86. <https://doi.org/10.1177/13582291211062363>.

²⁹ Singh, A. (2025). Constitutional morality and transformative constitutionalism in India: A critical appraisal of judicial activism and democratic accountability. *International Journal For Multidisciplinary Research*, 7(5), 57371. <https://doi.org/10.36948/ijfmr.2025.v07i05.57371>.

of professional standards but to safeguard the profession's integrity and to maintain the public's confidence in the legal system. A profession riven by gender-based harassment and inequality cannot fulfill this function. The Court's directive that bar councils "ensure" compliance with the Vishaka guidelines framed gender protection not as an external constraint but as integral to the regulatory mission. This understanding reflects a broader constitutional principle that institutions exercising delegated state power bear fiduciary duties to advance the constitutional values that ground democratic governance³⁰. The American constitutional scholar Jon Macey has termed this the "fiduciary state" conception, in which bodies wielding public power are understood as trustees of the constitutional order.

Comparative jurisprudence supports this approach. In the United States, Title VII of the Civil Rights Act of 1964 prohibited discrimination against the employees on grounds of protected characteristics, including sex³¹. The statute applies to "employers," which the Act defines as entities with fifteen or more employees. American jurisprudence has not treated professional autonomy separate from the application of anti-discrimination law. Professional associations, licensing bodies and bar associations have been held subject to anti-discrimination requirements.

The United Kingdom's Equality Act 2010 contains vital protections against workplace harassment and discrimination³². Significantly, the Act operates through a "public sector equality duty" under Section 149, which mentions that all public authorities should have "due regard" to the need to eradicate any form of unlawful discrimination, harassment, or victimization, advance equality of opportunity, and foster good relations among persons with protected characteristics³³. The Law Society of England and Wales and the Bar Standards Board, though not government agencies, are treated as subject to equality duties because they exercise delegated regulatory authority over the legal profession.

Australia has undertaken a substantial engagement with gender equality in the legal

³⁰ Jonathan R Macey, 'The Shifting Paradigm of Constitutional Jurisprudence on the Separation of Powers' (forthcoming) Yale Journal on Regulation.

³¹ Title VII of the Civil Rights Act of 1964, Pub L No 88-352, 78 Stat 241 (1964) (US).

³² Equality Act 2010, c 15 (UK).

³³ Equality and Human Rights Commission, "Sexual Harassment and Harassment at Work: Technical Guidance," January 29, 2020.

profession³⁴. The Law Council of Australia and state based regulatory bodies have developed responses framed in terms of the professions' obligation to ensure that gender equality is reflected in professional standards and institutional practice. A report titled "Challenging Disrespect and Inequality in the Legal Profession" emphasizes that professional regulation itself must incorporate gender equality as a core professional value. The regulatory bodies are positioned not as external enforcers of gender standards but as institutional actors responsible for shaping professional culture³⁵.

These comparative examples suggest a consistent pattern. Constitutional democracies with substantive commitments to gender equality treat professional autonomy and gender equality protection not as antagonistic but as complementary³⁶. When professional institutions themselves become vehicles for gender-based harm, professional autonomy becomes compromised.

INSTITUTIONAL IMPLICATIONS AND DOCTRINAL REFORMATION

The Bombay High Court's judgment creates a specific and documented remedial gap with immediate and consequential effects on the working conditions and safety of women advocates in India³⁷. Prior to the POSH Act, the only ostensible mechanism for addressing workplace sexual harassment was the Vishaka guidelines³⁸. These guidelines, while foundational, were judge made and lacked the institutional apparatus of a statutory enactment. The POSH Act provided that apparatus, establishing mandatory committees, procedures, timelines, and victim support mechanisms³⁹. For most categories of workers in organized and unorganized sectors, the POSH Act created enforceable rights and institutional mechanisms. For women advocates, however, the judgment creates a situation in which the POSH Act's mechanisms do not apply, and Section 35 of the Advocates Act is offered as the alternative.

³⁴ Justice Jayne Jagot, 'The state of gender equity in the Australian legal profession' (College of Law, 19 November 2022) <https://www.collaw.edu.au/community/news/gender-inequality-in-legal-profession/>.

³⁵ Justice Jayne Jagot, 'The state of gender equity in the Australian legal profession' (College of Law, 19 November 2022) <https://www.collaw.edu.au/community/news/gender-inequality-in-legal-profession/>.

³⁶ Jonathan R Macey, 'The Shifting Paradigm of Constitutional Jurisprudence on the Separation of Powers' (forthcoming) Yale Journal on Regulation.

³⁷ S.S. Rana & Co, 'Applicability of the POSH Act to Female Advocates: A Legal and Judicial Overview' (29 July 2025) <https://ssrana.in/posh-law/articles/applicability-of-the-posh-act-to-female-advocates-a-legal-and-judicial-overview/>.

³⁸ Vishaka and Ors. v. State of Rajasthan and Ors., (1997) 6 SCC 241.

³⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 27 of 2013.

Yet Section 35 does not provide specialized committees constituted specifically to address sexual harassment with mandated gender composition, trauma informed investigation procedures with presumptions of confidentiality, interim protective measures such as transfer or suspension of duty, time bound inquiry procedures mandated to conclude within a specified period, victim support services including counseling and rehabilitation, explicit statutory prohibitions on retaliation with independent remedies, or a framework distinguishing between misconduct generally and sexual harassment specifically.

The Bar Council of India and state bar councils are themselves institutions marked by severe gender underrepresentation and, by widespread account, resistant to gender equality measures⁴⁰. As of the date of the court's judgment, the Bar Council of India had never admitted a woman to its membership⁴¹. Against this background, relying on bar councils to provide informal, discretionary protection against sexual harassment is problematic. The institutional culture that permits extreme gender underrepresentation also shapes receptivity to gender protective mechanisms. Moreover, bar councils exercise as a disciplinary authority and can act as subjects of complaints, which will arise inherent conflict of interest.

The suggested gaps imply measurable direction of doctrinal reform and institutional change that works at different levels including judicial reinterpretation of the current statutory framework, legislative amendment to the POSH Act, and institutional development of bar councils themselves.

Judicial Reinterpretation

While the matter is in consideration the Supreme Court should reinterpret the definition of “employer” and “employee” as mentioned under sec2(g) and sec2(f) consistent with the interpretive principles established in the Karnataka High Court’s decision and in broader corpus of Indian jurisprudence on protective measures.⁴²The Court should hold that the definition of "employer" in Section 2(g) encompasses any person or body responsible for the

⁴⁰ POSHequili, 'Female Advocates & Sexual Harassment in Bar Council' (10 July 2025) <https://poshequili.com/female-advocates-sexual-harassment-bar-council/>.

⁴¹ Bar & Bench, 'No more a men's club: Supreme Court directs 30% reservation for women in State Bar Councils' (3 December 2025) <https://www.barandbench.com/news/no-more-a-mens-club-supreme-court-directs-30-reservation-for-women-in-state-bar-councils>.

⁴² SNR Law, 'Are OLA Drivers Employees or Contractors? A Critical Analysis of the Karnataka High Court Judgment' (October 2024) <https://www.snrlaw.in/wp-content/uploads/2024/10/SR-Insights-Karnataka-High-Courts-Recent-Judgement-Are-OLA-Drivers-Employees-or-Contractors.pdf>.

"management, supervision and control" of a workplace, and this definition is intended to be expansive, capturing entities with substantial gatekeeping or regulatory authority.

Bar councils, through their rule making, disciplinary, and governance authority, bear responsibility for the management of the profession and the conditions under which advocates practice. Advocates, though practicing independently, engage in work at a "workplace" where power imbalances and hierarchies exist and where sexual harassment occurs. The statutory definitions of "employee" and "employer" are intended to prevent contractual structures from defeating protective coverage. This reinterpretation would not require legislative amendment, rather, it would require the Supreme Court to apply the purposive interpretation doctrine consistently and to overrule the Bombay High Court's narrow formalism.

Legislative Amendment

While judicial reinterpretation may succeed, legislative amendment would provide greater certainty. Parliament could amend the POSH Act to include an explicit provision stating that professional regulatory bodies exercising authority over practitioners are deemed "employers" for purposes of the Act, and that practitioners subject to such regulatory authority are deemed "employees." Alternatively, Parliament could amend the Advocates Act to require the constitution of specialized Internal Complaints Committees within bar councils for addressing complaints of sexual harassment by women advocates against other advocates or institutional actors.

Institutional Initiatives

In accordance with POSH Act framework model, the Bar councils could voluntarily constitute Internal Complaints Committees even without a formal judicial directive specified by court⁴³ and also directions to state bar councils to establish such committees, frame rules of procedure consistent with the POSH Act and the Vishaka guidelines. Moreover, certain bar associations and bar councils have already moved forward in this direction⁴⁴. The Delhi Bar Council and the Delhi High Court Bar Association have, in recent years, established complaint mechanisms specifically for sexual harassment claims and have undertaken training initiatives.

⁴³ The Legal School, 'POSH Act 2013: Objectives, Rules & Key Provisions' (2 December 2025) <https://thelegalschool.in/blog/posh-act>.

⁴⁴ The Print, 'No PoSH for women lawyers? SC to hear plea against order depriving them of sexual harassment shield' (20 November 2025) <https://theprint.in/judiciary/no-posh-for-women-lawyers-sc-to-hear-plea-against-order-depriving-them-of-sexual-harassment-shield/>.

The Supreme Court's recent directions mandating 30% women reservation in state bar council elections which will substantially complement the protection of women by enhancing the gender representation, institutional accessibility to safety mechanisms, and cultural shifts within bar councils. However, representation alone can never be sufficient without parallel mechanisms like POSH Act extensions to address harassment and ensure safety for women advocates, as these reforms must advance together to be effective.

CONCLUDING REMARKS

The ruling of the Bombay High Court on *UNS Women Legal Association v. Bar Council of India* is a great failure as far as providing gender equality in legal occupation is concerned. The judgment is an unusual, formalistic interpretation of the statutory definitions of the POSH Act, by-passing the accepted principles of purposive construction which Indian courts have been relying on in landmark decisions which have applied protective laws. The court applied Section 35 of the Advocates Act as a sufficient alternative redress to sexual harassment in the gender specific misconduct that could not be placed in the category of general misconduct. Above all, the decision was based on an untrue difference between professional autonomy and gender equality protection, which presupposes the hostile character of these values, whereas they establish a required complementarity in the constitutional management.

The case demonstrates that Indian jurisprudence has developed the doctrinal tools to reach a contrary result. The Supreme Court's decisions in *Vishaka v. State of Rajasthan*⁴⁵ and *Medha Kotwal Lele v. Union of India*⁴⁶ establish that gender protection is a constitutional mandate that extending to all workplaces and all professions, and that protective obligations are not diminished by claims of professional autonomy. Comparative jurisprudence of the United States, the United Kingdom, and Australia indicates that constitutional democracies constantly approach the subject of gender equality and professional regulation as two issues that are consistent with one another and even complementary to each other.

The Supreme Court's undecided consideration of the case presents an opportunity to correct the doctrinal course. The Court should hold that bar councils, act as statutory bodies exercising delegated authority over the legal profession, are "employers" within the meaning of the POSH Act, and that women advocates are "employees" entitled to the Act's protections. This holding

⁴⁵ *Vishaka and Ors. v. State of Rajasthan and Ors.*, (1997) 6 SCC 241.

⁴⁶ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

would not be based on any judicial legislation; indeed, it would be based on a meticulous interpretation of broad and purposive definitions in the POSH Act and an understanding that professional independence does not conflict with constitutional adherence to substantive gender equality.

Beyond the immediate case, this judgment illustrates the ongoing work necessary to ensure that constitutional commitments towards gender equality and protection of women are realized across all sectors and professions. Professional bodies must be understood as bearing fiduciary duties toward both their members and the broader polity, these duties include affirmative obligations to advance substantive gender equality. Professional bodies should be conceptualized as having fiduciary responsibilities to both their members and the wider polity as having affirmative responsibility to promote substantive gender equality. It is the special responsibility of the legal profession, invoked to defend constitutional rights and enforce the rule of law, to see to it that the internal structures of the profession are such that they do no harm to these constitutional values but on the contrary promote them.

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