

Original Article

Bridging the Gap: Addressing Workplace Sexual Harassment in the Unorganized Sector under the POSH Act, 2013

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Abstract

In India, sexual harassment at work is a widespread issue that affects all industries and job levels, yet it is frequently not as well-known as it ought to be. Even though we have made progress with the POSH Act, 2013, which was created to address this issue, quick progress is still a long way off because of implementation flaws, ignorance, and ingrained societal biases. Because of these flaws and because some victims are afraid of retaliatory victim-blaming, many victims choose not to report harassment, which helps criminals avoid punishment. Sexual harassment of women at work is a problem in India despite legislative steps taken by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act). This article examines the prevalence of sexual harassment in Indian workplaces, whether current laws protect women, and if they do, how their non-implementation makes them insignificant. Ignorance, fear of reprisals, and the widespread stigma associated with sexual harassment deter women from reporting occurrences, even though the POSH Act requires the establishment of Internal Committees (ICs) and Local Committees (LCs) to provide redressal channels for complaints of sexual harassment at work. Since Internal Committees are usually for organised workplaces, the Act requires the creation of Local Committees (LCs) at the district level to handle sexual harassment complaints in this industry. By establishing LCCs and implementing the POSH Act effectively, India is working towards ensuring that women in the unorganized sector have access to justice and a safe working environment.

Key Words: The POSH Act, Sexual Harassment, Unorganized Sector, Workplace

Introduction

To protect women "against sexual harassment of women at [the] workplace and for the prevention and redressal of complaints of sexual harassment," the Indian Parliament passed the landmark Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (also known as the POSH Act) in February 2013. A crucial turning point in Indian history was reached when the Act went into effect in December of the same year. It granted legal status to a type of violence that many women still frequently encounter but frequently ignore. A list of undesirable behaviours, either explicit or implicit, is included in the act's definition of sexual harassment in the workplace. Additionally, it contains a broad definition of the workplace that includes domestic workers, employees in the unorganised sector, and any location a person visits in connection with their job (Chawla, 2024).

Sexual harassment is one of the crimes against women that affects workplace organisations, but because of sociocultural concerns pertaining to gender and power dynamics, it is outside the legal scope to address, posing obstacles to public-private partnerships. There is a lack of awareness, and victims are even more afraid of the consequences if they report such instances. They may also be told that they deserve what they get, that they should learn from it, and that there is no point in reporting it. The majority of workplaces do not comply with the POSH Act's statutory regulations for the creation of Internal Committees (ICs) for grievance redressal, especially small businesses and informal workplaces.

The Supreme Court of India's historic ruling in the Vishaka Guidelines (1997) marked the beginning of workplace protection against sexual harassment

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Eventually, these rules evolved into the POSH Act, which mandates that all employers implement preventative measures and create a harassment-free workplace. However, enforcement remains a challenge, since many employees are unaware of their rights or how to address infractions. Beyond the legal action, however, there is an even greater need for organisations to cultivate an environment of gender equality and respect. Effectively addressing this calls for preventive actions like raising awareness in the workplace, establishing anonymous channels for complaints, and demonstrating the leadership's unwavering commitment to zero tolerance.

International Perspective

One of the few countries in the world with laws expressly addressing sexual harassment in the workplace that prioritise the protection of female employees is India. About 140 nations have enacted comparable laws, according to reports from groups like UN Women, the International Labour Organisation (ILO), and the World Bank's Women, Business, and the Law initiative. However, almost fifty nations have either no legislation at all or insufficient protections, indicating a global disparity in employee safety.

The more widespread problem of structural discrimination in the workplace is not addressed by the POSH Act, which focusses exclusively on individual complaints. International frameworks, on the other hand, frequently incorporate external oversight organisations that are in charge of keeping an eye on compliance and managing appeals, so minimising any potential conflicts of interest that may arise from internal procedures. This distinction highlights the POSH Act's shortcomings in addressing the root causes of discrimination that may continue in different workplaces. When compared to nations like Canada and Sweden, which take a more comprehensive approach to workplace harassment, a comparative analysis of international legislation uncovers significant flaws in the POSH Act. These frameworks hold businesses responsible for preventing harassment while acknowledging and attempting to address systemic problems like gender discrimination. Canada employs a holistic approach that goes beyond sexual harassment by tackling more general concerns including gender discrimination and workplace bullying through its Occupational Health and Safety Act. It strengthens businesses' accountability for worker safety by requiring them to provide a safe workplace through compliance audits and required training. In a similar vein, Sweden places a strong emphasis on prevention by mandating that organisations notify outside authorities of harassment instances, which

increases accountability and transparency. In addition to addressing the immediate nature of harassment, this legislative framework offers victims counselling and rehabilitation, creating an atmosphere that encourages people to report instances without worrying about reprisals.

Addressing Workplace Sexual Harassment in the Unorganized Sector under the POSH Act, 2013

Here's a breakdown of how the POSH Act addresses sexual harassment in the unorganized sector:

1. Scope of the POSH Act:

- The POSH Act applies to all workplaces, including those in the unorganized sector, meaning it covers women working in various settings like domestic work, construction, agriculture, and other informal employment.
- The act recognizes that women in the unorganized sector may face unique challenges in reporting harassment, such as lack of awareness about their rights or fear of retaliation.

2. Local Complaints Committee (LCC):

- The POSH Act mandates the creation of LCCs at the district level to handle complaints from women in the unorganized sector or those working in workplaces with fewer than 10 employees where an ICC is not functional.
- LCCs are responsible for receiving, investigating, and addressing complaints of sexual harassment in their jurisdiction.
- The LCC must be composed of at least 50% women members and include a representative from a non-governmental organization (NGO) or women's group.
- **Complaint Process:** A woman can file a complaint with the LCC within three months of the incident, or within three months of the last incident in a series of events.

3. Role of the District Officer:

- The District Officer is responsible for establishing and overseeing the functioning of the LCC.
- They also designate a nodal officer in each block, taluka, or ward to receive complaints and forward them to the LCC.

4. Awareness and Training:

- The Act emphasizes the need for regular awareness programs and training for both employers and employees to educate them about their rights and responsibilities under the POSH Act.
- This is particularly important in the unorganized sector where awareness levels may be lower.

5. Addressing Power Imbalances:

- The Act acknowledges that power imbalances are often a factor in sexual harassment, and the LCC mechanism helps to address these imbalances by providing an independent forum for complaints.
- By providing a clear process for redressal, the Act aims to empower women in the unorganized sector to report harassment without fear.

6. Key Considerations for Effective Implementation:

- **Accessibility:**
Ensuring that LCCs are easily accessible to women in the unorganized sector, including those who may not have access to technology or who may be geographically isolated, is crucial.
- **Confidentiality:**
Maintaining confidentiality throughout the complaint process is essential to protect the privacy and safety of the survivor.
- **Support:**
Providing support services, such as counseling and legal aid, to survivors is important to help them cope with the aftermath of harassment and navigate the complaint process.
- **Accountability:**
Ensuring that employers and individuals in positions of power are held accountable for their actions is critical for creating a safe and respectful work environment.

Conclusion

Although the POSH Act represents a major advancement in creating safer work environments for women in India, it is not yet fully realised due to ingrained procedural and structural issues that need to be resolved. Comprehensive legislative revisions, organisational adjustments, and a significant cultural shift towards gender equality in all sectors are necessary to fully achieve the Act's objectives. Enacting legislation alone won't be enough; strong enforcement measures must be in place in addition to a culture that actively upholds and defends women's rights and dignity in the workplace. In the fight against sexual harassment, organisations play an indispensable role. In addition to proactively fostering a culture of respect, transparency, and accountability, entities must unquestionably uphold the text of the law. Strong anti-harassment policies, staff training, and improved redressal mechanisms are necessary to prevent harassment and give victims the tools they need to fight it. Top leadership commitment is also crucial. However, changing societal beliefs is also

important. In addition to being a legal and policy issue, eliminating workplace harassment also involves changing people's perspectives, fighting gender stereotypes, and empowering women in general to feel comfortable speaking up. It is the responsibility of academic institutions, the media, and social organisations to normalise harassing discussions, promote bystander intervention, and eliminate toxic workplace cultures. Sexual harassment at work is a major source of growing stress on a global scale. It is a form of gender-based violence that violates the victims' human rights and impairs their sense of dignity, productivity, and general well-being. In India, the issue of sexual harassment is particularly common in the unregulated, small-scale, informal business sector. Sexual harassment at work is a pervasive problem that affects people in many different fields and industries. However, it's particularly prevalent in the unorganised sector, where workers usually lack access to formal complaint and redressal processes.

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