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Addressing Workplace Harassment: The Role Of POSH Committees

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Abstract

The Protection of Women from Sexual Harassment (POSH) Act, 2013 mandates that every company develop anti-sexual harassment policy for its staff. Despite this many workforces are abstained from its rights under the POSH Act, due to poor enforceability. This legitimately contributes to the rise in occurrences of sexual harassment cases despite a dedicated legislation which ought to have been preventing sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) was a result of a long and laborious struggle of several women's rights groups. It was the only solace that Bhanwari devi could draw as she never got justice for what she went through in the line of her duty. This research article discusses the Act and its shortcomings, and proposes concrete improvements to make it more effective in combating workplace sexual harassment. The authors and their team have dedicated the past decade to implementing the POSH Act. Comprising of employee awareness trainers and external members of the Internal Complaints Committee of various organizations, their experience and insights offers valuable perspectives on the Act's implementation and its impact in various workplace settings.

Keywords:

- Workplace
- Sexual harassment
- Women
- POSH Act
- Gender.

Introduction:

Sexual harassment can be defined through the actions of workers or coworkers in the workplace or outside the workplace, which can either be physical or verbal in nature and may include defaming behaviour. Examples taken from real life could be a nightmare coming true for a great number of individuals working in various organisations.

The POSH Committee plays a crucial role in enhancing the protection of women's rights within labour legislation. It is crucial in establishing a secure and non-threatening workplace atmosphere for women.

Legislative History and embarking challenges

The *Vishaka case* and the *A.K. Chopra case* are two of the landmark judgements in the field of sexual harassment. These cases have made it abundantly clear that any employee who is sexually harassed is in violation of Fundamental Rights, and these cases have also built guidelines so that workers or employees do not face such things in the future.

However, it is important to note that up until this point, the legislature has only focused on the women's right and has left the men and other genders at a halt, this affects the feminist intersectionality. The prevention of the vulnerable section is further seen to be encompassing in the Rights of Persons with Disabilities Act, 2016, Transgender Persons Act, 2019 and so on. Sometimes, transmen and transwomen abstain from disclosing their identity due to the fear of prejudices and biases. Therefore, there is a need for the POSH Act to be implemented with a wider connotation and has to be reworked, yet it should also be made sure that these acts are only used to promote safety and not to misuse it.

POSH and the Metaverse

Sexual harassment in the metaverse reflects numerous problems observed in the tangible realm but can materialise within a virtual setting. Gender-based discrimination, which encompasses making insulting or offensive comments about someone's avatar, physical appearance, or identity.

Collaboration between metaverse platforms and their users is crucial in order to proactively combat and handle instances of sexual harassment, hence creating a virtual environment that promotes a good and respectful experience for all users. The implementation and enforcement of POSH policies can have a substantial impact on accomplishing this objective.

The Information Technology (IT) Act and the POSH standards are both essential in dealing with and preventing sexual harassment in the metaverse. Improvisations in tracking down the unknown abuser remains a challenge in Indian setup as observed in *Sulli Deals case* and *Bulli bai case*.

Adapting POSH Policies: Navigating the Challenges of Preventing Sexual Harassment in Remote Work Environments During COVID Times

Following the impact of the Covid-19 pandemic, there was a noticeable transition towards virtual and internet platforms. The decision to transition to a virtual mode was driven by the necessity to rapidly adjust to long-term remote work, address consumer demands during the lockdown, modify business models, address staff requirements and concerns, and ensure business recovery and continuity in the face of many hurdles. The online environment has not been secure for everyone, as there have been several instances of unreported sexual harassment.

During the initial stages of the work-from-home trend in multinational corporations, there was a belief that the POSH Act was no longer necessary. However, it is important to understand that the scope of POSH Act extends beyond physical spaces and has a broader interpretation. It is crucial to note that Sexual Harassment encompasses not just the physical realm but also extends to the internet realm.

Scope of POSH Act

Although many multinational corporations (MNCs) have declared their intention to implement permanent work-from-home policies, it is necessary to broaden the definition of the workplace to encompass the concept of "Home". If an employee or workman experiences a situation where their home becomes an unfriendly or unwelcoming atmosphere for work, it should be considered for inclusion in either the virtual workspace or physical workplace. In 2021, the Rajasthan High Court, in the case of *Sanjeev Mishra v. Disciplinary Authority and General Manager*, expanded the definition of workplace to include virtual workspaces.

It would be inaccurate to interpret the phrase "*virtual workspace to home*". Therefore, if the legislature decides to include "*home*" within the scope of the workplace, it will provide relief for numerous employees.

The case of *Medha Kotwal Lele & Ors. v. Union of India & Ors.* was adjudicated by the Supreme Court of India in 2018. The case originated with a petition submitted by a few activists advocating for Women's Rights, headed by Medha Kotwal Lele. The Petition questioned the validity of the POSH Act. The Petitioners alleged that the POSH Act was inadequate in safeguarding women from sexual harassment in the workplace, and that it lacked proper redressal measures for victims of such misconduct in furtherance to this, they stated that the Act failed to sufficiently provide a redressal to the concerns about the involvement of third parties enabling sexual harassment, the need to safeguard against online harassment, and the requirement for gender-sensitisation of its members of internal complaint committees.

The Supreme Court dismissed the petitioners' claims, affirming the constitutionality of the POSH Act and its adequate safeguards for women against workplace sexual harassment. The Court also determined that the Act was consistent with India's international commitments under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Medha Kotwal Lele case has great significance as it reasserted the crucial role of the POSH Act in safeguarding women from sexual harassment in the workplace and offered valuable insights into the practical implications and impacts of the Act. This is a landmark judgment in the ongoing battle against sexual harassment and all manifestations of gender-based violence in India.

Fostering a respectful workplace: Legal obligations and best practices

The POSH Act has established regulations that organisations must adhere to address complaints promptly. As part of these provisions, the Act requires organisations to establish an internal complaints committee (ICC) as a legal requirement. The IC consists of:

1. The IC is required to designate a female Presiding Officer who occupies a high-ranking position within the organisation. In the absence of a senior-level employee, the ICC has the authority to choose a female employee from other departments or divisions within the workplace. If a qualified candidate cannot be discovered within the organisation, another senior-level female employee from a different workplace under the same employer or organisation may be selected instead.
2. Moreover, it is vital to incorporate two more members who are employees, namely persons who are committed to promoting women's rights or possess proficiency in social work or legal affairs.
3. The IC should include a representative from an NGO or association specialising in the promotion of women's rights or possessing expertise in the field of sexual harassment.

It is accurate to assert that individuals do not resign from their positions, but rather depart from the detrimental work atmosphere.

In the matter of *Ruchika Singh Chhabra v. Air France India and Anr. (2018 SCC Online Del 9340)*, the Court offered more elucidation about the eligibility criteria for the External Member of a Committee and the qualities required for the internal members within the organisation. The requirement is that an external member does not need to have a specific professional or organisational affiliation but must have competence around workplace sexual harassment.

The case of *Sibu v. Air India Limited, ((2016) 2 KLJ 434)* shed light on the method of conducting preliminary inquiries and formal investigations, offering a clear understanding of the procedure. Several Internal Committees fail to adhere to different inquiry requirements, including paperwork, quorum, speed, and secrecy, when they receive a complaint. In this judgement, the Court emphasised that the preliminary inquiry must adhere to all the protocols of a full investigation.

Measuring POSH Act Effectiveness: Leadership's Role in Prevention

It's worth noting that the implementation of the POSH Act came after the landmark case of *Vishaka Vs. State of Rajasthan*, but it's also important to note that with further change in time amendments are needed, taking the loopholes into aspect, in a case of *M. Rajendran Vs Daisy*.

Just like the above case there have been multiple cases where there had been partiality in constituting the members of the Internal committee. Despite a good step that had been taken by the POSH Act to

implement an Internal committee whenever any sexual harassment case is reported, there have been loopholes. The case had been decided by the Madras High Court in which the Respondent persuaded the IC to handle the case favouring him. Additionally, the IC was made up of personnel who reported to him as subordinates and worked under his supervision. As a response to this, the Madras High Court decided that there is a legitimate risk that any investigation carried out by the IC would be tainted by prejudice. This conclusion was reached after the Madras High Court reviewed the allegations. Because of this, the Court gave instructions to establish the IC in accordance with the mandates of the POSH Act in order to address the specific complaint. This is being done in order to comply with the requirements of the POSH Act thereby meeting principles of Natural Justice.

This is being done to comply with the requirements of the POSH Act committee. Despite this, there have been several instances where employees have seen bias in the internal committee member appointments. These kinds of situations have been documented in a number of cases:

In *Smt. Sobha v. State of U.P.*, the respondent sought the formation of the internal committee in response to a petitioner's complaint against him. The respondent contended that the individual designated as the Internal Committee's presiding officer was a subordinate and did not meet the requirements for being a senior level employer.

In the second case involving *K Hemlata v. State of Tamil Nadu and Ors.*, the Madras High Court rejected the internal committee's report because it contained representatives of the educational institution's administrative department, which was against the POSH Act's established procedure.

The *Vishaka case* ruling, delivered by the Supreme Court in 1998, was a significant milestone in addressing sexual harassment in the workplace. Following this judgement, the enactment of the POSH legislation demonstrated a greater focus on the rights and protection of women in the workplace. The POSH Act is alleged not to be gender neutral, as the IC established under the act is authorised to investigate only those complaints lodged by female employees, provided that the complaint is filed within three months of the incident's occurrence.

There are misconceptions regarding the POSH Act. Some people believe that making an organization's POSH policy gender neutral would be sufficient and a viable solution. However, the legislature has not considered making it gender neutral. In other words, the POSH Act does not permit such a modification.

The organisational policy, developed in compliance with the Act, cannot be gender-neutral because the Act explicitly prohibits it. The Act grants the IC the power of a civil court while conducting investigations related to actions under the Act. The jurisdiction of IC is comparable to that of a civil court, but only when cases are initiated by female employees. The powers vested in the IC, such as the ability to summon the complainant, respondent, and witnesses for interrogation, seek documents as evidence, or propose actions following the conclusion of an inquiry, are exclusively applicable to complaints filed by female employees.

The *Vishaka case* ruling basically aims to safeguard the "fundamental rights of women to equality under Articles 14 and 15 of the Constitution of India, their Right to life and dignity under Article 21, and their Right to engage in any profession or occupation, including the Right to a safe environment free from sexual harassment".

In the case of *Anita Suresh vs. Union of India & Ors in W.P.(C) 5114/2015*, the Court affirmed the improper utilisation of the privileges granted to women under this legislation and imposed a penalty of INR 50,000 on the Complainant for submitting a fraudulent complaint. An essential provision in the statute is included to guarantee the prevention of abuse under this legislation. Many organisations neglect to provide proper education to their workers about this matter, and several Internal Committees fail to launch inquiries when they determine a complaint to be frivolous.

POSH Act and infringement to the Fundamental Rights

In the *Golaknath case*, the Supreme Court made it abundantly plain that the Constitution designates some rights to be Fundamental rights, and that this declaration renders null and void any laws that infringe upon such rights. The supreme court could have used the word "person" instead of just "women" or the specific pronoun "she"; the Vishaka judgement itself clarifies that "fundamental rights of women to protect them from sexual harassment."

It can be made clear from the POSH Act that it violates the constitution of India according to the *Vishaka case*. The Constitution and the *Golaknath case* state that fundamental rights do not discriminate based on gender and have a broad application. These rights are not restricted to any single gender.

However, the Fundamental Rights chapter of the Indian Constitution is responsible for Articles 14, 15, and 21 of the law in question. Therefore, in accordance with the *Golaknath case*, the constitution recognises certain rights as basic rights and renders null and void all laws that infringe upon those rights. Sexual harassment is not limited to a single gender. Recently, the concept of diversity and inclusion has progressed to encompass LGBTQIA+ individuals in the workforce.

It is imperative for organisations to adopt gender-neutral rules since some organisations have already implemented gender-neutral policies regarding POSH Act. The Act establishes the fundamental principles. Furthermore, sexual harassment not only directly affects employee productivity and well-being, but also has a profound and enduring impact on the emotional and mental well-being of the employee, as well as their behaviour. This impact extends beyond the individual, affecting their family, children, and society. This issue is a critical and urgent problem that requires immediate attention and action. The present expenses incurred will be significantly less than the future consequences to be addressed.

Limitations of POSH Act and IT Act

Just like any other piece of law, they have their own restrictions and possible omissions. The following are some objections and flaws that are often linked with both acts:

1. **Obsolete Provisions and tracking system:** IT Act, which underwent an amendment in 2008, has been criticised for allegedly not keeping up with the fast-advancing technology. It is possible that it may not sufficiently handle modern forms of cybercrime, such as increasing dangers like cyberbullying and online harassment.
2. **Ambiguities in Legal jargons:** Some people believe that the legal wording of the IT Act is unclear and may be interpreted in several different ways, which might result in possible loopholes that criminals could use to their advantage.
3. **Difficulties in Enforcing the Law:** Due to jurisdictional questions and the international scope of the internet, enforcing the laws of the Information Technology Act, particularly in cyberspace, may be difficult. It might be difficult to locate criminals and bring them to justice.
4. **Concerns Regarding Privacy:** The IT Act has come under fire for various aspects that are associated with surveillance and data protection. A recurring difficulty is striking a balance between the pressing need to protect individuals' privacy and the need of fighting online criminality. Because, the Act is mainly concerned with criminal prosecution, the scope of the civil remedies that may be available to victims who are looking for compensation or restitution may be restricted.

However, constant adjustments and updates to existing laws are essential in order to meet developing difficulties and enhance the efficacy of the legal system in the digital era. In addition, increasing number of people's understanding these rules and encouraging them to report violations are two of the most important things that can be done to make them more effective in practise.

Conclusion

To summarise, while the POSH Act represents a noteworthy advancement in tackling workplace sexual harassment in India, it cannot achieve complete success on its own. To establish a work environment that is fair and equal for women, it is imperative to continue with initiatives such as awareness campaigns, strict enforcement, and a change in societal attitudes. It is an interactive procedure that requires the active participation of all parties involved, such as employers, workers, and appropriate authorities, in order to accomplish its desired objectives.

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