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ABSTRACT:

*"In India, sexual harassment against women in the workplace is still a persistent issue that causes serious violations of the right to equality and dignity of women. This article examines the evolution of the legal frameworks addressing this harassment issue with a particular focus on the landmark Vishaka case, which laid the foundation for the enactment of **THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013**, also known as the **POSH Act 2013**. It analyses the effectiveness of the POSH Act along with other relevant laws such as provisions of the Indian Penal Code and the Constitution of India. This article also explores key challenges in implementation such as lack of awareness, lack of accountability and social stigma all of which obstruct justice delivery. Through judicial decisions, it reflects on how Indian courts have interpreted and enforced the laws to provide justice to women's rights and dignity. Furthermore, it also provides some recommendations to strengthen the redressal mechanisms that will help to create a safe, secure and healthy workplace environment that promotes gender equality and mutual respect for all".*

KEYWORDS: SEXUAL HARASSMENT, WORKPLACE, EQUALITY AND DIGNITY OF WOMEN, VISHAKA CASE, POSH ACT 2013, INDIAN PENAL CODE, CONSTITUTION, GENDER EQUALITY.

I. INTRODUCTION:

India is a rapidly developing country where there is active participation of both men and women in the workforce which boosts the economic development of the country. The workplace must ensure that it provides a safe, secure, healthy and dignified working environment to its people. But women working in the workplace often get exposed to sexual harassment by their colleagues or supervisors. *Sexual harassment refers to unwelcome acts or behaviour that can be direct or indirect. Such acts or behaviours are as follows:*

- i. *Physical contact and advances or*

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- ii. Demand or request of sexual favours or*
- iii. Showing pornography or*
- iv. Making sexually coloured remarks or*
- v. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature¹*

Sexual harassment not only violates women's right to equality and dignity of the women but also affects their physical and mental well-being as well as their career growth. ***This issue arose nationwide attention after the landmark case of Vishaka vs. State of Rajasthan (1997)***², which provides guidelines about the workplace sexual harassment of women at a time when any specific legislation was absent. These guidelines become the foundation of the current act *i.e., THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013*³. Despite the presence of a specific law, several challenges persist. Many workplaces do not have a proper committee for redressal. Lack of awareness among people regarding the law which led to underreporting of the issue. Victim often faces social stigma, fear of losing their job because of which they don't file the complaints. This issue shows power imbalances and gender bias in work. Real changes depend upon the effective implementation and solving the gaps that exist in law and creating proper awareness to create a safe, secure and healthy workplace.

II. LEGAL JOURNEY OF WORKPLACE SEXUAL HARASSMENT

LAW:

Before 1997, India had no law or guidelines to deal with events of sexual harassment at the workplace. Women who were victim of sexual harassment at workplace had to file a complaint under *section 354 of Indian penal code*⁴ (*currently Section 74 of Bharatiya Nyaya Sanhita*⁵)

¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 2(n)

² AIR 1997 SC 3011

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013)

⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s. 354

⁵ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 74

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*which deals with assault or criminal force to woman with intent to outrage her modesty or under section 509 of Indian penal code⁶ (currently section 79 of Bharatiya Nyaya Sanhita⁷) which deals with word, gesture or act intended to insult the modesty of a woman. The case of *Vishaka vs. State of Rajasthan*⁸, in 1997 was a historic and landmark case that formed the foundation of workplace sexual harassment laws in India. In this case, Bhanwari Devi, a government employee from Rajasthan who went to stop the child marriage as a part of her duty was raped by the father of the girl child along with his friends in front of Bhanwari's husband. The accused were acquitted by the Rajasthan High Court, which led to the filing of various PILs in the Supreme Court by NGOs and several women activists. The Supreme Court recognised sexual harassment as a violation of Articles 14, 15 and 21 of the Indian Constitution and also defined sexual harassment along with guidelines popularly known as '*Vishaka guidelines*' to be followed by the employers to prevent and address sexual harassment. The Vishaka guidelines were treated more as a suggestion or recommendation. The guidelines lack binding power on many workplace organisations such as in the private and unorganised sectors and there is no authority to monitor whether the organisation is complying with the Vishaka guidelines or not. This led to the need of a specific law to deal with the harassment problems which gave rise to the ***SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013*** also known as the ***POSH Act 2013***⁹. The POSH Act has been enacted to prevent and protect women against sexual harassment and to provide a redressal of complaints of harassment. It widens the definition of workplace under section 2(o)¹⁰ and includes both private and public organisations, hospitals, sports venues, any places visited during work and even homes employing domestic workers. Under section 2(f)¹¹, an employee includes people working at a workplace. Such an employee can be regular, temporary, daily wage. They can be directly or indirectly appointed through an*

⁶ Supra note 4, s. 509

⁷ Supra note 5, s. 79

⁸ Supra note 2

⁹ Supra note 3

¹⁰ Supra note 1, s. 2(o)

¹¹ Supra note 1, s. 2(f)

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agent. They can be working for payment or not. It mandates that the workplace having 10 or more than 10 employees form a complaint committee known as the ***Internal Complaints Committee or Internal Committee¹² (IC) under section 4¹³***. This committee is tasked with addressing and resolving the sexual harassment complaints filed by an aggrieved woman. It must be done fairly and impartially.

IC consists of a female presiding officer, 2 employee members who are aware and sensitive about the gender issues and one external member who belongs to some NGO or association related to the protection of women against sexual harassment. The external member ensures transparency and neutrality in the process. The composition should be such that half of the total members must be women. Failure to establish an IC can lead to the imposition of fines¹⁴. Furthermore, repeated non-compliance may result in cancellation of licenses or registration which is required in business operations. In organisations where there are fewer than 10 employees, a local committee must be constituted in the district by the district officer under section 6.

Under section 19, the duties of the employers are provided. Some of these are:

- ***Provide a safe working environment***
- ***Display the penal consequences of harassment in a conspicuous place in the workplace***
- ***Organise awareness programmes.***
- ***Provide necessary facilities to the IC and the local committee***

The POSH Act also provides confidentiality of the complainant, respondent, witnesses and the details of the investigation under section 16. This is done to maintain privacy. The Criminal Law Amendment Act 2013 also aids women by criminalising sexual harassment, voyeurism and stalking.

¹² Repealing and Amending Act, 2016 (Act 23 of 2016), Second Schedule

¹³ Supra note 1, s. 4

¹⁴ Global Health Pvt. Ltd. v. Local Complaints Committee, District Indore, W.P. Nos. 22314 & 22317 of 2017 (M.P. HC, Indore Bench, 16 Sep. 2019).

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III. IMPLEMENTATION CHALLENGES:

III.I LACK OF AWARENESS:

One of the main problems in implementing the POSH Act is a lack of awareness among people in the workplace. Many people are not aware of their rights and the process of filing complaints. Most of the male employees are not even aware that many casual remarks by them may be considered sexual harassment. 40% of women who face sexual harassment at work are not aware of their legal rights.¹⁵ This led to underreporting.

III.II LACK OF GENDER NEUTRALITY:

The Act lacks gender neutrality as it specifically focuses on the sexual harassment of women in the workplace. In recent years, it can be observed that not only women but also men and people belonging to the LGBTQ+ community are also becoming targets of sexual workplace harassment. This creates a type of gap and inequality in addressing harassment issues in the workplace. *In Dr. Malabika Bhattacharjee vs. Internal Complaints Committee, Vivekananda College & Ors¹⁶*, the Calcutta High Court held that any person can be sexually harassed irrespective of their gender and the POSH Act can maintain the dignity and modesty of any person irrespective of their gender.

III.III NON-CONSTITUTION OR IMPROPER CONSTITUTION OF

IC:

The POSH Act has provided that an organisation having 10 or more than 10 employees shall establish an Internal Complaint Committee. But the Supreme Court in one of the judgments has pointed out that 16 out of 30 national sports federations in India have not constituted an IC. Even if some organisations have established an IC but they either have an inadequate number of members or lack external members.

III.IV LACK OF ACCOUNTABILITY:

¹⁵ People Manager, “Critical Gap in Workplace Safety for Women and POSH Act Implementation: Report”, *PeopleManager.co.in*, , available at: <https://peoplemanager.co.in/critical-gap-in-workplace-safety-for-women-and-posh-act-implementation-report/> (last visited on June 12, 2025)

¹⁶ WPA (A) 1198 of 2021

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The Act does not specify who is going to be responsible for ensuring that the workplace complies with the provisions of the POSH Act. This also creates problems in determining who is going to be held liable if the provisions of the act are not followed.

Social Stigma:

The majority of women who face sexual harassment in the workplace do not file a complaint due to fear of social stigma. They fear that filing a complaint will affect their families' respect and dignity and will be judged by society or fear of losing their job.

Inadequate Training of IC Members:

The members of both the IC and the local committee often lack the training that is required for proper handling of the complaint of sexual harassment. This led to improper inquiry, breach of confidentiality which led to injustice to the victim.

IV. CASE LAWS AND RECENT DEVELOPMENTS:

Shanta Kumar vs. Council of Scientific and Industrial Research (CDIR) & Ors¹⁷:

The petitioner filed a complaint against the third respondent alleging that the respondent had used derogatory language and touched her arm without consent, claiming it as sexual harassment. The IC after examination determined that the issue was administrative rather than sexual in nature and the Disciplinary Committee also accepted this finding. The petitioner filed a writ in the Delhi High Court against the decision arguing that touching without consent amounts to sexual harassment. The Court held that physical contact or advances made with sexual intent constitute sexual harassment. While the action of the respondent can be considered as offensive or inappropriate, but it lacks the element of sexual intent and thus does not amount to sexual harassment.

Ruchika Singh Chhabra vs. Air France India¹⁸:

¹⁷ (2018) 156 FLR 719

¹⁸ LPA 237 of 2018 & C.M. Appl. 16802–03 of 2018

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The appellant who was a former employee of the respondent company Air India France, alleged that she had been sexually harassed by the employee and filed a complaint with the ICC of the respondent. She argued that the IC's constitution was in contravention of the POSH Act as the external member was not associated with any NGOs and his qualifications were not informed to her. The Delhi High Court declared that the appointment of the external member was invalid and set aside the report of the IC regarding that case and directed the reconstitution of the IC to adhere to the rules of the POSH Act.

Avinash Kumar vs. Union of India¹⁹:

The petitioner was accused of sexual harassment by a female officer. The petitioner challenged the proceeding on the ground that he was denied the chance to cross-examine the witnesses, and he was not provided with the witness statement during the IC proceedings. The court held that except in the rare cases of risk to the witnesses, denying cross-examination is a violation of Article 14 and natural justice. Therefore, the report made by the IC was set aside.

Sanjeev Mishra vs. Bank of Baroda²⁰:

The petitioner, a chief manager filed a petition for quashing of the chargesheet for alleged sexual harassment arguing that the incident occurred outside the workplace and the obscene message was sent at night. The Supreme Court rejected this view stating that digital communication can constitute even outside the workplace regardless of place and time. This judgment expanded the definition of workplace by including virtual space.

Pawan Kumar Niroula Vs. Union of India²¹:

The Calcutta High Court held that students in the school fall under the definition of an aggrieved person under the POSH Act irrespective of their status of employment or age.

¹⁹ 2014 (215) DLT 714

²⁰ S.B. Civil Writ Petition No. 150 of 2021

²¹ WP.CT 86 of 2021

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In Re: Alleged Rape and Murder Incident of a trainee doctor in R.G. Kar Medical College and Hospital, Kolkata²²

In this case, a 31-year-old PG trainee doctor was raped and murdered in the college building where she was working. The SC set up a National Task Force to provide recommendations to improve the safety and working conditions of medical professionals in the workplace. Sexual harassment in the workplace is still a serious problem despite the existence of the POSH Act. The MeToo Movement in India gained significant attention in 2018, mostly through social media where women share their experiences of sexual harassment in the workplace and the entertainment industry. It put pressure for the discussions and amendment of the POSH Act.²³

Some of the recent developments to protect against harassment in the workplace are as follows:

a) Introduction of SHe-Box Portal:

The Sexual Harassment Electronic Box (SHe-Box), an online portal launched by the Ministry of Women and Child Development in 2017, to help women in both public and private organisations to file workplace sexual harassment under the POSH Act. This portal hides the identity of the complainant by sending the complaints directly to the concerned IC or local committee. Only the chairperson of the committee has access to the details of the complaint.²⁴

b) Mandatory Corporate Reporting on Sexual Harassment:

The Ministry of Corporate Affairs (MCA) amended the Companies (Accounts) Rules 2014, mandating that the listed companies in India must disclose the number of complaints of sexual harassment filed and disposed of in a financial year in their annual board reports.²⁵

²² SMW(Crl) No. 2 of 2024 (Supreme Court of India)

²³ Sudhirendar Sharma, "MeToo Movement in India: A Timeline of Key Events", *Outlook India*, available at: <https://www.outlookindia.com/national/metoo-movement-in-india-a-timeline-of-key-events-news-276260> (last visited on June 19, 2025)

²⁴ POSH at Work by TLS, "Comprehensive SHe-Box Registration Guide", *POSHatWork.com*, available at: <https://poshatwork.com/comprehensive-she-box-registration-guide/> (last visited June 20, 2025)

²⁵ Anuradha Gandhi & Surbhi Gandotra, "MCA New Notification on POSH Act Compliance", *S.S. Rana & Co.*, available at: <https://ssrana.in/posh-law/news-event/news/mca-new-notification-on-posh-act-compliance/> (last visited June 20, 2025).

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c) Public Awareness Programmes:

The National Commission for Women (NCW) has been conducting awareness programmes on the POSH Act for both government and corporate employees to prevent any further sexual harassment cases in workplaces.

d) Training for Internal Committees:

Organisations are providing training to their members of the IC to make them skilled to investigate and redress the complaint filed by the aggrieved party.

V. RECOMMENDATIONS:

- *The POSH Act should be amended in such a way that all genders including LGBTQ+, shall also be included as aggrieved parties.*
- *A zero-tolerance policy should be applied in the organisation which means sexual harassment is explicitly prohibited in the workplace.*
- *Providing counselling and support to the victims of sexual harassment.*
- *Ensure all the complaints are disposed of fairly and expeditiously.*
- *The offenders of sexual harassment must be penalised strictly regardless of their position in the workplace.*
- *Protect victims and witnesses from any kind of retaliation by the offenders.*

VI. CONCLUSION:

The protection of women against workplace sexual harassment is a fundamental step towards ensuring gender equality and human dignity. Sexual harassment obstructs women's rights to work in a safe, secure and healthy environment. It affects their mental and physical well-being and also their work capability. The existence of the POSH Act is not enough. Organisations have to take responsibility to provide a dignified and safe environment to their employees. The fight against sexual harassment must be done through cooperation between the government agencies, NGOs, legal professionals and private and public sector organisations. This

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collaboration must ensure that all the working women especially at the grassroots level, are aware of their rights and understand what falls within the ambit of sexual harassment. This kind of collaboration will be an approach to create a safe, secure, healthy and dignified work environment for women so that they can uplift themselves and the country.

