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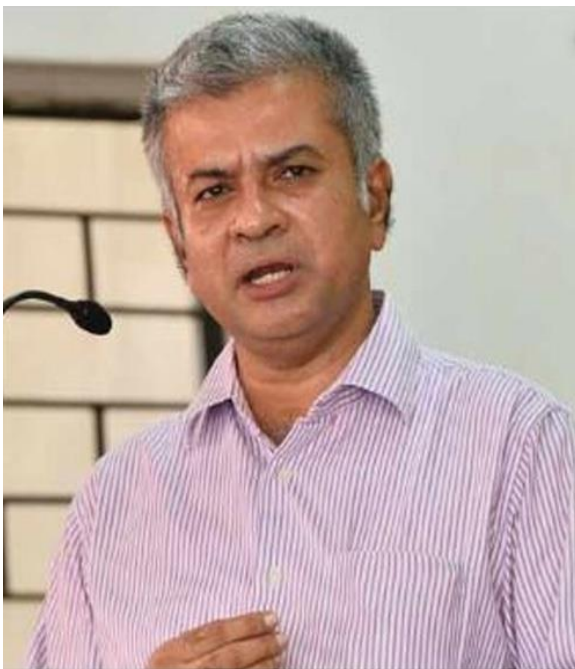
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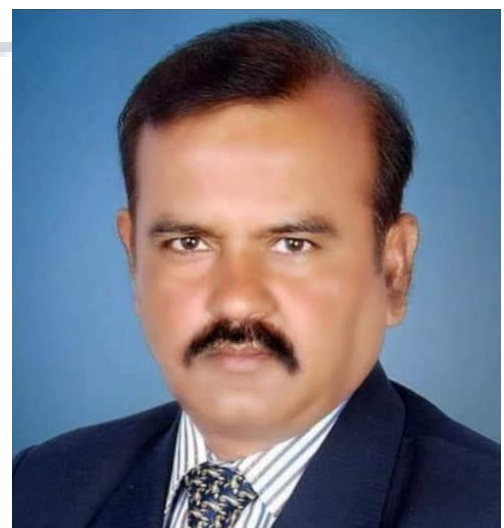
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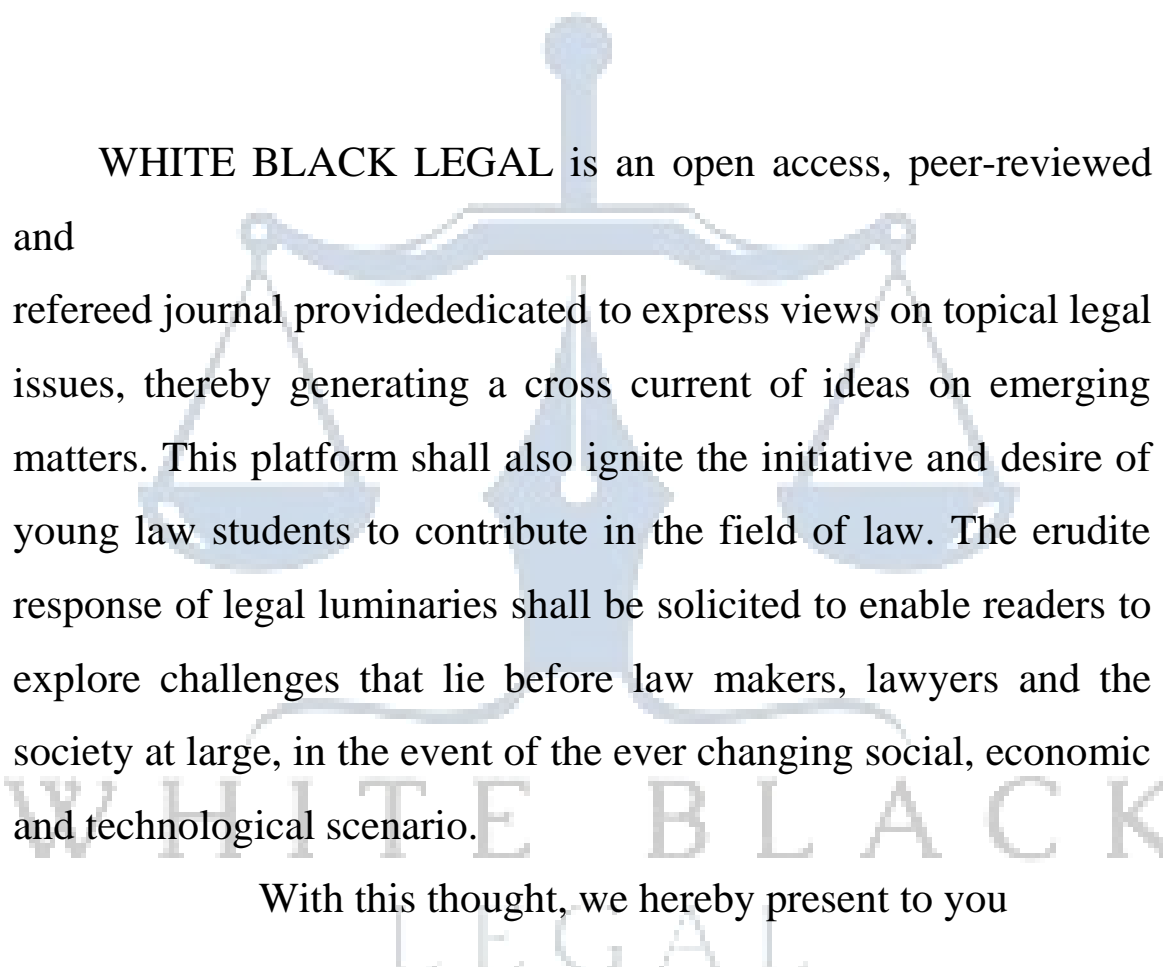


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FROM A “MISUNDERSTANDING” TO A CRIME: DISCERNING THE LEGISLATIVE AND SOCIAL IMPACT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

AUTHORED BY: SHREYA SUBRAMANIAM

INTRODUCTION

On the 23rd of August, 2013, the Indian legislative system witnessed a huge alteration within its statutory rights by incorporating the Sexual Harassment at Workplace as a statutory wrong. This provided formal guidelines for how an incident involving sexual harassment could be addressed and the precautionary steps the victim and the company should take moving forward. Before the establishment of this act, there lay no formal statute which would explicitly cater to such matters. This landmark judgement of the Supreme Court of India established the “Vishaka Guidelines” through the hearing of the case, Vishaka and Others v State of Rajasthan.

The subsequent Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) bill states the steps the corporations should take towards prevention of sexual harassment by establishing the need for a committee to be established in each company to this respect, known as the Internal Complaints Committee. Further, the steps carried out for the investigation into the offence once taken place, the privacy of the parties involved, compensation provided to the victim and subsequent action of the company to increase awareness are provided within this Act. Lastly, this paper will delve into the evolution of the act itself and the impact it has had on society by providing this sphere with a new legislative mechanism.

RESEARCH QUESTIONS

1. What was the societal attitude before the establishment of the Act?
2. What led to the establishment of the Act?
3. Through the establishment of the Act, how society has changed its outlook towards harassment?
4. Why women had complied with such sexual harassment at workplace to be considered as a misunderstanding?

5. How it has impacted the Indian society in a positive and negative manner?
6. Which legal precedents helped in the establishment of such an Act?
7. What are the future implications for the Act and the manner in which it should be developed?

RESEARCH OBJECTIVES

This paper will predominantly focus on the simultaneous evolution of the Sexual Harassment of Women at Workplace Act, 2013 within the legal sphere while delving in the impact it created within the Indian society by turning their attitude to sexual harassment at the workplace from a norm to a crime. To understand the same, the evolution of the Act from its past, present to the future has been analysed to understand the contours of how it would help in impacting the citizens it governs. Additionally, the Act itself is to be observed to understand the meticulous steps taken by the Government of India to address the issue of sexual harassment and analysing what truly is construed as sexual harassment. Lastly, the positive and negative impacts of the Act on the society is to be discerned and its future prospects of development.

HISTORICAL REVIEW OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

VISHAKA AND OTHERS V. STATE OF RAJASTHAN

The procedure leading to the implementation of the Prevention of Sexual Harassment (Prevention, Prohibition and Redressal) Act of 2013 is one accompanied with a prolonged process from the date of the commencement of its importance being voiced by the women of India during the 1990s as a result of the gore events that had taken place in Rajasthan. In 1997, the landmark judgement of Vishakha and Others v. State of Rajasthan¹ had been passed terming sexual harassment at workplace as a constitutional wrong rather than a mere form of discriminatory conduct, the process of which had begun with the filing of a Public Interest Litigation by Naina Kapur in 1992 against the state of Rajasthan and the central Government of India by the Vishaka organisation, a women's group led by Naina Kapur and Sakshi during this period.

The origin of the act stems from the revolting events that took place in Bhatari, Rajasthan. On 22 September 1992, against Bhanwari Devi who was a worker employed under the Women's

¹ Vishaka and others v. State of Rajasthan, AIR 1997 S.C. 3011.

Development Project, an initiation by the Government of Rajasthan. As part of this project, she had been appointed the task to protest against the child marriages that would be taking place during the festival of Akha Teej, an auspicious event known for marriages which would inculcate the practice of child marriage as well. One of the tasks conferred to the members of WPD was of convincing the local villagers against the conduct of child marriage.

One such family carrying out a child marriage was the union arranged by Ram Karan Gurjar for his nine-month-old daughter. However, regardless of Bhanwari's efforts the family had not been persuaded which led to the involvement of the Sub-Divisional Officer and Deputy Superintendent of Police who would occasionally frequent the Gurjar family's household prior to the commencement of the event. In the end, Bhanwari's pursuit had been deemed futile as the marriage had been prevented for a while, however, on the subsequent day at the stroke of midnight the marriage did take place.

Apart from her efforts being established in vain the members of the Gurjar family sought after revenge from Bhanwari by attacking her and her boyfriend amid them working on their field. The 5 men had beaten Bhanwari's boyfriend with sticks to a state of lost consciousness after which they gang raped her. As a consequence of this and the callous attitude shown by the police towards the circumstances of the case, she filed an FIR. This case had been dealt with by the district court, however due to an unsatisfactory deliberation of justice it went to the higher courts for further restitution. The judgement passed had been in favour of Bhanwari Devi.

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STATUTORY HISTORY OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE
ACT 2013**

The act of sexual harassment had not been represented as one which violated the constitutional provisions of India. The grave nature of the Vishaka case was used as a stepping stone towards this realisation by the legal authorities as in the judgement passed for the Vishaka case that led to the establishment of the Prevention of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act of 2013, had termed sexual harassment as an act which "results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or

business² which includes a right to a safe environment free from sexual harassment.”³

The protection of women against the act of sexual harassment and the right to work with dignity is a recognized human right by the international conventions such as Convention on Elimination of all Forms of Discrimination against Women (CEDAW) which in an international legal treaty introduced in the year 1979 on 18th December by the United Nations General Assembly and subsequently came into force in the year 1981. The convention declares that “State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating⁴ discrimination against women and, to this end, undertake: to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”⁵ India became a signatory to this treaty on 25th June, 1993.⁶

Prior to this landmark judgement there lay no formal guidelines that dealt with the sexual harassment taking place against women in workplace. Women facing such injustice would have to refer to sections within acts that would not term it as a constitutional wrong but rather in mundane words referring to the same as an inconvenience caused on the reputation a woman would hold in society⁷. Unlike referencing the effect, it would have on the women from a personal perspective it looked at the matter from the stance of society.

The sections previously referred to were the Section 354 and Section 509 of the Indian Penal Code of 1860. The former alluded towards outraging the modesty of woman and the latter deals with insulting the modesty of a woman. After 10 years of legal battle put forth by the members of the Vishaka organisation, in 2007, a draft of the Protection of Women against Sexual Harassment Bill, 2007 had been approved by the Union Cabinet ensuing the bill being introduced in the Lok Sabha in 2010. In 2012, the amended bill had been reacquainted with the

² Devi, Kalpana. "Sexual Harassment of Women At Work Place: Myth And Reality." *Vidhigya*, vol. 9, no. 2, 2014, pp. 14-19.

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No.14, Acts of Parliament, 2013.

⁴ Klaristenfeld, Jerry. "High Press: Stakeholders and the Legal Fight Against Racism in World Football." *Texas Law Review*, vol. 100, no. 1, 2021, pp. 189-218.

⁵ Convention on the Elimination of All Forms of Discrimination against Women, signed in 25 June 1993 (entered into force 3 September 1981), Art. 2.

⁶ Hakimi, Mehdi. "Elusive Justice: Reflections On The Tenth Anniversary Of Afghanistan's Law On Elimination Of Violence Against Women." *Northwestern Journal of International Human Rights*, vol. 18, no. 1, 2020, pp. 52-72.

⁷ S. C. Srivastava, *Sexual Harassment of Women at Workplace: Law and Policy*, 39 *Indian J. Indus. Rel.* 364, 364-90 (2004).

Lok Sabha conclusively leading to it being passed by the Lok Sabha on the 3rd of September, 2012 and by Rajya Sabha on 26th February, 2013. Lastly, on 23rd April, 2013 the act received assent from the President of India with it being published within the Gazette of India under the title of Act no. 14 of 2013.

JUDICIAL PRECEDENTS AIDING THE ESTABLISHMENT OF THE ACT

First, the emergence of the POSH act took place in the landmark judgement of *Vishaka v. State of Rajasthan*, wherein, the guidelines gained its preliminary formation in which the employers were mandated to provide a safe working environment, establishing a complaint committee alongside insurance of prompt redressal of complaints. The judgement of the Supreme Court led to the establishment of Vishaka Guidelines, the foundational regulation⁸.

Second, within the case of *Apparel Export Promotion Council v. A.K. Chopra*, the Delhi High court widened the scope of sexual harassment to encompass that “physical contact is not always essential for an act amounting to workplace sexual harassment.” This judgement underscored the seriousness of workplace sexual harassment and reinforced that any form of unwanted physical contact of advances constituted sexual harassment⁹.

Third, in *Rupan Deol Bajaj v. K.P.S. Gill*, the gaps in the law in the previously referred to section 354 and section 509 of the Indian Penal Code, 1860 fell short in provided recourse to the sexually harassed IAS officer. This led to the creation of awareness regarding the gaps within the legal framework and the need for further reforms targeting specific resolution to the victims of sexual harassment¹⁰.

Fourth, in *Medha Kotwal Lele & Ors. v. Union of India & Ors.*, the petitioner wrote a letter highlighting the lack of implementation of the Vishaka Guidelines within the workforce environment in India, which led to the apex court issuing directions regarding the state government to make sufficient complaint committees within each state. Additionally, the Supreme Court states that it shall be the duty of the Bar Council of India to ensure that all individuals registered under the State Bar Councils must comply with the Vishaka Guidelines.

⁸ *Vishaka and Others v. State of Rajasthan and Others*. 1997. Supreme Court of India, [AIR 1997 SC 3011, 1997 (6) SCC 241].

⁹ *Apparel Export Promotion Council v. A.K. Chopra*. 1999. Supreme Court of India, [1999 AIR 625, 1999 SCC (1) 759].

¹⁰ *Rupan Deol Bajaj v. K.P.S. Gill*. 1995. Supreme Court of India, [1995 SCC (6) 194, AIR 1996 SC 309]

It catalysed the formulation of the POSH act and the enforcement of the same to ensure protection of women at workplace as their primary significance and aim¹¹.

Fifth, in the case of *Seema Lepcha v. State of Sikkim and Others*, the Supreme Court provided that the State Government shall provide comprehensive publicity to the notifications and orders issued by it in adherence to the Vishaka Guidelines and the directions issued under the *Medha Kotwal* case, alongside complete publicity in the forum of Doordarshan regarding the steps taken by the State Government in the implementation of the Vishaka Guidelines¹².

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

While evaluating the case of *Vishakha v. State of Rajasthan*, the Supreme court issued a judgement providing guidelines for dealing with sexual harassment and noted the subsequent statement while acknowledging the issue:

“the incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures...”

By referencing the varied international conventions such as the Beijing Declaration at the Fourth World Conference on Women, and the Covenant on Elimination of Discrimination against Women, led to the creation of definite recognition in regard to sexual harassment at workplace. The preamble of this act states that sexual harassment towards the female employee performed at the workplace violated her fundamental right to equality under article 14 and 15 alongside article 21 which pertains to her right to life and to life with dignity. The constitutional right to practice any profession or to carry on any occupation, trade or business¹³ which includes a right to a safe environment free from sexual harassment is also violated through the act of workplace sexual harassment. The reference to India being a signatory towards the Convention on the Elimination of all Forms of Discrimination against Women. Chapter one of this act provides the relevant definitions with respect to the parties that would be involved in the event of sexual harassment at workplace.

The act of sexual harassment itself has been defined under the clause (n) of section 2 of this act

¹¹ *Medha Kotwal Lele and Others v. Union of India and Others*. 2012. Supreme Court of India, [2013 (1) SCC 297].

¹² *Seema Lepcha v. State of Sikkim and Others*. 2012. Supreme Court of India, [2013 (11) SCC 641].

¹³ Devi, Kalpana. "Sexual Harassment of Women At Work Place: Myth And Reality." *Vidhigya*, vol. 9, no. 2, 2014, pp. 14-19.

as “any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

- i. Physical contact and advances; or
- ii. A demand or request for sexual favours; or
- iii. Making sexually coloured remarks; or
- iv. Showing pornography; or
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature;”¹⁴

Chapter two of this act states the essential elements required for the constitution of the Internal Complaints Committee as stated within section 4 of this act. Clause two of this act provides for the essential elements that must be taken into consideration for the admission of the members. The presiding officer should be a woman currently holding a highly authoritative or a senior position amongst the employees, and not less than two members from the committee should preferably be committed to the cause of woman or have shown their association to this cause via their legal knowledge of the matter or their experience in social work linked to such causes, and lastly, one member should avail from a non-governmental organization which carry out functions committed to the cause of women or being someone familiar with the issues in accordance with sexual harassment. The tenure of these members must not exceed three years from the date of their inception within this post. In *Global Health Private limited & Mr. Arvinder Bagga v. Local Complaints Committee, District Indore and Others*, the court held that in light of there being no constitution of the Internal Complaints Committee, a fine would be imposed under the POSH act.

Subsequently, chapter three provides the constitution of the local complaints committee, consisting of the notification of district officer, the constitution and jurisdiction of this body. Section 7 of the act delineates the composition, tenure and other terms and conditions of Local Complaints Committee.

The procedure for the inquiry must start with a written request by the aggrieved woman or the ICC or LCC that consists recommendations to the employer such as the need to grant leave that would be in addition to the one, she would already be entitled to. In light of false accusation

¹⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, S.2, No.14, Acts of Parliament, 2013(India).

being made, the punishment liable towards the accuser would be based on the rules established for the particular corporation. Under section 15, provides for the compensation for aggrieved women and under section 14, those complainants are brought upon who are considered “false and malicious.” Under section 16 there is recognition of sensitivity associated with sexual harassment and consists confidentiality provisions.

CONTEMPORARY IMPORTANCE OF THE SEXUAL HARASSMENT AT WORKPLACE ACT, 2013

EMPERICAL STUDY OF ITS EFFECTIVENESS

The effectiveness of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been paradigm in its outcome, however, this shift being altogether one with positive impact could be brought upon to question. Through an empirical study done via the analysis of data for 300 listed companies on the National Stock Exchange (NSE) till March 31, 2023 it may be noted that over this period, there has been an increase in the number of cases reported in India within the ambit of the POSH act. However, such instances of sexual harassment at workplace did not go altogether overlooked due to the absence of the implementation of the POSH act, rather, before the enactment of the aforementioned act, cases had been reported under this sphere, more specifically, during the period encompassing 2012-2013, 71 cases were reported by 12 companies.

Subsequently, with the enactment of the POSH act in 2013, with the broadening of the legal sphere towards the protection of the dignity of women, a likeminded development took place within the economic sphere as well with an increment in the filing of sexual harassment cases taking place, and the same being recorded as 161 cases filed in the first financial year following the enactment of the POSH act. In due course, this was followed by a jump of 465 cases in the subsequent financial year. This data flourishes with every passing year until the strike of COVID 19, wherein a total of 586 cases were reported in comparison to 961 in the previous year. This number however did increase in the financial year 2021-2022 to 767 cases and lastly leaped to 1160 cases in the following year, accounting for a 51.2% jump in the number of cases being put forth. Although the filing of such plethora of cases may not always be seen with a neutral connotation as it may lean towards the implication of growing sexual harassment cases within workspace, which it does, but the same is to be expected in a country such as India growing every minute to accommodate the even faster growing population.

As more of the younger generation become incorporated within the economic sphere, so does their varying mindset, in case of a young man being incorporated within a company, their views on how to interact with women may differ with what the other women within the work field hold. This may lead to further misunderstandings, thereby leading to the filing of a sexual harassment case, this shows growth within the awareness of the women in the manner in which they are to be respected. Although this is more of an elementary exemplification of the sexual harassment taking place within the work environment, it is also a possible reason for filing for the same. Hence, while viewing this increment in the number of cases being filed, one should be open minded towards the same as the preliminary filing does not account to much determination of the state of sexual harassment at workplace but rather the subsequent action the companies take in resolution of the same.

The consequential aim of analysis of this increase should rely on the distinction between the number of cases filed and those resolved, which does persist a healthy comparison within India. In FY 2013-2014, the year in which 161 cases had been filed, a meagre 109 complaints were resolved within the companies. This experienced a jump of 406 in the year 2014-2015, however in the previous year the number of cases being unresolved were 41.2% while in this given year, there had been 13.55% of cases being unresolved. This trend has been followed within the subsequent years, the number of pending cases is smaller than the gap between the reported and resolved cases as well.¹⁵

BENEFICIAL IMPACT OF THE ACT

Such empirical data, although consists a limited amount in light of the number of companies being present in India, it does provide a possible avenue for analysing the state of sexual harassment at workplace in India which would otherwise go unnoticed. Although the increase in the number of cases may seem daunting, the same must be appreciated as well since it portrays the increment in the voices of women being subjected to the repulsive act of sexual harassment. Such increment must account for with caution and the same can reflect the wide array of reasons one may file for a case under the POSH act. Hence, while creating a judgement regarding the same, one must view the same with scrutiny while maintaining the words stated by the International Labour Organisation (ILO) being “lack of reported cases of sexual

¹⁵ Manocha, Isha. "A Decade of the POSH Act: What the Data Tells Us About How India Inc. Has Fared." *Centre for Economic Data and Analysis (CEDA), Ashoka University*, 2023, <https://ceda.ashoka.edu.in/a-decade-of-the-posh-act-what-the-data-tells-us-about-how-india-inc-has-fared/>.

harassment in no way implied that there have been no such incidents.”

The benefits enjoyed within the economic realm due to the emergence of the POSH act are abounding with inclination towards enhanced workplace safety and respect, legal safeguard against such immoral acts, improved employee morale, increased productivity with the inculcation of a safe work environment and lastly leading to positive organisational reputation.¹⁶ By adhering to the guidelines put forth by the Supreme Court, a proactive approach is taken towards the protection of the employees thereby enhancing the workplace in regard to the safety and respect.

With the advent of legal safeguards in the form of the POSH act, the non-compliance of the same would lead to legal repercussions and scrutiny thereby promoting the need to comply with the legal guidelines. With higher morale being implemented via the compatible work environment, attraction of positive work culture and top talent is made viable. Implementing the guidelines would improve the external reputation of the organisation alongside benefitting the internal functions of the same.

CHALLENGES ARISEN IN LIGHT OF THE OBJECTS OF THE ACT

In spite of the trust the emergence of the POSH act has created within the victims of such a repulsive act, there lies disparity in the application of the same in various spheres of the legal sphere and its practicality in the real world. Some of these challenges interlude within the limited scope of gender neutrality, a potential threat of retaliation formed in the minds of the victim, limited recourse for women in the informal sector, and potential for government scrutiny.

First, this act precludes its application towards women as can be seen through various references to the same within the literary framework of the same. In section 2(a) of the act, a woman aggrieved by sexual harassment is defined as someone who alleges that she was subjected to the act. Additionally, within section 3, it is prohibited to harass a woman at her workplace, therefore such literary construction and specification of “woman” limits its scope and eliminates the possibility to put forth a complaint regarding the sexual harassment taking place

¹⁶ Naina Kapur, *Workplace Sexual Harassment: The Way Things Are*, 48 Economic and Political Weekly, 27 – 29 (2013).

against men or members of the LGBTQ+ community.¹⁷

Second, there lies the fear of retaliation by the harasser of the organisation in light of such a complaint coming to light as either would face the downfall of their reputation. This leads to many women not raising their voice in regard to such issues, as they may also face additional challenges from their senior employees, likelihood of hostility from their colleagues or supervisors, a negative reference for future employers, or even losing their employment. The action to be taken by the employed during the pendency of the inquiry falls within section 12 of the act which states that the aggrieved woman could be transferred, granted leave for up to three months, or received any other relief suggested by the court. The responsibilities within section 19 of the act are manifold, however none which ensure that the complainants are not harassed, stigmatized or ostracized from their regular working environment.

Third, many women employed within the informal sector, find their matters pertaining to sexual harassment as trivial which leads to them to ignore the same, this had been substantiated by a study conducted by the Human Rights Watch in 2020. Within the act as well, the manner of its literary construction caters to its application being easier within working environment which fall under the ambit of the formal sector. Additionally, the term “workplace” as defined under the act may not include many contemporary work arrangements such as virtual workplaces, off-site meetings, and remote work.¹⁸

There lies government scrutiny and their responsibilities in light of monitoring the working of the Internal Committees, Local Committees, employers and all other aspects are defined within section 21, 23, 24 and 25 of the Act. This leads to many grey areas within the investigative process being overlooked as their main means to supervise lies in the overview of the function, and since the same falls within the control of the Government, the scope to scrutinize and accountability is limited. Additionally due to the procedural and technical aspects of the same, the POSH act does not provide for handling anonymous complaints, which would come up on social media.

¹⁷ Critical Analysis of Loopholes in the POSH Act." *iPleaders*, 2023, <https://blog.ipleaders.in/critical-analysis-of-loopholes-in-the-posh-act/>.

¹⁸ Legal Specs. "Limitations of POSH Act and Possible Improvements." *LinkedIn*, 2023, <https://www.linkedin.com/pulse/limitations-posh-act-possible-improvements-legal-specs-yjkic/>.

During the inception of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013, there lay no proper standards to justify whether the perpetrator of the act of sexual harassment could be the member of the same sex. This had been brought forward in *Dr. Malabika Bhattacharjee vs. Internal Complaints Committee, Vivekananda College and Ors.*¹⁹ before the Calcutta High Court in 2020. Although the act does provide for the definition of who an aggrieved person would be, clarity over who could be termed as an aggressor had not been provided. It had been stated that Section 2(n) of this act cannot be read in a static manner as it must be interpreted on the basis of the circumstances which led to the sexual harassment. Henceforth, it had been stated that the perpetrator may be of any gender.

There had been ambiguity on whether the act of sexual harassment against a student of an institute should be considered within this statute. The *Pawan Kumar Niroula vs. Union of India*²⁰ it had been held by the Calcutta High Court that the student in a school would be classified as “aggrieved woman.” Therefore, those students who have been sexually harassed would be provided remedy within this act.

Although the statute specifies what is considered as a workplace, confusion still remains regarding the inculcation of work environments that may not come within the ambit of the provision such as the film industry. In the *Women in Cinema Collective vs. State of Kerala*²¹, the Kerala High Court pronounced the workplace of film with over 10 workers within it as one which must have an ICC, chiefly due to the numerous cases of sexual harassment that do arise from within this industry.²²

IMPLEMENTATION OF PREVENTION OF SEXUAL HARASSMENT AWARENESS AND TRAINING

In the contemporary sphere the awareness of the Prevention of Sexual Harassment is taking place in varied regional languages to accommodate different regions of the country in a problem faced by many. Additionally, there has been increment in various multimedia

¹⁹ *Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College & Ors.*, 2020 Cal. L.R. (Cal. H.C. 2020).

²⁰ *The Pawan Kumar Niroula v. Union of India*, (2020) 8 SCC 234 (India).

²¹ *Women in Cinema Collective v. State of Kerala*, 2018 SCC OnLine Ker 1614 (Ker. H.C. 2018).

²² *Gaps identified in the implementation of the POSH act: Ambiguities in the law* (no date) *Centre for Law & Policy Research*. Available at: <https://clpr.org.in/blog/gaps-identified-in-the-implementation-of-the-posh-act-ambiguities-in-the-law/> (Accessed: 29 August 2024).

awareness being put forth and well accepted by the public, for instance, movies like 'PINK' which revolve around sexual harassment. There has been inculcation of theatre-based role plays, roadshows, competitions among various firms such as creation of video in light of prevention of sexual harassment, competitions, and publication of books such as 'BCC: Behind Closed Cubicles' which can be read by managers to help understand ground realities.

Supporting systems in the form of one-on-one helpline via phone, expert advice from companies like 'KelpHR' and tech-based comprehensive case management tools helps in closure of cases, and such systems have been institutionalised in the work environments. The Ministry of Women and Child Development, launched 'She-Box' (sexual harassment electronic box) in 2017, which is an online complaint management system for documentation and redressal of grievances regarding cases of sexual harassment.²³

FUTURE OF THE ACT

Aspects which would lead to better efficiency within the act would be clarification of definitions and expansion of its scope, enhancing awareness and training, strengthening redressal mechanisms, and expansion of its coverage.

To enhance the implications of the act, inspiration from other countries may be drawn to further establish the prevention of sexual harassment in India. For instance, in Japan, within the Equal Opportunity and Treatment between Men and Women in Employment ("Equal Opportunity Act")²⁴, there is the presence of vicarious liability on part of the employer and practices such as terming those companies which are avid perpetrators of the same are listed as 'black companies.' A similar practice in regard to the accountability of the employers is present in the United States of America put forth through Title VII of the Civil Rights Act, 1964. Additionally, some states such as New York, Illinois and California impose mandatory training as well which could be one enacted within India as well but in a centralized manner.

In South Africa, the manner in which redressals are recorded is divided as wither a claim for compensation/damages or corporal punishment such as imprisonment. This had been instituted

²³ Best Practices of POSH Which Transformed Organizations." *People Matters*, 2017, <https://www.peoplesmatters.in/article/diversity/best-practices-of-posh-which-transformed-organizations-16983>.

²⁴ Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, art. 11, para. 1 (Japan 1997).

through Employment Equity Law introduced in 2023. By adopting the same, the object of the redressal becomes a part of the primary source of information, thereby making the subsequent stages easier to interpreted and lesser procedural delays being taken place. Pakistan enacted its PoSH law in the 2010, which contained a comprehensive understanding of what amounts to 'harassment', additionally, this law is a very inclusive one with the prompt inclusion of new trends, as can be seen in the amendment made to the same in the year 2022 which increased the scope of workplace and ambit of harassment, the former of which is lacking in India.

Sri Lanka does not possess a codified PoSH law; however, it does rely upon Section 345 of the Penal Code, in which the term 'sexual harassment' has been provided with a gender-neutral definition, one lacking in the framework of India. This gender neutrality is persistent within the laws of Thailand as well under Section 16 of its Labour Protection Act. Additionally, there is specific emphasis on the accountability of public servants engaging in acts of sexual harassment²⁵. In 2023, Indonesian Ministry of Manpower issued guidelines on managing complaints of sexual harassment in the workplace mandating companies to establish sexual harassment prevention task force. By implementing the same, the difference between the pending and the resolved cases in the workplace will be minimised.

The above stated laws are compliant with international commitments such as the ILO Discrimination Convention, International Covenant on Civil and Political Rights, and Convention on the Elimination of All Forms of Discrimination Against Women. The main aim via the compliance of the above stated international provisions is to maintain the principles of natural justice and adopt diversity and inclusivity in the adoption and maintenance of the policies. By the implementation of aforementioned regulations which India currently lacks, it would lead to enhancement of socio-economic changes already occurring such as the normalisation of conversation regarding harassment, provision of safe work environment, legal recognition to a form of violence and highlighting the need for greater awareness alongside enforcement.²⁶

²⁵ Thailand. *Labour Protection Act B.E. 2541 (1998)*, Section 16. Government of Thailand, 1998.

²⁶ The Outcast Collective." *POSH Laws in Different Jurisdictions*. The Outcast Collective, 2023, <https://theoutcastcollective.com/posh-laws-in-different-jurisdictions>.

SOCIETAL IMPACT OF THE ACT

In accordance with the Time Use Survey (TUS) conducted by the National Sample Survey (NSSO) in 2019, among the entirety of the working population, women spend three times more time on domestic work when compared to men. This helps enumerate the patriarchal value still held in light of women being the ones to carry out the domestic hustle. This statistic reflects the dominating role of woman being considered as one of a homemaker in India which helps understand their recent inculcation in corporate activities²⁷. However, although this insurgence is one backed with positive outcome for the economy of the nation, the Confucian vision of the Indian society has always mandated the prominence of maintenance of public order over nourishing a harmonious environment within personal relationships.

This ideology to consider the state of society while engaging in personal matters plays a contributory cause to the late recognition of this wrong. Within the Indian society, those women who tend to avoid confrontation in order to maintain the status quo are considered as more desirable, therefore it becomes difficult for the women of such a nation to fight for their equitable rights. The mention of their perils would be considered as a cause for disharmony thereby leading to the discouragement towards the filing of such cases.²⁸

Although, there has been further enhancements within the legal sphere to establish a safe environment for the women, such provisions such as the Act are not uniformly implemented as can be seen through lack of implementation regarding the ICC in various corporations. Additionally there has also been a reduction in the female labour force participation rate in India as it has witnessed a reduction from 30.2% of the working female population holding jobs to 17.5% in 2018 as put forth by the Periodic Labour Force Survey (PLFS)²⁹.

However, the same cannot be considered as an absolute insignificant legislative step as there has been positive impact in some aspects in the society's mindset since before such an act would be considered as a misunderstanding, however the case no longer holds. It has also played a vital role in the development of confidence of women as before they had no

²⁷ National Statistical Office (NSO), *Time Use in India-2019*, Ministry of Statistics and Programme Implementation, Government of India (2020), available at <http://www.mospi.gov.in>.

²⁸ "Sexual Harassment of Women at Workplace: Issues and Challenges" *International Journal of Research and Analytical Reviews*, Volume 10, Issue 1, March 2023.

²⁹ Sattva Consulting, *What's Going on With India's Female Labour Force Participation?*, *Sattva.co.in*, (Oct. 24, 2023), <https://www.sattva.co.in/news-media/whats-going-on-with-indias-female-labour-force-participation/>.

substantive legal recourse which would lead to a lesser impact on their rights, however now there is an established provision for the same. This has also brought the attention towards the safety of women as a universal effort to be considered within every sect of our society. It also helped in breaking the silence revolving the act of harassment which would go unnoticed without putting forth repercussions regarding this matter.

CONCLUSION

To conclude, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has provided a novice and comprehensive avenue for the aggrieved women to put forth their grievances towards a trusted system without being scrutinized from their peers and ostracized from their developed work environment. Although the official act took 16 years to be passed, the importance of the same had been time immemorial since sexual harassment within workspaces had been a persistent problem within various communities and the establishment of legal backing toward the same came with a sigh of relief since legal scrutiny and repercussions are not a man's best friend, nor a space one would want to willingly intervene in.

Although the act has its downfalls and gaps in the scope of its application and ambiguity in its definitions, it still is more than a "something better than nothing" circumstance since it portrays the seriousness of such an act alongside recognizing the same as a breach of fundamental rights of an individual. This act has helped in building the awareness of the public towards such a gore wrong to a woman's reputation and providing a suitable avenue for the redressal of the same. Although there are gaps to be fulfilled, the aims quoted in the name itself of prevention, prohibition and redressal has been carried out and proven to be a milestone in the journey for improvement of the quality of life a woman holds in India.

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