

Citation: St. Soldier Journal of Law and Social Science, Vol.1:2, July 2025 pp. 136-147

Revisiting the Horizons of The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013: A Critical Appraisal

Dr Shaifali Dixit

Assistant Professor, Himachal Pradesh National Law University, Shimla

Introduction

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 was enacted by the legislature, with an objective of prevention, prohibition, and redressal of sexual harassment of women in the workplace.¹ The circumstantial background for the enactment of this Act can be traced from the infamous gangrape of Bhanwari Devi, a woman employed as a 'Saathin', working under the Women's Development Project (WDP) run by the Government of Rajasthan.² The rape was a result of seeking vengeance against her campaign as a part of her job under (WDP), to stop a child marriage solemnizing in a gujjar family of her village. Her campaign and other efforts to stop that child marriage led to boycotting Bhanwari Devi and her family by the villagers, she also lost her job amid this boycott, her husband was assaulted and she was brutally gang-raped by the five men of gujjar family of that village.

While seeking justice, she faced various obstacles in registering her complaint and thereafter, the trial court acquitted the accused citing insufficiency of evidence and she could not get the justice. This led to a collective initiative of several women's groups and

¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

² Vishaka & Ors. v. State of Rajasthan & Ors. is (1997) 6 SCC 241

NGO(s) to file a petition in the Supreme Court under the platform of '*Vishaka*' where the Supreme Court of India issued the guidelines to protect the interests of working women at their workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 was passed by the legislature in 2013 to give strong enforceability to these guidelines.³

The case of Apparel Export Promotion Council v. A.K. Chopra marked the first instance in which the Supreme Court addressed this issue after the *Vishaka* decision.⁴ The Supreme Court confirmed the termination of a senior officer from the Delhi-based Apparel Export Promotion Council who was found guilty of sexually harassing a junior female employee under his supervision, in line with the guidelines established by the *Vishaka* judgment. In this ruling, the Supreme Court expanded the definition of sexual harassment, asserting that physical contact is not a prerequisite for an act to be classified as sexual harassment. Certainly, physical contact or advances could constitute sexual harassment, but it is not a necessary element for the offense; such physical actions or advances are simply aspects of behaviour that is sexually determined.

The Court clearly remarked in the case of *Suman Dhanda v. Kurukshetra University*, that in the absence of established legislation to ensure the effective implementation of the fundamental human right to gender equality and protection against sexual harassment and abuse, especially in workplaces, and set forth the guidelines and standards outlined for adherence

³ DoE_Prevention_sexual_harassment.pdf available at: https://doe.gov.in/files/inline-documents/DoE_Prevention_sexual_harassment.pdf last visited 12th June 2025.

⁴ Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCT 642

in all workplaces or other institutions.⁵ This action was taken to uphold the fundamental rights under Article 32 of the Constitution, and the Court observed that, it is important to understand that this will be regarded as the law established in pursuant to Article 141 of the Constitution.⁶

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 was passed by the legislature in 2013 to give strong enforceability to these guidelines.⁷

Ambiguity in the definition of workplace

The definition of “aggrieved woman” under Section 2(a)(i) includes, all women who work or visit any workplace, whether they are regular employees, temporary workers, on an ad-hoc basis, or receiving daily wages, are protected under this Act and alleges to have been subjected to any act of sexual harassment at workplace. ⁸The Act acknowledges every woman's right to a workplace that is safe and secure, regardless of her age or employment status. It encompasses all women, whether they are engaged directly or through an agent, including contractors, with or without the principal employer's knowledge. They may be compensated, volunteering, or working in other capacities. Their employment terms can be either explicit or implicit. Moreover, she may be a co-worker, a contract worker, a probationer, an intern, an apprentice, or identified by any other title.

There are several ambiguities in the language of the provisions of POSCH Act, which further contribute in the ineffective implementation of the legislation. Majority of females rendering

⁵ Dr. Suman Dhanda v. Kurukshetra University, Civil Writ Petition No.22260 of 2010 Available at: <https://indiankanoon.org/doc/71816383/> last visited on 10th June 2025

⁶ Article 141 The law declared by the Supreme Court shall be binding on all courts within the territory of India, The Constitution of India 1950

⁷ Sheba Tejani, “Sexual Harassment at the Workplace: Emerging Problems and Debates” Available at <http://www.jstor.org/stable/4415633>.

⁸ Section 2(a)(i), The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

services in the informal sectors, employed in rural areas, domestic workers, small entrepreneurship, unorganised sectors, flexible workplaces, self-employed and in home-based industries, do not come under the purview of labour laws. Such females are often exposed to perilous environment and are likely become vulnerable to rampant sexual harassment.⁹ The cases may remain unreported due to the absence of ICC in such informal sectors and inaccessible channels for redressal mechanism. Domestic workers are victimised to sexual harassment and violence in isolation of private spaces because of the nature of their work. However, the POSH Act prescribes for domestic workers, that such cases are to be reported by the Local Committees to the police.¹⁰ But lack of awareness, fear of humiliation at police stations and threats of losing work are the major challenges that result in the non-reporting of such cases. The term “workplace” includes “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.”¹¹ As per this definition, a workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India.

Moreover, another ambiguity arises that which places can be interpreted as workplace for the purpose of the law and leads to a confusion as to whether certain workplaces, such educational institutes, film production units, Hospitals qualify as a workplace under POSH Act or not. Though, the Kerala High

⁹ Indira Jaising, “Sexual Harassment at Workplace”, Universal Law Publishers Co., New Delhi Second Edition 2015.

¹⁰ Section 11, The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

¹¹ Section 2(o), The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

Court, in **Women in Cinema Collective v. State of Kerala**¹² has held that a production unit of a film can be included under the ambit of a workplace and an ICC shall be constituted where more than ten people are working in such production unit. The court has also gone to the extent of passing directions to the government to set up a Local Complaints committee for such complaints. However, as against the above-broached scenarios, it is evident that the Act has not taken into cognizance the fact that a bulk of women are employed in the informal sector and therefore, majority shall remain outside the protective umbrella of this legislation.

Another debated issue is that whether the students of educational institutions are covered under the purview of this Act or not. This issue was partially addressed by the Calcutta High Court in **Pawan Kumar Niroula v. Union of India**,¹³ where the Court ruled that students in school are covered under the definition of “aggrieved woman” but there are some other major concerns in this context which are still remained unheard.

Gender Justice, Gender Equality and POSH Act 2013

The POSH Act is a remarkable milestone for protecting women from sexual harassment and has created a mandatory obligation on employers to provide protection and redressal to the women working in various organisations against any kind of sexual harassment. Undoubtedly, the cases related to Sexual predominantly perceived and documented in relation to women, therefore the legislation was formulated exclusively for the protection of female victims. However, it cannot be contended

¹² Women in Cinema Collective v. State of Kerala, 2022 SCC OnLine Ker 1436, available at: <https://www.scoonline.com/blog/post/2022/03/21/in-the-film-industry-would-production-units-have-to-constitute-internal-complaints-committee-to-deal-with-harassment-against-women/>, last visited on 2nd June 2025.

¹³ Pawan Kumar Niroula v. Union of India and others in WP.CT86 of 2021 and 2022, available @ https://hindi.livelaw.in/pdf_upload/pawan-kumar-niroula-v-union-of-india-408368-408410.pdf, last visited on 2nd June 2025.

that men and LGBTQI people are exempted from the perils of sexual harassment. Although the other genders encounter various additional impediments due to "social taboos" and "stereotypes" in such context.¹⁴

The Act has precisely mentioned in Section 2(a)[3] that only a female can be a victim.¹⁵ However, there seems a slight ambiguity regarding the gender of the harasser and the question is that where lies the protection if the harasser is of the same gender or if a man is sexually harassed at the workplace. Since the Act is silent on male or LGBTQI employees who may be subjected to workplace sexual harassment. Thus, by limiting the scope to women, the Act precludes the opportunity to resolve sexual harassment complaints raised by men or other individuals.

As Calcutta High Court has observed in the case of **Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College**¹⁶ that "the definition of 'sexual harassment' in Section 2(n) cannot be a static concept but has to be interpreted against the back-drop of the social perspective."¹⁷ As sexual harassment pertains to the dignity of a person which relates to her/his gender and sexuality, it does not mean that any person of the same gender cannot hurt the modesty or dignity as envisaged by the POSH Act."¹⁸

¹⁴ Stefanie K. Johnson et al, Has Sexual Harassment at Work Decreased Since #MeToo?, HARVARD BUSINESS REVIEW 2019, <https://hbr.org/2019/07/hassexual-harassment-at-work-decreased-since-metoo>.

¹⁵ Section 2(a)[3], The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

¹⁶ Dr Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors. 2021(1) SCT 431 (Calcutta)

¹⁷ Section 2(n), The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

¹⁸ G.S. Venumadhava, M. Tejashwini, "Sexual Harassment of Women at workplace", International journal of advanced research, 2015.

The provision of Indian Penal Code, 1860 and now the corresponding provision In Bhartiya Nyaya Sanhita 2023 related to Assault or criminal force to woman with intent to outrage her modesty,¹⁹ Word, gesture or act intended to insult the modesty of a woman,²⁰ and Punishment for Rape²¹ are gender specific and especially focused on addressing sexual assault on women. Moreover, the only provision dealing with the sexual harassment and assault to men and LGBTQI community under Section 377²² is also removed in Bhartiya Nyaya Sanhita 2023.

The Supreme Court refused to entertain a plea to widen the scope of the regulations of POSH Act to bring within its purview the acts of sexual harassment of aggrieved women, to include LGBTQIA+ communities.²³ The Court observed that *“the focus will be lost from the principal objective i.e., prevention of sexual harassment of women at the Supreme Court of India, if such amendments to the regulations which were framed following enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are made,”* Since the current law is framed in order to protect only an ‘aggrieved woman’ in the workplace in regard to the principle enshrined in clause 3 of Article 15 of the Constitution of India .

Lack of expertise of the IC and other implementation challenges

The Act has delegated the onus of implementation of the provisions and Rules of POSH on the IC, and the IC is conferred with the equivalent power to a Civil Court in the concerned

¹⁹ Section 354 IPC Section 74 BNS

²⁰ Section 509 IPC, Section 79 BNS

²¹ Section 376 Indian Penal Code, 1860, Section 64 Bhartiya Nyaya Sanhita, 2023

²² Section 377, Indian Penal Code, 1860 (repealed)

²³ Binu Tamta & Anr. v. High Court of Delhi & Ors. Miscellaneous Application No. 2308/2023 in W.P.(C) No. 162/2013 (Arising out of impugned final judgment and order dated 17-07-2013 in W.P.(C) No. No. 162/2013 passed by the Supreme Court of India).

matters for the purpose of conducting the enquiry as well as examining the evidence.²⁴ In practical scenario, IC members have either no or a very less experience in adjudicating experience in handling such sensitive matter. Unlike the judges of special courts and Tribunals, no training sessions or workshops are conducted of IC members for enhancing their adjudicating skills. Consequently, more often such enquiry reports are challenged in the High Courts by the aggrieved parties and many of these reports are set aside for not abiding the principles of natural justice, which the IC members might not be aware in the first place. Perhaps, this appears to be a fundamental design flaw in the implementation since the report of IC may put a life-changing impact on the aggrieved as well as the accused not only in terms of profession but also in terms of reputation.²⁵

Practical Challenges in Obligation to maintain Confidentiality

The POSH Act clearly creates an obligation at the part of the employer to maintain strict confidentiality and precisely states that information relating to the inquiry shall not be communicated in any form to the public, press, or media. In the contrary, it is usually observed that such information invariably gets leaked within the organisation, or in the media, and results in an undue pressure on all the parties involved, including the IC members.

The right to cross-examination and natural justice under POSH Act

²⁴ Section 11(3), The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

²⁵ Indian Parliamentary Debate, Lok Sabha No. 14, Session IX (19 Dec., 2006), Remarks of Renuka Chowdhury, *then* Minister of State of Ministry of Women and Child Development) on Unstarred Question No. - 3808.

The Calcutta High Court ruled in *Nutrition and Ors v. Suddhasil Dey &Anr.*²⁶ regarding the POSH Act's and a disciplinary inquiry's procedural requirements. The Court ruled that neither the 2013 Act nor the 2013 Rules specify that a respondent to a sexual harassment complaint at work is not permitted to cross-examine the complainant. The 2013 Act and the 2013 Rules must incorporate the right to cross-examination. It concluded that the right to cross-examine is a fundamental right to a fair trial in all laws pertaining to investigations and trials against delinquents or accused people. The delinquent or accused may legitimately file a grievance at the request of the accused if the opportunity for cross-examination is not extended during an inquiry or trial. This is important when dealing with proceedings that could potentially deny the accused or delinquent his valuable right to a fair trial. According to the ruling, courts must be vigilant in preventing employers from failing, omitting, or neglecting to provide any procedural protections that are available to a respondent without jeopardizing the complainant's safety and security.

Emerging Concerns of Misuse of POSH Act, 2013

False complaints are uncommon, but they can have detrimental effects. False charges have the potential to harm a person's career, reputation, and mental health. To shield women from sexual harassment at work, India passed the historic Prevention of Sexual Harassment (PoSH) Act, 2013. Though the Act's main goal is to give women a safe and respectable workplace, it also contains clauses that guard against the abuse of the legal system through fabricated complaints. Maintaining the integrity of the legal system and guaranteeing justice for all parties involved depend heavily on this well-rounded strategy.

²⁶*Nutrition and Ors. v. Suddhasil Dey and Ors.* 2020 (4) SLR 437

Section 14 of the Act addresses malicious or false complaints and their repercussions.²⁷ The Act addresses the possibility of abuse by permitting sanctions against individuals who intentionally file complaints. This clause is crucial for safeguarding the careers and reputations of people who might otherwise be falsely accused.

Anita Suresh v. Union of India & Ors²⁸

The version of the complaint was that the respondent had given certain comments indicating sexual advances against her in the presence of certain other colleagues on 7th July, 2011. She has also narrated another incident that the respondent also asked her in the presence of the staff members to come alone in the male washroom to inspect the shortcomings. After examining the complainant, it was found that neither she could recollect the names of any of her colleagues who were alleged to have been present as a witness of these incidents, despite being shown the attendance records of the staff members present on that day and nor she was able to recollect or mention the exact words said to her.

The respondent denied the allegations of sexual harassment and submitted that he just brought the absence of soap in the male toilet to the notice of the petitioner but the remarks were misinterpreted completely out of context. He put allegation on the petitioner and claimed that the complaint of sexual harassment is lodged against him as a vindictive grudge which was the result of certain official work disposed by him in complainant's absence. After considering all the facts and circumstances the Court reached to the conclusion that the complaint appeared to be false and has been filed with some ulterior motive. Therefore, the petition of the complainant was dismissed with the cost of Rs.50,000/ Rs. The court also

²⁷Section 14, The Sexual Harassment of Women at Workplace (Prevention, prohibition, and Redressal) Act, 2013

²⁸Anita Suresh v Union of India & Ors, AIR ONLINE 2019 DEL 1065

permitted to initiate appropriate action for filing false complaint against the respondent.

In **Union of India v. Reema Srinivasan Iyengar**²⁹, it was held by the Madras High Court that the Sexual Harassment of Women at Workplace Act, 2013 was designed to give women equal status in the workplace and to foster a welcoming environment where their dignity and self-esteem are protected, it cannot be permitted for women to abuse the law by harassing someone with false or fabricated accusations, according to Reema Srinivasan Iyengar, the Hon'ble High Court of Madras. "

For a variety of reasons, such as retaliation against someone, professional rivalry, or to obtain leverage in a dispute, the women employee occasionally make false reports. Such mistreatment can hinder legitimate claims by discouraging the actual victims from coming forward. False accusations may cause serious harm to the accused, such as loss of employment, mental illness, and harm to their reputation.³⁰ Even if an accusation is untrue, the stigma associated with it remains.

Conclusion

The POSH Act's provisions contain certain ambiguities in their wording, which further hinders the law's efficient application. Many women who work in rural areas, in the informal sector, as domestic helpers, small business owners, in flexible work arrangements, as independent contractors, or in home-based enterprises are not able to effectively get the protection in the practical implementation of the Act. Moreover, though the POSH Act serves as the foundation for safeguarding workers against sexual harassment, there is increasing concern that it is being abused. However, it is crucial to comprehend these issues

²⁹Union of India v. Reema Srinivasan Iyengar, WP Nos. 10689, 24290 and 4339 of 2019

³⁰Flavia Agnes, Protective Legislations: Myth of Misuse, 30(16) EPW 865 (1995).

to preserve the integrity of the Act while keeping the realities on the ground in mind.

Undoubtedly, The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 has endeavoured to empowering the women, protecting them from any form of Sexual Harassment at their workplace and ensuring a safe environment at the workplace. But the most relevant question here is that whether the Act has successfully achieved the legislative intent behind the enactment and implementation or there is a way ahead.