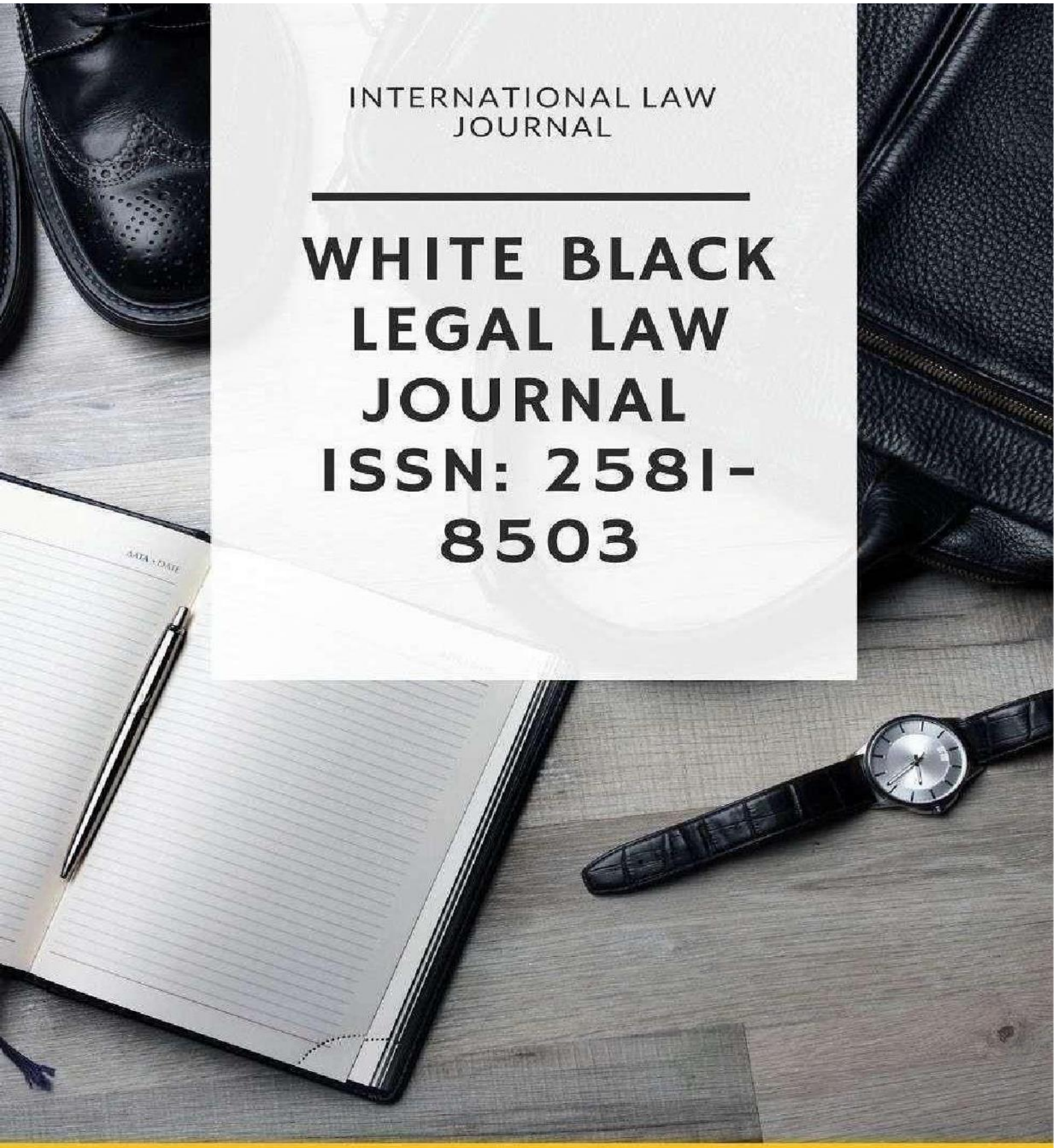


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A CRITICAL STUDY ON THE EFFECTIVENESS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) POSH ACT ,2013 IN INDIA

AUTHORED BY – MUTHAMIL M

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7. Initiatives for Inclusion Foundation v. Union of India, Supreme Court of India (order of December 2024).
8. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986).

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ABSTRACT

Sexual harassment at the workplace violates a woman's rights to equality, dignity, privacy and livelihood. Following the Supreme Court's guidelines in *Vishaka v. State of Rajasthan*, India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act"), supported by the 2013 Rules and, for criminal liability, the Bharatiya Nyaya Sanhita, 2023. More than a decade on, the Act's promise is still undercut by non-constitution of Internal Complaints Committees, weak Local Committees, fear of retaliation, a short limitation period, underreporting, poor reach into the informal sector and the absence of reliable data. This article examines the text, institutional machinery and judicial interpretation of the Act, identifies the gap between law and practice, draws on comparative models from the United States, the United Kingdom and international labour standards, and proposes legislative, institutional and attitudinal reforms. It argues that the most immediate gains lie in credible enforcement and independent monitoring, supplemented by targeted amendment.

Keywords: Sexual harassment; POSH Act; Internal Complaints Committee; Local Committee; Vishaka guidelines; workplace safety; women's rights; Bharatiya Nyaya Sanhita; gender justice.

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CHAPTER I – INTRODUCTION

Employment is one of the principal routes through which women attain economic independence, social standing and personal autonomy. As women have entered offices, factories, hospitals, schools, farms, households and, more recently, digital workspaces in larger numbers, their exposure to unwelcome sexual conduct in those spaces has become a visible legal and social concern. Sexual harassment at the workplace is not merely a personal wrong. It undermines equality of opportunity, pushes many women out of employment, and converts a place of livelihood into a place of fear.[1]

Before 2013, India had no dedicated statute on the subject. Complaints were pursued through general criminal provisions on outraging or insulting the modesty of a woman under the Indian Penal Code, 1860, or through departmental service rules that were neither uniform nor designed for the purpose.[2] The turning point came in *Vishaka v. State of Rajasthan*, where, in the absence of legislation, the Supreme Court laid down binding guidelines for the prevention of workplace sexual harassment, drawing on Articles 14, 15, 19(1)(g) and 21 of the Constitution and on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[3] Parliament gave these guidelines statutory form sixteen years later through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, in force from 9 December 2013.[4]

The POSH Act is preventive, prohibitive and redressal-oriented in design. It defines sexual harassment, places obligations on every employer, requires an Internal Complaints Committee (ICC) in workplaces with ten or more employees and Local Committees (LCs) at the district level, prescribes a time-bound inquiry, and provides for interim relief, compensation and penalties for non-compliance. It operates alongside the criminal law, which since 1 July 2024 is contained in the Bharatiya Nyaya Sanhita, 2023 (BNS).[5]

A statute, however, is only as effective as its implementation. Reports, surveys and judicial observations over the last decade indicate that many establishments have not constituted the mandatory committees, that district machinery is weak, and that women continue to hesitate before complaining. This study therefore asks how far the POSH Act has achieved its stated

[1]Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 19 (1992) and General Recommendation No. 35 (2017), recognising sexual harassment as a form of gender-based discrimination and violence.
[2]*Rupan Deol Bajaj v. K.P.S. Gill*, (1995) 6 SCC 194.
[3]*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[4]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
[5]Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), §§ 74, 75, 77, 78 and 79.

objects of prevention, prohibition and redressal, and what reforms are needed to close the gap between the law as enacted and the law as experienced.

1.1 BACKGROUND OF THE STUDY

Workplaces are central to women's economic independence, professional development and social participation. As women increasingly work in offices, factories, hospitals, educational institutions, agricultural settings, domestic work, transport, digital platforms and remote-work environments, the need to ensure safe and dignified working conditions has become a major concern of labour law, constitutional law and gender justice. Sexual harassment at the workplace is not merely an individual act of misconduct; it affects equality of opportunity, dignity, privacy, physical and mental well-being, and the right to earn a livelihood.

Before 2013, India did not have a comprehensive statute specifically dealing with sexual harassment at the workplace. Complaints were generally addressed through provisions of the Indian Penal Code, 1860 relating to outraging or insulting the modesty of a woman, or through service rules and departmental procedures. These remedies were fragmented, inconsistent and often inadequate for addressing harassment occurring within employment relationships.

The Supreme Court's decision in Vishaka v. State of Rajasthan marked a decisive shift. In the absence of specific legislation, the Court laid down binding guidelines requiring employers to prevent sexual harassment and to constitute complaints committees. The Court grounded its reasoning in Articles 14, 15, 19(1)(g) and 21 of the Constitution and in India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Parliament subsequently enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly known as the POSH Act. The Act defines sexual harassment, imposes duties on employers, requires the constitution of Internal Complaints Committees (ICCs) in workplaces with ten or more employees, provides for Local Committees (LCs) at the district level, and prescribes inquiry, interim relief, compensation, confidentiality and penalty provisions. Since 1 July 2024, criminal remedies relating to sexual harassment are also found in the Bharatiya Nyaya Sanhita, 2023.

Despite this comprehensive legal framework, reports, judicial observations and scholarly writings indicate persistent implementation gaps. Many establishments have not constituted ICCs; Local Committees remain weak or non-functional in several districts; women hesitate to complain due to fear of retaliation, stigma and procedural barriers; and workers in the unorganised sector often remain outside the effective reach of the law. The present study

therefore critically examines the effectiveness of the POSH Act in preventing and redressing workplace sexual harassment in India.

1.2 SIGNIFICANCE OF THE STUDY

More than a decade has passed since the POSH Act came into force, making it possible to assess its practical effectiveness rather than merely its legislative intent.

Judicial decisions, particularly Aureliano Fernandes v. State of Goa and subsequent directions in 2024, have highlighted serious deficiencies in the constitution and functioning of complaint committees.

The Act imposes affirmative obligations on employers, making it an important instrument for promoting women's participation in the workforce.

Changes in the nature of work, including remote work, hybrid work, gig work and digital communication, raise new questions about the application of the Act.

The study seeks to bridge the gap between the law as enacted and the law as experienced by women workers, particularly those in vulnerable and informal employment.

1.3 REVIEW OF LITERATURE

Catharine A. MacKinnon, in Sexual Harassment of Working Women:

A Case of Sex Discrimination, argued that sexual harassment should be understood as a form of sex discrimination rather than as an isolated personal wrongdoing. Her work influenced the equality-based approach later adopted by the Supreme Court in Vishaka v. State of Rajasthan. However, her analysis is primarily based on American employment law and does not directly address the Indian institutional framework.

The Justice J.S. Verma Committee, in its Report on Amendments to Criminal Law: examined the inadequacy of employer-controlled complaint mechanisms and recommended stronger institutional safeguards. The Committee's observations remain relevant because the POSH Act continues to rely substantially on Internal Complaints Committees constituted by employers.

The Ministry of Women and Child Development's Handbook on Sexual Harassment of Women at Workplace explains the provisions of the POSH Act:

the duties of employers and the procedure for complaints. While useful as an explanatory and awareness-oriented document, it does not critically evaluate the practical functioning of ICCs, Local Committees or enforcement machinery.

The FICCI-EY report, Fostering Safe Workplaces:

Prevention of Sexual Harassment at Workplace, and the Indian National Bar Association's survey on sexual harassment at the workplace highlight uneven compliance among organisations and considerable underreporting of complaints. These studies are valuable in showing implementation deficits, but their samples are largely limited to organised-sector establishments and do not adequately capture the position of domestic workers, agricultural workers, construction workers and other informal-sector women.

Judicial literature surrounding Vishaka, Apparel Export Promotion Council v. A.K. Chopra, Medha Kotwal Lele v. Union of India and Aureliano Fernandes v. State of Goa demonstrates the judiciary's continuing role in defining sexual harassment, enforcing employer obligations and directing compliance. Yet much of the existing commentary focuses on legal interpretation rather than on a consolidated assessment of institutional effectiveness, procedural barriers, enforcement capacity and the position of informal-sector workers.

1.4 RESEARCH GAP

The Existing Literature Consists Largely Of Statutory Commentaries, Government Handbooks, Compliance Guides, Reports And Judicial Case Comments. These Materials Explain What The Posh Act Requires, But They Provide Limited Analysis Of Whether The Act Works Effectively In Practice.

In particular, there is inadequate scholarly attention to:

- The structural independence of Internal Complaints Committees, especially in complaints against employers or senior management.
- The practical functioning and accessibility of Local Committees for women in the unorganised sector.
- The impact of the three-month limitation period, conciliation, confidentiality and inquiry timelines on complainants.
- The absence of an express statutory prohibition against retaliation.
- The adequacy of penalties and State monitoring mechanisms.
- The application of the Act to remote work, digital workplaces and platform-based employment.
- The relationship between the POSH Act and the Bharatiya Nyaya Sanhita, 2023.
- Comparative lessons from the United States, the United Kingdom and international labour standards.

The present study addresses these gaps by critically evaluating the effectiveness of the POSH

Act and suggesting reforms.

1.5 Objectives of the Study

1. To examine the concept, meaning, nature and forms of sexual harassment at the workplace.
2. To analyse the constitutional, international, statutory and judicial framework governing the prevention of sexual harassment of women at the workplace in India.
3. To evaluate the effectiveness of the POSH Act, 2013 in preventing, prohibiting and redressing workplace sexual harassment.
4. To assess the constitution, composition, independence and functioning of Internal Complaints Committees and Local Committees.
5. To identify procedural, institutional and social barriers faced by women complainants.
6. To examine judicial approaches towards the interpretation and enforcement of the POSH Act.
7. To study emerging challenges relating to remote work, digital workplaces and the unorganised sector.
8. To suggest legislative, institutional and administrative reforms for strengthening the effectiveness of the POSH Act.

1.6 Research Questions

1. What is the conceptual meaning of sexual harassment at the workplace, and what are its principal forms, causes and consequences?
2. What constitutional guarantees, international obligations, judicial principles and statutory provisions form the legal framework for preventing sexual harassment of women at the workplace in India?
3. To what extent have Internal Complaints Committees and Local Committees been constituted and functioned effectively under the POSH Act?
4. Do procedural features such as limitation, conciliation, confidentiality, inquiry timelines and interim relief facilitate or obstruct access to justice for women complainants?
5. How have the courts interpreted and enforced the POSH Act, and what have been the main judicial directions on implementation?
6. What challenges arise in applying the POSH Act to the unorganised sector, remote

work, digital workplaces and non-traditional forms of employment?

7. What legislative, institutional and administrative reforms are necessary to improve the effectiveness of the POSH Act in India?

1.7 Research Methodology

The study adopts a doctrinal, analytical and comparative legal methodology. It relies primarily on primary sources, including the Constitution of India, the POSH Act, 2013, the POSH Rules, 2013, the Bharatiya Nyaya Sanhita, 2023, service rules and decisions of the Supreme Court and High Courts.

Secondary sources include books, journal articles, reports of government committees, publications of the Ministry of Women and Child Development, industry surveys, international instruments and policy documents. The comparative component draws upon the legal positions in the United States, the United Kingdom and international labour standards, particularly ILO Convention No. 190.

The research is qualitative and interpretative. It does not rely on original empirical fieldwork, interviews or surveys.

1.8 Limitations of the Study

The study is limited to sexual harassment of women at the workplace under the POSH Act. Harassment of men and transgender persons is considered only to the extent relevant to discussions on gender neutrality and possible reform.

The study does not include field surveys or interviews. Reliable, disaggregated and current national data on complaints, inquiries and outcomes are not readily available, and confidentiality provisions may result in incomplete public reporting.

Finally, the legal position continues to evolve through judicial directions, government notifications and administrative measures. The study therefore reflects the law and implementation concerns as understood from the materials examined.

1.9 Scheme of the Study

Chapter I – Introduction presents the background, significance, review of literature, research gap, objectives, research questions, hypotheses, methodology and limitations of the study.

Chapter II – Conceptual Framework of Sexual Harassment at Workplace examines the meaning, evolution, nature, forms, causes and consequences of workplace sexual harassment,

along with the challenges faced by women complainants.

Chapter III – Legal Framework for Prevention of Sexual Harassment of Women at Workplace in India analyses constitutional protections, international obligations, the Vishaka guidelines, the POSH Act, 2013, the Bharatiya Nyaya Sanhita, 2023, allied laws and the institutional machinery under the Act.

Chapter IV – Critical Analysis of the Effectiveness of the POSH Act evaluates the scope of the Act, the functioning of ICCs and LCs, procedural concerns, judicial approach, gender neutrality, retaliation, remote and digital workplaces, comparative models and enforcement mechanisms.

Chapter V – Findings, Suggestions and Conclusion summarises the findings of the study, offers recommendations for reform, identifies areas for future research and concludes.

CHAPTER II – CONCEPTUAL FRAMEWORK OF SEXUAL HARASSMENT AT WORKPLACE

2.1 INTRODUCTION

Sexual harassment at the workplace is a form of gender-based misconduct that exploits unequal power relations, social attitudes towards women and the economic dependence of employees. Before examining the law, it is necessary to understand what the term means, how it has developed, and what experiences it covers. This chapter therefore examines the meaning and definition of sexual harassment, traces the evolution of the concept, describes its nature and forms, and analyses its causes, consequences and the barriers that complainants face.

2.2 MEANING AND DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is broadly unwelcome conduct of a sexual nature that violates a person's dignity or creates an intimidating, hostile or offensive working environment. The central element is that the conduct is *unwelcome*: what matters is how it is experienced by the recipient, not the intention of the person engaging in it. It exploits unequal power relations, social attitudes towards women and employees' economic dependence, and may be subtle or overt, isolated or continuing, and committed by a superior, colleague, subordinate or third party such as a client.

Section 2(n) of the POSH Act provides that sexual harassment includes any one or more of the following unwelcome acts or behaviour, whether directly or by implication: physical contact and advances; a demand or request for sexual favours; sexually coloured remarks; showing

pornography; or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.[6] The definition follows *Vishaka* and was reiterated in *Apparel Export Promotion Council v. A.K. Chopra*, where the Court stressed that physical contact is not necessary and that the test is the effect of the behaviour on the woman concerned.[7] Section 3(2) adds circumstances that, if connected with an act of sexual harassment, may amount to it: an implied or express promise of preferential treatment; an implied or express threat of detrimental treatment; a threat about present or future employment status; interference with work or the creation of an intimidating, offensive or hostile environment; and humiliating treatment likely to affect health or safety.[8] These capture the two classic forms recognised in comparative law, quid pro quo and hostile work environment harassment.

2.3 EVOLUTION OF THE CONCEPT

The concept developed first through feminist scholarship and litigation in the United States in the 1970s, which framed harassment as sex discrimination. In *Meritor Savings Bank v. Vinson*, the United States Supreme Court recognised that a hostile or abusive work environment can itself amount to sex discrimination under Title VII of the Civil Rights Act, 1964.[9] Internationally, CEDAW General Recommendation No. 19 (1992) recognised sexual harassment as discrimination and violence against women. India ratified CEDAW in 1993, and this became a basis for the reasoning in *Vishaka*.[10] The ILO Violence and Harassment Convention, 2019 (No. 190) further affirms everyone's right to a world of work free from violence and harassment, although India has not ratified it.

In India, the concept moved from an offence against "modesty" to a violation of equality and dignity. The *Vishaka* guidelines, which arose from the gang rape of a social worker, Bhanwari Devi, in the course of her work in Rajasthan, marked that shift, and the 2013 Act institutionalised it through a preventive and redressal framework. The Criminal Law (Amendment) Act, 2013 simultaneously introduced sexual harassment as a distinct criminal offence, now continued in the BNS.[11]

[6]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(n).
[7]*Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.
[8]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 3(2).
[9]*Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).
[10]CEDAW Committee, General Recommendation No. 19 (1992); *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[11]Criminal Law (Amendment) Act, 2013 (Act No. 13 of 2013); Bharatiya Nyaya Sanhita, 2023, § 75.

2.4 NATURE AND FORMS OF SEXUAL HARASSMENT AT WORKPLACE

Workplace sexual harassment takes several overlapping forms:

Abuse of power and quid pro quo. Harassment frequently occurs where the harasser controls promotion, assignments, evaluation or continued employment, and a benefit or detriment is made conditional on submission to sexual demands, expressly or by implication.

Hostile work environment. Repeated sexual jokes, remarks, display of pornography or unwelcome comments on appearance may amount to harassment even where no direct demand is made.

Physical, verbal and non-verbal conduct. The statutory definition expressly covers unwelcome touching, sexually coloured remarks, and gestures, staring or display of obscene material.

Electronic harassment. Messages, emails, social media contact, calls and video-conferencing are increasingly used to harass colleagues. Where the conduct arises out of or in the course of employment it may fall within the Act, and may also attract the Information Technology Act, 2000 and the BNS.[12]

Harassment by non-employees. Women who work with customers, clients or patients may be harassed by outsiders. The Act's definition of workplace, which includes places visited in the course of employment, extends to such situations.

2.5 CAUSES AND CONSEQUENCES

The causes of workplace sexual harassment lie in patriarchal attitudes, unequal distribution of power in organisations, normalisation of sexist behaviour, lack of accountability for senior employees and a culture that discourages complaints. Where the person complained against is valuable to the organisation, there is an incentive to protect the individual rather than the complainant. For victims, the consequences include anxiety, loss of confidence and ill-health, reduced performance, forgone opportunities and, often, exit from the workforce. Employers bear costs in productivity, attrition, reputation and legal liability, and society bears the cost of reduced women's participation in paid work.

2.6 CHALLENGES FACED BY WOMEN COMPLAINANTS

Women who wish to complain face six principal obstacles: fear of retaliation and loss of livelihood, made worse because the Act contains no express prohibition on retaliation; stigma and victim-blaming; lack of awareness, especially in small establishments and the informal

[12]Information Technology Act, 2000, §§ 66E, 67 and 67A; Bharatiya Nyaya Sanhita, 2023, §§ 77, 78 and 79.

sector; doubts about the independence of employer-constituted committees; procedural barriers such as the short limitation period, pressure to conciliate, repeated testimony and delay; and the absence of support systems such as counselling, legal advice and financial assistance. The statutory definition in India is broad and aligned with international standards, but a broad definition is of little use unless it is matched by a mechanism women can trust.

2.7 CONCLUSION

Sexual harassment at the workplace is a multifaceted wrong with legal, economic, psychological and social dimensions. It has been recognised as a form of sex discrimination and as an infringement of dignity. The statutory definition in India is broad and aligned with international standards, but the conceptual understanding must be matched by a mechanism which women can trust. The next chapter examines the legal framework created for this purpose.

CHAPTER III – LEGAL FRAMEWORK FOR PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA

3.1 INTRODUCTION

India's response is built in layers. Constitutional guarantees provide the foundation, judicial guidelines supplied the first enforceable standards, the POSH Act provides the specialised preventive and redressal mechanism, and criminal law, service rules and other statutes supplement it. International instruments inform the interpretation of all of these. This chapter examines each layer and the institutions through which the law operates, concentrating on the POSH Act, which forms the core of the framework and the subject of this study.

3.2 CONSTITUTIONAL PROTECTION OF WOMEN AT WORKPLACE

Article 14 guarantees equality before the law, and Article 15(1) prohibits discrimination on the ground of sex, while Article 15(3) permits special provision for women, of which the POSH Act is an example. In *Vishaka*, the Supreme Court held that each incident of workplace sexual harassment violates the fundamental rights to gender equality and to life and liberty, and infringes the right under Article 19(1)(g) to practise any profession, which depends on a safe working environment.[13] Article 21 includes the right to live with dignity, and the right to privacy affirmed in *Puttaswamy* protects bodily integrity and informational privacy, supporting

[13] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

the Act's confidentiality provisions.[14] The fundamental duty in Article 51A(e) to renounce practices derogatory to the dignity of women is not enforceable by itself but reinforces the constitutional vision.

3.3 INTERNATIONAL OBLIGATIONS

Internationally, CEDAW requires States to eliminate discrimination against women in employment; General Recommendations No. 19 and No. 35 identify sexual harassment as a form of discrimination and gender-based violence.[15] The Beijing Platform for Action (1995) calls for its elimination at work. ILO Convention No. 190 and Recommendation No. 206 set a comprehensive standard requiring States to prohibit violence and harassment in the world of work and to require employers to take preventive measures. Though India has not ratified the Convention, it is an important benchmark for assessing Indian law.[16]

3.4 VISHAKA GUIDELINES AND THE JUDICIAL GENESIS OF THE LAW

Vishaka arose from a writ petition by women's groups and NGOs after the gang rape of Bhanwari Devi, a grassroots worker employed under a State programme. Noting the absence of domestic law, the Court laid down guidelines, to be treated as law under Article 141 until legislation was enacted. They defined sexual harassment, imposed a duty on employers to prevent it and to provide procedures for resolution, required a complaints committee headed by a woman with at least half of its members women, and required the involvement of a third party such as an NGO.[17]

The guidelines were developed in later decisions. In *Apparel Export*, the Court upheld disciplinary action for an attempt to molest a subordinate and held that such cases must be approached with sensitivity and that absence of physical contact or corroboration does not make the conduct acceptable. In *Medha Kotwal Lele v. Union of India*, the Court noted poor implementation of the guidelines and issued directions for compliance, including that complaints committees be deemed inquiry authorities for disciplinary proceedings under service rules.[18]

[14] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[15] CEDAW Committee, General Recommendations No. 19 (1992) and No. 35 (2017).
[16] International Labour Organization, Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206.
[17] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
[18] *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

3.5 THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Coverage. The Act protects an "aggrieved woman", meaning a woman of any age, employed or not, who alleges sexual harassment by the respondent; in a dwelling place, it means a woman employed there. "Employee" includes regular, temporary, ad hoc and daily-wage workers, contract workers, probationers, trainees, apprentices and co-workers, whether or not the principal employer is aware and whether paid or voluntary.[19] "Workplace" under Section 2(o) covers government bodies, public and private organisations, hospitals, sports venues, any place visited in the course of employment including employer-provided transport, and a dwelling place or house, which brings domestic workers within the Act.

Employer duties. Section 19 requires every employer to provide a safe working environment; display the penal consequences of harassment and the order constituting the committee; hold awareness programmes and orientation for committee members; provide facilities to the committee; assist the woman if she files a criminal complaint; treat sexual harassment as misconduct under service rules; and monitor timely submission of committee reports.

Complaint, conciliation and inquiry. Under Section 9, a written complaint must be made within three months of the incident or the last of a series of incidents, extendable by a further three months for recorded reasons, with assistance available to a woman unable to complain in writing.Section 10 allows conciliation at the woman's request before an inquiry, but bars monetary settlement as its basis. The committee inquires under Section 11 with the powers of a civil court, and the inquiry must be completed within ninety days.

Interim relief, outcome and appeal. During the inquiry the committee may recommend transfer of either party, leave of up to three months for the aggrieved woman, or other prescribed relief. Findings go to the employer or District Officer within ten days; if the allegation is proved, action is recommended as misconduct under service rules, with deduction from salary or payment to the woman, and the employer must act within sixty days.Compensation is assessed by reference to mental trauma, loss of career opportunity, medical expenses, and the respondent's income and capacity to pay. An appeal lies within ninety days.

Confidentiality and false complaints. Section 16 prohibits publication of the contents of complaints and inquiries and the identity of the parties and witnesses, overriding the Right to Information Act, 2005; contravention is punishable under Section 17. Section 14 permits action where a complaint is found false or malicious, with a proviso that mere inability to substantiate

[19]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §§ 2(a) and 2(f).

a complaint does not attract action.

Reporting and penalties. Committees must submit annual reports to the employer and the District Officer, and the appropriate Government is responsible for monitoring and maintaining data.Under Section 26, non-compliance is punishable with a fine up to fifty thousand rupees, doubled for repetition and potentially accompanied by cancellation of licence or registration. Offences are non-cognizable under Section 27, and Section 28 preserves other remedies.

3.6 BHARATIYA NYAYA SANHITA, 2023 AND ALLIED LAWS

The BNS, which replaced the Indian Penal Code from 1 July 2024, punishes assault or criminal force to outrage a woman's modesty (Section 74), sexual harassment including unwelcome advances, demands for sexual favours, showing pornography and sexually coloured remarks (Section 75), voyeurism (Section 77), stalking including monitoring electronic communication (Section 78), and words, gestures or acts intended to insult a woman's modesty (Section 79).[20] The POSH Act and the criminal law operate in parallel: the former offers an employment-based remedy aimed at discipline, prevention and compensation, the latter punishment through criminal courts, and a woman may use either or both.

Rule 3C of the Central Civil Services (Conduct) Rules, 1964 prohibits sexual harassment by government servants, and the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 treat it as misconduct. Online harassment may attract Sections 66E, 67 and 67A of the Information Technology Act, 2000. Disclosure of sexual harassment complaints under SEBI's Business Responsibility and Sustainability Reporting framework adds a market-based accountability mechanism for listed companies. The POSH Rules, 2013 supply operational detail on inquiry procedure, honoraria for external members, appeals and annual reports.

3.7 INSTITUTIONAL MACHINERY UNDER THE ACT

Internal Complaints Committee. Under Section 4, an employer with ten or more employees must constitute an ICC at each office or administrative unit. It comprises a Presiding Officer who is a senior woman employee; at least two employee-members preferably committed to women's causes or with social-work or legal experience; and one external member from an NGO or a person familiar with issues of sexual harassment. At least half the members must be women, and members hold office for up to three years.[21]

[20]Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), §§ 74, 75, 77, 78 and 79.
[21]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, S 4.

Local Committee. Sections 5 to 7 require the appropriate Government to notify a District Officer, who constitutes an LC in each district, and where necessary at block level. The LC receives complaints from establishments with fewer than ten employees, complaints against the employer, and complaints from women in the informal sector, including domestic workers. It is chaired by an eminent woman in social work and includes a member from among women working in the area, two NGO nominees and the officer concerned with social welfare or women and child development, with at least one member preferably from the Scheduled Castes or Scheduled Tribes. Nodal officers designated in each block, taluka, tehsil or ward must forward complaints to the LC within seven days.

District Officer and SHe-Box. The District Officer, typically the District Magistrate or Collector, constitutes the LC, designates nodal officers, receives annual reports and carries out awareness and monitoring functions. The Ministry of Women and Child Development's SHe-Box portal, launched in 2017 and later relaunched as a centralised platform, allows women, including those in the unorganised sector, to lodge complaints that are forwarded to the appropriate committee and to track their status.

3.8 OVERALL ASSESSMENT OF THE INDIAN LEGAL FRAMEWORK

India possesses a comprehensive and progressive framework. The definition of harassment is broad, those of employee and workplace expansive, positive duties are placed on employers, interim relief and compensation are available, and a district-level mechanism exists for those outside internal committees. At the same time, structural features raise questions: the Act protects women only, relies heavily on employer-constituted committees, prescribes a short limitation period, permits conciliation, carries modest financial penalties and contains no express anti-retaliation provision. Whether these features, and the manner of implementation, allow the Act to meet its objectives is the subject of the next part.

CHAPTER IV – CRITICAL ANALYSIS OF THE EFFECTIVENESS OF THE POSH ACT

4.1 INTRODUCTION

The previous chapter described the constitutional, statutory and institutional structure of the law. This chapter evaluates how the Act has worked in practice. Effectiveness is assessed here against the Act's own objects: whether it prevents harassment, whether it gives women an accessible, fair and timely remedy, and whether it ensures employer accountability. The

analysis draws on the statutory text, judicial decisions and published reports and surveys, and is subject to the limitation that comprehensive national data on complaints and outcomes are unavailable.

4.2 SCOPE AND COVERAGE OF THE ACT

The Act's definitions of employee and workplace are among its strengths. By extending to trainees, volunteers, contract workers and places visited in the course of employment, it covers far more than the *Vishaka* guidelines, and the inclusion of domestic workers and employer-provided transport is significant. There are, however, limits. First, only women may be aggrieved persons, so men and transgender persons who experience sexual harassment at work cannot invoke the Act, although the respondent may be of any gender. Second, its application to political parties, informal gatherings of an organisation, and freelancers and platform workers who may not be "employees" in the traditional sense has been uncertain. Third, students and researchers in educational institutions are generally dealt with under separate regulations.

The first limit is the subject of recurring debate. Defenders argue that the Act is a special measure for women under Article 15(3), a response to documented vulnerability, and that gender-neutral extension might dilute its focus. Critics reply that harassment can affect persons of any gender and that a rights-based law should protect all employees. The question requires a careful legislative choice that preserves the Act's core purpose while ensuring that those outside it have an equally effective alternative remedy.

4.3 CONSTITUTION AND FUNCTIONING OF INTERNAL COMPLAINTS COMMITTEES

Non-compliance. The most basic condition of effectiveness is that the committee exists. Industry surveys indicate that a significant proportion of organisations, including large ones, had not constituted an ICC in the first years of the Act.[22] In *Aureliano Fernandes v. State of Goa*, the Supreme Court recorded that implementation was unsatisfactory nearly a decade after enactment, that many government departments and bodies had not constituted committees, and that several committees were not constituted as the Act requires; it directed the Union, States and Union Territories to verify and ensure constitution, publicise details, and conduct training and sensitisation.[23] Where no committee exists, the woman has no ready forum, and even the

[22]FICCI and Ernst & Young, *Fostering Safe Workplaces: Prevention of Sexual Harassment at Workplace* (2015).
[23]*Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 1592 (decided 12 May 2023).

LC route may be unavailable if district machinery has not been set up.

Composition and independence. The Act secures some independence through a senior woman Presiding Officer, a majority of women and an external member. Yet the Presiding Officer and employee-members are subordinate to the employer, who controls their careers, which can compromise independence in cases against senior management; the Verma Committee's reservations reflect this concern. The external member is meant to be a counterweight, but quality varies, honoraria may be modest, some organisations may choose members who are not truly independent, and there is no public register or verification system.

Capacity and timelines. Committee members conduct quasi-judicial inquiries, apply natural justice, assess evidence and record findings. Where they lack training, inquiries suffer and findings may be set aside by courts. Section 19 requires orientation, but compliance is uneven. Delay is commonly reported despite the ninety-day inquiry period, the ten-day reporting period and the sixty-day period for employer action, and because the Act specifies no consequence for missing these timelines they operate more as directions than enforceable standards.

Transparency and data. Annual reports are the principal monitoring tool, but many establishments do not file them and District Officers have no systematic means of aggregating the data. The State consequently cannot measure how many complaints are filed, upheld or remedied, which prevents evidence-based policy and makes it hard to know whether the law is working.

4.4 LOCAL COMMITTEES AND THE UNORGANISED SECTOR

A large majority of women workers in India are in the informal sector, as domestic workers, agricultural labourers, construction workers, home-based workers, street vendors and community health and anganwadi workers. For them the LC is the only realistic forum. Reports and judicial observations indicate that LCs have not been constituted in many districts, that block-level nodal officers have not been designated, and that public awareness is minimal. In December 2024, in proceedings on the implementation of the Act, the Supreme Court directed authorities to appoint District Officers, constitute LCs and designate nodal officers, and called for steps to publicise the SHe-Box portal and the Act's mechanisms.[24]

Even where LCs exist, women in the unorganised sector may live far from district headquarters, be unable to afford travel or a day's lost wages, and depend economically on the employer. Domestic workers face the added difficulty that the workplace is a private home, making

[24] *Initiatives for Inclusion Foundation v. Union of India*, Supreme Court of India (order of December 2024).

witnesses and evidence scarce and dismissal more likely. The informal sector thus reveals the Act's most significant implementation gap: coverage on paper is extensive, but reach in practice is limited by weak district machinery and the absence of outreach.

4.5 PROCEDURAL CONCERNS: LIMITATION, CONCILIATION, CONFIDENTIALITY AND TIMELINES

Limitation. Survivors may need considerable time to decide to complain because of trauma, fear or continuing dependence on the harasser, and many come forward only after leaving the organisation or after a series of incidents. The criminal law imposes no comparable cut-off for offences of this nature, so a rigid period, even with discretion to extend, may operate against the women the Act seeks to protect.

Conciliation. Voluntary conciliation may suit some women, but complainants may be subtly pressured to "settle" to preserve workplace harmony or a senior's reputation. The safeguard that the request must come from the woman and be recorded depends on how scrupulously committees observe it.

Confidentiality. Section 16 is essential to encourage complaints and prevent humiliation, but it is broadly worded and leaves unclear how organisations may publish anonymised aggregate data and outcomes to deter misconduct. A balanced approach would protect identities while requiring aggregate reporting of complaints, findings and action taken.

Interim relief. There is a risk that the complainant, rather than the respondent, is moved, which may be perceived as punishment. The Act does not provide for restraining orders or for removing the respondent's supervisory authority over the complainant during the inquiry.

Penalties. A fine of up to fifty thousand rupees, even with enhancement for repetition, is modest for large establishments and may not deter. Because the offence is non-cognizable, enforcement actions against non-compliant employers appear rare.

4.6 JUDICIAL APPROACH TOWARDS THE POSH ACT

The judiciary has played a central role, first in creating the framework and then in pressing for implementation. *Vishaka* created the law; *Apparel Export* affirmed that sexual harassment includes unwelcome sexually determined behaviour, direct or implied, and warned against trivialising it; *Medha Kotwal Lele* monitored compliance; and *Aureliano Fernandes* criticised lack of implementation and directed time-bound compliance, also holding that statutory procedure must be followed and that an inquiry by a body not constituted under the Act could

be vitiated.[25]

This trajectory shows both the strength and the weakness of the framework. Courts have been willing to enforce the Act, but judicial intervention is episodic and depends on litigation; the repeated need for directions suggests that administrative machinery has not by itself ensured compliance. The courts' emphasis on procedural fairness to respondents protects the legitimacy of the process, but it also means that a failure to follow the statutory procedure can leave a complainant without a remedy.

4.7 GENDER NEUTRALITY, RETALIATION AND FALSE COMPLAINTS

Gender neutrality. Courts have not generally extended the Act to men, and the legislative position is that other remedies, such as service rules and criminal provisions, may be available. A reasoned reform would consider a separate or broader framework protecting all persons from workplace sexual harassment without diluting the safeguards available to women.

Retaliation. The Act does not expressly prohibit retaliation against a complainant or witness or provide a specific remedy for adverse action after a complaint. Adverse action might be treated as misconduct, or relief sought under general employment law, but the absence of an express provision is a serious gap. Fear of retaliation is among the main reasons women do not report, and the statute leaves this most pressing concern unaddressed.

False complaints. Section 14 is intended to deter misuse, but its presence may deter genuine complainants who are unsure whether they can prove their case, because the line between a complaint that fails for want of proof and one that is false can be hard to draw. The proviso offers some protection, though its application depends on the committee's sensitivity. Data on actual misuse is scarce, and concerns over false complaints should not be allowed to weaken the Act's protective purpose.

4.8 EMERGING CHALLENGES: REMOTE WORK AND DIGITAL WORKPLACES

The Act's definition of workplace, which includes any place visited in the course of employment, is capable of covering digital platforms used for work. But it was drafted before remote and platform-based work became widespread. Work-from-home arrangements, online meetings, messaging applications and gig work raise questions about the ICC's jurisdiction over conduct outside office premises and working hours, and about gig workers who are not formally employees. Technology also creates new harms, including unsolicited explicit

[25] *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759; *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297; *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 1592.

messages, morphed images and deepfakes, and electronic monitoring. These may be addressed through the Act where there is a nexus with employment, and through criminal and information technology law, but employers need clear policies and committees need technical capacity to handle digital evidence.

4.9 COMPARATIVE PERSPECTIVE

In the United States, sexual harassment is treated as sex discrimination under Title VII, and complaints go first to the Equal Employment Opportunity Commission, an external statutory agency; *Meritor* recognised hostile work environment as actionable.[26] In the United Kingdom, Section 26 of the Equality Act 2010 prohibits harassment of all genders, and the Worker Protection (Amendment of Equality Act 2010) Act 2023, in force from October 2024, requires employers to take reasonable steps to prevent sexual harassment, a proactive duty enforceable by the regulator.[27] Australia has similarly introduced a positive duty on employers, enforced by its Human Rights Commission. ILO Convention No. 190 requires a comprehensive approach spanning prevention, protection, remedies, enforcement, guidance and training.

These models suggest three lessons for India: an enforceable, proactive duty of prevention on employers; an independent external agency to supervise, receive complaints and enforce compliance, a feature absent from the Indian model; and express protection against victimisation.

4.10 CRITICAL ASSESSMENT OF ENFORCEMENT MECHANISMS

The Indian framework has real strengths: a broad definition, a statutory duty on employers, dedicated forums at workplace and district levels, powers of inquiry, interim relief and compensation, a confidentiality safeguard and judicial backing. The Act has also raised awareness and led many organisations to adopt policies and training. The central difficulty is enforcement. The Act depends heavily on employer self-regulation and complainant initiative; State monitoring is limited; no dedicated authority can audit compliance, publish data and impose penalties; penalties are modest; district machinery is weak; and the informal sector is largely unreached. Fear of retaliation and the limitation period deter reporting. Strengthening enforcement and institutional capacity is therefore as important as new legislation: substantive amendments are needed on certain points, but the most immediate gains lie in consistent implementation, transparent monitoring and credible enforcement of existing provisions.

[26] *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).
[27] Equality Act 2010 (UK), s. 26; Worker Protection (Amendment of Equality Act 2010) Act 2023 (UK).

CHAPTER V – FINDINGS, SUGGESTIONS AND CONCLUSION

5.1 INTRODUCTION

This study has analysed the legal and institutional measures for the prevention and redressal of sexual harassment of women at the workplace. It has examined the meaning and forms of workplace sexual harassment, the constitutional, international and judicial foundations of the law, the provisions and machinery of the POSH Act, 2013, and the practical difficulties in its implementation. Following a doctrinal, analytical and comparative approach, the findings indicate that India has a strong legislative framework whose effectiveness is limited by uneven implementation, weak monitoring, structural concerns about committee independence, procedural barriers to complaint and limited reach in the unorganised sector.

5.2 FINDINGS OF THE STUDY

A comprehensive normative framework. The Act defines harassment broadly, covers a wide range of workers and workplaces, and provides for inquiry, interim relief, compensation and penalties, reflecting constitutional and international standards.

Implementation is the principal weakness. Non-constitution of ICCs and LCs, failure to file annual reports, inadequate training and weak monitoring have limited the Act's effect, as the Supreme Court's directions of 2023 and 2024 confirm.

Committee independence is a structural concern. ICCs are constituted by and drawn largely from the employer's staff, so doubts persist in cases against senior personnel; the external member's effectiveness varies.

The unorganised sector is largely unreached. Most women workers depend on LCs that have not been uniformly constituted or publicised.

Procedural features can deter complainants. The three-month limitation period, conciliation, the lack of express protection against retaliation and delay in inquiry may discourage women from complaining or continuing.

Penalties and monitoring are inadequate. The maximum fine is modest, enforcement against defaulting employers is rare, and no independent authority monitors compliance or publishes data.

Reliable data is lacking. The absence of consolidated national data on complaints and outcomes impedes evaluation and evidence-based reform, and underreporting conceals the true extent of harassment.

New forms of work and harassment need clarification. Remote, platform and gig work and

technology-enabled harassment may be covered only by interpretation.

5.3 SUGGESTIONS AND RECOMMENDATIONS

Ensure universal constitution of committees. Governments should conduct periodic audits to verify that every eligible establishment has an ICC and every district a functioning LC and nodal officers. Compliance details should be published online, and registration, licensing or tender conditions should be linked to proof of compliance.

Strengthen committee independence. The law should provide fixed tenure not terminable at the employer's discretion, protection of members against adverse action for good-faith acts, and external members drawn from an approved panel maintained by the District Officer or a State authority. Complaints against the employer or senior management should go to the LC or another external forum.

Introduce express anti-retaliation provisions. The Act should prohibit retaliation against complainants and witnesses, provide interim protection against adverse employment action, and specify remedies and penalties.

Review limitation and conciliation. The limitation period should be extended and the power to condone delay broadened, with express recognition of continuing harassment and the effect of trauma and dependence. Conciliation should carry safeguards, including independent advice to the complainant and verification that her request is voluntary.

Create a dedicated monitoring authority and central data system. A national or State-level authority should monitor implementation, receive annual reports online, conduct audits, issue guidance and impose penalties. SHe-Box can be strengthened as a data repository, with aggregate, anonymised data published annually consistently with Section 16.

Enhance penalties and enforcement. Penalties should be proportionate to the size and turnover of the establishment, with clear consequences for repeated default, and enforced consistently against public and private employers alike.

Extend reach to the unorganised sector. Governments should appoint full-time District Officers and nodal officers, create accessible block-level complaint points, provide toll-free helplines and legal aid, and conduct outreach in local languages through self-help groups, trade unions and worker collectives, with special measures for domestic workers.

Build capacity and awareness. Committee members, District Officers, police and judicial officers should receive regular training in law, procedure, trauma-informed practice and digital evidence, and employers should hold periodic awareness sessions for all staff, including senior management, with materials in regional languages.

Address digital and non-traditional workplaces. Rules or guidelines should confirm that the Act applies to electronic harassment and remote and hybrid work, consider extending protection to gig and platform workers, and require employer policies on digital conduct.

Consider a broader framework on gender neutrality. After stakeholder consultation, Parliament should consider how to give persons of all genders an effective remedy without weakening protections available to women.

Provide support services. Counselling, legal aid and, where appropriate, financial support should be available to complainants during proceedings, together with protection against social and professional victimisation.

5.4 SCOPE OF FUTURE RESEARCH

Future work may include empirical studies of ICCs and LCs based on interviews with complainants, respondents, committee members and employers; analysis of High Court decisions reviewing committee findings; studies of the experience of domestic and other informal sector workers; examination of platform and gig work; and comparative studies of independent enforcement models in other jurisdictions.

5.5 CONCLUSION

The POSH Act, 2013 is a significant step in India's legal response to workplace sexual harassment. Its definitions are broad, its institutional design is thoughtful, and it has the support of constitutional principles and judicial decisions. It has brought the subject into organisational policy and public discussion.

Yet legislation alone cannot guarantee protection. The Act's effectiveness depends on whether committees are constituted and function independently, whether district machinery reaches women in the informal sector, whether complainants are protected from retaliation, whether procedures are accessible and timely, and whether the State monitors and enforces compliance. On each count there is a gap between the law and its implementation.

The framework therefore provides a strong foundation, but sustained implementation, targeted amendment, independent monitoring, capacity-building and attention to the unorganised sector are necessary to realise its objects. Ensuring safe workplaces for women requires more than a statute: it requires institutions that women trust, employers who are accountable, and a workplace culture that treats dignity as non-negotiable.

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