

A COMPREHENSIVE ANALYSIS OF THE MISUSE OF POSH ACT

INTRODUCTION

The full form of POSH is Protection of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), 2013¹. It is an Indian legislation meant to protect the rights of women. The Supreme Court's judgement in *Vishaka v. State of Rajasthan, 1997*², gave rise to the POSH Act. The court's decision proposed that there is inadequate legal infrastructure to safeguard and curb sexual harassment within the professional environment. This ruling set out the basis on which the 2013 Act was formulated.

The POSH Act primarily attempts to protect how women occupy and exercise their roles in organizational activities at all levels. To this end, the law not only defines sexual harassment exhaustively, but also allows women to file through proper channels. The law also requires offices to take proactive measures aimed at preventing sexual harassment within the organization.

POSH Act has faced scrutiny for the misuse of provisions in the recent past. It has come to light that even with the POSH Act enabling a considerable number of women to come out and contest some ill-willed actions, a good portion of the stakeholders consider it a paradox that even after everything put in place to enable women in vulnerable circumstances, the law created to aid women is misused for context, oversimplified—reducing grievance to cope and a desperate attempt to use law as power against someone else. Intending to discredit a certain organization, there are tales of no engineering, or some false claims, which completely subvert the good thought of the POSH Act, miraculously beyond repair.

Nevertheless, that is the conundrum of how to properly safeguard the genuine victim without infringing upon the rights of an innocent party. The POSH Act covers such issues — Section 14 allows for an action against a complaint, which is a deceit or revolves around petty grievances; however, as in many others, the execution of such provisions is wanting.

¹ ¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 1, India Code (2013).

² *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) 6 S.C.C. 241 (India).

The objective of this paper is to investigate both parts of the POSH Act, its effectiveness in controlling workplace harassment, and the emerging concerns regarding its potential misuse. With the help of legal analysis, case law, and health publications, this paper attempts to explain how both sides could be amalgamated into a single solution. Furthermore, this paper aims to propose some reforms that would preserve the POSH Act's integrity and responsiveness to legislation. By and large, the Act strives to create a procedure for controlling grievances that is orderly and methodical. The statute specifies, "Every organization which has ten or more staff shall constitute an Internal Committee (IC) for the redressal of grievances."

Local Committees (LCS) are set up by district authorities in rural or urban areas for handling complaints from establishments with fewer than ten employees, or the complaint is against the employer himself. An employer's responsibility lies in formulating appropriate policies and providing relevant training to combat such issues. The step is purportedly part of a wider effort to be welcoming by providing multiple protections to women, contractual employees, students, customers, as well as homemakers, who, in a more liberal understanding, do not engage in an employment relationship. By expanding the definition of the word "workplace," it also encompasses private and public organizations along with their IT infrastructures, including the more informal, non-structured sectors of the economy.

The POSH Act requires companies to put in place measures that prevent and correct sexual harassment in the workplace. They are to take action against harassment and support complainants through the process of investigation. At its core, the POSH Act is to foster a very respectful, safe, and equal work environment. Also, it promises prompt and fair resolution of issues and reports of sexual harassment with zero tolerance. This means that any kind of sexual harassment will not be put up with, and issues are handled with promptness and fairness.

Among other things, the Prevention of Sexual Harassment of Women at Workplace Act, 2013, is a detailed legal text that goes into the core issues of what constitutes sexual harassment in the workplace and what to do about it. The Act has two primary components, which are the what and the how. In 2013, we saw the latest changes to the Act. Report-wise wise it is very much employee and service sector friendly. What the Act does is it puts in place a comprehensive structure for the issue of sexual harassment in the workplace. The Act puts forth key definitions and also sets out the responsibilities of redressal bodies and employers.

The following are the main clauses: Here are the primary clauses:

1. **Section 2(n)³ Sexual Harassment:** Unwanted sexual behaviour, which may include physical contact, pursuit of sexual favors, making sexual remarks, display of pornographic material, also any other form of sexual behaviour that is verbal, physical, or non-physical. Our broad definition includes all kinds of inappropriate actions.
2. **Section 2 (a)⁴ Aggrieved Women:** Affected female or any woman of all ages or of any employment status who reports having gone through sexual harassment in the workplace is what we term an “affected female” in this section. Also included in this definition are employees, temp workers, interns, housekeepers, customers, and guests.
3. **Section 2(o)⁵ Workplace:** Explanatory notes on the workplace. The definition of "workplace" in section 2(o) is rather expansive. It includes: public and private sector organizations, nursing and retirement homes, hospitals, schools, recreational centres, transport services, and Remote or telecommuting
4. **Section 10⁶ Internal Committee:** It specifies that every employer who has ten or more employees is required to set up an Internal Committee (IC) to manage issues of sexual harassment. It must be chaired by a more senior woman and must have at least one external member who is a specialist on women and the law

5. Inquiry Timelines

The Act imposes strict time limits to ensure that justice is obtained as soon as possible. The Act sets strict time frames for prompt justice. Fine for false reports.

Under section 11(4)⁷: All investigations should be conducted within a timeframe of no more than 90 days from the date of registration of a complaint.

Under Section 13(4)⁸: The employer has sixty days from the date of receipt of the report to take action.

This part is for deterring the abuse of the Act, which we see through the imposition of penalties on complainants who bring forward what is true, false, or which they have fabricated as support. In addition, it is important to note that a

³ ³ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 2(n), India Code (2013).*

⁴ *Id.* § 2(a).

⁵ *Id.* § 2(o).

⁶ *Id.* § 10

⁷ *Id.* § 11(4).

⁸ *Id.* § 13(4).

complaint that is found to be without merit does not, in and of itself, mean it was false; what we require is proof of deliberate deception.

Misuse of the POSH Act, 2013: Legal Problems and Court Reports

It is of the essence that we understand the context of sexual harassment in India. What strong advocacy did was make it possible for the Prevention of Sexual Harassment (POSH) Act to pass in 2013, which in turn put formal protections into place for women in the workplace. That is POSH's great achievement thus far. In a way, it fulfils the promise of the basic structure of the Indian Constitution, and was also enacted as a consequence of the Supreme Court of India decision from 1997.

Section 14 of the Act reports that should a complaint be found to be false or brought forward to cause harm, the Internal Committee (IC) or Local Committee (LC) may take action against the person bringing the complaint. Also, it is important to note that what may not support a complaint does not in itself mean it was false until it is proven that there was ill intent. Section 14 of the Act states that should a complaint prove to be false or put forth to cause harm, the Internal Committee (IC) or Local Committee (LC) may take action against the person who brought the complaint. It is also important to note that what is not able to support a complaint does not in itself mean it was false, until it is proven that there was ill intent.

In some cases, we have seen the misuse of the complaints process by the courts. An example of this is the case of *Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College & Ors, 2020*⁹, against the Internal Complaints Committee at Vivekananda College in 2020. The Calcutta High Court determined that the complainant, who is a teacher, brought forward a baseless complaint against the principal and ICC members because she was dissatisfied and not to be used recklessly.

*Ruchika Singh Chhabra v. Air France India & Ors., 2018*¹⁰, is yet another case of importance in the domain, courtesy of the High Court of Delhi in the year 2018. In this ruling, the court noted that not every workplace grievance can be escalated to the level of a sexual harassment allegation. A woman employee alleged that her employer was harassing her. However, the inquiry showed that her claim was

⁹ *Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College & Ors., 2020 SCC OnLine Cal 1676 (India)*.

¹⁰ *Ruchika Singh Chhabra v. M/S Air France India & Anr., 2018 SCC OnLine Del 9340 (India)*.

groundless. The court reinforced the findings of the investigation and cautioned that the POSH framework should not be misused to resolve ordinary HR or employment disputes.

In the case of *Parteek Bansal v. State of Rajasthan Ors*¹¹, 2024, which came before the Supreme Court, we see a man who put forth that he was the victim of two FIRs filed against him by the same person, which were based on similar claims under Sections 498A, 406, 384, and 420 of the IPC. He presented that the second FIR was a ploy to harass. The court held that: Falcons upon multiple FIRs for the same set of allegations is not a proper use of the legal process. The second FIR was a matter of malice and to put the accused under pressure. Also, the court struck out the second FIR and ordered the complainant to pay Rs 5 lakh. Note: This may not be a case under the POSH Act, but what it does bring to light is that which laws are meant for protection can at times be used differently.

In the business and education fields, some put forth complaints under POSH to delay disciplinary actions, to damage reputation, or to gain an edge in other arguments. This isn't the primary issue we see, but it has caught the attention of legal experts who report that it does undermine fair treatment and the idea that all are innocent until proven guilty. The POSH Act is put in place to make workplaces safe, but the courts report that it is being used out of context, which in turn hurts true victims and the accused. It is very much a fine line between what we do to protect those that bring forth a complaint and at the same time see that we have a fair process for all. Also, what we are seeing is that Internal Committees must conduct fair investigations and ensure that both sides are treated justly.

To summarize, even if it is not frequent, the misuse of the POSH Act remains a concern. There are "strict" guidelines on its enforcement, and the manner of its execution must remain within the confines of its design so that the justice is not perverted or abused. Section 14 penalises for False or Malicious Complaints and Lies.

The misuse of law is the primary focus of concealment in Section 14 of the POSH Act. It intends to protect self-serving accusations without evidencing a complete lack of truth while encouraging genuine victims to surface.

Key features

1. If the Internal Committee (IC) or Local Committee (LC) establishes that a complaint has been made out of personal vengeance, or that the

¹¹ *Parteek Bansal v. State of Rajasthan & Ors.*, (2024) 5 S.C.R. 74 (India).

complainant has wilfully fabricated information, they do have the power to recommend sanctioning that person. The failure to substantiate a claim does not suffice to prove that a claim was made with malice.

2. If a perpetrator provides false evidence with the intent to mislead, the committee has the authority to recommend sanctions against the individual.
3. A disciplinary action may be applied to a claimant or even a witness who, according to organizational service policy, may be deemed within their jurisdiction. In the absence of any particular provisions, actions may be taken as described in the POSH Act.
4. Primary protective action: Before undertaking anything in Section 14, the IC/LC must ascertain that there is sufficient proof of malicious intent or some misleading pretence and provide an opportunity for explanation from the affected person.

Objective

To maintain the integrity of the POSH process by restricting its weaponization for retaliatory purposes while ensuring that genuine complainants receive the necessary psychological safety from real harassment if their claims cannot be substantiated.

Effect of Online Abuse

The since of what we are seeing is a great change in how we work as a result of the COVID-19 pandemic, which is very much also true in terms of how people interact with each other. We have seen a shift to hybrid and remote work settings, and within that, we have also seen a change in the type of workplace harassment we are dealing with, which has gone online.

This, in turn, has brought up issues for existing laws like the Prevention of Sexual Harassment of Women at Work 2013. In this paper, we look at how working from home has played a role in sexual harassment, which has come to be known as digital harassment. Digital harassment is defined as when someone puts forth inappropriate sexual behaviour online, which may happen via email, messengers, social media, or during video calls.

Some examples are sending unsolicited sexually suggestive video calls, bullying people online, or sully the work environment by tormenting individuals, and sharing lewd pictures or memes during online meetings. These incidents pose peculiar definitional challenges to the law's jurisdiction due to being outside a physical office. The POSH Act in Section 2(o) provides a wide definition of a workplace. It not only encompasses the office but also any location in which an employee goes while performing their duties. This includes remote work and

virtual interactions. This was supported by the Delhi High Court in the *Saurabh Kumar Mallick v. Auditor General of India & Anr.*, 2007 case, that a workplace is not just the office walls.

However, in practice, the Internal Committees (ICs) face challenges in addressing incidents of cyber harassment. They struggle with the handling of evidence, the locations of the incidents, and the absence of tangible witnesses. Perpetrators can more conveniently remain anonymous due to various masking technologies. Most ICs lack the required skills for dealing with online harassment, which includes encrypted communication and cross-platform abuse. Also, victims may not report incidents that they are not sure if the POSH act covers in case the incident is out of work hours and for personal, not professional, reasons.

Legal regulations and company rules must evolve with the times. Companies should update their harassment prevention guidelines to cover online misbehaviour. Several major corporations in India already include provisions about conduct during video conferences and on chat platforms like Slack or Microsoft Teams. Courts might also need to expand their definition of a workplace to ensure that virtual harassment receives the same attention as face-to-face misconduct. The global shift to remote work demands a fresh look at harassment laws. While the POSH Act aims to create safe work environments, we need to tweak the rules, boost internal committees, and clarify legal interpretations for the digital era.

Landmark Cases

In the legal matter involving *Rashi v. UOI & Anr.*, 2020¹², the Delhi High Court scrutinized the procedural integrity of a POSH Act, 2013 inquiry during its examination of Union of India & Anr. Rashi, serving as a contractual employee at the Rehabilitation Council of India, initiated legal proceedings by filing a sexual harassment complaint against her senior official. The investigation's central issue was the composition and neutrality of the Internal Complaints Committee (ICC), which examined her claims. Justice Prathiba M. During his review of the case, noted that the establishment of the ICC failed to meet the requirements outlined in Section 4 of the POSH Act. The Court determined that an ICC requires formation with members who maintain independence and impartiality while being devoid of any potential conflicting interests. The report specifically indicated that an external member must keep a distance from any organizational ties that could threaten their independent status.

¹² *Rashi v. Union of India & Anr.*, MANU/DE/2178/2020 (Del. HC Dec. 4, 2020).

The Court reiterated that maintaining natural justice standards, which require both parties to receive a fair hearing, remains critical in these investigations. The Court identified procedural defects within the ICC's constitution and consequently mandated the establishment of a new and correctly formed ICC to conduct a reinvestigation of the complaint. The judgment affirmed the essential legal requirement for maintaining structural and procedural integrity in POSH inquiries to deliver equitable treatment and justice to all involved parties.

In the matter of *Bibha Pandey vs Punjab National Bank & Ors, 2020*¹³, the Delhi High Court looked at the regulations governing the Internal Complaints Committee (ICC) under the POSH Act of 2013. A woman employed with Punjab National Bank reported sexual harassment from a senior staff member. The ICC found that the couple had consensual contact and closed her case. They also condemned her conduct, however, implying she could be punished for being inappropriate and undisciplined.

The High Court decided that the ICC's authority is limited to deciding whether, as defined by the POSH Act, an incident of sexual harassment occurred. It stressed that the ICC cannot pass moral judgments or remark on the personal behaviour of the relevant parties. The Court noted that, given it does not impact workplace discipline or breach any service standards, any consensual connection among adults should not be of concern to the management or the ICC.

This ruling strengthens the idea that the ICC has to act within its stipulated mandate and uphold the ideals of natural justice so that investigations are carried out honestly without overstepping its power.

In the instance of *K.P. Rajagopal v. State of Kerala, 2018*¹⁴, the Kerala High Court discussed the scope of the 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, known as the POSH Act. Challenging the conclusions of an Internal Complaints Committee (ICC) that found he committed sexual harassment based on a report he wrote, Anil Rajagopal claimed that inappropriate language regarding a female coworker was used in his report.

The High Court stressed that under Section 2(n) of the POSH Act, conduct must include unwelcome sexual behaviour, such as physical contact, sexually colored comments, or explicit sexual advances, to qualify as "sexual harassment." In this case, the Court determined that the words employed in the report, though maybe offensive or unprofessional, had no sexual connotation or intention. The Court

¹³ *Bibha Pandey v. Punjab Nat'l Bank & Ors., 2021 LLR 359 (Del. HC Dec. 16, 2020).*

¹⁴ *K.P. Anil Rajagopal v. State of Kerala & Ors., (2018) 1 KLJ 106 (Ker. HC).*

thus decided the ICC had exceeded its authority by defining the conduct as sexual harassment. Reiterating that just behaviour satisfying the particular requirements stipulated in the POSH Act should be handled under its rules, the Court quashed the ICC findings. These ruling highlights the need for ICCs to follow the definitions and boundaries set out by the POSH Act to guarantee that only behaviour qualifying as sexual harassment is handled under its framework.

In *Global Health Private Ltd Vs. Local Complaints Committee, District Indore & Ors, 2020*, the High Court of Madhya Pradesh, considered some of the major issues relating to Sexual Harassment of Women at the workplace. In the wake of this decision, the petitioner Global Health Private Limited (doing business as "Medanta " in Indore) has sought revision of findings by Local Complaints Committee (LCC) that grievance redressal mechanism did not act promptly and did not arrest sexual harassment (contravention Ing Section 4) of an employee Ms. Anjali Singh Thakur, Senior Marketing Manager against her immediate superior Dr. Gowrinath Mandiga. Key pointers of the LCC's report where the complainant was subjected to interference and created an unhealthy work atmosphere, and the hospital did not establish an Internal Complaints Committee (ICC) as per Section 4 of the POSH Act Consequently, LCC ordered the hospital to reinstated the complainant and framed charges against the accused for misuse of power with apology compensation.

The High Court holds in its findings that the employer has a statutory responsibility to set up an ICC for the LCC. The Court imposed a fine of Rs 50,000 on the hospital for noncompliance and awarded ₹ 25 lakhs as compensation to the complainant for mental harassment and consequent loss of income due to the termination and work environment.

The order highlights the significance of employers complying with provisions of the Posh Act, especially how to constitute an ICC so that a woman is not only safe but also with dignity at the workplace.

The interaction between Sexual Harassment of Women at Workplace and existing service rules was considered in *Ananta Prasad v. Gauhati High Court & Ors, 2020*¹⁵. The Chief Administrative Officer of the petitioner, Ananta Prasad, was suspended after Section 9 POSH Act against a female colleague lodged a charge of sexual harassment. The petitioner contended that the inquiry under the POSH Act issued to him was invalid, and that the Rules (Assam Services (Discipline and Appeal) Rules, 1964) should apply, not the POSH.

¹⁵ Ananta Prasad v. Gauhati High Court & Ors., 2020 LLR 980 (Gauhati HC).

The High Court opined that in case of conflict, the POSH Act, being a specific enactment for dealing with the problem of workplace sexual harassment, shall be applied over the amorphous general service rules. The Court, although noting that the Posh Procedures & Safeguards [as mentioned in the POSH Act] must be complied with in a manner such that the cause of the complainant and respondent gets justice. It also clarified that action for a sexual harassment complaint would be on the findings of the Internal Committee as per provisions of the POSH Act, not only departmental service rules.

This judgment clearly illustrates the necessity for compliance with provisions of the POSH Act when addressing complaints of sexual harassment in the workplace. Additionally, it promotes the spirit of an Act designed to ensure that women can work in an environment where they are treated safely and with the dignity due to them as human beings, and are not demoted by general service regulations circumvented through special procedures.

In *Keshaba Ch. Panda v. Sambalpur University & Ors, 2020*¹⁶, Orissa High Court has considered the procedural integrity of the disciplinary journey consequent on an ICC probe under the POSH Act. Dr. Keshaba Chandra Panda, Reader, Sambalpur University, was alleged to have sexually harassed a Junior Research Fellow. The university conducted an ICC inquiry, lodged charges, and thereafter took disciplinary action by way of a show-cause notice leading to dismissal.

The High Court opined that once the ICC conducts an investigation and also furnishes its report, the same shall be final and not merely as a starting point of the next stage towards any further disciplinary proceedings. The Court stressed that pursuing separate disciplinary proceedings against the accused beyond the report of the ICC is in derogation of the statutory scheme created by the POSH Act. Thus, the Court struck down the charges framed against Dr. Panda and his subsequent show-cause notice enunciating that, as the ICC findings are final, their jurisprudence has to be followed by the employer conclusively. This judgment highlights that it is imperative to comply with the procedural provisions of the POSH Act so as not to dilute the role of the ICC by piecemeal disciplinary processes.

CONCLUSION

The Prevention of Sexual Harassment of Women at Workplace Act, 2013 made a significant impact on creating safer and more equitable work environments for women in India. Research indicates that while many women now feel more

¹⁶ *Keshaba Ch. Panda v. Sambalpur Univ. & Ors., 2020 (I) OLR 909 (Orissa HC).*

confident to report sexual harassment, some individuals have misused the law. Though false accusations are rare, they bring up genuine issues regarding the rights of the accused and the need to ensure fair processes. The rise of new work arrangements the increase in remote jobs, has introduced challenges like online harassment that current legislation doesn't address.

Looking ahead, we should think about tweaks such as making the rules cover everyone, giving Internal Committees better training, and updating policies for online spaces. In the end, the POSH Act must evolve as workplaces change to stop harassment while also protecting against false accusations.