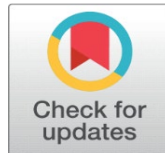
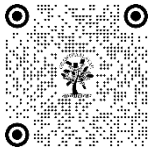


LAWS, CHALLENGES, SOLUTIONS RELATED TO WORKPLACE SEXUAL HARASSMENT IN INDIA

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ABSTRACT

Despite legislative measures in India through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act), workplace sexual harassment continues to be a cause for concern. This article takes a closer look at how common sexual harassment is in the workplace in India, whether existing laws protect women, and if they do, how the lack of implementation renders them akin to scraps of paper. Although the PoSH Act mandates the setting of Internal Committees (ICs) to provide redressal mechanisms for complaints of sexual harassment at the workplace, ignorance, fear of retaliation and the prevailing stigma of sexual harassment discourages women from reporting incidents. Furthermore, many organizations operate outside the law, making enforcement nearly impossible. However, it is not just regulations, but also workplace culture where the accountability for harassment is born. It is essential that organizations take preventive actions, gender-sensitization training, anti-harassment policies, and anonymous reporting channels. Leadership is of utmost importance regarding creating a safe and inclusive workplace. It also describes landmark cases and legal precedents that wanted India to handle workplace harassment. Demand for policy changes, the gap between what should be happening under the law and what is being enforced and holding corporations accountable. By tackling these issues and nurturing a spirit of non-tolerance, India can head towards safer and fairer workplaces for everyone.

Keywords: Workplace Sexual Harassment, PoSH Act 2013, Legal Framework in India, Gender Sensitization, Corporate Accountability.

1. INTRODUCTION

Introduction Workplace sexual harassment is a serious problem in India threatening the dignity, safety and professional development of the employees especially of women. The ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*** (the POSH Act) has brought about landmark legislation aimed at providing women protection against incidents of workplace harassment in almost all sectors; however, even today, we still see cases of workplace harassment being reported on a day-to-day basis. This was already happening across industry, as those in corporate offices, factories, schools, medical centres, and the informal sector were playing this out. Sexual Harassment is one of the crimes against women those overlaps with workplace organisations but is beyond law to tackle creating public-private partnership challenges because of socio-cultural issues related to gender and power dynamics. Awareness is low, and victims fear repercussions yet more if they report such incidents, and/or they are told that they deserve what they get, that they should take it as a lesson so why bother. In most workplaces, particularly in small establishments and informal workplaces, the mandatory provisions of the POSH Act relating to establishment of ***Internal Committees*** (ICs) for grievance redressal is largely not in compliance. Even where legislation does exist, gaps in practical implementation and a lack of an effective reporting mechanism impede the provision of remedies.

Vishaka Guidelines (1997), a landmark judgement from the Supreme Court of India, was the first step towards giving protection from sexual harassment at workplaces. These guidelines were eventually transformed into the POSH Act that requires every employer to take preventive measures and provide a harassment-free workplace. But enforcement continues to be a problem, with many workers not knowing their rights or how to remedy violations. But there is a more pressing need for organizations to foster a climate of gender equality and respect over and above the legal action. Addressing this effectively requires preventive measures such as sensitizing the workplace, setting up anonymous mechanisms where complaints can be made, and a visible commitment to zero tolerance from the leadership. As India builds a professional environment built on the pillars of equality and respect, a paradigm shift in workplace culture can be initiated, supplemented by stronger implementation mechanisms.

This article explores the current legal framework, the issue with the enforcement of these laws, and the possible way forward to make sure that India makes its workplaces safer for all.

2. THE ESSENTIALS OF THE POSH ACT: PROVISIONS AND DUTIES

Sexual harassment at the workplace amount to a serious infringement of the right and dignity of an individual. To address this problem, the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** (POSH Act) was enacted in India. The Act writes a complete framework to prohibit and to redress the workplace sexual harassment that ensures safe and smooth work life with dignity. The law represents a major step in employee protection, but effective implementation of the law falters due to ignorance of many employees and employers alike.

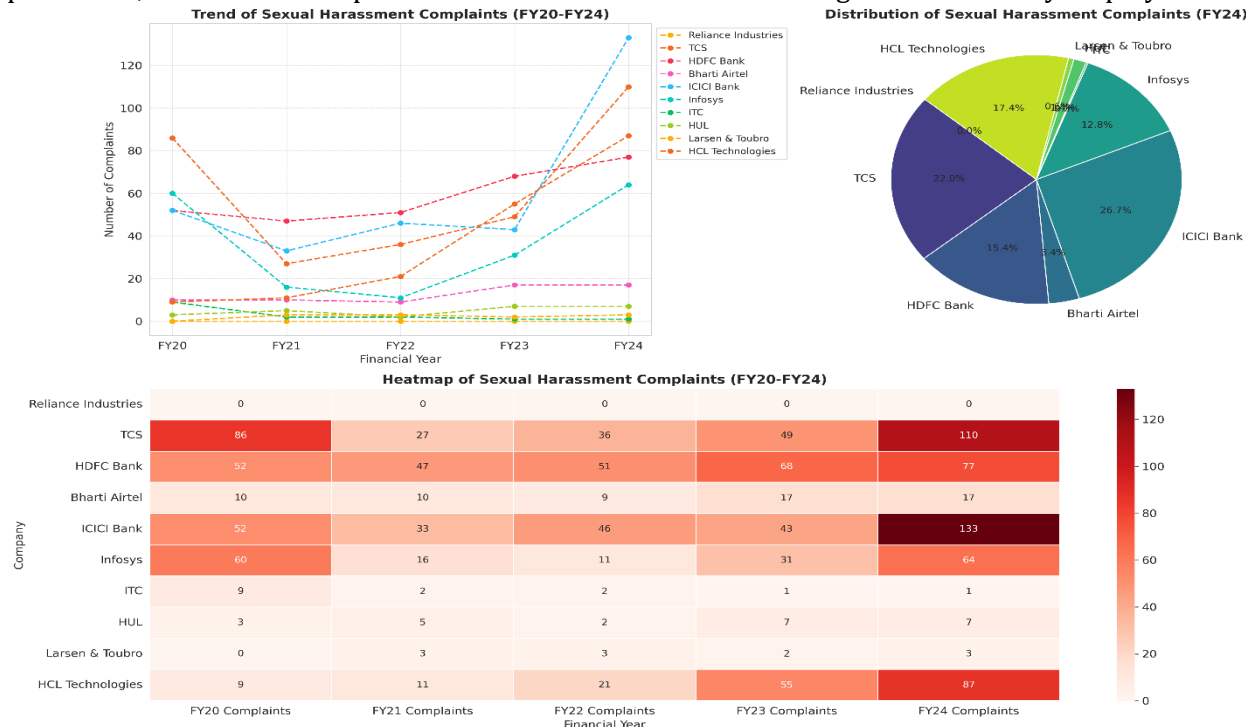


Fig. 1: The number of sexual harassment complaints per year in major Indian companies: FY20 -FY24

Source : The Economic Times¹

It describes the term sexual harassment in a broad manner to include physical contact and advances, asking for sexual favours, sexually coloured remarks, displaying pornographic material and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. This law covers all areas of industry, private and public sector, including government, hospitals, education and informal workplaces. This bill is crucial since it does not only impact full-time employees but also interns and trainees, domestic workers, and workers on a contractual basis, making sure that a wide category of workers are covered.

One of the most important provisions of POSH Act is the setting up of **Internal Complaints Committee** (ICC) at every workplace with 10 or more employees. The IC deals with complaints of sexual harassment and should be chaired by a senior woman employee. The committee must include at least two other members of the organization who are aware of

¹ The number of sexual harassment complaints per year in major Indian companies: FY20 -FY24

gender-related issues, and one other member from an NGO or legal background to guarantee impartiality. Where a workplace has less than 10 employees or the employer is the offender, the **Local Complaints Committee (LCC)** at the district level deals with complaints. Its complaints machinery requires victims to submit a written complaint within three months of the incident (which can be extended in exceptional cases). The IC will have 90 days to complete her/her inquiry and give the finding report, post which the employer would need to take appropriate action, including termination, suspension or monetary compensation. In addition to having anti-harassment policies in place, employers will be required to hold sensitization programs on a regular basis and to prominently display the guidelines laid under POSH at their places of work. Non-compliance with these rules may attract penalties of as high as ₹50,000 and repeat violations may lead to harsher penalties which may include suspension or cancellation of company business licenses. Even with such provisions in law, compliance with the provisions of the POSH Act remains poor in a large number of workplaces further cutting down its impact. The law does create a really strong foundation but for organisations, compliance is the bottom level of the pyramid and enabling a workplace culture of safety, respect and gender equality is the next step.

3. IMPLEMENTATION OF THE LAW: GAPS AND DEFICIENCIES

The POSH Act in India has been a well-meaning counter to workplace sexual harassment, but this continues to be a serious problem in the country. But employee awareness, especially in small firms and the informal sector, is one of the biggest challenges to effective implementation of the law. Most workers are still unsure of what sexual harassment is and how to complain, or the role of the Internal Complaints Committee (IC). Employers, on their part, also do not conduct proper in-house training sessions resulting in poor implementation of the Act. Many victims do not report because of fear of retaliation and social stigma. Workers, especially women, do not report harassment because of the fear of losing their job, harming their career, or being victimized again. And in industries typically dominated by men where the social stigma of lodging complaints of sexual harassment exists, many cases go unreported wholly.

S.No	Provision	Details
1.	POSH Act, 2013	Sexual Harassment definition, ICC requirement in 10+ employee workplaces, complaint redressal mechanism.
2.	ICC — Internal Complaints Committee	Any organization with 10 or more workers must create an Internal Complaints Committee (ICC) to manage complaints confidentially and independently.
3.	Local Complaints Committee (LCC)	Committee at the level of the district for workplaces with less than 10 employees or the employer being the party accused of misconduct.
4.	Strict Penalties	The policy also states that an employer who violates this may be penalized with a penalty of ₹ 50,000, as well as cancellation of its business license in case of repeated violations.
5.	Confidentiality Clause	Safeguards complainant's identity through the proceedings in order to deter retaliation.
6.	Time-bound Redressal	They also state that complaints must be resolved in 90 days giving it a brisk pace.
7.	Awareness & Preventive Training	All employees to attend compulsory workshops and sensitization prog at HR level
8.	Protection from Retaliatory Action by Employer	Prevents any form of victimization of the complainant or witnesses during/after investigations.
9.	Gender Sensitization Programs	Consistent Exercises for a Culture of Respect
10.	Reporting to Authorities	An annual report on sexual harassment cases and outcomes must be lodged with the District Officer by companies.

Table 1: about protecting provisions under PoSH ACT.

Source: author's own creation by using PoSH ACT

One more big problem is non-compliance from employers. Too often, companies do not establish an Internal Complaints Committee (IC) or the IC is employer-biased. At times complaints are dismissed without being investigated properly or are investigated only as far as to pressure the victim to withdraw their complaint. For smaller organizations where there is no HR division as such, POSH Act compliance is completely skipped. For a very high-segment of India's labor force, employed in the informal sector, the problems are more multifaceted. Domestic workers, daily wage laborers, and street vendors usually work in situations that lack a system for reporting harassment. When they are denied their rights, it is almost impossible for workers to seek justice due to the unorganized nature of these sectors, a lack of formal contracts, and no Local Complaints Committees (LCCs).

The law is also undermined by bureaucratic inefficiencies and loopholes in enforcement. Investigations are frequently slow, and when someone well-connected is accused, victims can have a hard time being heard. Also, even though the POSH Act provides for punishment for non-compliance, organizations go scot free because of poor regulatory enforcement. Without stringent government oversight, some businesses are neglecting their responsibilities to comply with laws.

In order to fill these gaps, stamp down on non-compliance, and enforce compulsory training for employees and members at IC. Organizations should also implement anonymous reporting mechanisms so that victims are able to complain without fear of retaliation. The government should also perform more determinately in monitoring compliance with the law and enforcing the law.

4. WHAT ORGANIZATIONS SHOULD DO TO PREVENT SEXUAL HARASSMENT

The POSH Act and these legal frameworks are essential in providing protections from workplace sexual harassment, but ultimately the power to combat it truly lies with organizations. Corporates should rise up from the compliance box and develop a culture of respect, equality and safety. Achieving this necessitates a multifaceted approach that incorporates clear policies, employee training, and commitment from the leadership.

The very first and perhaps most important step is to set up a stringent sexual harassment policy. Then, make hiring decisions based more on character than credentials; create a zero-tolerance policy that clearly defines harassment, how to file complaints, and how those who harass will be punished; and continue to listen to your employees, with regular anonymous surveys, and take their recommendations seriously. The policy should be made available to everyone from the employees to ensure they are fully aware of their rights and responsibilities as well. It is also imperative for organizations to provide periodic awareness and sensitization programs. It is essential to train employees to identify inappropriate behavior, understand the importance of consent, and report harassment. Managers, HR professionals and Internal Complaints Committee members need to be trained specifically so that they can handle complaints in a sensitive and competent manner.

The other important step is to make sure that the Internal Complaints Committee (IC) is not a mere rubber stamp and is independent and fair. The IC should be trained in legal processes and able to take on confidential and sensitive cases. Businesses should also develop reporting systems that make it more appealing for victims to speak out, by ensuring that they can do without the fear of backlash or exposure. This may mean having a set of reporting channels — a helpline, a dedicated email, a third-party complaint portal, and so forth. We always preach that leadership is the key driver of workplace culture. It reassures your employees when top executives and senior managers take the lead on gender equality and safety at work. When leaders commit to a zero tolerance for harassment, an environment exists that encourages victims to speak up and holding perpetrators accountable.

Finally, organizations should regularly carry out a compliance audit of their internal processes for effective implementation of the POSH Act with the help of third-party review audits. Regular evaluations can expose the shortcomings in implementation and responsiveness. Leading an inclusive and secure workplace is a legal compulsion and a path towards yourself appealing employees, who can operate fear-free from any harassment. Prevention-first approach toward workplace safety translates into benefits such as more engaged employees, productivity, and a good brand image (among others) that always pulls the organization high on the ladder. These steps will enable Indian workplaces to make significant progress towards eradicating sexual harassment ensuring a culture of dignity and respect for every employee.

5. POLICIES & CHANGES: TO A SAFER WORLD

A serious topic that is still undermined with its occurrences and representations in India despite the existence of the POSH Act. But the difficulty of upholding it signals that policy changes and cultural shifts will be needed for a truly safe and inclusive workplace. Although current laws offer a basis to combat harassment, enforcement must improve and societal attitudes must change.

I. UPHOLDING LEGAL AND POLICY CHANGES

A major failing of the current system is the absence of serious consequences for non-compliance. In fact, some organizations are so lax with the provisions mentioned in the POSH Act that they can still use it in their power to escape accountability. In this regard, the government should implement stricter punishment for those who break the rules by

raising fines, canceling business licenses and disclosing the names of violators to the public. Companies should be subjected to regular audits and inspection to ensure that they have an Internal Complaints Committee (IC) and have followed the procedure prescribed under the Act.

A second area that warrants reform is the provision of legal protections for all genders. The POSH Act is gender-neutral but applies only to women since men and the LGBTQ+ community are not covered by the Act even though they are equally subjected to workplace harassment. Policymakers should seize this opportunity to do something about the law so it is not one that only helps women but one that will direct all legal provisions toward all victims of workplace harassment.

Second, there is a lack of coordination between the different government bodies and enforcement agencies. The POSH Act is defectively applied across industries/regions. A centralized monitoring body that oversees compliance in these sectors, and acts as an advisory, will strengthen the enforcement process and reporting mechanisms.

II. WORKPLACE FOCUSED EFFORTS TO CHANGE CULTURE

Legal reforms can take long time, to create workplace culture, policy is not sufficient. It is up to organizations to step up and build safe, safe, and abuse-free workplaces. Companies, for instance, will need to aim for stricter HR policies, transparent reporting channels, as well as zero-tolerance behaviour for harassment. Organise regular workshops that explain gender sensitivity, how to behave in a workplace and tips on being a good bystander among the employees. These initiatives promote accountability and responsibility among employees and ensure a clear understanding of how everyone contributes to a harassment-free workplace. This is the responsibility of senior management and leadership teams who need to lead by example for employees to follow.

Anonymous reporting pathways can also be helpful in bordering on greater async, such that victims feel safe to report complaints. What can really help to ensure the complaint process is not too daunting, but not too scary, is the digitalisation of the complaint process through third-party grievance redressal services, or even just employee support groups.

III. SOCIETIES ROLE IN CHANGING PERCEPTIONS

In addition to workplaces, we also need a change in attitudes towards gender equality and harassment in society as a whole. This becomes a way of normalising sexual harassment, because of which people do not come out in front about it. Implementing gender sensitization programs in schools, colleges, and other community organizations will help in inculcating the habits of respect, consent, and equality from an early age. The media too can do its bit to shape public discourse. Media organizations can contribute by bringing attention to these issues, showcasing the real-life impact of the crime, and providing information on legal developments and success stories that can empower victims. The #MeToo campaigns and other social movements have already brought workplace harassment into the public consciousness in a big way, but keeping the ball rolling is challenging.

IV. CREATING A HARASSMENT-FREE TOMORROW

Having a harassment-free workplace cannot be possible without action from each part equally. In order for change to occur, governments have to toughen up the laws and the enforcement, organizations must have solid policies in place, and individuals must work to break down the cultural attitudes that foster harassment. It will take all stake-holders — employees, employers, lawyers, social activists, and policy-makers — working together, to make a safer future for all work-force in India. Through addressing legal lacunae, prompting right-to-work policies and spurring sociocultural change, India can head on the path towards all of its workforce being able to access their most basic of rights: to earn a wage in safety, dignity and with respect.

6. CONCLUSION

Sexual harassment at the workplace is a rampant problem in India, running across sectors and levels of employment, but often not as visible as it should be. Though we have made headway with the POSH Act, 2013 that was formulated to tackle this issue, rapid advancement still remains a distant goal due to the implementation gaps, ignorance and long-founded societal biases. Many victims do not report harassment because of these shortcomings and because some of them fear retaliatory victim-blaming, allowing offenders to evade punishment.

Even with those critical challenges, however, change is happening, and the increasing discussion around sexual harassment at work is forcing organizations and policymakers to start addressing this issue. The POSH Act sets a legal ground, but enforcement requires more cumbersome employers to comply with it, stricter penalties for violations, and ongoing sensitisation capacities. Furthermore, in order to render our work environments as completely safe as possible, normalising gender inclusivity to some extent and ensuring the rights of every human, despite gender identity, is extremely important.

Organization's role in this battle with sexual harassment is irreplaceable. Entities must clearly honour letters of the law, as well as proactively create a culture of respect, openness, and responsibility. Preventing harassment, and empowering victims to combat it requires strong anti-harassment policies, training for employees, and strengthened redressal mechanisms while reinforcing commitment from the top. But altering perceptions in society is of equal significance as well. Erasing workplace harassments is not just a legal and policies issue, it is a mindset problem, an issue of contending with gender stereotypes, and challenging women in general to feel safe to have their say. It is faculties, media, and social organizations that have to take steps towards normalizing talk of harassment and encouraging bystander intervention and dismantling toxic workplace cultures.

A step further to creating truly safe and equal workplaces is a collaborative effort among every stakeholder, government bodies, organizations, employees, legal experts, and society. Law reform has a role to play, of course, but other drivers; cultural change, positive workplace practices, and robust enforcement mechanisms are necessary to achieve permanent change.

The change is here and as India continues its journey, it is vital to know that workplace safety is not a only a women issue and but a human rights issue! Creating workplaces based on dignity, equity and respect for all, these are the keys to ending sexual harassment, not just because the law requires it, but because the law will reflect the new normal where every employee is able to work with confidence, dignity, and security.

CONFLICT OF INTERESTS

None.

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