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**FROM VISHAKA TO POSH: EVOLUTION OF LAW ON SEXUAL
HARRASMENT IN INDIA**- Bhumika Rani¹**ABSTRACT**

Sexual harassment at the workplace is a serious issue that affects a person's Fundamental Rights, particularly the right to equality, dignity, and the freedom to practice any profession. In India, the legal journey to recognize and address this problem has developed over time through court decisions and new laws. This paper looks at how the law related to sexual harassment at work has grown from the landmark judgement in Vishaka and ors v. State of Rajasthan (1997) to the enacting and the implementation of the POSH Act, 2013 (Sexual Harassment of Women at Workplace Act). Before 2013, there was no proper law to handle cases of sexual harassment at the workplace. To deal with this, the Supreme Court created a set of rules known as the Vishaka Guidelines. These were based on international women's rights agreements like CEDAW. These guidelines became the base for future laws on workplace safety for women.

Later, in 2013, the Indian government made the POSH Act, which turned these guidelines into statutory law. This law made it compulsory for every workplace to have an Internal Complaints Committee (ICC) to deal with such complaints and made it the employer's duty to ensure a safe working space. It looks at important cases, the details of the POSH Act, and why this change was necessary in Indian society. It further examines how well the POSH Act is working today, what problems still exist like people being afraid to complain, lack of awareness, or misuse of the law and what more needs to be done to protect everyone. By looking at the path from Vishaka to POSH, this paper shows why strong laws and respectful workplace environments are important. It shows that the law does not just react to the societal issues but also helps to make institutions more responsible in dealing with gender inequality.

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The paper ends with suggestions on how to make the law stronger and ensure it is properly followed in real life.

Keywords: Sexual harassment, Women's right, POSH, Workplace

INTRODUCTION

Workplaces ideally serve as environments where individuals can grow, find opportunities, and work with dignity. Nonetheless, for many women in India, these spaces have also been fraught with discrimination and harassment. Until the late 1990s, India did not have a specific law addressing sexual harassment at work. Women who experienced such mistreatment had to depend on general criminal provisions related to assault or obscenity, which often failed to capture the gravity and unique circumstances of workplace harassment. This lack of clear legal protection led to many cases going unreported and countless women silently enduring harassment, often out of fear of social stigma, retaliation, or loss of their livelihood.

The landscape shifted significantly in 1997 with the Supreme Court's landmark decision in *Vishaka v. State of Rajasthan*. This case arose from the horrific gang rape of Bhanwari Devi, a social worker from Rajasthan actively involved in preventing child marriage. Her case brought to light the harsh reality that women could face threat and harassment simply for doing their work, while also revealing glaring deficiencies in the legal system's ability to provide recourse. In its judgment, the Supreme Court asserted that sexual harassment at the workplace is a violation of a woman's fundamental rights to equality under Article 14, freedom under Article 19, and to life with dignity under Article 21 of the Constitution. Recognizing the absence of any legislative provision, the Court issued binding guidelines, widely known as the Vishaka Guidelines, to address this urgent issue. The Vishaka Guidelines marked a significant turning point, as they not only articulated a clear definition of sexual harassment but also placed a direct responsibility on employers to prevent and remedy it. This was the first time Indian law explicitly acknowledged harassment not merely as a private matter but as a serious workplace and societal problem. However, since these were judicial directives rather than laws enacted by Parliament, their implementation was inconsistent. Many organizations neglected their responsibilities, and women continued to face significant challenges in accessing justice.

Following *Vishaka*, several other critical cases reached the Supreme Court, such as *Apparel Export Promotion Council v. A.K. Chopra* (1999), where the Court reaffirmed its firm stance

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that sexual harassment at work cannot be tolerated under any circumstances. By 2012–2013, in the *MedhaKotwalLele* case, the Court reiterated the urgent need for proper legislation on this issue. Responding to these judicial urgings and societal demands, Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, commonly known as the POSH Act. This law provided statutory backing to the Vishaka

Guidelines and established a detailed framework for complaint handling, inquiry procedures, and penalties against violations. This research paper aims to trace the evolution of sexual harassment law in India over time. It examines the circumstances before the Vishaka judgment when no specific legal mechanism existed, the judiciary's pioneering role in framing guidelines to address the gap, and how those judicial directions eventually culminated in the comprehensive statute known as the POSH Act, 2013.

Additionally, the paper explores whether the current legal regime is adequate to protect women from harassment, and highlights the challenges that persist in implementing the law effectively. The analysis primarily draws from a doctrinal methodology, involving a thorough study of judicial decisions, constitutional provisions, and scholarly literature, with no primary field research conducted. The focus remains on the Indian legal framework while briefly considering international contexts where relevant for comparative insight.

LITERATURE REVIEW

When discussing the development of sexual harassment law in India, it is essential to recognize the extensive scholarship contributed by academics, legal experts, and activists over the years. Researchers have approached workplace harassment from multiple perspectives some viewing it predominantly as a matter of gender justice, others as a human rights concern, and still others interpreting it within the framework of labour rights. Examining this existing body of work not only illuminates what has already been explored but also reveals critical areas that warrant further investigation. The earliest significant contributions to this discourse emerged from feminist writings in the 1980s and 1990s. Activists and scholars of that time pointed out the glaring absence of specific legal provisions to protect women from harassment at work. They argued that harassment was not merely a question of isolated incidents or individual misconduct but rather symptomatic of broader

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systemic gender inequalities entrenched in societal and workplace structures. These foundational works helped shift the understanding of workplace harassment from a private, personal grievance to a structural social issue demanding collective and legal attention. Following the Supreme Court's Vishaka judgment in 1997, scholarly focus intensified. Legal commentaries widely hailed the verdict as a landmark example of judicial activism, with many applauding the Court's proactive role in stepping into a legislative gap and drawing inspiration from international agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, some critics expressed caution, emphasizing that issuing guidelines alone was insufficient to bring tangible change especially when there was no systematic monitoring or enforcement mechanism to ensure compliance by employers. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013 sparked a fresh wave of academic and practical examination. Numerous publications began unpacking the details of the Act, explaining provisions that mandated the formation of Internal Complaints Committees, outlined inquiry procedures, and prescribed penalties for non-compliance. Some of this literature was geared towards practitioners, serving as handbooks for human resource managers and employers to guide compliance efforts. At the same time, a critical strand of scholarship emerged, questioning whether legal advancements would translate into real-world protection, given challenges in institutional enforcement and cultural attitudes. Many journal articles have delved into the constitutional dimensions of workplace harassment, framing it as not merely an employment or disciplinary issue but a violation of fundamental rights enshrined in Articles 14, 15, 19, and 21 of the Indian Constitution. This legal scholarship underscores that safe and harassment-free workplaces are integral to ensuring gender equality and upholding human dignity, positioning sexual harassment as fundamentally contrary to constitutional principles. Despite the richness of literature on the Vishaka Guidelines and the POSH Act itself, one notable gap is evident: there is relatively limited empirical or evaluative research focusing on how effectively these laws and guidelines have been implemented across different workplaces and sectors. While theoretical and doctrinal exploration has advanced considerably, scholarly inquiry into the practical impact and enforcement of the legal framework remains underdeveloped. This gap highlights the need for further research that moves beyond textual analysis to scrutinize the lived realities of legal protections and their success in making Indian workplaces safer for women.

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LEGISLATIVE PROVISION

Safeguarding women in the workplace from sexual harassment is a critical aspect of human rights and social justice in India. Legal protections have evolved from constitutional promises to detailed legislative solutions, creating a robust system aimed at both prevention and redress. This segment reviews the legislative measures shaping India's response highlighting the foundational constitutional principles, pivotal judicial innovations, and formal statutory enactments that together build the framework for protection.

Constitutional Provisions:**1. Article 14: Right to Equality**

The Constitution guarantees all citizens equal treatment by and under the law. Experiences of sexual harassment at work undermine this promise, subjecting women to unsafe conditions and obstructing genuine equality in the workforce.

2. Article 15: Prohibition of Discrimination

This Article forbids any discrimination rooted in sex, among other grounds. Preventing harassment is vital for promoting real gender justice and fulfilling the Constitution's commitment to a fair society.

3. Article 19(1)(g): Freedom to practice any Profession

Every person has the right to pursue any profession, business, or trade. Harassment at work restricts women's opportunities, interfering directly with their constitutional freedoms.

4. Article 21: Right to life and Personal Liberty

Article 21 extends beyond mere existence to include safety, dignity, and meaningful participation in society. Sexual harassment at work threatens these basic rights, impacting women's sense of worth and security.

Judicial Landmark: Vishaka Guidelines

Confronting the absence of direct statutory remedies, the Supreme Court in *Vishaka v. State of Rajasthan* issued transformative guidelines in 1997. The Court asserted that workplace harassment harmed constitutional values, mandating:

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- Proactive policies by employers to curb harassment.
- Establishment of complaints committees, predominantly composed of women and featuring external representation.
- Implementation of training and sensitization efforts at work

These directions functioned as the prevailing legal standard until Parliament intervened with formal legislation.

The POSH Act, 2013: Statutory Framework

1. The POSH ACT, 2013: Statutory Framework

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, gave legislative force to the Vishaka guidelines, embedding them in binding law and introducing a thorough system for workplace intervention.

2. Major Features:

- The law specifically defines what constitutes sexual harassment and articulates guaranteed protections for women at work.
- Workplaces with a staff size of ten or above are obligated to institute an Internal Complaints Committee (ICC).
- The ICC must be chaired by a senior woman and include external experts, ensuring impartiality.
- Complaint handling must be prompt, confidential, and fair to both sides of the dispute.
- Penalties are prescribed for failure to comply, and regular awareness initiatives are now mandatory.

3. Scope:

- Coverage extends to all categories of women workers regular, contract, part-time, interns, volunteers, and even those working at home as domestic staff.
- The Act applies across the spectrum: government, private sector, organized and unorganized workplaces, ensuring broad protection.

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JUDICIAL ANALYSIS

The judiciary in India has played a crucial role in shaping the legal framework against workplace sexual harassment. Judicial interventions not only filled critical gaps left by the absence of legislation but also broadened and deepened the understanding of workplace harassment as a violation of constitutional rights. This chapter highlights key Supreme Court Judgments that paved the way for effective legal protections and analyses how judicial decisions have complemented and propelled legislative reforms. The landmark case of *Vishaka v. State of Rajasthan* (1997) stands as the cornerstone of India's legal response to workplace sexual harassment. This case was triggered by the brutal gang rape of Bhanwari Devi, a social activist working to prevent child marriage, which exposed how women performing their duties could be vulnerable to harassment and violence without adequate legal protection. At the time, there was no specific law addressing sexual harassment at work. Recognizing that this gap violated women's fundamental rights to equality, dignity, and safe employment under Articles 14, 15, and 21 of the Constitution, the Supreme Court took the unprecedented step of issuing binding guidelines. These Vishaka Guidelines mandated employers to take proactive measures, including forming complaint committees with sufficient female representation and raising awareness among employees. The ruling was a pioneering judicial effort that linked fundamental rights to workplace conduct and set the stage for future legislation. After *Vishaka*, the Court continued to refine the legal understanding of sexual harassment in cases such as *Apparel Export Promotion Council v. A.K. Chopra* (1999). Here, the Court expanded the definition of harassment beyond physical advances to include unwelcome verbal or non-verbal conduct that creates a hostile or intimidating workplace atmosphere. The judgment emphasized that the impact on a victim's dignity and emotional well-being, rather than the harasser's intention, is crucial in determining what constitutes harassment.

In the years following the enactment of the POSH Act, the judiciary's attention shifted toward ensuring its proper application and interpreting its provisions fairly. For instance, in *Dharma Pratishtan v. MedhaKotwalLele* (2014), the Supreme Court actively oversaw the implementation of the Act and stressed the critical need for sincere efforts by employers and the government to create genuinely safe workplaces. The Court acknowledged the POSH Act as more than a procedural formality, recognizing it as a vital protection for victims requiring

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meaningful compliance. More recent rulings, such as *Dr. Punita K Sodhi v. Union of India* (2020), explored finer procedural aspects, focusing on ensuring fairness and protecting the rights of both complainants and respondents during workplace harassment inquiries. Courts have consistently emphasized confidentiality, impartiality, and the independence of Internal Complaints Committees to prevent misuse and deliver just resolutions. This shows that judicial interpretation continues to evolve, balancing robust victim protection with safeguards against false or malicious allegations.

The judiciary's progressive stance has deeply influenced workplace policies and societal attitudes. Courts have made it clear that sexual harassment encompasses not just overt physical Misconduct but also subtler forms of intimidation and hostile behavior that degrade a woman's dignity and interfere with her ability to work safely. This wider understanding has helped break down stigma, encouraging more victims to speak out and hold offenders accountable within the legal system .

In summary, judicial trends demonstrate a dynamic and evolving jurisprudence that has significantly shaped and reinforced India's approach to legislating workplace sexual harassment. The judiciary played an indispensable role before Parliament enacted legislation and continues to oversee the law's implementation and interpretation. Courts have acted as trailblazers in transforming social norms by invoking constitutional principles, ensuring the right to work free from harassment is protected and respected. Collectively, these rulings show how judicial activism and constitutional safeguards have driven meaningful progress towards workplace gender justice in India.

DOCTRINAL ANALYSIS

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, stands as a significant milestone in India's journey toward gender justice within workplaces. Yet, to truly grasp its effectiveness, it is important to critically examine the Act from a doctrinal perspective considering how well it aligns with constitutional values as well as the realities of its application.

One of the Act's greatest strengths lies in being India's first comprehensive law specifically designed to address sexual harassment at work. Unlike the earlier judicial guidelines, the POSH Act carries statutory authority, with clear legal duties placed on employers, along with penalties for noncompliance. It mandates that workplaces above a certain size set up Internal

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Complaints Committees (ICCs), creating an accessible, institutional mechanism through which victims can voice complaints and have them investigated properly. This formalization helps send a strong message that harassment will not be ignored or tolerated. Additionally, the Act's broad coverage extending protections to all women employees irrespective of their contract type or sector includes workers in unorganized and informal sectors, who are especially vulnerable to exploitation and abuse.

From a constitutional standpoint, the Act embodies the principle of equality as guaranteed under Article 14 and the prohibition against sex-based discrimination in Article 15. It addresses a deeply entrenched obstacle to women's equal participation in the workforce. Meanwhile, the Right to dignity and the assurance of safe working conditions under Article 21 find expression through the Act's emphasis on prevention, complaint redressal, and corrective action. The Procedural elements, such as the right to a fair inquiry and the maintenance of confidentiality, reflect the doctrine of natural justice, offering a fair process to both complainants and respondents.

However, despite these positive aspects, the Act also reveals certain doctrinal weaknesses when examined in detail. A principal criticism centers on its gender-specific nature it protects only women as complainants, thereby excluding men and transgender persons who may also be victims of sexual harassment. This limitation raises questions about the law's inclusiveness and lashes with emerging ideas of gender neutrality and comprehensive equality. Furthermore, while the ICC mechanism is theoretically sound, its actual effectiveness often depends on the independence, capability, and commitment of committee members. Research and reports suggest that many ICCs suffer from inadequate training, lack true autonomy, or face informal pressures from management, undermining the fundamental principle of impartial and unbiased adjudication.

Implementation presents another major doctrinal challenge. Awareness of rights and complaint procedures remains relatively low across many workplaces, especially among smaller enterprises and in the informal sector. Without robust awareness and education efforts, the statutory protections risk remaining merely symbolic. Additionally, enforcement is not always strong: Penalties for violations tend to be light and infrequently applied, reducing the deterrent effect that the law seeks to establish.

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The Act also struggles to confront the deeper societal and cultural factors entwined with workplace harassment. Patriarchal norms and power imbalances are embedded within workplaces and wider society, meaning that legal measures alone cannot dismantle systemic gender biases. Addressing harassment requires complementary initiatives educational programs, organizational culture change, and broader shifts in attitudes to create truly respectful and safe work environments. The Act's focus on complaint redressal is necessary but insufficient on its own.

Doctrinally speaking, the POSH Act reflects key constitutional values, but there remains a noticeable gap between these normative ideals and the day-to-day realities faced by many women at work. For the law's promise of equality, dignity, and justice to be fully realized, consistent and sincere implementation is essential, alongside institutional support and wider cultural transformation. The Act is therefore a work in progress, requiring ongoing evaluation and reform to ensure it becomes more inclusive, effective, and adaptable to the needs of all genders and the diverse nature of the Indian workforce.

The POSH Act is a landmark and progressive legal instrument, embodying India's constitutional commitment to gender justice within workplaces. Its strengths lie in its statutory backing, Comprehensive scope, and alignment with fundamental rights. Nonetheless, weaknesses such as its gender exclusivity, reliance on competent Internal Complaints Committees, gaps in awareness, and challenges in enforcement highlight that legislation alone cannot eradicate sexual harassment. Future reforms must strive toward inclusivity, stronger enforcement mechanisms, enhanced training and capacity building, and broader societal change to unlock the Act's full transformative potential.

CONCLUSION

The development of laws addressing workplace sexual harassment in India from the initial Vishaka Guidelines to the enactment of the POSH Act marks a vital progression in the country's legal and social landscape. The judiciary played a pioneering role by recognizing sexual harassment as a breach of constitutional rights and setting key protective standards long before parliament stepped in to provide a statutory framework. This journey reflects ongoing efforts to secure women's rights to equality, dignity, and safe working environments. The principal finding of this study is that although India now has a robust legal framework on paper, practical difficulties often diminish its effectiveness. The POSH Act lays down

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comprehensive procedures for preventing harassment and providing redress, including the mandatory formation of Internal Complaints Committees (ICCs) at workplaces. Despite this, many employees and employers remain unaware of their rights and responsibilities under the law. Implementation frequently suffers due to poorly trained ICC members, organizational indifference, and fear among victims about possible retaliation. Compliance remains especially patchy among smaller businesses and within the informal sector. Moreover, the current law is limited in scope as it protects only women, leaving out men and transgender individuals, highlighting a crucial area for reconsideration.

Based on these insights, several recommendations arise to strengthen India's fight against workplace harassment. First, workplaces must institutionalize regular and mandatory training and awareness programs to ensure that every employee understands their rights and obligations. Second, amendments should be considered to make the law more gender-neutral and inclusive, extending protections to all vulnerable groups. Third, the Internal Complaints Committees should be granted greater independence and better resources, with periodic evaluations and audits conducted by government agencies to guarantee their effective operation. Lastly, stronger government oversight is necessary to enforce compliance, particularly in the unorganized sector, where stricter penalties and incentives could improve adherence.

India has laid down a solid legal foundation to combat workplace sexual harassment yet its transformative potential depends heavily on sustained efforts to translate legal protections into everyday reality. There is a pressing need for future research that evaluates how effectively organizations and institutions are applying these laws on the ground. Such empirical studies will be invaluable in shaping policies that make workplaces safer, more equitable, and more respectful for everyone.

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