

**The POSH Act, 2013: A Critical Analysis of  
Procedural Fairness and False Complaint Concerns  
under Sections 9–14**

**DR. VICTORIA MURMU**

**Asst. Professor**

**Law college Dhanbad, Dhanbad**

**Abstract**

Posh Act, also known as "the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013," is one step taken in the direction of establishing safe and respectable work environment for women in India. This act is founded on the principles mentioned in the Vishaka judgment of 1997, according to which workplace sexual harassment is considered a violation of fundamental rights like equality, dignity, and right to work. This research paper discusses the Posh Act of 2013 in the light of the provisions of law, society, and institutions with specific attention paid to sections 9 through 14, dealing with the complaint and inquiry procedure. While section 9 of this act sets a time limit on complaints, in practice women often postpone filing because of their fears, shame, and even pressure from employer. Conciliation provided in section 10 of the Posh Act helps solve the issue promptly, although, in case of power inequality, this way of conflict resolution may be inappropriate. Section 11 is devoted to inquiry and draws special attention to the issue of fair proceedings. The provision of Section 12 acts as a temporary measure during the inquiry, protecting the complainant from any further damage, whereas Section 13 covers the outcome of the case. Section 14 covers instances of false or malicious complaints, yet it is mentioned clearly that a complaint cannot be false simply because it could not be substantiated. It must be noted here that even after years of implementation, several issues are still prevailing including the problem of underreporting, poor implementation, and awareness among others, particularly regarding informal sectors of the economy. It can therefore be said that while the POSH Act has provided an important legal framework, its effectiveness ultimately lies in proper implementation and workplace sensitivity.

**Keywords:** POSH Act 2013, Workplace Sexual Harassment, Internal Committee (IC), Local Committee (LC), Sections 9–14 POSH Act, Complaint and Inquiry Mechanism, Natural Justice, Procedural Fairness False and Malicious Complaints.

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## **Introduction**

The POSH Act, 2013 has been a landmark legislation in the way Indian law perceives and deals with sexual harassment in the workplace. In the past, sexual harassment at work was considered acceptable, neglected or a matter of personal preference rather than a systemic problem caused by gender-based discrimination and disparity in power distribution. Women often found themselves in the awkward position of having to choose between staying quiet about their discomfort or losing out on their jobs and reputation by filing a complaint. Lack of a systematic framework for addressing sexual harassment also added to this dilemma. The Act endeavors to alter this grim scenario by assigning duties and liabilities to the organization rather than individual workers. Employers become legally obligated to provide a secure working environment for their employees, while an effective mechanism for filing complaints becomes mandatory. While the above is true, the Act also ensures that no one person suffers unduly because of the existence of such a complaint mechanism. Indeed, it is necessary for the complaint procedure to be equitable to both parties. This balancing act of justice and equity finds its true meaning in Sections 9 to 14 of the Act.

## **Historical and Constitutional Background of the Legislation**

The Vishaka judgment of 1997 is crucial in understanding the context in which the POSH Act came into existence. It provided the legal response to the situation wherein the Indian Constitution lacked any provision for dealing with workplace sexual harassment. The background was a series of events involving Bhanwari Devi, an employee of Rajasthan Village Panchayat, who suffered a barbaric assault by her colleagues. In its verdict, the Supreme Court observed that workplace sexual harassment amounted to violation of fundamental rights under the Indian Constitution, including the rights to equality (Article 14), non-discrimination (Article 15), freedom to practice one's profession (Article 19), and the right to life and personal liberty (Article 21). Additionally, in order to formulate the Vishaka Guidelines, the Court also referred to several international laws, such as the CEDAW convention. Nevertheless, the Vishaka Guidelines turned out to be insufficient since most institutions did not take proper steps towards implementation and there was no system for enforcement. Thus, there was a need for legislation that would help to overcome these deficiencies. Consequently, the POSH Act was enacted in 2013.

## **The Extent of Scope and the Mechanism through which the Act Works**

Another positive point in favor of the Act can be that it provides a very broad scope of application. For example, the notion of "aggrieved women" not only

applies to employees but can also involve interns, trainees, domestic workers, as well as visitors of a particular workplace. Additionally, the concept of a workplace in the context of the law extends to all places of employment, including those outside offices. According to the terms of the POSH Act, organizations are to create Internal Committees, while Local Committees are established at the district level to provide coverage for various kinds of workplaces. Nevertheless, this mechanism of implementation gives rise to the problem related to the lack of independence of Internal Committees (since they operate inside an organization) and to possible conflicts arising during the resolution of disputes involving high-level employees.

### **Section 9: Filing of Complaints**

Section 9 outlines the process through which complaints are to be filed, with a maximum time limit of three months, subject to extension of three months further. Even as this section attempts to provide adequate time for filing a complaint, it fails to consider the nature of reality in which the victim exists. Victims may be reluctant to report sexual harassment due to various reasons such as fear of being retaliated against, fear of jeopardizing one's career prospects, or fear of social condemnation. This requirement, therefore, may end up disqualifying real cases. The fact that there can be an extension under this section notwithstanding. This illustrates a general problem in law where the process followed cannot accommodate reality.

### **Section 10: Conciliation**

The option of conciliation in lieu of investigation is permitted by Section 10 only if the complainant requests it. However, this approach should be applied carefully because in companies where hierarchical relations prevail, it would be difficult to speak of voluntariness. The reason for such a conclusion is that the employee will agree to conciliation not out of personal interest, but under the threat of dismissal. Moreover, even though financial compensation is prohibited by law, other types of pressure cannot be ruled out. For example, the manager of the department can threaten to reduce the salary of the complainant. Thus, the effectiveness of conciliation as a method of resolving the conflict is determined by voluntariness.

### **Section 11: Inquiry & Fairness**

In Section 11 of the Act, we find an important issue, namely that of conducting inquiries in a manner consistent with the principles of natural justice. This means that the accused should be given a right to defend his case, both parties are allowed to present evidence, and any decision must be made on reasonable grounds. However,

at the same time, the proceedings must also take into account the sensitivity of the complainant so as not to create an adverse atmosphere. The question that emerges here is that of finding the balance between the two. The problem is that most internal committees lack knowledge in the area of law, which means that sometimes there could be a tendency towards excessive informality, while at other times the opposite approach may prevail. It is crucially important for courts that the inquiry should be conducted fairly.

### **Section 12: Temporary Measures During Inquiry**

Temporary measures under section 12 are essential since the inquiry process might be stressful for the complainant and could even put him/her at risk of additional suffering. However, the application of these provisions requires careful consideration. Sometimes, it happens that not the accused, but the complainant is the one who has to undergo a change of location or leave. The purpose of these temporary measures should be to protect the complainant without damaging his/her career prospects. Thus, this section demonstrates how even a provision meant to ensure safety of a complainant can result in adverse outcomes.

### **Section 13: Outcome of the Inquiry**

According to section 13, the result of an inquiry is accompanied by recommendations from a committee and even disciplinary actions in case a complaint is proved. However, it is worth noting that it could prove difficult for the employer to follow these recommendations since organizational interests would come into play, particularly in case the accused occupies a leadership position.

### **Section 14: False Complaints**

This section pertains to false or malicious complaints. In cases where such a complaint has been filed, the complainant can be prosecuted. This may be necessary to protect the provisions from being abused. However, one must note that the mere inability to prove a complaint does not render the complaint itself false. Cases where there is insufficient evidence do not necessarily mean that the complaints have been filed maliciously. An incorrect understanding of this clause can dissuade women from lodging harassment complaints. Hence, it is essential that the difference between an unproven and malicious complaint be kept clear.

### **Challenges in Social and Institutional Sphere**

Although the law has a solid base, it still encounters numerous obstacles. The under-reporting problem persists because women are not confident enough to file

complaints. The Internal Committees may be biased or poorly trained, while Local Committees usually fail to function effectively. There is another challenge that comes into play in the context of the informal sector. Most employees work there, but their chances to address the matter and receive appropriate assistance are rather limited. Such findings suggest that a change in legislation does not guarantee success on its own.

### **Critical Analysis**

Certainly, the POSH Act has been instrumental in ensuring the transition from the state of silence about workplace sexual harassment towards legal action. Before the passage of this act, such issues were considered personal and thus were either ignored or overlooked by the parties concerned. However, with the establishment of the legal framework and institution of the procedures to combat workplace sexual harassment, the POSH Act has helped realize that the safety of employees in the workplace is essential and constitutes an inherent right of the individuals. This legislation has also helped bring about the change in culture regarding gender relations at workplaces. On careful examination, however, the efficiency of the Act is largely determined not by its legislative aspects but by implementation. One of the crucial problems is related to the establishment of committees within the company by the employers themselves. Even though this approach makes the procedure easy to understand and accessible for the employees, it also implies certain conflicts of interest. Committees are often charged with the task of investigating complaints about individuals holding high-ranking posts within the very same company. As a result, this can involve some form of pressure or prejudice towards the decision. The other significant drawback associated with the Act is inconsistency of procedure due to lack of proper training. In many cases, the committees lack knowledge of the law, leading to inconsistent approaches to solving issues of workplace bullying. Some investigations may be too light-hearted, lacking adequate analysis, while others may turn out to be too severe and insensitive, causing discomfort to the complainants. Local Committee's function is another area that illustrates implementation gaps. Designed for helping workers who work in small industries or the informal sector, Local Committees themselves tend to lack adequate funding or staffing and fail to be active. In this way, a significant number of workers, especially domestic and daily-wage workers, find themselves beyond the reach of the Act. There is an inherent problem here in that the law appears more effective in formal urban settings while falling short when applied to vulnerable populations. There is yet another element that makes the application of the

law difficult: the section on false complaints. While it is important, there is no denying that a fear of having your complaint labeled as false will create reluctance among victims of harassment to report it. It is equally important, however, to recognize the positive normative implications of the Act. The Act has contributed to shifting the way workplace harassment is seen, from being an acceptable part of the work environment to something that infringes on the individual's right to work. Initiatives such as #MeToo have played a role in solidifying this shift, demonstrating not only the power but also the shortcomings of the current approach.

## **Conclusion**

The Sexual Harassment of Women at Workplace Act, 2013 is an important landmark in acknowledging that safety at workplace is not just a policy matter but a matter of rights, dignity, and equality. The emphasis here is on institutionalisation as opposed to ad-hoc approach towards sexual harassment at workplaces. The act brings a duty on institutions to provide an atmosphere where women can pursue their profession with respect, confidence, and equality of opportunities. While the legislation is robust in itself, the actual effectiveness of this legislation is dependent on its interpretation and implementation by different institutions. From Section 9 to Section 14 of this legislation, we come to know about the complexity involved in delivering justice to a woman complainant in case of workplace harassment. This is because the very essence of this legislation lies in the process followed during its implementation. Firstly, there is the question of giving support to women who are already going through emotional and professional turmoil due to social stigmas associated with sexual harassment. However, there is also an imperative to protect the rights of the accused and give him/her a fair chance to answer and argue. Finding a fine balance between these two imperatives is not going to be an easy task, and success or failure of the Act will depend on this balance. One of the important problems arising out of the conflict is that between the legal framework and actual practice. Internal Committees, which play a crucial role in the whole system of sexual harassment at the workplace, frequently lack either independence or professionalism or both. Some committees do not even serve the purpose but merely help the organizations in satisfying their legal obligations. Local Committees, which are supposed to help the workers in smaller or informal organizations, continue to be ineffective. The second key concern pertains to the anxiety about the consequences of complaining. While it is true that the Act makes a clear distinction between unsubstantiated complaints and malicious complaints, the mere presence of provisions relating to the latter can make individuals hesitate

before filing a complaint. The fear here combines with other factors including the fear of retaliation, loss of reputation, and lack of institutional backing. In such circumstances, the empowering spirit of the Act may not be able to materialize as desired. On the other hand, the fact that the Act has contributed substantially in terms of bringing about an attitudinal change regarding workplace harassment is noteworthy. It has helped raise awareness, promote policy formulation, and training. For the future, the emphasis will have to be on the implementation of the law rather than its extension or modification. The areas that can help in achieving this are making Internal Committees more autonomous and training them effectively. It is necessary to make sure that Local Committees operate effectively and that they reach out to employees without difficulty. Increasing awareness levels among employees is another task that has to be undertaken. The POSH Act can thus be considered a living document that calls for constant improvement and involvement. Success in implementing this act does not consist only in handling the complaints that come up; it involves creating a completely new working environment characterized by awareness and sensitivity.

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