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From Physical Offices to Digital Spaces: Reinterpreting Workplace under the POSH Act, 2013

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ABSTRACT

The security and dignity of an individual in the place of work, whether it be an educational institution or a factory, and whether within a concrete building or in the online realm, are pre-eminent for fostering an environment conducive to efficiency and the acquisition of knowledge. In India, the fight against sexual harassment has been long evolving and has seen significant developments, culminating in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the POSH Act), which has been supplemented by the UGC Regulations of 2015. Yet, because of the rapid advancement of technology, the law has struggled to keep pace, leaving grey areas that are yet to be addressed. This article examines the legal framework established by the POSH Act, the UGC Regulations and key judicial pronouncements, and the need for reform in light of the growing role of technology and the work-from-home culture that emerged significantly after the Covid-19 pandemic, with a view to eliminating sexual harassment from workspaces, including virtual platforms.

Keywords: POSH Act, Vishaka Guidelines, sexual harassment, workplace, virtual workplaces, social-media platforms

I. INTRODUCTION

Technology is so fast-paced that the legal framework often lags behind, failing to cope with or address issues arising from technological advancement. While the nature of work and of classrooms has changed so significantly that almost all of it can now be conducted online, the POSH Act, though broad in its scope, does not expressly address virtual workplaces and technology-mediated interactions. Virtually conducted meetings and classes, audio-video conferences and calls pose a greater risk of sexual harassment that may go unnoticed or unreported, owing to the twin factors of the lacuna in the law and the volatile nature of electronic evidence.

This transformation therefore raises an important question: does unwelcome conduct committed online attract liability under the provisions of the POSH Act, 2013? The issue has acquired

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greater significance after the advent of the Covid-19 pandemic and the emergence of a widely spread online social-media world and the work-from-home mechanism. Although it may be said that the POSH Act ought to be given a wider interpretation by the courts, it cannot be argued that all of the country's virtually committed sexual offences should, or can, be addressed only through such expansive judicial interpretation. There is thus a need to address issues such as this. This article accordingly examines whether the existing legal framework is capable of addressing these challenges, and argues for reforms that would align the law with the realities of contemporary digital interactions.

II. THE POSH ACT, 2013: A LEGAL OVERVIEW

A. Historical Background: Evolution of Sexual Harassment Law in India after Vishaka v. State of Rajasthan

The eradication of sex-based prejudice has been one of the basic principles and fundamentals of the constitutional edifice of India. It is embedded in the Preamble, the Fundamental Rights, the Fundamental Duties and the Directive Principles of State Policy. Despite this, it was only in 1997 that sexual harassment against women, especially at the workplace, was given a voice and formally recognised in India by the Hon'ble Supreme Court in the Vishaka judgment.¹ Confronted with the legislative lacuna, the Apex Court, under its power conferred by Article 32 of the Constitution, laid down a mandatory set of guidelines popularly known as the Vishaka Guidelines for the prevention and redressal of sexual harassment. The struggle continued for a further 16 years to obtain a codified law on the subject, but until then these guidelines served as a *de facto* law that required employers to provide safe working conditions and to set up internal complaints committees. Despite the delay, in 2013 the guidelines were transformed into a codified law named the POSH Act and thereafter took the form of a statutory framework. Since then they have been legally enforceable and are widening their scope as and when required.

B. Key Provisions of the POSH Act, 2013

The Act is a sturdy piece of legislative work drafted and enacted to intercept and redress cases of sexual harassment of women at their workplaces. A few of its key provisions are examined below.

S. 2(n): "sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."²

¹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : AIR 1997 SC 3011.

The Act thus provides a wide definition of what constitutes sexual harassment. It broadly encompasses acts or behaviour that are unwelcome to the woman. Significantly, it takes into its ambit acts whether implied or explicit, covering a vast gamut of conduct.

S. 2(o): "workplace includes— (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; ... (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey; (vi) a dwelling place or a house."³

Section 2(o) thus lays out a comprehensive definition of 'workplace' to include not only conventional office spaces but also any other spaces visited by employees in the course of their employment. Both governmental and private bodies have been brought within its ambit.

S. 4: "Constitution of Internal Complaints Committee.— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the 'Internal Complaints Committee' ... (d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section."⁴

It directs that every employer employing 10 or more employees must put in place an ICC. This committee is a paramount apparatus to receive and inquire into cases of sexual harassment. The Act itself provides for the composition of the committee. It includes a Presiding Officer, at least two members from among the employees committed to the cause of women or possessing a legal background, and at least one member from a non-governmental organisation committed to the cause of women. The majority of the membership must be held by women.

S. 19: "Every employer shall— (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the

² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 2(n).

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 2(o).

⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 4.

workplace ... (j) monitor the timely submission of reports by the Internal Committee."⁵

Section 19 lays down particular duties cast upon employers, which are mandatory as evident from the use of the word 'shall'. Providing a safe working environment, raising awareness, managing ICCs and assisting the aggrieved woman are among the vital duties of an employer.

C. The Definition of "Workplace" and its Scope in the Digital Era

The wide and broad definition of 'workplace' under Section 2(o) of the POSH Act was, as envisaged by the legislature at the time of enactment, primarily intended to cover only physically existing institutions where employees, employers and students interact in person, rather than through online or virtual platforms. In the digital era, the workplace should be determined not by physical location but by the functional relationship between the interaction and the employment or educational activity. This is where the legal lacuna lies in the digital world. There is no explicit provision anywhere in the Act for harassment that a victim may face while working from home or while interacting through electronic devices.

III. VIRTUAL WORKPLACE: EXPANDING THE MEANING OF WORKPLACE

Although not explicitly mentioned in the original Act, judicial interpretations and interpretive doctrines may serve to extend the concept of 'workplace' to virtual spaces, recognising that harassment can occur through digital mediums connected to one's academic or professional life. This is essential to acknowledge in the present times because, after the pandemic struck the country, many changes have been seen. Not only are classes held online, but official meetings are also conducted from places of convenience by both employers and employees, increasing the risk of unwelcome conduct of a sexual nature committed online. Moreover, the advent and increasing use of social-media platforms have exposed the general public and social-media influencers to online harassment through comments, direct messages (DMs) or posts. It therefore becomes expedient to address this issue.

In the evolving era of technology, although Indian courts have not expressly recognised all virtual spaces as workplaces under the POSH Act, judicial interpretations favouring an expansive understanding of 'workplace' provide a doctrinal basis for such an extension. In *Saurabh Kumar Mallick v. Comptroller and Auditor General of India*,⁶ the Hon'ble High Court of Delhi held that:

It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information

⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 19.

⁶ *Saurabh Kumar Mallick v. Comptroller and Auditor General of India*, 2008 SCC OnLine Del 563 : (2008) 151 DLT 261.

technology. A person can interact or do business conference with other person while sitting in some other country by means of video-conferencing. It is also becoming a trend that office is run by certain CEOs from their residence. Obviously, members of public would not have access to that place, though personal staff of such an officer would be present there. In a case like this if such an officer indulges into an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'work place', but at his 'residence' and get away with the same.

It was held in *State of Maharashtra v. Praful B. Desai*,⁷ applying the principle of updating construction as enunciated by Francis Bennion, that:

We cannot allow the dead hand of the past to stifle the growth of the living present. If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind.

Following the same doctrine, it can be inferred that the definition of 'workplace', now extending beyond traditional concrete buildings, may be construed to include the digital workplace created through electronic devices.

Furthermore, a closer look at the definition shows that it uses the word 'includes', which means that the definition is not exhaustive but rather illustrative in nature. It was held in *Dr. Sohail Malik v. Union of India*⁸ that:

The POSH Act is a social welfare legislation and it must be interpreted as thus. The intent of the legislature behind giving such a wide meaning to the word 'workplace' to go beyond the bounds of the traditional meaning implying location of the office, cannot be brushed aside by narrow construction.

Consequently, giving the definition a wider interpretation, as has also been held in judgments of the Supreme Court, it can be concluded that virtual workspaces and work-from-home platforms, along with online classes conducted on Google Meet and Zoom, are also covered within its ambit. This acknowledges the evolving nature of learning and work environments.

IV. LANDMARK JUDICIAL PRECEDENTS

In *Apparel Export Promotion Council v. A.K. Chopra*,⁹ the Supreme Court observed that:

⁷ *State of Maharashtra v. Praful B. Desai*, (2003) 4 SCC 601 : AIR 2003 SC 2053.

⁸ *Dr. Sohail Malik v. Union of India*, 2025 INSC 1415.

⁹ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 : AIR 1999 SC 625.

Sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate.

In *Medha Kotwal Lele v. Union of India*,¹⁰ the Apex Court emphasised the duty of employers. It was held that:

Vishaka guidelines require the employers at workplaces as well as other responsible persons or institutions to observe them and ensure the prevention of sexual harassment to women; All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment; The implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect.

The definition of 'workplace' was given further significant consideration by the Hon'ble Bombay High Court in *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*.¹¹ It was held that:

This definition is inclusive and again deliberately kept wide by the Parliament to ensure that any area where women may be subjected to sexual harassment is not left unattended or unprovided for. Its Clause (v) highlighted above shows even an artificial extension thereof and it may include workplace of another employer. Section 2(p) defining 'unorganized sector' in relation to a workplace also brings out this intention. This wide canvass brings to fore the intention to provide protection and prevention at all possible workplaces where either aggrieved woman works or may be or visit in connection with her duty or the Respondent is at work. Section

¹⁰ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297 : AIR 2013 SC 93.

¹¹ *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University*, 2014 SCC OnLine Bom 214.

19 dealing with the duties of employer mandates that every employer has to provide a safe working environment for a woman at the workplace which includes even safety from the third person coming into contact with her at the workplace. Clause (h) of Section 19 is also conducive to this interpretation.

V. CHALLENGES IN APPLYING THE POSH ACT TO VIRTUAL WORKPLACES

The question of whether virtual workplaces are covered by the definition of 'workplace' can, more often than not, be resolved through judicial precedent and interpretive doctrines. Another issue that remains unaddressed, however, is the evidentiary procedure that follows. Evidence is the backbone of any proceeding or trial that takes place in a court of law to determine the guilt or innocence of the accused. But because of the dynamic, volatile and fragile nature of digital evidence, a significant challenge may be posed to ICCs, as crucial electronic records may be deleted, edited or made to disappear even before they are detected or preserved for further investigation. Unlike physical evidence, electronic evidence is more susceptible to contamination and is short-lived and ephemeral in nature. ICCs may rely on eyewitness or victim testimony, CCTV footage and attendance records, which may prove to be of less use in such online cases.

Furthermore, digital evidence is required to be analysed and collected by forensic experts. ICC members may lack such expertise with regard to the authenticity, integrity and reliability of digital material.

Another issue that may emerge in online sexual harassment cases is that online meetings are more at risk of unauthorised recordings or screen captures, data leaks, accidental forwarding of confidential information and, more importantly, cyber-security breaches. A single leak is capable of going viral at the instance of a single click or tap. This creates difficulty in preserving the privacy of the complainants, witnesses, the parties and, most importantly, the victim.

Also, as with any other cyber-crime, the issue of jurisdiction arises here too. Virtual workplaces blur territorial boundaries. The victim or complainant may be located in one state and the respondent in another, while the employer or educational institution may operate from an entirely different jurisdiction. This raises practical questions regarding the initiation of inquiry and proceedings.

Lastly, virtual environments readily enable offenders to conceal or fake their identities through anonymous accounts, usernames, temporary email addresses and fake social-media accounts. Identifying the perpetrator in such cases is extremely difficult. Even where the conduct is clearly established, the ICC may face practical difficulties in attributing responsibility to a particular individual.

VI. RECOMMENDATIONS

Given the increasing shift towards remote working, virtual classrooms and technology-mediated interaction, a corresponding evolution of and amendment to the legal framework is proposed. Although the Act has been interpreted widely, the absence of express provisions relating to online workplaces creates legal and procedural uncertainty. In light of this, the following statutory amendments to the Act are proposed.

A. Statutory Inclusion of Virtual Workplaces in Section 2(o)

It is proposed that an Explanation be added to Section 2(o) to formally recognise virtual and online-mediated work environments, which may read as follows:

Explanation.— For the purposes of this section, 'workplace' shall include any virtual, digital, remote, or online-mediated environment used for employment, professional interactions, academic purposes, internships, research supervision, training programmes, or official institutional communication.

B. Statutory Inclusion of Digital Harassment under Section 2(n)

To remove any ambiguity regarding unwelcome conduct occurring through emails, messages, video-conferencing and social-media platforms, the legislature should consider introducing an Explanation under Section 2(n), which may read as follows:

Explanation.— For the purposes of this section, sexual harassment shall include any unwelcome act or behaviour of a sexual nature committed through electronic communications, social media platforms, audio-video electronic means, messaging applications, institutional digital platforms, emails, or any other technology-enabled means.

C. Creation of a Digital Evidence Framework

As mentioned earlier, the adjudication of complaints rests significantly on the collection, preservation and evaluation of electronic evidence. The POSH Act presently has no express provision in this regard. Therefore, a new provision, Section 11A, may be added to empower ICCs to obtain, preserve and evaluate volatile digital evidence in accordance with law, which may read as follows:

S. 11A. Collection and Preservation of Digital Evidence.— (1) The Internal Complaints Committee shall be empowered to collect, preserve, examine, and authenticate electronic records relevant to a complaint under this Act. (2) Electronic records may include emails, chat logs, screenshots, metadata, audio recordings, video recordings, social media communications, and other digital material. (3) The appropriate Government may prescribe appropriate rules and regulations by

notification in the Official Gazette for the preservation, authentication, and evaluation of such electronic evidence.

D. Mandatory Inclusion of a Digital Forensics Expert in the Internal Complaints Committee

As stated earlier, ICCs may face hindrance in the correct appreciation of electronic evidence because of a lack of forensic expertise. It is therefore proposed that there be mandatory inclusion of a minimum number of forensic experts as members of the ICC, which may be reflected as an additional statutory provision, Section 4A, as follows:

S. 4A. Inclusion of a forensic expert.— Where a complaint involves electronic communications, digital platforms, or other forms of technology-mediated interaction, the Internal Complaints Committee may consult a qualified digital forensic expert as a technical or forensic advisor for the purpose of examination and authentication of electronic evidence.

E. Amendment to Section 16

Because issues of confidentiality and privacy almost always arise in the cyber world, it is proposed to add the following provision to Section 16 of the Act:

The prohibition on publication or disclosure under this section shall extend to screenshots, screen recordings, audio recordings, video recordings, electronic communications, digital documents, and any other electronic record relating to proceedings under this Act.

VII. CONCLUSION

Thus, the issue is no longer confined to whether workplace interactions can occur in online spaces, but whether the traditional law is prepared to identify, recognise and regulate them effectively. While the POSH Act was enacted within the arena of traditional physical workplaces, the professional and academic relationships of the contemporary world increasingly operate through digital platforms that function as an alternative to conventional workspaces. In such a scenario, a restrictive interpretation of the law is not feasible, and it fundamentally questions the very purpose of the law. The law must therefore evolve in accordance with the updating construction doctrine to ensure that the right to a safe and dignified environment remains secure, irrespective of whether the interaction occurs in a physical office or on an online platform such as Google Meet or Zoom.
