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Workplace Harassment and Sexual Misconduct: Legal Standards, Employer Responsibilities, and Employee Rights

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ABSTRACT

The barriers to employment for women have been significantly dismantled by the factors such as socio-economic changes, cultural shifts and legal reforms, which in turn have significantly evolved and increased women's involvement in the workplace. Women are no longer confined to limited sectors, as was the case earlier; they can now be seen participating in all sectors, and even outnumbering men in a few. This has resulted in positive changes such as women's empowerment, a reduction in gender disparity and securing financial independence for women. However, this positive change could be eclipsed if the workplaces are not safe for them. Workplace Harassment and Sexual Misconduct are issues plaguing the world globally, including India. Securing Women's safety at the workplace is not a luxury but a fundamental right, essential for reaping the social, economic and cultural benefits of increased women's participation in the workplace. This research paper attempts to explore the legal standards, employer responsibilities, and employee rights concerning workplace harassment and sexual misconduct in India.

Keywords: *Sexual Harassment at Workplace, Women's Safety, Women Empowerment, Employer's responsibility towards women, gender inequality.*

I. INTRODUCTION

The talents of women remain largely untapped, even though they are significant reservoirs of it. Arrested by a patriarchal mindset, women historically played a limited role. They were expected to handle only household chores, while men went out to work. This mindset dismantled women's opportunities and created a significant barrier to their involvement and participation in the workplace.

However, this mindset is transforming due to several factors: **higher education** has enabled the women to pursue professional career; **skill development programs** initiated by the Government and the NGOs have increased women's employability; **legislation and policy**

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reforms have helped ensure a conducive environment at the workplace; **technological advancements** have allowed the women to balance work and family responsibilities; and gradual changes in societal attitudes have reduced the stigma associated with working women, promoting gender equality.

Increased participation of women in the workplace aids in economic growth by boosting GDP. The diversity of the labour force leads to a variety of perspectives and ideas, enhancing creativity and productivity. It also helps a country reap social benefits, such as enhancing women's social status by securing their financial independence and bargaining power within households.

However, to reap these benefits, ensuring the safety and security of women in the workplace is crucial. If we fail to secure women in the workplace, they may suffer mental, physical, and social issues, undermining their dignity and productivity, thereby, creating a toxic work environment.

The Hon'ble Supreme Court of India observed the same in the leading case of *Vishaka v. State of Rajasthan*⁴, stating that *“Being a victim of such a deplorable act not only dents the self-esteem of a woman, it also takes a toll on her emotional, mental and physical health. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job”*⁵.

Globally, the evil of sexual harassment in the workplace is condemned, and actions against it are prescribed in various conventions and treaties. For instance, the *Convention on the Elimination of All Forms of Discrimination*⁶ requires that all forms of discrimination against women in all the fields, including equality under law, politics, governance, healthcare, the workplace, and other areas of social and public life, must be eliminated by State Parties taking appropriate measures against it. Sexual harassment is violence and a form of discrimination against women, recognised under conventions such as *Beijing Platform for Action*⁷, *Discrimination (Employment and Occupation) Convention*⁸, *Indigenous and Tribal Peoples*

⁴ (1997) 6 SCC 241

⁵ The Hindu, “Explained/ What is the POSH Act and why has the Supreme Court flagged lapses in its implementation?” <https://www.thehindu.com/news/national/explained-the-indian-law-on-sexual-harassment-in-the-workplace/article66854968.ece> Last accessed on 21 June 2024.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>. Last accessed on 22 June 2024.

⁷ Fourth World Conference on Women, Beijing Declaration and Platform for Action, 178, U.N. Doc. A/CONF.177/20 (1995), <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>. Last accessed on 22 June 2024.

⁸ Discrimination (Employment and Occupation) Convention (No. 111), June 25, 1958, 362 U.N.T.S. 31, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111. Last accessed on 22 June 2024.

*Convention*⁹, *Charter of Fundamental Rights for the European Union*¹⁰, *Inter- American Convention on the Prevention, Punishment and Eradication of Violence Against Women*¹¹, among several others.¹²

From the perspective of India, the country previously lacked specific laws to deal with the menace of sexual harassment in the workplace, even though it ratified the U.N. Convention on the Elimination of All Forms of Discrimination Against Women in 1993, which requires the state parties to take appropriate steps to eliminate discrimination against women in the field of employment, ensuring the same rights for men and women, particularly the right to work and sexual autonomy for women. In the landmark decision of *Vishaka v. State of Rajasthan*¹³, the Hon'ble Supreme Court of India highlighted the need of anti-sexual harassment laws and, to fill the legislative vacuum, issued guidelines to address sexual harassment in the workplace by recognizing that the right to life encompasses the right to live with dignity under Article 21¹⁴. After 16 long years of this case, finally the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013¹⁵.

II. LEGISLATIVE FRAMEWORK TO PROTECT WOMEN FROM SEXUAL HARASSMENT AT WORKPLACE

Sexual harassment in the workplace is a critical issue that affects women's safety, dignity, and equality. In India, the legislative framework to protect women from such harassment is robust, evolving from judicial pronouncements to comprehensive statutory enactments. This Chapter examines the various laws and regulations designed to safeguard women from sexual harassment in the workplace, emphasizing constitutional provisions, the landmark POSH Act of 2013, supportive provisions in the Indian Penal Code (IPC), and other relevant legal instruments.

⁹ Indigenous and Tribal Peoples Convention (No. 169), June 27, 1989, 1650 U.N.T.S. 383, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 Last accessed on 22 June 2024.

¹⁰ Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391. https://www.europarl.europa.eu/charter/default_en.htm Last accessed on 22 June 2024.

¹¹ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534. <http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20P ara.htm> Last accessed on 22 June 2024.

¹² UN Women, "*Sources of International Law Related to Sexual Harassment*" <https://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html?next=469> Last accessed on 22 June 2024.

¹³ *Ibid* (1)

¹⁴ INDIA CONST. art. 21

¹⁵ Pathshala, "*Social Legislations and Crime*" https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001747/M027781/ET/1521114732Module19.pdf last accessed on 20th June 2024.

(A) Legal framework under the Indian Constitution:

Part III of the Indian Constitution provides for the fundamental rights. Some of these rights are available only to citizens, while others are available to all persons irrespective of the nationality. Not ensuring the safety of women in the workplace violates rights such as Equality before law¹⁶; prohibition of sexual harassment of women at workplace¹⁷; right to equality in matters of employment¹⁸; freedom to carry on the business of trade and profession¹⁹; right to life; right against exploitation²⁰. These articles aim to promote equality and uphold the dignity of women²¹. Hence, abiding by these provisions helps uphold the constitutional principles.

(B) Framework under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

The POSH Act was enacted to prevent and protect women from incidents of sexual harassment and to provide for the redressal of complaints related to it. The Act applies to all women, regardless of their work status, and covers all workplaces, including the public and private sectors, organized and unorganized sectors, and institutions of education, sports, and residential workplaces.²²

The Act provides an elaborative and broad definition of terms such as “sexual harassment”, “workplace”, “employer” and “employee”, thus closing loopholes that the accused might exploit. For instance, sexual harassment is defined to include all forms of harassment faced by women, encompassing physical contact and advances, making sexually coloured remarks, showing pornography, and any other unwelcome non-verbal, physical or verbal conduct of a sexual nature.²³

Furthermore, the definition of “workplace”²⁴ includes both public and private sector organisations, government (state, central and local) and its departments, establishments funded directly or indirectly by the government, government companies, government corporations or

¹⁶ INDIA CONST. art. 14

¹⁷ INDIA CONST. art. 15

¹⁸ INDIA CONST. art. 16

¹⁹ INDIA CONST. art. 19 (1)(g)

²⁰ INDIA CONST. art. 23

²¹ Kriplani Trishna, “National Legislative Framework – Sexual Harassment of Women” <https://ebooks.inflibnet.ac.in/hrdp05/chapter/national-legislative-framework-sexual-harassment-of-women/> Last accessed on 21 June 2024.

²² J Lakshmi Charan, “Legal Framework of Sexual Harassment of Women at workplace in India” file:///C:/Users/nived/Downloads/9.POSHArticle.pdf Central European Management Journal, ISSN: 2336-2693|E-ISSN:2336-4890, Vol. 31 Iss. 3 (2023)

²³ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 2 (n), No. 14, Acts of Parliament, 2013 (India)

²⁴ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 2 (o), No. 14, Acts of Parliament, 2013 (India)

government co-operative societies. It also covers places such as nursing homes and hospitals, sports complexes, stadiums, residential complexes, competition or games venues for competitions or training in sports and other related activities.

The scope of “workplace” is further expanded to include places the employee visits “arising out of, or during the course of employment”. Moreover, the Courts have already appended a broader meaning to the term “workplace”, even before formal legislation like the POSH Act, as seen in the case of *Saurabh Kumar Mallick v. Auditor General of India*²⁵, where the Hon’ble Delhi High Court held that sexual harassment at the workplace also includes acts committed outside the physical premises of the office, and thus “office” cannot be given a restrictive interpretation.²⁶

Some other key features of the Act include the establishment of an **Internal Complaints Committee**, which every employer with more than ten employees is required to constitute. It should be chaired by a senior woman employee, with at least two other employees and one external member from an NGO or an individual familiar with issues of sexual harassment. Further, the Act requires that the District Officer constitute a Local Complaint Committee if the complaint is made against the employer.

The Act emphasises the importance of gender sensitisation and awareness programs by mandating that employers educate their employees about the impact of sexual harassment through regular training sessions, ensuring an inclusive workplace that respects equality and culture. Appropriate redressal and remedies for employees are ensured by provisions that call for timely and fair investigations, disciplinary action against the perpetrators, monetary compensation, and measures to prevent further harassment.

Thus, this Act aims to create a safe and equitable work environment for women. Though there have been notable advancements in this direction, the Act suffers from implementation challenges that could be overcome through concerted efforts.

(C) Legislative Framework under the Indian Penal Code, 1860:

The legal framework contained under IPC aligns with the POSH Act and reinforces the idea of creating an equitable and safe work environment by punishing the acts of sexual harassment²⁷. It further penalises acts of criminal force or assault intended to outrage the modesty of the

²⁵ WP(C) 8649/2007

²⁶ Nishith Desai Associates, “*Sexual Harassment: Workplace ‘Outside the Box’*” <https://www.nishithdesai.com/generateHTML/5861/4> Last accessed on 22 June 2024.

²⁷ The Indian Penal Code, Section 354 A, No. 45, Acts of Parliament, 1860 (India)

woman²⁸, including the use of words and gestures for the same purpose.²⁹ To uphold the dignity of women in the workplace, it is necessary to ensure that the Act is enforced effectively through awareness and appropriate support. Further, achieving workplace safety requires that such evils not be tolerated, and that necessary legal recourse be taken against them. Only then can we truly achieve this purpose.

(D) Legislative Framework under the Protection of Human Rights Act, 1993:

The legislative intent behind enacting the Protection of Human Rights Act, 1993, was to promote and safeguard human rights through the constitution of the National Human Rights Commission (NHRC), State Human Rights Commissions, and Human Rights Courts. The Act defines human rights as the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in international covenants and enforceable by courts in India³⁰.

The NHRC monitors the implementation of safeguards provided under the Constitution and other laws to protect human rights, including those against sexual harassment, and also enquires into complaints of human rights violations.

The NHRC also advises the government on measures to prevent and remedy violations of human rights, including workplace sexual harassment. NHRC promotes human rights education and awareness through its initiatives, which include sensitization programs on gender equality and sexual harassment.

(E) Legislative Framework under the Industrial Employment (Standing Orders) Act, 1946:

The Industrial Employment (Standing Orders) Act, 1946 (“Standing Orders Act”) is a central enactment that, inter alia, requires employers to define and publish uniform conditions of employment in the form of standing orders. The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (“Standing Orders Rules”) prescribe a list of acts constituting ‘misconduct’ and specifically include sexual harassment, and define ‘sexual harassment’ in line with the definition under the *Vishaka Judgment*³¹.

The applicability of this Act is limited to industrial establishments employing a minimum of 100 workmen. Model Standing Orders serve as guidelines for employers, and if an employer

²⁸ The Indian Penal Code, Section 354, No. 45, Acts of Parliament, 1860

²⁹ The Indian Penal Code, Section 509, No. 45, Acts of Parliament, 1860 (India)

³⁰ The Protection of Human Rights Act, Section 2(d), No. 10, Acts of Parliament, 1994 (India)

³¹ *Ibid* (1)

has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall apply. It further envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. However, unlike the POSH Act, the committee set up under this Act is gender-neutral³².

In light of this, one could conclude that the framework provided for the protection of women from sexual harassment aims to create an equitable and safe environment, with the POSH Act occupying the central provision, aided by IPC and other relevant laws.

III. RESPONSIBILITIES OF THE EMPLOYER

Employers play a pivotal role in creating and maintaining a safe and respectful work environment. To protect women from sexual harassment, employers are required to undertake proactive measures under various legal frameworks. This chapter outlines the responsibilities of employers to protect women from sexual harassment, focusing on the legal provisions, preventive measures, and the implementation of effective policies under the POSH Act, 2013.

(A) Duties of the Employer:

The employer is responsible for ensuring compliance with the POSH Act and taking necessary action for the effective implementation. Section 19³³ of the POSH Act lists the duties of the employer. Apart from Section 19, there are other sections that casts responsibilities on the employer, which must be complied with.

Establishing Internal Complaints Committee (ICC):

Employers must constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The ICC should include a senior woman employee as the presiding officer, at least two other employees committed to the cause of women or with experience in social work or legal knowledge, and one external member from an NGO or an individual familiar with issues of sexual harassment³⁴.

Furthermore, the employer is required to declare the names and contact details of all members of the ICC and to display conspicuously at the workplace the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the ICC. The employer is

³² Nishit Desai Associates, “Prevention of Sexual Harassment at the Workplace” https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf Last accessed on 20th June 2024.

³³ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19, No. 14, Acts of Parliament, 2013 (India)

³⁴ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 7, No. 14, Acts of Parliament, 2013 (India)

also required to provide necessary facilities to the ICC for dealing with complaints and conducting an inquiries³⁵. The ICC is obligated to submit an annual report to the District Officer³⁶ detailing the number of complaints received, the number of cases disposed of, and the number of cases pending for more than 90 days; hence, the employer must monitor the submission of the report³⁷.

Creating an Anti-Sexual Harassment Policy:

Employers are required to develop a comprehensive policy against sexual harassment that defines sexual harassment, outlines the complaint process, and specifies the disciplinary actions for those found guilty. Furthermore, this policy should be widely communicated to all employees. It should be included in the employee handbook and prominently displayed in the workplace.

Awareness and Training Programs:

Employers must sensitise the employees by conducting regular training and awareness programs for all employees, educating them about the POSH Act, their rights, and the complaint process. Specific training sessions should be imparted to the members of the ICC to ensure they are well-equipped to handle complaints effectively and sensitively³⁸.

Facilitating the Complaint Process:

Employers must ensure that the complaint process is accessible to all employees. Complaints can be submitted in writing or electronically. Assistance should provide to the complainant if they choose to file a complaint related to an offence under the Indian Penal Code (45 of 1860) or any other legal framework³⁹.

Handling Complaints and conducting Enquiries:

Upon receiving a complaint, the ICC must conduct an inquiry within 90 days in accordance with the principles of natural justice. Interim relief to the complainant may be granted by transferring the complainant or the respondent, granting leave to the complainant, or restraining the respondent from reporting on the complainant's work performance. Throughout the process,

³⁵ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19(b), No. 14, Acts of Parliament, 2013 (India)

³⁶ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 21, No. 14, Acts of Parliament, 2013 (India)

³⁷ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19(j), No. 14, Acts of Parliament, 2013 (India)

³⁸ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19(c), No. 14, Acts of Parliament, 2013 (India)

³⁹ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19(g), No. 14, Acts of Parliament, 2013 (India)

employers are required to ensure the confidentiality of the identities of the complainant, respondent and the witnesses⁴⁰.

Implementation of the ICC recommendations:

The employer must take appropriate action within 60 days based on the findings of the ICC, including undertaking disciplinary measures against the perpetrator or recommendations for further action. Employers are also tasked with undertaking remedial measures to rectify the situation and prevent future incidents, which may include policy revisions, additional training, or workplace environment changes.

Maintaining Records and submission of Annual Report:

Employers are required to maintain proper documentation of all the complaints, inquiry reports, and actions taken. For future reference or legal proceedings, employers must retain these records for a reasonable period. Furthermore, employers are required to include a report on the number of cases filed and their disposal status in the organization's annual report⁴¹.

Ensuring Non-Retaliation:

Sexual Harassment at workplace is often underreported due to fears such as loss of livelihood, professional standing, reputation, or reprisals from the perpetrator⁴². The issue of retaliation faced by aggrieved women was also highlighted by the Hon'ble Supreme Court of India in the case of *D.S Grewal v. Vimmi Joshi*⁴³. Therefore, ensuring non-retaliation is essential to foster a safe and supportive environment where employees feel confident to report incidents of sexual harassment. Employers must ensure that no adverse action is taken against the complainant or witnesses in relation to discrimination, victimisation, or retaliation.

In conclusion, employers have a critical role in preventing and addressing sexual harassment at the workplace under the POSH Act. Compliance and effectiveness by the employer are ensured through regular monitoring and accountability. By formulating robust policies, creating awareness, facilitating the complaint process, ensuring fair inquiries, and maintaining confidentiality, employers can foster a safe and respectful work environment.

⁴⁰ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 16, No. 14, Acts of Parliament, 2013 (India)

⁴¹ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 22, No. 14, Acts of Parliament, 2013 (India)

⁴² Ministry of Women and Child Development, "*Handbook on Sexual Harassment of Women at Workplace*" <https://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf> Last accessed on 21st June 2024.

⁴³ 2009 2 SCC 210

IV. EMPLOYEE RIGHTS

Safety at the workplace is not a luxury but a fundamental right. However, many women fail to understand that sexual harassment at the workplace is a gross violation of their rights, as such behaviour is often excused as ‘harmless flirtation’ or ‘natural’ male behaviour which women supposedly enjoy. Even the Courts, while evaluating the pervasiveness and severity of sexual harassment, are required to consider the perspective of the victim rather than the stereotyped notions of acceptable behaviour, as highlighted in the case of *Ellison v. Bardy*⁴⁴. The POSH Act, apart from enjoining duties on the employers, also guarantees the women employees rights to safeguard their safety and well-being at the workplace.

Key rights of the employee are as under:

Safe Work Environment:

Ensuring safety from sexual harassment at the workplace is of paramount importance for protecting employee well-being by reducing the psychological distress arising from an unsafe environment. A safe work environment enhances productivity by fostering self-esteem and confidence, enabling employees to perform to the best of their abilities. If the safety and dignity of the employees are valued, their loyalty and commitment are enhanced, thereby creating a positive work culture that is productive, dignified, and inclusive.

The legislative intent behind the enactment of the POSH Act is to provide a conducive environment for the employee at the workplace, which must be ensured by the employer by creating a safe working environment for all persons coming in contact at the workplace⁴⁵.

Right to File a Complaint:

A right without a remedy serves no purpose. Thus, the POSH Act provides the right to file a complaint to the victim by enlarging the scope of “aggrieved woman” to include an women employee, visitor to the office, client or vendor, housekeeping and maintenance staff, intern, volunteer, or a temporary worker, ensuring that no women directly or indirectly related to workplace, either temporarily or permanently, is left behind⁴⁶.

Any woman employee who feels harassed has the right to file a complaint directly with the Internal Complaints Committee (ICC) established at her workplace. The complaint should

⁴⁴ U.S. Court of Appeals, Ninth Circuit 924 F. 2d 872 (1991)

⁴⁵ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 19(a), No. 14, Acts of Parliament, 2013 (India)

⁴⁶ eLeranPosh.com, “All you need to know about the POSH Act”, <https://elearnposh.com/posh-act>. Last accessed on 21st June 2024.

ideally be filed within three months from the date of the incident. However, this period can be extended by another three months if the ICC is satisfied with the reasons for the delay⁴⁷.

Right to Fair and Impartial Inquiry:

Upon receipt of the complaint, the ICC must make an endeavour to dispose of the said complaint by conducting an inquiry within 90 days, in a fair and impartial manner. The complainant and the respondent must be provided with an opportunity to be heard and to present evidence and witnesses in their support. Furthermore, the ICC is required to communicate its findings and recommendations to the employer and both parties involved⁴⁸.

Right to Interim Relief:

To ensure safety and comfort at the work place, the complainant employee can seek interim relief in addition to any other relief to which she is entitled. The interim relief could be in the form of getting either transferring the respondent or herself to another workplace, granting leave for up to three months, or any other such relief that may be prescribed⁴⁹.

Right to compensation:

If the respondent is found guilty of sexual misconduct, the aggrieved woman is entitled to compensation deducted from the salary or wages of the respondent as per the Service Rules. If such a deduction is not possible, she is entitled to receive the sum from the respondent as per the directions of the Employer⁵⁰. In determining the compensation, factors such as emotional distress, mental trauma, pain and suffering caused to the aggrieved woman, loss in the career opportunity due to the incident, medical expenses incurred for psychiatric or physical treatment, the financial condition and income of the respondent, and his ability to pay the amount in instalments or lump sum, would be considered⁵¹.

Thus, protection of the dignity of women employees is ensured by the POSH Act by specifying and entitling them to rights to ensure their safety. The employer must play a proactive role in upholding and prioritising these rights, without showing any leniency towards the menace of sexual harassment. Showing any kind of sympathy or leniency is

⁴⁷ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 9, No. 14, Acts of Parliament, 2013 (India)

⁴⁸ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 11, No. 14, Acts of Parliament, 2013 (India)

⁴⁹ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 12, No. 14, Acts of Parliament, 2013 (India)

⁵⁰ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 13(3), No. 14, Acts of Parliament, 2013 (India)

⁵¹ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, Section 15, No. 14, Acts of Parliament, 2013 (India)

not appreciated because it tends to have a demoralising effect on working women, as observed by the Hon'ble Supreme Court in the case of *Apparel Export Promotion Council v. A.K. Chopra*⁵².

V. CONCLUSION

By protecting women from sexual harassment, we recognise and respect the autonomy and inherent worth of each woman. Sexual harassment undermines a woman's productive performance by compromising with her right to work in a safe and supportive environment. The empowerment and well-being of women is affirmed through the prevention of harassment, enabling them to reach greater heights.

The POSH Act is a crucial step in protecting and safeguarding women's rights against sexual harassment. Despite having a comprehensive framework, its effectiveness is hindered by various challenges. One of the foremost challenges is the lack of awareness about the provisions and procedures of the POSH Act, especially among the workforce of small organisations or those in the informal sector, as they often do not conduct regular training sessions or adequately disseminate the information about the Act.

Another challenge in the effective implementation of the POSH Act is the non-constitution of the ICC or the lack of required representation. Even when ICCs are constituted, they often lack the expertise and necessary training to handle sensitive cases of sexual harassment effectively and impartially⁵³.

Since the functioning of the POSH Act centres on the constitution of the Internal Complaints Committee (ICC) by employers, and the constitution of Local Complaints Committee (LCC) and Internal Committee (IC) by the appropriate government (as contemplated in Chapter II and Chapter III of the POSH Act), failure to constitute these committees in accordance with the Act can have severe repercussions. This can result in poorly conducted inquiries by ill-prepared committees, posing a serious threat as highlighted by the Hon'ble Supreme Court of India in *Aurelieno Fernandes v. State of Goa*⁵⁴.

Apart from structural challenges, the effectiveness of the POSH Act is also diminished due to the underreporting of cases by victims. This underreporting is often due to fear of being

⁵² AIR 1999 SC 625

⁵³ Legal Specs, "*Implementation Challenges of the POSH Act, 2013. How to Solve It ?*" <https://www.linkedin.com/pulse/implementation-challenges-posh-act-2013-how-solve-legal-specs-jef7c/> Last accessed on 21 June 2024.

⁵⁴ Civil Appeal No. 2482 of 2022

victimised and ostracized, as sexual harassment remains a taboo and acts as a significant social and cultural barrier.

These hurdles could be eliminated by stricter enforcement mechanisms, enhancing training programs, and robust support systems for the victims, ensuring an equitable and safe environment. However, the effective realization of the provisions of the POSH Act and the resolution of its challenges cannot be achieved single-handedly. Instead, all the stakeholders, namely government, employer and civil society, must work collectively and collaboratively in this direction.

Organisations must avoid a superficial approach and not comply with the law merely as a formality or in a routine fashion. Instead, they should integrate these values into their ethos and adopt an affirmative stance on gender equality by fostering open dialogues and leadership commitment.

A collective and unwavering commitment by society as a whole is required to hold institutions accountable and challenging stereotypes rooted in a patriarchal mindset, thereby promoting gender equality. Only then can we fulfil the objective of creating a workplace where the safety of each woman is valued and respected⁵⁵.

⁵⁵ King Stubb and Kasiva, “*Navigating Challenges in Upholding Workplace Safety: A comprehensive Analysis of the POSH Act implementation*”, <https://ksandk.com/labour-employment/posh-act-navigating-workplace-safety-challenges/#challenges-and-lacunae-in-the-implementation-of-the-po-sh-act> Last accessed on 21 June 2024.