

## **Seeing the ICC: Critical Perspectives on the Limitations of the POSH Act, 2013**

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### **ABSTRACT**

*The implementation of India's PoSH Act, designed to prevent and address workplace sexual harassment, faces significant challenges, particularly in reaching the informal sector, where a majority of working women in the country are employed. Despite the Act's mandate, Internal Complaints Committees (ICCs) and district-level Local Committees (LCCs), the latter being crucial for addressing complaints in unorganised sectors, are either non-functional or improperly constituted in many regions. This gap in execution is compounded by inadequate funding, weak accountability mechanisms, and a lack of awareness at the grassroots level. Further complicating the Act's efficacy is its failure to account for caste, class, and economic disparities. Marginalised women often face intersecting forms of discrimination that the current framework does not adequately address. Additionally, the Act's focus on sexual harassment leaves other workplace biases, microaggressions, and non-sexual misconduct unaddressed. Hence, this paper details gaps, deficiencies, and limitations through a critical analysis of the PoSH Act. Recommendations for improvement include enforcing stronger accountability for District Officers and expanding the Act's scope to cover broader workplace issues to arrive at a robust, inclusive, and well-monitored PoSH framework that protects the rights of all workers, particularly those most vulnerable.*

**Keywords:** PoSH Act, Sexual harassment, Workplace safety, Internal Complaints Committee, Local Complaints Committee .

### **Introduction**

In India, all workplaces are mandated by law to protect women from sexual harassment. However, despite progress made over the years, data and reports reveal that sexual harassment still remains a pervasive issue. The Vishaka Guidelines of 1997, superseded by the Prevention of Sexual Harassment at Workplace Act of India (PoSH) in 2013, were considered landmark steps

towards the development of anti-harassment laws in the country. Yet, just 10 years later, the Supreme Court flagged “serious lapses” and “uncertainty” regarding the implementation of the PoSH Act (Munjaj, 2023).

At India's top publicly traded corporations, for instance, an analysis of annual reports revealed that sexual harassment increased by 70% in 2023 compared to the previous financial year (Sengupta and Bhattacharya, 2023). A survey by the Indian National Bar Association (2017, p. 14), one of the largest of this kind, revealed rampant sexual harassment across sectors, ranging from inappropriate comments to physical harassment. Additionally, of over 6000 respondents surveyed, only around 31% filed a report of the incident with the Internal Complaints Committee (ICC)—a body mandated by the PoSH act—or the management. In fact, a survey backed by the National Human Resource Development found that just 8% of employees were even aware of the PoSH Act before 2021 in the first place, despite having been implemented 8 years prior (Economic Times, 2023).

While such studies offer critical data and insights, it is also worth noting that current research, for the most part, explicates the experiences of employees belonging to the organised sector alone. Moreover, subtle lived experiences like biases and microaggressions, which are crucial in arriving at a comprehensive understanding of safety in the workplace, are also sidelined. These insights are critical for a country like India, where social, economic, and cultural dynamics, and the role of identity, drastically influence lived experiences.

The complex nexus between identity and workplace safety indicates that there is a need to understand how they limit the effectiveness of the PoSH Act. More specifically the two bodies the Act mandates to redress sexual harassment in workplaces: the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC).

For years, critical perspectives around the PoSH Act have implied that despite its comprehensiveness, there is still room to strengthen its scope, functions, and applicability. Hence, this paper focuses on providing an analysis of the applicability of the PoSH Act and its redressal committees across three key areas: addressing workers in the informal sector, marginalised identities, as well as more subtle lived experiences. By doing so, this paper aims to arrive at a comprehensive understanding of the limitations impacting the implementation of the PoSH Act as well as the gaps and deficiencies it must address to ensure workplace safety.

## **Background**

At present, workplace safety for women in the formal and informal sectors of India is codified by the PoSH Act (The Gazette of India, 2013). Prior to this, there was no law that addressed sexual harassment specifically at the workplace. This meant that the redressal route for an aggrieved

individual was broadly covered as a sexual offence under the Indian Penal Code, 1860. After Vishaka and Others Vs. the State of Rajasthan and Others, the Vishaka Guidelines were laid down to serve as temporary guiding principles in 1997, till a more comprehensive policy came into effect, which took place in the form of the PoSH Act.

Under the PoSH Act, all workplaces with 10 or more employees are mandated by law to set up an internal committee for the prevention and redressal of sexual harassment complaints (The Gazette of India, 2013, p.4). This body, the ICC, is made up of a Presiding Officer, a position typically filled by a senior-level woman employee, and no less than two other members. Once a complaint is filed, it becomes the task of the ICC to investigate sexual harassment claims in a timely, efficient, and vigilant manner and resolve them based on the guidelines of the Act. The ICC also has the power to initiate inquiries, summon witnesses, examine evidence, and recommend the appropriate course of action.

Similarly, for women working in organisations that have less than 10 employees, and for women employed in the unorganised sector, like household workers and daily wage earners, the redressal of sexual harassment complaints falls onto a second body, the Local Complaints Committee (LCC), mandated to be set up by district authorities under the PoSH Act (The Gazette of India, 2013, p.5). For the LCC, a District Officer nominates the committee and appoints a nodal officer in every sub-division, who must forward sexual harassment complaints within 7 days of receipt. The PoSH Act also stipulates that at least one of the LCC nominees must belong to a Scheduled Caste (SC), a Scheduled Tribe (ST), Other Backward Castes (OBC), or any other minority community.

On paper, these two bodies—the ICC and LCC—were conceived with the intent to cover all women employed in India and play a vital role in the implementation of the PoSH Act. As per Section 11, these bodies are even vested with the same powers as a civil court (The Gazette of India, 2013, p.7). All this has made the PoSH Act an ambitious and significant piece of legislation in Indian history. However, as noted earlier, lapses in its implementation over the years have called the effectiveness of the PoSH Act into question.

## **Discussion**

One of the biggest issues in the implementation of the PoSH Act is its applicability to the immense number of women working in informal sectors in India. Since district authorities play a vital role in upholding the LCC, it is safe to assume that any lapses within this mechanism can be a severe roadblock. Especially since a large majority of working women in India, as high as 94%, are concentrated in informal sectors (NCEUS, 2007). Despite this critical role, there is no

official government data or active monitoring of the functioning, effectiveness, and integrity of the LCCs.

External studies, however, elucidate a grim picture. Research by the Martha Farrell Foundation (2018, p.7) during 2016–2017, where RTI requests were filed in 655 districts in India, revealed that just 29% of the districts responded in the affirmative to having set up LCCs, despite having three years since the enactment of the PoSH Act to do so. Even in districts that had constituted one, several violations of the member composition stipulated by the PoSH Act were highlighted. For instance, 83% did not know if the chairperson of their respective LCC was female (p.8), 99% did not know if a woman belonging to the SC, ST, OBC, or a minority community was a member (p.9), and 93% did not know if the LCC members even had an orientation after being appointed (p.10).

These oversights can be chalked up to many reasons. Firstly, while the PoSH Act specifies a penalty as high as ₹50,000 on companies that do not set up an ICC, no such penalisation or accountability is placed on the District Officer (The Gazette of India, p.11). Moreover, there is no dedicated budget issued by the central government that outlines the resources needed to set up these LCCs (Desai, 2020).

Efforts to promote awareness about the LCCs and redressal mechanisms available to women at a grassroots level are also severely lacking. A SAFMA (2019, p.49) survey found that 85% of women surveyed were “totally unaware” that an LCC was constituted in their district, while 15% who claimed to be aware were unclear on which LCC was being referenced. Other findings include delays in implementation of the LCC-recommended action, District Officer being inaccessible and apathetic (p.40), and having just one single District Officer covering a large area (p.41). In the case of Odisha, where 33 districts are spread over a large land mass, panellists complained that expecting poor, marginalised women to travel all the way to the district headquarters in order to file a complaint was urban-centric and a significant barrier.

Apart from the the LCCs falling short, inadequacies in the laws against sexual harassment in a country like India, as Gupta et al. (2021) note, are often mediated by caste, class, and gender, of the survivor and of the perpetrator. Yet, the PoSH Act only references women at large, with no mention of the increased incidence of sexual harassment that women from marginalized castes, communities, and tribes face.

This is a serious omission, especially since the Vishaka Guidelines themselves were a direct result of the legal battle between a Dalit social-worker from Bhatari and perpetrators who deemed her "a lowly woman from a poor and potter community" and gang-raped her over trying to prevent child marriage in their locality (Dasgupta, 2001). Karwa (2022) also observes this

silence, noting that not acknowledging the experiences of marginalised women in the Vishaka Guidelines set the tone for the “continuous devaluation of marginalised women’s experience under the PoSH Act.”

In Section 12 for example, immediate relief like a three-month leave or branch transfer is put forward to aid an aggrieved woman (The Gazette of India, 2013, p.8). However, the informal sector lacks these systems and structures, leaving many with no such recourse. Further, qualitative findings from Human Rights Watch (2020) indicate that many marginalised women do not report such instances in the first place. This stems from a fear of retribution from employers for some, while others claimed to put up with it to support their families. The perception that the concerned bodies would not redress their complaint was also observed. Criticism over the LCC being derived from urban-centric practices was also echoed here, as one respondent noted that “the Local Committee is so far away that I could not even think of going there...this law has not helped women like me.”

Based on the evidence reviewed, it is clear that strengthening and restructuring the LCC is critical to the prevention of sexual harassment in India. However, it is also important to note that sexual harassment is far from the only hurdle to safe, inclusive workplaces.

Under the PoSH Act, only behaviour that is sexual and unwelcome, or has a sexual undertone is addressed, leaving no route for the redressal of instances where bias, prejudice, and microaggressions impact women in the workforce. Yet, these channels are equally necessary. As one study notes, 69% of Indian women working in a hybrid set-up reported experiencing microaggressions at work like being interrupted frequently in meetings and exclusion from male-dominated activities (Paul, 2022). A Deloitte (2022) survey also noted that harassment and microaggressions were on the rise, yet often go unreported, even when there are mechanisms in place. Some have also questioned the lack of gender neutrality within the language of the PoSH Act, which excludes aggrieved men and transgender individuals (Verma and Lobo, 2023; Malhotra, 2024).

All this points to the fact that workplace safety is multifaceted, requiring more than just a regulatory framework. While the PoSH Act has been a significant milestone in combating sexual harassment, it currently falls short in addressing the diverse realities faced by women, particularly those in marginalized communities and informal sectors. To truly foster safer work environments, the scope of the Act must be broadened to address these realities. Equally important is ensuring the Act functions efficiently across urban and rural settings, with robust accountability mechanisms, adequate resources, and inclusive protections that leave no one behind.

## **Conclusion**

The implementation of the PoSH Act is faced with significant challenges, particularly in reaching the vast informal workforce, where most working women in India are concentrated. The lack of structured oversight, the weakening of district-level mechanisms at the LCCs, and inadequate awareness campaigns hinder its effectiveness. Issues of caste and class further exacerbate the law's limitations, especially for marginalised communities. The Act's narrow focus on sexual harassment, excluding broader workplace biases and non-sexual misconduct, also leaves gaps in protection. Strengthening LCCs and addressing these systemic issues is crucial for ensuring safer and more inclusive workplaces across India.

To enhance the effectiveness of the PoSH Act, several steps should be prioritised. Firstly, the government should establish clear accountability measures for district authorities to ensure the proper formation and functioning of LCCs. Creating a dedicated budget for LCC operations would also be vital in this regard. Additionally, targeted awareness campaigns, especially in rural and informal sectors, are needed to inform women of their rights and available redressal mechanisms. These efforts can help arrive at a more comprehensive protection framework that not only addresses the legal aspects of workplace safety but also recognizes the nuanced challenges women face across sectors.

## **References**

Dasgupta, Rajashri, editor. *The Politics of Silence: Sexual Harassment at Workplace*. Sanhita, 2001.

Deloitte. *2022 Women at Work Report*. 2022.

Desai, Rajvi. "India's Sexual Harassment Law Has Failed 94% of Working Women: Report." *The Swaddle*, 14 October 2020, <https://www.theswaddle.com/indias-sexual-harassment-law-fails-94-of-working-women-report>. Accessed 24 August 2024.

Dey, Swati. "India Must Protect the 150 Million Women in the Informal Sector." *The Diplomat*, 23 March 2023, <https://thediplomat.com/2023/03/india-must-protect-the-150-million-women-in-the-informal-sector/>. Accessed 24 August 2024.

Economic Times. "Only 8% employees aware of the PoSH Act, reveals survey - ETHRWorld." *Economic Times*, 24 February 2023, <https://hr.economicstimes.indiatimes.com/news/workplace-4-0/only-8-employees-aware-of-the-posh-act-reveals-survey/98193795>. Accessed 24 August 2024.

Farrell, Martha. ““No #MeToo for Women Like Us”: Poor Enforcement of India's Sexual Harassment Law | HRW.” Human Rights Watch, 14 October 2020, <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>. Accessed 24 August 2024.

The Gazette of India. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. 22 April 2013.

Gupta, Pallavi, et al. “Sexual Harassment at the Workplace Act: Providing Redress or Maintaining Status Quo?” *Social Change*, vol. 51, no. 2, 2021, pp. 246-257.

Human Rights Watch. ““No #MeToo for Women Like Us”: Poor Enforcement of India's Sexual Harassment Law | HRW.” Human Rights Watch, 14 October 2020, <https://www.hrw.org/report/2020/10/14/no-metoo-women-us/poor-enforcement-indias-sexual-harassment-law>. Accessed 24 August 2024.

Indian National Bar Association. *GARIMA: Sexual Harassment at Workplace*. 2017.

Karwa, Surbhi. “India’s Workplace Harassment Law Has Failed Informal, Marginalised Workers.” *BehanBox*, 3 October 2022, <https://behanbox.com/2022/10/03/indias-workplace-harassment-law-has-failed-informal-marginalised-workers/>. Accessed 24 August 2024.

Malhotra, Rishi. “Gender Neutrality Of Laws Relating To Sexual Offences.” *Outlook India*, 2 July 2024, <https://www.outlookindia.com/national/gender-neutrality-of-laws-relating-to-sexual-offences#>. Accessed 24 August 2024.

Martha Farrell Foundation. *Who Safeguards A Woman’s Right To A Safe Workplace? A Study Of Local Committees Across India Using RTI Data*. 2018.

Munjal, Diksha. “Explained | What is the PoSH Act and why has the Supreme Court flagged lapses in its implementation?” *The Hindu*, 15 May 2023, <https://www.thehindu.com/news/national/explained-the-indian-law-on-sexual-harassment-in-the-workplace/article66854968.ece>. Accessed 24 August 2024.

National Commission for Enterprises in the Unorganised Sector. *Report on conditions of work and promotion of livelihoods in the unorganised sector*. 2007.

Paul, Manjul. “Indian women face high burnout: Report.” *Mint*, 29 April 2022, <https://www.livemint.com/companies/news/indian-women-face-high-burnout-report-11651174376256.html>. Accessed 24 August 2024.

Sengupta, Devina, and Patal Bhattacharya. "Sexual harassment cases in top cos spike | Company Business News." Mint, 3 August 2023, <https://www.livemint.com/companies/news/sexual-harassment-cases-in-top-cos-spike-11691001286921.html>. Accessed 24 August 2024.

Social Action Forum for Manav Adhikar. Status and Functioning of Local Complaints Committees under The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and Awareness Levels Among Women in the Workforce. Report Submitted to National Human Rights Commission. 2019.

Verma, Sonal, and Deonn Nash Lobo. "Towards Gender Neutrality: The Need To Reform The POSH Act To Ensure Workplace Safety For All - Whistleblowing - Employment and HR - Worldwide." Mondaq, 13 September 2023, <https://www.mondaq.com/india/whistleblowing/1365342/towards-gender-neutrality-the-need-to-reform-the-posh-act-to-ensure-workplace-safety-for-all>. Accessed 24 August 2024.