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Is Justice Transformative in Sexual Harassment Cases?

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We need changes to strengthen the Sexual Harassment of Women at Workplace Act, 2013 to fully protect all vulnerable women. The law must also take social imbalances and power differences at work into account.

In March, a section of women employees associated with the Karnataka State IT/ITeS Employees Union (KITU) staged a protest to end the exemption of information technology (IT) industries from the Industrial Employment (Standing Orders) Act. This exemption was based on the fact that internal complaints committees and grievance redressal cells would be set up in organisations to deal with complaints of sexual harassment. However, the workers claimed that they had been sexually violated but no such committees had been put in place to look into their grievances.

This is not the only instance of a failure to follow up on reports of sexual violence. Last year, in a nationwide scandal, Indian women wrestlers accused the president of the Wrestling Federation of India, Brij Bhushan Sharan Singh, of sexual harassment. It brought to light the absence of internal complaint committees in India's sports federations. Despite the passage of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act – also known as the POSH Act – in 2013, cases of sexual harassment in places of work continue. There is a great lethargy amongst organisations when it comes to setting up mechanisms to examine accusations of sexual harassment, and a general apathy amongst the public, which does not seem to bother whether they do so or not.

In this essay, we analyse the transformative capacity of the POSH Act to start a conversation about women's security in the workplace and their position in the labour force within the larger economy. Such laws open new spaces of interaction between legality and society, where women play the dual role of citizens and workers.

Defining harassment

The POSH Act of 2013 was based on the Vishaka Guidelines, which were framed by the Supreme Court as a reaction to the gang rape of Bhanwari Devi, a social worker in Rajasthan, for stopping a child marriage. The Vishaka Guidelines defined sexual harassment as “physical contact and advances; a demand or request for sexual favours; sexually coloured remarks; showing pornography; and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.” The Supreme Court held that sexual harassment was a breach of the fundamental rights of working women under Articles 14, 15 19(1)(g), and 21 of the Constitution. It also declared that the gang rape case of 1992 contravened international conventions that guarantee gender equality.

The Vishaka Guidelines saw sexual harassment as being not just an outcome of the sexual precarity of women in Indian society but also of their economic precarity. They stated, “It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work, including recruiting or promotion, or when it creates a hostile work environment.”

A handbook on the prevention of sexual harassment, published by the Ministry of Women and Child Development in November 2015, observed, “The Bhanwari Devi case revealed the ever present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.” According to it, a negative economic impact (for instance, the loss of women's productivity) could make sexual harassment visible.

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The POSH Act borrows the definition of sexual harassment from the Vishaka Guidelines, which clearly says that sexual harassment is a crime that is committed against women. Sections 2 and 3(i) of the Act define sexual harassment of “aggrieved women” and state that “no woman shall be subjected to sexual harassment in any workplace”. The coming of the act encouraged a rethinking of gender through women's advocacy and its implications on women's lives as workers.

By focusing on the site of work, security concerns are inextricably linked to women’s performance as productive members of the labour force. The critique of the POSH Act began by expanding the economic sectors covered by it. Politicians such as [Brinda Karat](#) were of the opinion that the category of “aggrieved women” did not include agricultural workers and women in the armed forces. While agricultural workers are still not covered, an amendment in 2012 has included domestic workers. This inadvertently suggests that the law covers only workplaces in urban locales.

Though the bill was modelled on similar acts in south India, the conversation turned to incidents on the way to work. [The Kerala Police Act](#), for instance, covers “public service vehicles” and “vessels” (buses, trains, ships, and boats), where the modesty of a woman can be outraged. By excluding the journey to the workplace with employees of the same office, it confined the POSH Act’s purview to the office space alone. Many employees turn to car pool services, which employers subcontract, and instances of sexual harassment could lead to ambiguity about the applicability of the POSH Act. Such incidents also breach the fundamental right to freedom of movement, broadening the act’s ambit to more than just economic concerns.

Besides, the act’s view of “aggrieved women” does not make it gender neutral. Though the University Grants Commission (UGC) and institutions of higher education may approach the act from a gender-neutral perspective, its clauses do not make it so. This issue was recently taken up in a [decision of the High Court of Calcutta](#), which said that sexual harassment can also happen between members of the same sex, and a person of the same gender could hurt the modesty of women. While this was a considerable expansion of the scope of sexual harassment, it still limited the crime only to women.

Internal complaints committees

While internal complaints committees and local committees are entrusted with taking steps on behalf of protecting women, the law provides such mediation the status of a civil court. These courts are expected to follow the norms of natural justice. The principles of natural justice grant a fair trial without having to rely on a lawyer to interpret the provisions of the law to the aggrieved party. However, natural justice becomes vague when tackled by those who are not trained in the law. Case studies from internal committees also reveal that natural justice makes it more difficult to register complaints against sexual harassment.

Lawyer and social worker [Monica Sakhrani](#), reflecting on her experiences as a member of an internal complaints committee, said “informal networks and grapevine play a greater role in determining the ‘truth’ over formal procedure”. The subjective nature of complaints and the experience of harassment in an environment of unequal employment relations challenges the faith in natural justice enshrined in the law. According to the Ministry of Women and Child Development handbook, “Very often situations that start off innocently end up in inappropriate and unprofessional behaviours. It is important to remember that workplace sexual harassment is sexually unwelcome, and the experience is subjective. The impact and not the intent matters, and it almost always occurs in a matrix of power.”

The statements suggest that the situation may be innocent before it turns threatening, hinting at the continuous need to interpret the actions of both parties (aggrieved and defendant). Consent is shifty, and it is difficult to define. In 2020, the case of a Punjab National Bank employee highlighted the dangers of taking punitive action against a woman if the internal complaints committee’s inquiry does not support her allegations. In this case, the committee had suggested halting the complainant’s promotion at the bank. [The Delhi High Court ordered](#) that “any consensual relationship among adults would not be the concern of the management or the internal complaints committee, so long as the said relationship does not affect the working and the discipline of the organisation and is not contrary to the rules or code of conduct binding on the said employees”.

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The internal complaints committee was ill equipped to understand the subjective experience of the crime it was arbitrating over and suggested penalties for the woman for bringing in an allegation about a mutually consensual relationship she was in. Such biases of the committee can hamper the investigation of the complaint. A [recent judgment](#) by the Delhi High Court held that the internal complaints committee could not become a moral judge and comment on the personal conduct of the parties. It can only suggest actions for misconduct in cases it pursues. Moral policing by the committee completely disregards the hierarchies of the workplace and causes other difficulties in registering a complaint.

Inquiry reports without uniform instructions create anxiety amongst those who wish to report incidents of harassment. In 2014, a resource centre for women and child development run by the Odisha government released a manual with frequently asked questions about the POSH Act. This extensive document covers each step, from how to complain to who is protected under the law, and the steps for redressal, but it does not have any instructions on what is permitted as evidence. An over-reliance on the internal committee's discretion allows the complainant and the respondent to mobilise their informal networks at work.

Human Rights Watch describes an instance of familiarity between the respondent and the inquiry members, leading to informal requests to the woman to withdraw her complaint. “When the medical superintendent, accused in my case, entered the room, all the committee members rose to greet him,” an aggrieved woman said. “Their bias was pronounced. The internal committee worked to protect him.” The definition of harassment, compounded with ambiguity about the evidence required to prove the written complaint, limits the possibility of securing justice.

The experience of harassment needs to be broken down into examinable and tangible evidence acceptable in the internal committees. An allegation of sexual harassment under the POSH Act isolates a singular experience of women to prove hostility or harassment at work. The threat of punishment if the committee reports the complaints to be malicious (to protect the respondent) compromises the transformative power of the law. Initially, the bill placed the responsibility on the accused men, but this provision was removed before it was passed. Now, the redressal mechanisms of the act make the complainants responsible for proving their harassment.

False complaints

Section 14 (1) of the POSH Act penalises those who press malicious or false charges or provide false testimonies or documents. This “false complaint” provision shifts the onus onto the woman, who can be legally penalised if her complaint is proven false. The draft bill suggested a fine of Rs 50,000, which women advocates severely criticised. Several women's advocacy groups suggested that incidents which led to death or suicide should be punished with a minimum of three years imprisonment and a fine of Rs 5 lakh and a maximum of five years imprisonment and a penalty of Rs 10 lakh.

However, when the bill was passed, this provision was left to the discretion of the internal complaints committees and the guidelines on the employer's services. The act merely states that the penalty has to consider the mental trauma, loss of career opportunity, and medical expenses incurred by the victim (physical or psychiatric), and the income and financial status of the respondent. This leaves enormous scope for interpretation and mediation by the internal committees in their negotiations with the accused.

The Act must move beyond legality and the assumption that the law alone can resolve all matters of injustice. It also has to shift beyond the lens of economic relations in the workplace, where its transformative potential is compromised.

There is a lack of clarity on punitive actions, which, despite being listed, continue to be seen as subjective experiences by internal committees. The main problem that false complaints create is that productive agents are suspended from the workforce, though temporarily. This returns us to the primary motivation for implementing the act – to secure women's economic productivity as workers in our society.

Many organisations argue that women use this legislation to satisfy private vendettas and aspirations for promotion or to gain public sympathy and publicity. Some websites describe the POSH Act as “anti-men” and offer their services to face such complaints. Companies that allow men to continue behaving offensively at the workplace can become commercially profitable as new business models. The legal vocabulary offers protection to men and enables the marginalisation of the experiences of women by casting doubt on their credibility. This can be twisted around to penalise the complainant.

By perpetuating the threat of punishment, such legislation equips men to normalise workplace harassment and leave the glass ceilings intact across sectors. As the POSH Act is meant to apply for the entire country, it has effectively written out other state legislations that had tried to sensitively incorporate other aspects of sexual harassment. Such legislation invites a rethinking of the idea of consensual relationships in a fast-paced society where the individual's spaces of autonomy have to be jealously protected against the communitarian identities that women are invariably subsumed under.

Conclusion

In a 2022 survey, the International Labour Organisation reported that “More than one in five people (almost 23 percent) in employment have experienced violence and harassment at work, whether physical, psychological or sexual.” The report emphasised that sexual harassment posed challenges to economic interests. “Violence and harassment at work causes harm to individuals, families, businesses and societies. It affects people’s lives, dignity, health, and well-being. It also exacerbates inequality in societies and undermines business productivity.”

On the other end, a 2017 survey by the “Indian National Bar Association of over 6,000 employees – mostly women – found that they chose not to report sexual harassment to management because of stigma, fear of retribution, embarrassment, lack of awareness of reporting policies, or lack of confidence in the complaints mechanism”. This is not to deny the importance of the legislation. It is an important law that tries to grapple with obvious and not so obvious acts of sexual harassment. As such, things are tricky to define, and there needs to be clarity on the procedures for investigation, on the settlement of disputes by internal committees, and on allowing the act to recognise the limitations inherent in its wording.

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For this, the act must move beyond legality and the assumption that the law alone can resolve all matters of injustice. It also has to shift beyond the lens of economic relations in the workplace, where its transformative potential is compromised. This reduces harassment to a mere cultural construct, diminishing its significance and failing to address the broader social and systemic factors that contribute to it.

An amendment to embolden the current legislation is required to promote its transformative potential, which would be in consonance with the need to protect women as citizens and workers. The law needs to recognise the social inequalities and power relations of the parties by mandating that presiding officers/committee members be socially and legally educated and that a permanent staff member be trained in the procedures and service rules of the organisation.

This requires that the law reaches out beyond legality and incorporates the deliberations of civic society, which move towards equal access to constitutionally mandated freedom. In the current circumstances, the POSH Act reproduces the existing social fault lines where patriarchal voices interpret ambiguities to reduce the transformative capacity of an otherwise progressive piece of legislation.

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