

# Sexual Harassment at Workplace: Transition from Vishakha Judgment to POSH Act

Dr. Mahi Venkatesh Fulbandhe

*Assistant Professor, Department of Sociology, KBCNMU, Jalgaon, Maharashtra, India*

## ABSTRACT

*Sexual harassment at the workplace undermines gender equality, dignity, and safe working conditions. In India, the Vishakha Judgment (1997) marked a judicial milestone by recognizing workplace sexual harassment as a violation of fundamental rights and by introducing legally binding guidelines. These guidelines were later codified into statutory law through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). This paper critically examines the transition from judicial guidelines to formal legislation and evaluates the effectiveness of the POSH Act in practice. Using qualitative analysis of secondary data, including case laws, academic literature, and policy reports, the study identifies key implementation challenges such as lack of awareness, weak institutional mechanisms, and socio-cultural barriers. The paper argues that while the POSH Act represents significant legal progress, its impact is limited by gaps in enforcement and compliance.*

**Keywords:** - Sexual Harassment, Vishakha Judgment, POSH Act, Gender Justice, Workplace Safety, fundamental human rights

## Introduction

Sexual harassment at the workplace is a global concern affecting women's participation in the workforce and violating fundamental human rights. In India, the issue gained prominence after the Vishakha v. State of Rajasthan (1997) case, where the Supreme Court addressed the absence of specific legislation. The Court framed guidelines based on constitutional principles and international conventions such as CEDAW.

The enactment of the POSH Act in 2013 marked a transition from judicial activism to legislative action. This paper examines this transition and critically evaluates whether the POSH Act has effectively addressed workplace sexual harassment.

## Literature Review

Existing literature highlights that sexual harassment is deeply rooted in patriarchal social structures (Agnes, 2014). Studies indicate that despite legal frameworks, underreporting remains a major issue due to fear, stigma, and lack of awareness (Gupta, 2016).

Scholars have noted that the Vishakha guidelines were progressive but lacked enforceability. The POSH Act improved upon this by introducing institutional mechanisms such as Internal Complaints Committees (ICCs). However, research shows that many organizations fail to comply fully with these provisions (Kumar, 2015).

## Research Gap

While several studies discuss either the Vishakha Judgment or the POSH Act independently, limited research critically examines the transition between the two and evaluates implementation challenges in a comprehensive manner. This paper attempts to fill this gap.

## Objectives

- To analyze the Vishakha Judgment
- To examine the provisions of the POSH Act
- To study the transition from guidelines to law
- To evaluate implementation challenges

## Theoretical Framework

This study is based on feminist legal theory, which emphasizes gender equality and critiques patriarchal bias in legal systems. It also draws on human rights perspectives, viewing workplace safety as a fundamental right.

## Research Methodology

The study adopts a qualitative approach using secondary data sources such as legal documents, books, journal articles, and government reports.

## Vishakha Judgment (1997)

**Vishaka and Ors. v. State of Rajasthan** was a 1997 Indian Supreme Court case where various women's groups led by Naina Kapur and her organisation, Sakshi, filed a Public Interest Litigation (PIL) petition against the state of Rajasthan and the central Government of India to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan, was brutally gang raped for stopping a child marriage.

The court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. The petition resulted in what are popularly known as the Vishaka Guidelines. The judgment of August 1997 given by a bench of J. S. Verma (then Chief Justice of India), Sujata Manohar, and B. N. Kirpal, provided the basic definitions of sexual harassment at the workplace and provided guidelines to deal with it. It is seen as a significant legal victory for women's groups in India

In its judgment, the Supreme Court recognized sexual harassment at the workplace as a violation of fundamental rights guaranteed under the Constitution of India. Specifically, the Court held that such acts infringe upon **Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), and Article 21 (Right to Life and Personal Liberty)** (*Vishakha v. State of Rajasthan*, 1997). Furthermore, the Court drew upon international legal frameworks, particularly the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, to reinforce its reasoning.

Due to the absence of statutory law at the time, the Court formulated the **Vishakha Guidelines**, which were to be treated as law under Article 141 of the Constitution until appropriate legislation was enacted. These guidelines provided a comprehensive framework for preventing and addressing workplace sexual harassment.

The Vishakha Guidelines defined sexual harassment broadly to include unwelcome physical contact, sexually colored remarks, showing pornography, and demands for sexual favors. They placed a clear obligation on employers to ensure a safe working environment and to take preventive measures. The Court also mandated the establishment of **Complaints Committees**, headed by women and involving external members to ensure impartiality.

Additionally, the guidelines emphasized the importance of awareness, preventive action, and confidentiality in handling complaints. Employers were required to initiate disciplinary action against offenders and ensure that victims were protected from retaliation.

The significance of the Vishakha Judgment lies in its proactive judicial approach. It filled a legislative vacuum and laid the foundation for future legal developments. The principles established in this case directly influenced the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)**.

In conclusion, the Vishakha Judgment marked a transformative moment in Indian jurisprudence by recognizing workplace sexual harassment as a violation of human rights and by establishing a structured mechanism for its prevention and redressal. It remains a cornerstone in the evolution of gender justice in India.

## POSH Act, 2013 (Sexual Harassment of Women at Workplace Act, 2013)

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)** was enacted in India to provide a comprehensive legal framework for addressing sexual harassment at the workplace. This legislation was introduced in response to the Supreme Court's directives in *Vishakha v. State of Rajasthan* (1997), thereby giving statutory backing to the Vishakha Guidelines.

The primary objective of the POSH Act is to **prevent, prohibit, and redress** incidents of sexual harassment against women at the workplace. The Act applies to both the organized and unorganized sectors, including government organizations, private institutions, educational institutions, and even domestic workers (Government of India, 2013).

The Act provides a **broad definition of sexual harassment**, which includes unwelcome physical contact, sexually colored remarks, showing pornography, demands for sexual favors, and any conduct that creates a hostile or intimidating work environment. This comprehensive definition ensures that various forms of harassment are recognized and addressed under the law.

A key feature of the POSH Act is the mandatory establishment of an **Internal Complaints Committee (ICC)** in every organization employing ten or more workers. The ICC must be headed by a senior woman employee and include at least one external member from an NGO or an expert familiar with issues of sexual harassment. This provision ensures impartiality and credibility in the complaint redressal process.

For the unorganized sector, the Act provides for the constitution of a **Local Complaints Committee (LCC)** at the district level. This mechanism is particularly significant as it extends legal protection to women who may not have access to formal workplace structures.

The POSH Act also prescribes a **time-bound inquiry process** for addressing complaints. It emphasizes maintaining **confidentiality** throughout the proceedings and protecting the complainant from retaliation. The employer is required to act on the recommendations of the ICC and ensure appropriate disciplinary action against the respondent if found guilty.

Furthermore, the Act places clear **responsibilities on employers**, including the duty to provide a safe working environment, conduct awareness and training programs, and ensure compliance with the provisions of the law. Non-compliance may result in penalties, including fines and cancellation of business licenses in severe cases.

Despite its comprehensive framework, the implementation of the POSH Act faces several challenges. Studies indicate that many organizations fail to properly constitute ICCs, and there is a general lack of awareness among employees regarding their rights and procedures. Additionally, social stigma and fear of retaliation often discourage women from filing complaints.

In conclusion, the POSH Act, 2013 represents a significant advancement in ensuring workplace safety and gender justice in India. However, its effectiveness largely depends on proper implementation, institutional accountability, and continuous efforts to raise awareness and change societal attitudes.

### **From Vishakha Judgment to POSH Act, 2013: A Legal Transition**

The transition reflects a shift from judicial intervention to legislative codification. While Vishakha guidelines were innovative, they lacked enforcement mechanisms. The POSH Act addressed this by introducing penalties and institutional structures.

The evolution of legal mechanisms addressing sexual harassment at the workplace in India reflects a significant shift from judicial intervention to comprehensive legislative action. The landmark judgment in *Vishakha v. State of Rajasthan* (1997) laid the foundation for recognizing workplace sexual harassment as a violation of fundamental rights, while the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** (POSH Act) institutionalized these principles into a statutory framework.

The Vishakha case emerged in the context of the brutal gang rape of Bhanwari Devi, a social worker in Rajasthan, which highlighted the absence of legal safeguards against workplace sexual harassment. In response to a Public Interest Litigation filed by women's rights groups, the Supreme Court acknowledged that sexual harassment violates **Articles 14, 15, and 21** of the Constitution, thereby framing it as an issue of gender equality, non-discrimination, and the right to life and dignity (*Vishakha v. State of Rajasthan*, 1997).

In the absence of specific legislation, the Court laid down the **Vishakha Guidelines**, which were to be treated as law under Article 141 of the Constitution. These guidelines provided a comprehensive framework, including the definition of sexual harassment, the obligation of employers to ensure a safe working environment, and the establishment of Complaints Committees headed by women with external representation. The guidelines also emphasized preventive measures, awareness, and confidentiality in handling complaints.

While the Vishakha Guidelines marked a progressive step, they were limited in their enforceability and implementation. Recognizing this gap, the Indian legislature enacted the POSH Act in 2013 to provide a formal

and enforceable legal structure. The Act not only codified the Vishakha Guidelines but also expanded their scope and applicability.

The POSH Act introduced a **comprehensive definition of sexual harassment**, covering both direct and indirect forms of misconduct, including hostile work environments. It mandated the establishment of **Internal Complaints Committees (ICCs)** in organizations with ten or more employees and **Local Complaints Committees (LCCs)** at the district level to address cases in the unorganized sector. These institutional mechanisms were designed to ensure accessibility, accountability, and timely redressal.

Furthermore, the Act imposed clear **statutory obligations on employers**, including the duty to provide a safe working environment, conduct awareness and training programs, and ensure compliance with legal provisions. It also introduced **time-bound inquiry procedures**, confidentiality requirements, and penalties for non-compliance, thereby strengthening enforcement.

Despite these advancements, the transition from Vishakha Guidelines to the POSH Act reveals persistent challenges in implementation. Studies indicate that many organizations fail to properly constitute ICCs, and there is a widespread lack of awareness regarding the law (Kumar, 2015; Gupta, 2016). Social stigma, fear of retaliation, and power hierarchies further discourage reporting of incidents, particularly in informal sectors.

Thus, while the Vishakha Judgment laid the normative and constitutional foundation, the POSH Act provided the necessary legal infrastructure. However, the effectiveness of this transition depends largely on institutional commitment, awareness, and rigorous implementation.

In conclusion, the transition from Vishakha to the POSH Act represents a critical development in India's approach to gender justice and workplace safety. It reflects the movement from judicial activism to legislative accountability, yet underscores the continuing gap between legal provisions and their practical realization.

### Challenges in Implementation

- Lack of awareness among employees
- Improper constitution of ICCs
- Organizational non-compliance
- Fear of retaliation and stigma
- Limited implementation in informal sector

### Conclusion

The transition from Vishakha Judgment to the POSH Act represents a significant advancement in legal protection against workplace sexual harassment. However, enforcement challenges limit its effectiveness. Strengthening implementation mechanisms is essential. There is a gap between legal provisions and ground realities. Effective implementation requires awareness, training, and institutional accountability. There is a gap between legal provisions and ground realities.

### Policy Suggestions

- Conduct regular and mandatory training programs on the POSH Act in organizations.
- Ensure proper constitution and effective functioning of ICCs (Internal Complaints Committees) and LCCs (Local Complaints Committees).
- Implement strict monitoring and evaluation by concerned authorities.
- Organize widespread awareness campaigns on workplace sexual harassment.
- Strengthen grievance redressal mechanisms to make them more accessible, transparent, and effective.
- Ensure strong protection measures for complainants.
- Improve implementation of the POSH Act in the informal sector.

### References

- Agnes, F. (2014). *Law and Gender Inequality in India*. Oxford University Press.
- Gupta, A. (2016). *Workplace Sexual Harassment in India*. *Journal of Gender Studies*.
- Kumar, R. (2015). *Implementation of POSH Act in India*. *Journal of Law*.
- Vishakha v. State of Rajasthan, AIR 1997 SC 3011.
- Government of India. (2013). *Sexual Harassment of Women at Workplace Act*.  
<https://wcd.delhi.gov.in/wcd/sexual-harassment-women-workplaceprevention-prohibition-and-redressal-act-2013sh-act-2013>