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Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## IMPLEMENTATION CHALLENGES OF POSH ACT, 2013

**AUTHOR-** KOMOLIKA GHOSH, STUDENT AT K.L.E. SOCIETY'S LAW COLLEGE, BENGALURU

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### ABSTRACT

*The POSH Act, commonly known as the Prevention of Sexual Harassment Act (POSH), the act was passed in December 2013 with the aim of providing a safe work environment for all Indian women, regardless of their affiliation with an organization. According to this Act, every company must establish an Internal Committee (IC) with at least 10 employees. Just the Internal Committees in the workplaces may not be considered much fruitful. The government especially the state government should have proper information and knowledge about the issues happening in the workplaces. Local Committees shall be formed which shall have the duty of providing all the information to the State Government. Additionally, the government is required to provide instruction, plan awareness campaigns, keep track of the number of sexual harassment lawsuits filed, and guarantee that the law is properly applied everywhere.*

*The Act cannot be said and concluded to be a total failure but it surely needs the aforementioned issues to be resolved as soon as possible with utmost care and awareness. Women shall be free not only visually but also mentally. The fear of being traumatized and embarrassed shall be removed from the minds of the women. The writer gives a summary of the Acts, the Implementational Challenges of the Act and a few Suggestions.*

**KEYWORDS** – Sexual Harassment; POSH Act; workplace; Privacy; Inspections; Internal Complaints Committee

### I. THE POSH ACT, 2013

The POSH Act, commonly known as the Prevention of Sexual Harassment Act, went into effect in December 2013. This act can be applied in any part of the country. It was passed with the intention of giving all Indian women, organized or not, who work in a variety of fields a secure workplace. Sexual harassment, according to the POSH Act, is any unwanted physical, verbal, or nonverbal action that is of a sexual nature. It includes unwanted advances and physical contact, requests for or demands of sexual favors, sexually charged statements, pornographic displays, and other acts. Criminal matters can be settled through the regular process for many years. This specific Act was created to expeditiously address sexual crimes against women in their places of employment

in light of the above circumstances. Nonetheless, a complaint can also be filed against the culprit under the sections relating to sexual harassment in Indian Penal Code.

A number of drafting errors still persist in both the Act and the Rules ten years after the Act was passed, which is unfortunate. Fear of losing job on reporting and the fear of blame coming on them stopped them from reporting it. Women tend to hold themselves responsible, at least in their thought process. The IC's job has become exceedingly difficult as a result. The official sector has been the only place where many women have begun to speak out against sexual harassment since the passage of this Act. For women working in the unorganized sector, it hasn't been much of a help. Due to the

stigma, concern about losing their jobs, and lack of faith in the legal system, women still find it challenging to disclose such occurrences in that location. The Act has many issues that need to be resolved on the legislative, judicial, and implementation fronts.

## II. SIGNIFICANCE AND NEED OF THE ACT

Women of this world are nowhere seen as an inferior set of people who are supposed to be weak and meek in front of the men outside. The long veils kept them blindfolded against all the decisions taken, even when about their lives and the urge of mankind to always keep them right at their feet have finally reached the brim. The powerful force of strength and independence can be seen all around the world. Women have finally started fighting and snatching instead of asking and begging for their rights.

Anywhere one goes, be it a military camp or see an auto-rickshaw driver, they are all around proving themselves as equally strong and ferocious as men. Although they have started reaching the heights in their careers and are out to fight against the patriarchy the universe always had different plans. The beautiful biological differences created by nature have been seen as one of the biggest ways to dominate and harass women. This has been happening for 100 years, however, the Parliament of India gave thought about it only before 16 years. It is when they come up with the idea of saving women from such felonious and sexually harassing acts done against them.

The case of *Visakha v. State of Rajasthan* ignited the women workforce and the whole of India. The brutality and barbarity happening against women around the whole country were finally able to grasp the attention of the lawmakers who then made up their minds to come up with an act which would help the women workforce to carry out their work in a safe and peaceful environment. This led to the coming of the POSH Act of 2013.

## III. IMPLEMENTATIONAL CHALLENGES OF POSH ACT, 2013

1. Harassment in the proximity of office- Upon receiving complaints against the company's senior management, such as the company's CEO/CFO, etc., the members of the internal control committee have been hesitant to conduct an inquiry in a fair manner. It is obvious that there will be practical difficulties in implementing the Act, which could raise questions as to the members of the IC's impartiality or objectivity in their decisions.
2. Annual Report- the Companies (Accounts) Amendment Rules, 2018, in addition, mandate that the board of a firm indicate in its report that it has complied with the Act's provisions relating to the establishment of an internal complaints committee. This makes the job of the directors more difficult and may prevent enterprises from incorporating.
3. Privacy- It is required of the employer to uphold strict secrecy. According to the Act, no information pertaining to the investigation may be disclosed to the press, the public, or the media in any way. In actuality, it has been discovered that information always leaks within the organization or to the media, putting undue pressure on all parties involved, including the IC members.
4. Misleading Complaints- The fact that men are extremely anxious about the POSH Act is another critique of the law. They believe that dishonest women may utilize the law to get revenge on coworkers they find repulsive. Talking to their female coworkers is now avoided by men. Giving comments to a female employee by herself makes them nervous. The deployment of POSH across organizations has been less effective as a result of obvious symptoms of unresolved discomfort and,



consequently, apathy among men. In India only 50 out of 500 harassment cases are reported by the victims or the witnesses. The act stipulates that hostile complaints may be punished and that fraudulent complaints may be addressed. The policies, staff awareness training, complaints committee meetings, and other relevant channels should all include this.

5. Anonymous Complaints- Anonymous reporting of sexual harassment is not permitted. While the SHE Box (launched by the Indian Ministry for Women helps bring complaints from women directly to the ICC), it does not permit the filing of anonymous complaints, which may be particularly critical for a country where women experience a lot of shame when they have to name a perpetrator.
6. Unorganized Sector- Institutionally, hundreds of thousands of women are primarily barred from using the POSH Act, including workers in the unorganized sector. Additionally, no government agency monitors the law's application.
7. Financial Penalty- The parameters for assessing a monetary penalty under the POSH Act in the event that any sexual harassment charge has been proven are still nebulous and imprecise. Lack of clarity would make it difficult for the ICC to determine the exact sum of money that the respondent should pay the complaint.
8. The incompetence of the Internal Complaints Committee- The Internal Complaints Committee (ICC) has been given the authority of the Civil Court to conduct the inquiry and review the evidence, and the law has placed the burden of enforcing the Act and Rules on it. The biggest failure is witnessed as many companies in India still do not have any such weapon and shield for the women. Statements by Board members and heads of the company of

openly criticizing the initiative is nothing to be surprised about. They have openly denied the whole act and has contempt from forming any such Internal Committee for the safety and security of women working.

The biggest issue is that even if the companies have formed internal committees, it is all for namesake. There has been no complains registered even though the women working class has been facing sexual harassment. Lack of awareness about the same has added to be a problem in such situations.

Many of these reports are disregarded because they don't adhere to natural justice standards, which the IC members may not have been familiar with, to begin with. There seems to be a fundamental design issue in the Act and the Rules that causes this. The investigation that the IC is tasked with carrying out could have a profound effect on both the accused and the wronged.

#### IV. CASE LAWS POSH ACT, 2013

- Independent Thought vs. Union of India and Anr. - In 2017, the Supreme Court of India rendered a decision in the case of Independent Thought v. Union of India and Others. A non-profit organization by the name of Independent Thought brought the lawsuit after it objected to the legality of the Indian Penal Code's provision that permits a husband to have sex with his wife if she is between the ages of 15 and 18.

Independent Thought asserted that because the exclusion permitted the sexual exploitation of children, it violated the rights of young females to equal protection under the law. The group said that the exclusion was discriminatory and went against child rights international treaties. The exception was

abolished by the Supreme Court after it sided with Independent Thought and determined that it violated young girls' rights to protection from sexual exploitation and abuse.

The Independent Thought case is notable because it ruled that cultural and customary practices must give way to children's rights, particularly the right to protection against sexual exploitation and abuse. In the struggle against child marriage and other types of gender-based violence in India, the case continues to serve as a crucial precedent.

- Nalini Netto v. Neelalohitadasan- An official meeting was taking place when the then-Kerala Transport Minister assaulted Nalini Netto, an IAS officer. She told her husband, who is also an IAS official, and her coworkers about this, and they asked her to keep quiet. She resisted filing a complaint out of concern about her reputation. When things got out of hand, she urged the Chief Minister to step in, but she only demanded a change in the workplace climate and not the prosecution of the offender. Her lawsuit was followed by another in which Prakriti Srivastava claimed that the same Minister had harassed her. She reported the incident to the city police commissioner rather than submitting a formal written complaint. In the course of the investigations, she was summoned to testify.

After her deposition, the Minister began issuing serious threats to her. She submitted a written complaint under section 354 of the Indian Penal Code (IPC) after being unable to endure the abuse. In spite of Visakha standards requiring an in-camera hearing, the government created a few committees to look into the subject and they insisted on holding a public trial. In the case of

Prakriti, the offender was given a one-year prison sentence, whereas in the case of Nalini, a Fast-Track court in 2008 found the Minister not guilty of the accusations of harassment and sexual assault.

- Medha Kotwal Lele v. Union of India & Ors.- In 2018, the Supreme Court of India rendered a decision in the case of Medha Kotwal Lele v. Union of India & Ors. The sexual harassment of Women at work act of 2013 (POSH Act) was challenged in a petition brought by a group of women's rights advocates, including Medha Kotwal Lele.

As a result, petitioners claimed that there was an inadequacy in the terms of the POSH Act with respect to protecting women from sexual harassment at work, and that it did not provide appropriate recourse to those who had suffered this harassment. The role of third parties in supporting sexual harassment, the necessity for protection against online harassment, and the requirement for gender-sensitive training for members of internal complaint committees were among the concerns they claimed the Act failed to effectively address.

The POSH Act was deemed constitutional and to have sufficiently protected women from workplace sexual harassment, the Supreme Court dismissed the petitioners' concerns. The Court further determined that the Act complied with India's duties under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which are international commitments.

The Medha Kotwal Lele case is notable because it clarified the practical implementation of the POSH Act and reinforced the necessity of the Act's protection of women from sexual

harassment at work. In the struggle against sexual harassment and other types of gender-based violence in India, the case continues to serve as a significant precedent.

#### V. AUTHOR'S SUGGESTION

To remove an age-old notion which has become more of a natural habit and mindset of the people of the nation is not one man task. The situation cannot change in one day. But there are a few lacunae which can be rectified by the government's force and power.

Included in the steps are:

1. Conduct inspections, and discipline any staff members who don't follow instructions.
2. Consistently provide victims with fair compensation and an open complaint process.
3. Yearly disclosure of information on the number of complaints of sexual harassment that the committees have received and handled.
4. An impartial internal complaints committee ought to investigate complaints as soon as they are received. The committee ought to be made up of individuals with experience managing sexual harassment claims and who are familiar with the POSH policies and practices employed by the business.
5. Businesses should set up a system for reporting sexual harassment to employees. The procedure ought to be simple to use and maintain the complainant's privacy.
6. ILO's convention against violence and harassment should be ratified and put into effect.
7. To make certain that everyone is aware of the organization's POSH rules and processes, managers and employees must get training. What sexual

harassment entails, how to see and report it, and the repercussions of engaging in such behavior should all be included in the training.

8. Ensure that victims receive a fair hearing and compensation.
9. The first step in achieving compliance is creating a thorough POSH policy. A clear definition of sexual harassment, examples of prohibited behavior, and information on how to file a complaint should all be included in the policy.
10. If the inquiry reveals that sexual harassment happened, the firm should take the necessary steps, such as disciplining the harasser or terminating their employment.

#### CONCLUSION

The need for a zero-tolerance policy for sexual harassment of women at work is strengthened by the workplace's rapid change. As a result of the passing of the POSH Act in India, a new era has begun for the development of gender equality legislation, where significant advances have been made towards the Visakha guidelines by the Indian government. In order for companies to comply with the law, they must raise awareness about sexual harassment, provide protection from it, and assist female employees who are subjected to it in filing complaints with the authorities. Unlike the circumstances discussed above, it is clear that the Act has, as in contrast to the case of the women who work primarily in the informal sector, not taken into account the fact that most of them work in informal employment. Most of them have been kept out of this law's protective umbrella. Women who are employed in rural areas, small enterprises, unorganized sectors, flexible work environments, and self-employed and home-based workers are all included in this category.



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