
“An analysis of the effectiveness of the laws with respect to Sexual Harassment at workplace in India (Empirical)”

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CHAPTER I: INTRODUCTION

1.1. INTRODUCTION

With globalization and feminism taking a rise, the role women have adopted in the outside world is significantly remarkable in all the sectors including defense. Women taking charge and coming out of the homes, are suffering major backlash due to the existing societal discrimination with respect to gender. When a person in any form encroaches upon the dignity of another person it constitutes more than one violation like violation of dignity of a person, violation of right to privacy, violation of right to life. When in workplace, offences like gender discrimination, bullying, sexual harassment are regarded as the worst of the lot. Mostly, the person who is the victim is a woman and the perpetrator is a man. In competition world, having a safe and secure workplace environment sounds more like a myth than a fancy dream.

Having a disturbed workplace, affects the individual performance of the employee, the overall performance of the company, the individual growth socially and economically, creates a state of suffering. India took a stand for this issue in 2013 when it passed the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act¹. In the landmark judgment of Vishaka vs. State of Rajasthan², the Supreme Court framed guidelines and directed the Union of India to form legislation which shall deal with this kind of issue.³ The facts of the case are: Bhanwari Devi, who was a Dalit woman and employed under the Rural development project of the government of Rajasthan in 1992. While she was working tirelessly to stop the practice of child marriage, to make her pay for her deeds she was brutally gang raped. Only after this case, the issue that a woman is not safe in its workplace and needs certain specific protection was felt. The Apex court regarded this as a violation of human rights, and thus framed the Vishaka Guidelines.

¹ Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013, No 14, Acts of Parliament, 2013 (India)

² Vishaka v State of Rajasthan ((1997) 6 SCC 241)

³ Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In addition to this, the criminal law amendment was brought into force which recognized new offenses and enhanced punishments for sexual harassment, voyeurism, stalking, etc.,⁴ The ministry of Women and Child Development also enacted the POSH rules (Sexual Harassment of women at Workplace (prevention, prohibition, and Redressal) Rules, 2013. The act being the first of its kind has helped create a standard and also an understanding amongst the crowd that their voice will not go unheard. For every woman in a workplace, to all forms of harassment it provides protection. The Convention on Elimination of All forms of Discrimination against women⁵, has been the guiding document in forming of both the guidelines and the Act.

In addition to the POSH Act, the Industrial Employment (Standing orders) Act, 1946 is a central enactment where the employer has to publish and provide uniform working conditions of employment. Then comes the IPC, 1860, there are various offences with regard to this, though not definitely talking about workplace, like outraging the modesty of a woman⁶, Sexual Harassment by a man⁷, Assault with a woman with the intent of disrobing⁸, voyeurism⁹, Stalking¹⁰, Insulting the modesty of a woman.¹¹

In the corporate sector, it is often seen that the women adopt to complain about sexual harassment to the authorities being the last resort. Because it is thought to have a negative impact on the impression, it spoils the work environment for everyone else, it is a challenge to the employer. So, most of the times, women keep silent about it. In this very study, an analysis has been made into understanding the shortfalls of the act. There is a shocking stand taken by court which said that for any decision taken by the Internal Committee, the court will not interfere in the same and neither will the court re-consider the evidence which the committee has considered.

1.2. STATEMENT OF PROBLEM

Sexual Harassment amounts to a profoundly serious offence and has to be dealt with by way of extreme judicious care. Cases which actually happened years ago, but only surfaced recently, due to either the enactment of this legislation or the voice given to the women by the famous me-too address. For women working with politicians, journalists, corporate houses, film industries which raised their voices. But when it came to legal enforcement of the same, two big hurdles came into light. One of the limitations of the act is that the act does not work retrospectively. The

⁴ The Criminal Law (Amendment) Act, 2013 (No. 13). Acts of Parliament, 2013, India

⁵ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180

⁶ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 354

⁷ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 354A

⁸ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 354B

⁹ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 354C

¹⁰ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 354D

¹¹ The Indian Penal Code, 1860 (no. 45) Acts of Parliament, 1860, India, Section 509

cases which are backdated does not fall under the purview of this Act and secondly, the period of limitation for filling of cases.

The composition of ICC (Internal Complaints Committee) also poses certain difficulty, the situation is more complicated when the accused is any person who holds a high post in the corporate house. As majorly, the key personnel being the part of the committee make the situation for women employee exceedingly difficult. The composition of ICC needs to be looked into for the creation of non-biasness and not impacting the decision of the committee. The name of the also seeks to address the issue of redressal. But the ICC mechanism and punishment leads to any of the following: either termination, demotion, or transfer of the accused. Whereas in comparison to the criminal law provisions, it is way more stringent and provides for criminal prosecution.¹²

The most important thing to be noted is the process of implementation which has also been a key part of the above two mentioned problems. Even after being enacted and being in force for 7 years, there is no data which is published by the government which deals with effectiveness of committees in informal sector. Any act is useless unless the very tool of operating the act is effective.¹³ Implementation of this Act is even more tough, the reason being every corporation is bound to act legally. But how they go about the committee, how they interpret specific terms, how they choose the committee, how they impose punishment, how seriously do they take the offence, etc., is a major part of the study. There is a lack of clarity about various aspects of the act including exactly what constitutes sexual harassment, what are the safeguards to the victim, what are the criminal consequences, what role will the court play. As far as I can see from the legal lens, there are a lot of unanswered questions pertaining to the act creating confusion and situation of distress amongst the victims.

1.3. HYPOTHESIS

The laws with respect to sexual harassment are amazingly effective in catering to the situation and helped in combating the number of sexual harassment complaints.

The laws with respect to sexual harassment lack the measures and modes of implementation resulting in leaving the victims in a stage of silent suffering and agony.

1.4. RESEARCH OBJECTIVE

The objective of the study is

- To understand the effectiveness of the Implementation of the Act (Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹² Urvashi Butalia and Uma Chakravarti, "The Limits of Law: Interview with Vrinda Grover," in Breaching the Citadel: The India Papers I, ed. Urvashi Butalia and Laxmi Murthy, (New Delhi: Zubaan, 2018), chapter 10.

¹³ Indira Jaising, Law Relating to Sexual Harassment at the Workplace (2014)

- To study the role of Internal Complaints committee so constituted under this Act for ruling upon the complaints.
- To highlight the drawbacks with respect to implementation of the act.

1.5. RESEARCH QUESTIONS

To fulfil the research objectives, the following questions have been answered in this research paper:

1. Whether or not the laws with respect to prevention of sexual harassment are effectively implemented?
2. Whether or not the role and obligation which is vested on the ICC is fulfilled?
3. Whether or not the drawbacks of the act are resulting in the Act not fulfilling its objective of creating a safe work environment for the women employees?

1.6. RESEARCH METHODOLOGY

1. Sources of Data: Primary Source (Students, employees, and Intellectual Academia)
2. Method of Data Collection: Structured Questionnaire
3. Sampling Plan: Purposive Sampling
4. Tools and Techniques used for Data Collection: Google Forms
5. Footnote Format: Bluebook — The Uniform System of Citation (19th ed.)

1.7. SCOPE AND LIMITATION OF STUDY

Even with the fast-pacing movement towards globalization, the issues pertaining to safety of women, has been the biggest lacunae in the functioning of the society. Until and unless a person feels safe in a place, neither will they give effective performance nor will live with peace. The laws provide for the governing body being the ICC with which the majority role of implementation lies. But any thought if there is any monitoring on how the ICC functions? The scope of the study is Analyzing the implementation process on the part of the government and the ICC, further, to understanding their implementation. The researcher has highlighted two hypothesis which cannot be true at the same time, so the researcher analyses the data collected through the survey conducted.

Limitation of the study is the limited number of opinions which could be collected due to the time constraint. Employees from various sectors could not be reached through due to lack of access. The major limitation faced during the research is there no data found on the government records which can speak about the effectiveness.

1.8. SIGNIFICANCE OF STUDY

The study is significant to help the woman by giving them a working environment which is friendly, non-discriminatory and does not see woman as any object of sexual nature, this mission can be accomplished by highlight the lacunae in the existing system and which procedure is

failing to fulfil its duty. The study is aimed at strongarming the public at large with statistical data to raise a voice against the company and the government.

1.9. CHAPTERIZATION

The study has been divided into 5 chapters:

Chapter 1 which talks about the **Introduction** and highlights the research question, methods, and scope of study.

Chapter II is the **Review of Relevant Literature** with respect to the topic taken for analysis. **Chapter III** deals with the **Theoretical Framework** which talks about the relevant provisions and the position of the law.

Chapter IV speaks about **Analysis of the Data** collected during the research and

Chapter V highlights the **Suggestions and Conclusions**.

CHAPTER II: REVIEW OF RELEVANT LITERATURE

The purpose of this research is not to primarily understand the theoretical concepts, but to analyses the implementation of the same provisions, so keeping in mind the objectives and questions of research in mind, the following articles required a thorough deliberation.

Role of employer

In a guidebook¹⁴ by **EEPCINDIA**, the role of employer has been discussed exhaustively with answering few of the questions which are always dedicated to the employers. Insights to the existing regulatory measures, within the Nation and internationally are mentioned like UDHR, ICESCR, CEDAW. Section 19 of POSH act states the duties of employer and section 16 provides for the punishment. In the section 4 of the guidebook, they provide a detailed guide on the role of the employer and it also focuses on understanding the reason of why the victim is silent. The primary role of the employer is to understand that it is both their legal and moral obligation to provide for a safe workplace.

In the research done by **Nishith Desai**,¹⁵ the employer's duties run around the tagline that prevention is better than cure. It provides a list of description of 23 which explains what amounts to sexual harassment. Every company where there are more than 10 employees working, needs to mandatorily have an internal committee, where every branch or office there needs to be an IC. Under the judicial restraint by Article 226, there is a judicial restraint on the interference of the

¹⁴ EEPCINDIA, "Guidebook to Preventing Sexual harassment at workplace" 2014, <https://www.eepcindia.org/download/Book-on-Preventing-Sexual-Harassment-at-Workplace150914215511.pdf>

¹⁵ Nisith Desai, "Prevention of Sexual Harassment at workplace (POSH)" Dec 2020 https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

court as held in *Om Kumar vs. UOI*¹⁶. The role of the employer is that it should receive the complaint and take action on it, it is not necessary that the victim should register the complaint in person.

Effectiveness of Sexual Harassment

In a survey¹⁷ conducted by **KelpHR**, as a part of their industry report has suggested that 28 percent of their employees believe that clarity on the external member being appointed in the ICC committee, will help the victim to understand the situation better. 46 percent believed that if the definitions of the Act, had more clarity then the act could have been more comprehensive, also if the outside the workplace incidents were handled in a better manner. 71 percent believed that building a strong company culture will help prevent the number of cases of sexual harassment and 51 percent believed that effective handling of cases.

The Author **Kaushik Basu**¹⁸, highlighted that sexual harassment is exceedingly difficult to define but highlights that it is an unproven hypothesis that quantity of sexual harassment in workplace has decreased but the number of cases being reported due to increased awareness has increased. The author wants to say that earlier with more number of cases also there was less reporting, and now with less number of cases there is more reporting. However, since the author has not backed up the same data with any proven hypothesis, the research disagrees with the hypothesis.

Drawbacks with the Act/ Experiences with Complaints Committee:

Sheba Tejani,¹⁹ highlighted that the major drawback with the Act is with respect to implementation and sensitization, without which any legal change will be hardly be successful. Power relations of the accused with the IC creates a situation of difficulty for the victim. The rights of the victim during the process of inquiry needs to be secured. Most of the situations so happen that when a victim complaint about the sexual harassment, then the complaint is not taken into cognizance, or if taken the victim is abused or treated indifferently. The research strongly agrees with the researcher.

The author **Naina Kapur**²⁰, believes that the legislation which was enacted in 2013 is nothing but a diluted version of the Vishaka guidelines. the ICC which was supposed to be the redressal mechanism, has no effective check on it and it results in violation of the fundamental principle of non-intimidation which is to protect complainants ensuring just practices, with no specific

¹⁶Om Kumar v UOI, (2001) 2 SCC 386

¹⁷ KelpHR, "Prevention of Sexual Harassment at workplace" *Journal of Corporate Law*, 22(3): 132-39

¹⁸ Basu, Kaushik. 2003. "The Economics and Law of Sexual Harassment in the Workplace." *Journal of Economic Perspectives*, 17 (3): 141-157.

¹⁹ Sheba Tejani. (2004). Sexual Harassment at the Workplace: Emerging Problems and Debates. *Economic and Political Weekly*, 39(41), 4491-4494.

²⁰ KAPUR, NAINA. (2013) "Workplace Sexual Harassment: The Way Things Are." *Economic and Political Weekly*, vol. 48, no. 24, 2013, pp. 27-29.

guidelines of evidence or collection of evidence and use of the same, there it gets too difficult to prove what truly amount to sexual harassment. In a scenario like this, section 14 which provides punishment for false complaint, but in no other area of law does such practice of punishment exists in peculiarity to gender specific legislation.

S. Jayashree,²¹ deliberated that when a new person joins the company and requests disclosure on the disclosure of the same, then typically two replies are received like we certainly do have a policy but cannot show the same to you. Else, we have not incorporated one because governance function is adequate enough for the purpose. It highlighted the fact that the harasser need not necessarily be a man. It can be a man or woman. The result of a sexual harassment, as revealed in a survey, AHA is the most common result for a victim of harassment i.e., Anger, Hate and Aggression which also includes a situation of self-blame. “the fence does not start eating its own crops” is the ideology adopted while formulating any policy.

Paramita Chaudhari²² through an empirical research proved that ICC even when constituted as per the provisions of the Act, are mostly non-functional and it occurs in “other” workplaces. A major problem with ICC is when the chairperson or other members are changed or transferred for whatsoever reason. When the sole purpose of committee is redressal, but there is not much to do by the members in that field, it is automatically defunct. Men being present as the chairperson, impact the decision largely due to the power and influence over the company. There are two similar yet minutely different terms i.e., acts of sexual harassment and consequent work-related harassments, which either leads to dismissal of complaint or no complaint at all.

CHAPTER III: THEORETICAL FRAMEWORK

A social activist, working with government of Rajasthan, was brutally gang raped, and therefore the need of protecting women in their workplace. The lower court in this case, acquitted the accused and tried for an offense which had much lesser punishment. Even after 28 years of this, an appeal is still pending. After the situation of crisis when the employer raised hands from taking any liability as the rape was not conducted “within the workplace”. After which a public interest petition was filled which demanded safe workplace and environment as a right for every working women. Such cases bring large amount of public outrage and this led to the enactment of both the Vishaka guidelines in 1997 and the POSH Act in 2013.

When studying the POSH act, Vishaka guidelines cannot be overstepped. The guidelines recognized sexual harassment as the following includes such unwelcome sexually determined behavior (whether directly or indirectly) as

1. Physical contact and advances

²¹ Jayashree, S. “Sexual Harassment at Work: An HRM Perspective.” *Indian Journal of Industrial Relations*, vol. 35, no. 2, 1999, pp. 202–216.

²² Chaudhuri, Paramita. “Experiences of Sexual Harassment of Women Health Workers in Four Hospitals in Kolkata, India.” *Reproductive Health Matters*, vol. 15, no. 30, 2007, pp. 221–229.

2. A demand or request for sexual favor
3. Sexually colored remarks
4. Showing pornography
5. Any other unwelcome physical, verbal non-verbal conduct of sexual nature.²³

After the nation raising its voice in favor of Vishaka, in the case of Apparel Exports Promotion Council vs. A.K. Chopra²⁴, the ambit of sexual harassment judgment was increased by stating that physical contact is not a necessary ingredient. Further in the case of Medha Kotwal & Ors. Vs. UOI²⁵, the question of implementation of the Vishaka guidelines arose, as it was suggested that the guidelines exist only in form, but the very spirit is dead, not being satisfied with the implementation process, the SC directed the States to put forth mechanisms to ensure implementation. And provided that if there is non-compliance then the concerned high courts can be approached.

In a very recent log of cases during the me-too movement, when numerous complaints were raged and women all around the country took to websites, social networking sites to put forth their story. One of such post was against an Indian Artist, who in return to the social media post, filed a case of defamation, resulting in the decision by Delhi High Court, which directed the Social Networking Site to not allow any further post against the artist and take down the current post and also reveal the name of the author of the post. The court opined that without having any legal backing, a person just cannot go around throwing cases at each other. As for any complaint to be logged after the period of limitation has lapsed may not even be accepted.²⁶

As per the provisions of this Act, an aggrieved woman²⁷ can be of any age, whether or employed or not. This is the positive aspect of the act that it does not stipulate only to include the woman who are employed with the company, but also the customers, clients, workers on contractual basis, trainee, Domestic worker, the interns, even a visitor, etc., It is noteworthy that the legislation is not gender neutral but applies only to women, so the male victim have no grievance redressal mechanism.

The definition provided of Sexual Harassment²⁸ in POSH act is in line with the Vishaka guidelines.²⁹ The last clause states that any other act which is unwelcoming in nature of physical, verbal, non-verbal may amount to an offence. Here the legislation had provided an upper hand to

²³ Supra at 1

²⁴ Apparel Exports Promotion Council vs. A.K. Chopra (1999) 1 SCC 759

²⁵ Ibid

²⁶ Hunt, C.M., Davidson, M.J., Fielden, S.L. and Hoel, H. (2010), "Reviewing sexual harassment in the workplace – an intervention model", *Personnel Review*, Vol. 39 No. 5, pp. 655-673.

²⁷ Section 2(a) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

²⁸ Section 3(2) of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

²⁹ Geeta Pandey, "Bhanwari Devi: The rape that led to India's sexual harassment law," BBC, March 17, 2017, <https://www.bbc.com/news/world-asia-india-39265653> (accessed Dec 4, 2020).

the ICC to interpret if a particular incident is a sexual conduct.³⁰ There are some acts which prima facie comes under the act like showing pornography, sexual assault, etc. but there is no fine line of testing the same. In 2010, the Delhi High Court in the case of Dr. Punita K. Sodhi vs. UOI & Ors.³¹ Held that sexual harassment is a very personal feeling and subjective experience, which cannot be caged within definitive terms. So, the only requirement is understanding the standing of the victim in toto.³²

Grievance redressal forum is ICC which needs to be set up at each office or branch in every organization employing more than 10 employees.³³ The composition ICC are as follows:

- a) Presiding officer: Woman employed at the Senior level post
- b) 2 members from the employees
- c) An external member (mostly from an NGO or association which works towards cause related to women)

More than half of the members of the ICC must be women and there are no specific guidelines for who should the members be. But preferably someone committed towards working for the cause of women or having legal knowledge. The members cannot be part of the committee for more than 3 years and for an inquiry to be conducted a minimum of 3 members must be present including the Presiding officer.

This brings me to a particularly important question, who shall form the IC, there is no specific guidelines with respect to the same and secondly, no scrutiny upon the qualification, the tenure, etc. of the members.³⁴ To have system of checks and balances, the government of Telangana and Mumbai issued circulars, which required every ICC to be registered with the state government. In Telangana, there is T-She box which is an online forum for registration of the IC of company and in Mumbai it has to be done manually with the office of District women and Child development officer.³⁵ In addition to the IC, a LC is set up which takes cognizance for victims of unorganized sectors and for those employees who do not have IC, as they do not have more than 10 employees. LC takes Cognizance in the following situations:

- a) Where the victim is a domestic worker
- b) Where the complaint is against the employer himself
- c) And when the complaint is against a third party, who is not an employee of the company where the victim works.³⁶

³⁰ Supra at 34

³¹ Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

³² Supra at 23

³³ Section 4 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

³⁴ Supra at 17

³⁵ <https://tshebox.tgwdcw.in/>

³⁶ Section 5 of Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act 2013

The IC and LC are vested with the same powers as that of the judge of a civil court granted under the CPC, 1908. Any aggrieved woman who wishes to file the complaint must submit 6 copies of the complaint, along with supporting evidence, list of witnesses and the same must be done within the period of three months. Other than the victim, the friends, family, co-workers, psychologists, and psychiatrists is allowed to file the complaint if the victim has physical incapacity for doing the same. The main agenda of having an IC is for speedy disposal of case and access to justice. Because a complaint under POSH does not bar a person from filing a complaint under the IPC, but being a criminal case, it will be going on for years. This also does not amount to double jeopardy under Article 20 of the Indian Constitution, 1950.

The duties of the employer does not stop at creating an IC, but it has to ensure a gender sensitive workplace and remove any factor which may cause hostile work place; formulate an internal policy with respect to this, at various parts of the organization display the penal consequences for indulging in such prohibited act, clearly declare all the details about the members of the IC; organize workshops and awareness programs for the employees, provide all the facilities required by the IC, prepare an annual report with respect to number of cases filed and their disposal with the district office, and an obligation to treat sexual harassment as misconduct and treat the same under the service rules.

The Indian National bar Association in 2017³⁷ conducted a survey where the sample size was more than 6000 employees from various job sectors- where it found that sexual harassment ranges from various kind of activities including sexual lewd comments and ranging to the extent of straightforward demand of having sex in the name of promotion, transfer, termination of service or demotion. In the survey it was found that even after a legislative protection for the same, most women preferred not to report the case due to reasons like retribution, fear of embarrassment, being unemployed, not being aware of the policies and mechanism for filing of complaint, and no faith in the justice system be it the IC, LC, or the Judicial system. Till today there has been no study which could possibly show the relation between women leaving their jobs as a recourse of sexual harassment. So, as per the understanding of the author, more than the role of government in implementation of the Act, the role is vested with the HR department, with the employer, with the IC and LC and additionally it includes to build the confidence within their own female workforce to raise their voices. The message should be strong and clear “*we have got your back*”.

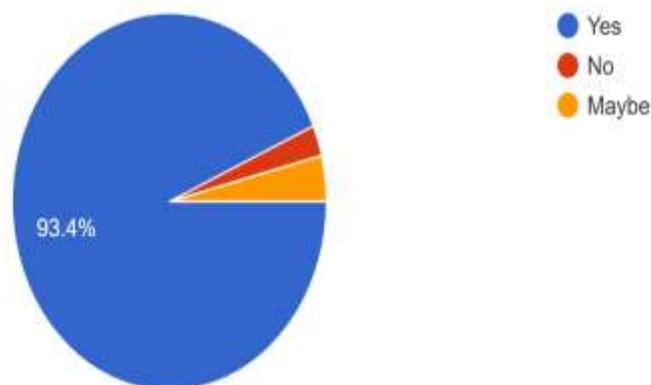
CHAPTER IV: ANALYSIS OF THE DATA

After circulating the google forms, through structured questionnaire a total of 76 responses where recorded, here is a detailed question by analysis of the same.

³⁷ INBA, “Sexual Harassment at Workplace”, Indian national Bar association, 2017 <https://www.indianbarassociation.org/wp-content/uploads/2017/07/Garima-IINBAs-Book.pdf>

1. Are you aware of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH ACT)?

76 responses

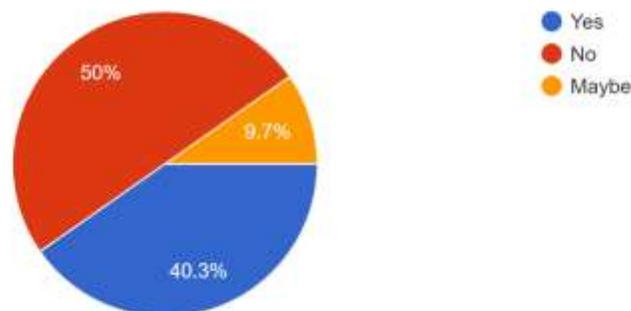


Through this basic question, it popped up that significant 93.4 percent knew about the existence of a legislation of this kind. 2 percent of respondents selected no suggested there is no awareness about the act and 3 opted for the option of maybe. The origin of this Act is traced back to the Vishaka guidelines, the act is considered to be a substituted sanction of the Vishaka guidelines and gave a legal right to the victim to fight for the indifferent treatment. POSH is not the only act which deals with the sexual harassment complaints. The IPC, 1860 provides for various offences which leads to criminal prosecution.

To understand what role a legislation plays in our lives and how it is impacted, let us consider a similar example. In a recent law which was about a legislation about Salt Lake developed by local government. The government sold small plots at subsidized rates to people who are not rich. But since the politicians feared that rich mis use the same provisions, so they prohibited any owner to sell any land. So, economist would argue that such a law will favor no one. But similarly, in a situation in United States law, it says that a firm cannot offer a job contract in which the pay is high, and the benefits are good-but the employer reserves the right to sexually harass the worker. Which means, that a person who accepts the job finds that sexual harassment to be less than the benefits associated with the job. In both the situations, we see two adults making a choice to make some exchange and to negate the externality. Some contracts are just unconscionable. For reference, in US civil Rights Act of 1964 under title VII deals with the same, which prohibits employment discrimination on the basis of race color and religion.

2. Were you provided training on POSH ACT and its working where you are currently employed?

72 responses



During section 19 of the POSH act which states the duty of an employer, includes under its c sub-clause that it must organize workshop and awareness programs at regular intervals for the purpose of sensitizing its employees about the provisions of the Act. And also conduct the orientation programs for every member of the Internal committee in the manner as prescribed. The question not being mandatory in nature, 72 responses were recorded, and 50 percent opted of not being provided with any training with respect to the POSH act. 41 percent claimed to have been got the training and 10 percent chose the response of maybe. The response maybe did not really make sense here, but one possibility of it could be the people who have joined recently and are not yet fully completed the course of taking the awareness program or due to the situation of COVID-19 there was a complete disturbance in the corporate sector, which might have led to this delay in providing the training.

It is the first step which every employer needs to take is primarily to create awareness. This duty of employer may seem quite small but the most significant one. If the employer does not take responsibility of taking any step to create an awareness program, then how are the employees going to realize the fine line of difference between a friendly corporate behavior and sexual assault which may hurt the sentiment of a woman. And this will also fail to sensitize the women about their rights. This step falls in a two-fold theory: primarily in sensitizing the woman of their rights and then secondly, in training the employees about the right kind of behavior. In a survey it has been found out that one of the positive outcomes of providing training to the employee is it retains the honest employee and increases respect for the employer which is increased by ten times.

To understand the situation as to why there were so many companies which did not provide training, because the part of providing training, though is mandatory in nature there is no training neither is any case reported because employee do not want to put their earning source into jeopardy by indulging in any such activity. And secondly, the believe of the employer that this

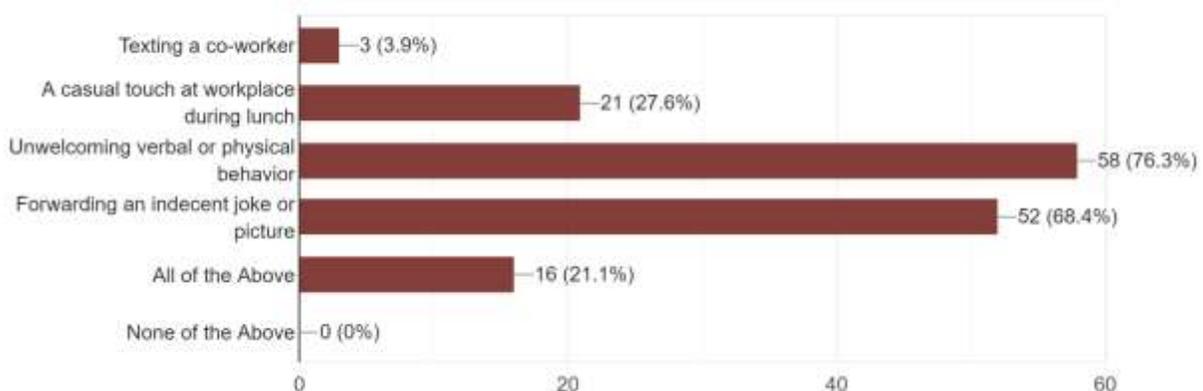
might just give idea to the employees to indulge in any activity which they otherwise would not have if not provided with training. According to Section 19(c) of the POSH Act, every employer if not complying with the provision, then a penalty up to Rs. 50, 000 can be levied upon the company.

The awareness programs are conducted to strongly give the message that no matter in what position you are in the company, mild to moderate jokes of sexual nature on your employee is an act to be punished. The training must be conducted for all employees of the company with no difference on designation or gender. By providing training, the company can ensure that in future the reputation of the company is not tarnished.³⁸ Failing to provide training is the first step of lack of proper implementation on the part of the employer, and government to keep a check on this. Ordinarily a woman will not approach the authorities if not provided with training, but when the assault crosses the tolerance level and leads to a criminal case, then the fact of not providing training, will attract fine and also damage the reputation of the company. There can be found two Lacunae which can be found:

- a) If an informal sector women employee faces any of such kind of harassment, then the authority to report is not directly approachable and neither she has the power and mostly do not even have the strength to fight the case, such cases even if happening remains unattended.
- b) For any company were less than 10 employees are working, now only have one option left which is to approach the Local Committee or the court. Approaching the court, will make the pace of justice as slow as it was initially.

3. Which of the following amounts to Sexual harassment?

76 responses



³⁸ Geeta Pandey, “Bhanwari Devi: The rape that led to India's sexual harassment law,” BBC, March 17, 2017, <https://www.bbc.com/news/world-asia-india-39265653> (accessed Dec 4, 2020).

To draw attention about the activities which amount to sexual harassment, the following question was asked as to what according to them amounts to sexual harassment, the options were kept simple and vivid, like texting a co-worker. Texting a co-worker for the purpose of company work or pure corporate relationship is not sexual assault, however, if it crosses the line and extends to forwarding indecent jokes or talking vulgar then it amounts to sexual harassment. Since in the question, multiple responses could be recorded, 3 people believe that texting a co-worker amounts to sexual harassment. 21 believe that causal touch at workplace and forwarding indecent joke was marked by 58 people.

In the case of *Punita Sodhi v Union of India*³⁹, the Delhi High Court endorsed that sexual harassment is a subjective experience and depends on two understanding of the victim: what is their tolerance level and what is their understanding of sexual harassment. Men may believe that their some action may not amount to hurt the sentiments of women, and are harmless social interactions, so the view of man of sexual harassment will be vastly different and they may find that a woman is overreacting without a full appropriation.

The following is an indicative list of what behavior may amount to sexual harassment:

- Whistling, staring, sexual and obscene joke, any joke or talk which may cause awkwardness.
- Displaying pornographic or other offensive or derogatory material.
- Open taunting regarding perfection, imperfection, or characteristics about physical appearance of someone's body or shape.
- Forcible invitation for dates, forcible physical touch, or molestation; forcefully kissing or hugging someone.
- Written communication of sexual nature given in the form of letter of send through computer or hardcopy or invitations.
- Having someone expose their private parts to a woman or repeatedly staring at private parts of woman which makes her feel uncomfortable.
- Blocking movements, slurring comments, leering.
- Sexual advances or propositions, offering employment benefits in exchange of sexual favors.

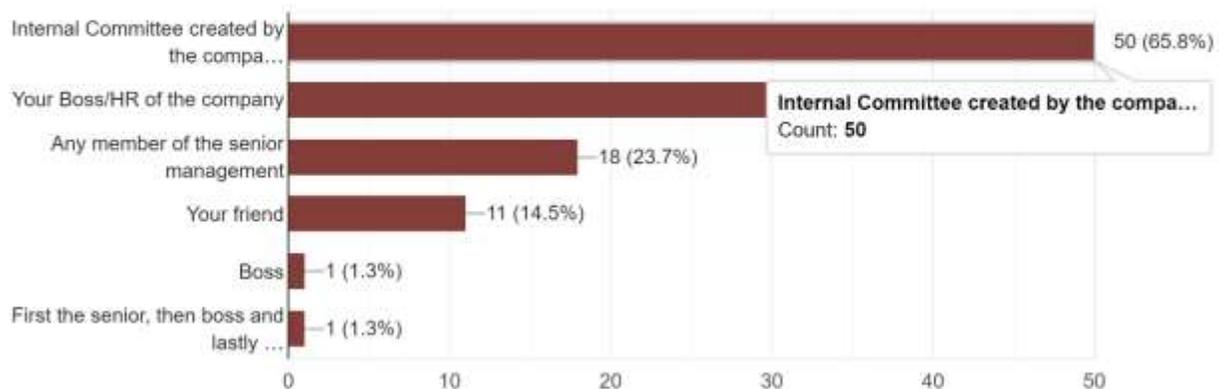
Primarily, the understanding of sexual harassment is especially important, because only if a person knows what behavior wrong will is then they fight for making it right. The definition of sexual harassment giving in Vishaka Guidelines and POSH act is similar and has a broader ambit so that it does not get old with advancement of technologies, were news forms of harassments are being figured out. Only women can be victim according to this Act. The real concern should be shown by the employer and it should not be a mere farce to comply with the POSH act, as

³⁹ Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

directed by the Bombay HC in the case of *Jaya Kodate v Rashtrasant Tukdoji Nagpur University*.⁴⁰

4. If ever you come in a situation where you are to report a situation like this within the workplace, whom do you approach?

76 responses



Through this question, the author was trying to analyze whether the people filling out the survey are aware of whom to fill the complaint with him or whom to report. 50 people believe that internal committee should be approached primarily, and the other options chosen are not valid as per the eyes of the law. they may approach the same to seek counselling and comfort (which is your friends, or boss or any senior management etc.) The laws of sexual harassment are now 7 years old, and there needs to be a review of the members of the internal committee must be done. The law has done a significant role in creating awareness about the laws and gives confidence to female employees to report any averments.

The power of taking major decisions with respect to the investigation process, documenting evidence, collection of evidence, calling of witnesses, examining the parties and their conduct. The change is also required with respect to the penalties which shall be levied upon the guilty if proven.

Employers should also focus on helping their new members develop soft skills in terms of dealing with the complainant and the respondent. ICC is the authority within the company to which all the issues of such nature must be communicated. The composition of the ICC is discussed in the theoretical framework with the most significant part being it is headed by a women chairperson who is placed in the highest designation and more than half of the members

⁴⁰ *Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University* (2014 SCC OnLine Bom 814)

of the committee must be women with one external member mostly related to the NGO or doing social work. A complaint with the ICC must be filled within 3 months from the date of incident and in case of series of events, the 3 months period will start from the date of last incident. However, in case of sufficient cause of delay then the same may be accepted. If the employee who has filed the complaint wants to settle the dispute, then conciliation may also be adopted for resolving the dispute. The IC and LC are equipped with the power to suggest the following to the employer to provide interim relief: transfer either the aggrieved or the accused to any other workplace; granting leave to the aggrieved woman for a period of three months in addition to her contractual leave (this is done to help the women restore her psychological balance; the employer may be directed to stop the accused from reporting on the work performance of the aggrieved woman and on writing the confidential report.

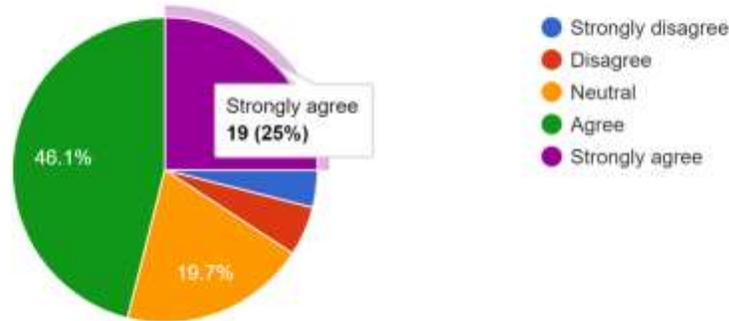
With respect to confidentiality, the employer may request new members to be acting as observers to the functioning of the ICC just to ensure check and balance. This change of adding an observer is not an easy process. When the people could not adjust yet to the old laws, there has come a time to change the ways in the ICC is already functioning. In the suggested change their will be much difficult which will arise, primarily to understand how the entire system of law will work after the change. The disparity with respect to the members and their tenure is decided by the employees and can they be increased by their discretion? Does the employer understand the role of a presiding officer and understand it with that preciseness which will help the aggrieved women and the risk associated with such role? Is the external member appointed by the employer and who decided their tenure? And who needs to change the external member and what are the qualifications other than being devoted to the cause of woman justice.

The Bombay high court in its ruling even ordered that it has no interference with the order of punishment passed by ICC with respect to sexual harassment complaint unless the decision passed is highly disproportionate.⁴¹ The decision is not about the interference of court and the related ifs and buts with respect to it, but it is with respect to the unchecked power and reaffirms the jurisdictional capacity of the ICC. But the whole point lies that is the decision taken by the ICC or the decision is taken by the employer on the suggestion of the ICC? Is the employer vested with the power to overrule and overpower the judgment of the ICC. There are many uncertain and unclear events.

⁴¹ Vidya Akhave v. Union of India and Ors. (Writ Petition 796 of 2015)

5. Is unresponsiveness of the available channels leading to not reporting of enough cases?

76 responses



By asking this question, the author proactively wanted to know is one of the primary reasons the employees refrain from complaining is the idea that justice will never be served, and they will only attract embarrassment and awkward situation. With this point of reasoning 46 percent agree and 19 of the people agree strongly. An ICC even does not have the power to start the inquiry proceedings without the nod of the employer. Coming to a hypothetical situation, A is constantly harassed by B by stalking, verbal comments and touching inappropriately. A has no witness of the same, but C, the employer is aware of the situation. A decides not to file the complaint as she was certain she will not be able to prove it. C can act but will certainly not jeopardize his/her position in the company or the reputation of the company. The situation goes unanswered due to two primary reasons, lack of evidence with the victim and lack of pro-active nature of the employer. In 13 countries surveyed by research group Ispos MORIS, respondents thought that roughly 39% of women have experienced sexual harassment at work, but in reality, on average of 60% women have.⁴²

Every company is required to draft their own set of regulation which shall guide the implementation of POSH in their company. To name one, Parimal Housing Finance⁴³ in their guidebook, gave the power to the company to initiate a Suo motto action in case they became aware of commission of a sexual harassment case, and in the absence of a formal complaint from

⁴² Yatti Soni, “ POSH challenges for startups” , (7Mar, 2020) <https://inc42.com/features/posh-challenges-are-startups-safe-working-havens-for-women/>

⁴³ supra at 38

the employee. This is a proactive step. As per the POSH Act, the ICC cannot initiate any such Suo motto action, but employer can and help the aggrieved woman.

Let us clear one thing out, the authority to hire, to punish and to terminate the services is the employer, and not the IC. So, what role do⁴⁴es the ICC really play? The role played to only guide and the ultimate decision lies with the employer. ICC is not the disciplinary body, but it is the redressal mechanism.

Unresponsiveness of the channel can mean any of the following:

- a) The employer not taking any action even after the report of the ICC
- b) The employer not taking Suo-motto action even after having knowledge of happening of any such event
- c) Lack of proper training of the ICC which ultimately results in the delay of procedural understanding and measures, leaving the aggrieved woman with no way out
- d) Difference of reality in paper and in actual: implementation of POSH act on ground is not yet complete and complied with in many organizations. In government offices especially there is no clear understanding of the act.
- e) Lack of any procedure for appeal after the decision of ICC. So, if the situation turns out that the victim is not believed by the ICC, no matter how much truth she is stating. There is a standstill. The labor tribunals will not entertain a case like this. And going to a court with no evidence sounds unintelligent. So, there is a void between going to ICC, then no appeal, and going to the Criminal system of courts.
- f) A biased ICC panels
- g) Under the authority of this Act, all the companies are required to submit a report on the dealings of the case filled under POSH act. But many states have not claimed this authority yet, leaving the option open to the companies to act in their whims and fancies.
- h) Lack of a sound policy of sexual harassment or its reporting in the company
- i) The reaction received in case the alleged perpetrator is holding a senior management position in the company
- j) Lack of stricter penalties. POSH provides for a punishment of only transfer demotion or termination of services. A charge like outraging the modesty of woman under Section 509 of the Indian Penal Code, 1860 attracts a jail term of 3 years and/or fine.

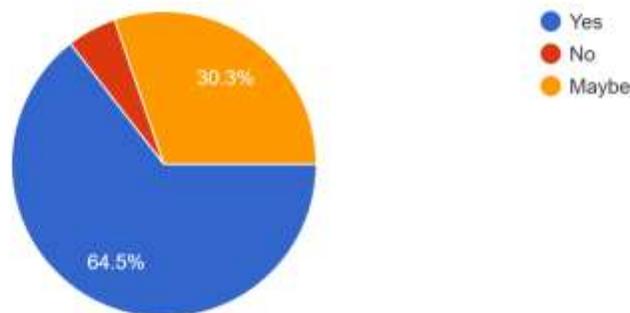
The channels available to a woman employee is approach the boss and they approach the ICC or approach the ICC directly. Either ways there are two blocks here the ICC and the employer. Most situations go unreported on the way they are treated. The only suffered loss is not looked with empathy or compassion but as shame, shame for raising a voice. The total

⁴⁴ Government of Telangana, T-SheBox, <http://www.shebox.nic.in/user/faq>

number of cases reported in financial year 19 is 675 and in 2020 it is 657.⁴⁵ Will this data be really reliable that in a country with 1.26 million registered companies⁴⁶ only 657 complaints were reported? The reduction of case can be due to two reasons: unresponsiveness of channels or improving upon the behavior due to compliance by the company to POSH.

6. The act does not specifically provide for what qualifies as an evidence for sexual harassment. Do you see that as a shortfall of the act?

76 responses



In determining the fate of a case or complaint, it is important to have some evidence and that those evidence are acknowledged by the authorities in favoring the rightful complaint of the aggrieved women. But considering the nature of the act, it considers the offences which often is a conversation within two people, where it is difficult to accumulate prove. Because someone maybe asking sexual favors in a lift which was shared by two people, where no third person is present, there are no cameras, the conversation so happened is not recorded. So, what grounds will the ICC have to believe upon the truthfulness of the complaint. On similar lines, it will be so easy to file a frivolous complaint. There can be no system of checks and balance on this, because what we are talking about is extremely private in nature and not everywhere does a woman go around with recording on or with spy camera.

So how does a woman prove that the employee was constantly staring at her and making her feel uncomfortable. Under the lunch hours, the employee tried to grab the woman from her thighs but from under the table. Verbally, the manager demanded sexual favors, no text, no email, the proof of the offense is a challenge in such a situation. POSH recognizes the offences which take place in isolation and 64.5 percent of the people who took the survey believed that not having proper guidelines for collection of evidence is a shortfall under this act.

⁴⁵ Nasrin Sultana, <https://www.livemint.com/companies/news/sexual-harassment-cases-see-a-marginal-decline-in-india-s-largest-companies-11599384167896.html>

⁴⁶ <http://www.mca.gov.in/MinistryV2/incorporatedorclosedduringthemoth.html>

POSH does recognize evidence but having Indian Evidence Act not being applicable on this what qualifies as an evidence and what not is left to the discretion of the ICC. There is no proper method of how the evidence should be collected, stored, documented, etc. Indian Evidence Act of 1872 was enacted with the intention to show the necessity of an evidence to prove the existence of a crime being committed. Under the POSH Act this criterion is not required. Thus, a complaint can be registered without any evidence and often a case/complaint is registered on the testimony of the victim.

This issue can be argued in a two-fold manner one from the side of the victim and one from the sign of the accused. From the side of the victim, this is a great privilege because for accepting a complaint of sexual harassment a proof is not required but mere existence of sexual harassment. And the law functions on the principle of natural justice, it does not have to be proved like every other case, that sexual harassment happened beyond reasonable doubt, but mere existence of probability of the same, is sufficient.

The ICC has to abide by the principles of natural justice and according to Section 7(4) of the POSH Act⁴⁷, both the parties are given a fair opportunity to u forth their stories. In case the complainant has brought forward any witness, a cross examination of the witness will be allowed. The doctrines of natural justice are individual rules which have been manifested by the judges as being the protection of the rights of the human being on the way to the arbitrary practice that may be implemented by a judicial or quasi-judicial authority for hindering those rights. Audi altera partem is the maxim used to provide a right of fair hearing, and it is only after both the parties have rightfully presented their case, then the ICC will take any decision. In case of *Debjani Sengupta vs. Institute of Cost Accountants of India*⁴⁸, the principle of natural justice must be mandatorily followed else it renders the judgment null and void.

A complaint of sexual harassment attracts mostly a victim favored opinion and understanding and thus it states to be not treated as an empty formality but dealt with precision and utmost dedication. Merely because a person cannot proof his case, should not silence the aggrieved from raising a voice. Often the character of the women is often used as an argument by the respondent to prove the complaint incorrect. In this Supreme Court in case of *State of Maharashtra vs. Mudukar Mardikar*⁴⁹ was clear of its opinion dating back to 1991. The argument that a woman was unchaste so her testimony should not be accepted was bluntly rejected by the court. The Bombay HC had rejected the testimony of the woman which was overturned by the SC.

⁴⁷ Section 7(4) of the Sexual Harassment at Workplace (prevention, Prohibition and Redressal) Act, 2013

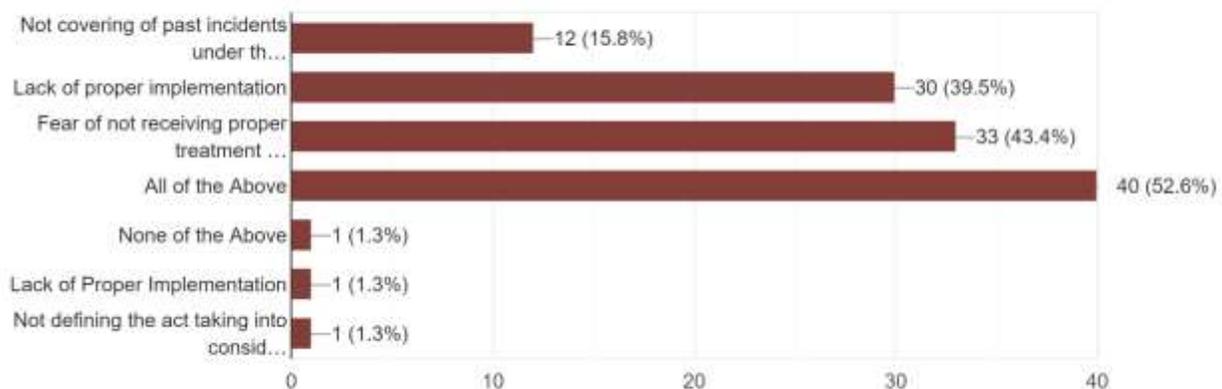
⁴⁸ *Debjani Sengupta v. Institute of Cost Accountants of India* 2019 SC OnLine Cal 734

⁴⁹ *State of Maharashtra vs. Mudukar Mardikar* , AIR 1991 SC 207

In a situation where the ICC is not convinced by the Complainant's testimony, the ICC can summon witnesses and substantiate evidence. If the committee considers that there is scope to question the Accusers statement, they can additionally conduct an internal inquiry. If the Respondent at this instance discredits the Complainants deposition with reasons like being motivated, or any personal enormity or the relationship once shared now gone wrong then the Respondent has to prove these accusations against the woman.

7. What According to you is shortcoming of the Act which results in increase in number of cases?

76 responses



Considering the constant decrease in the number of cases of reporting, it is hard to believe that woman is using the methods which are given to them for the purpose of reporting the cases. One of the major flaws is the act failing to cover the cases retrospectively, as quoted by the framers of the Vishaka guidelines. As the criminal law provides for a period of limitation of two to three years, whereas POSH Act covers a timeline of three months and in case of recurring events then three months from the occurring of the last event of such nature.

Mostly sexual harassment is against a person and that person often responds by filing of counter complaints or dismissing the services of the complainant and or indirectly, directly creating a hostile work environment. This is a tough call for women approaching the system because more than you gaining justice and punishing the wrong doer, you have a chance of losing, losing your self-respect, the job, etc., Having no provision with respect to this, makes it a tough decision to approach the system.

40 responses recorded suggests that all the above-mentioned reasons is adding up to the failure of the act: implementation of the Act, not having retrospective effect and fear of not receiving proper treatment. There was only vote which suggested that none of the above amounts to the shortcomings of the act. Another glaring reason for which the implementation part has taken a setback is because the onus of implementation is on the employers, and the state has relived itself

from all the responsibilities. State is majorly out of the purview of responsibility, the companies which had to register with the state is only implemented in the state of Telangana and Maharashtra. The time frame for LCC to be notified about the case, punishment for government officials failing to comply has no mention in the act. The role of the state especially the state government is negligible in terms of ensuring the enforceability of the Act.

Starting from 1997 to 2017 some major sexual harassment at workplace cases were reported. The industries are vivid and includes private sectors, government bodies, media houses, IT sectors, etc. the struggle and the power of the people is of sheer importance. Some of the cases to name:

- a) Gopal Kanda who was the former Haryana Minister, where an airhostess committed suicide and accused the minister of sexual harassment and the minister was later charged with abatement to suicide. And then the minister rendered his resignation. The sad part is sexual harassment at workplace was not used as a mechanism and under the criminal law, the accused is out on bail.⁵⁰
- b) Against the former SC judge, Ashok Kumar Ganguly⁵¹, a blog was shared by the former law student intern. No complaint was lodged and taking cognizance on the blog, the SC took cognizance and ordered a probe, but no action could be initiated under the POSH act, because the judge was already retired.
- c) Tarun Tejpal, the founder of Tehalka was alleged to have sexually harassed a woman employee in a hotel room in Goa. The trial is going on.

Some more leading cases are KPS Gill, former Punjab Director General of Police, Phaneesh Murthy, executive at Infosys, David the head of Penguin from the Canada division, Shaimak Davar, the Bollywood Choreographer. There is no way which has changed in intimidating coworkers, which is highlighted by the Sexual harassment act. In a survey conducted by putting forward questions to 6,047 participants in various cities by the Indian National Bar Association. One of the questions which was put forward in the survey was if the ICC dealt fairly with the complaints presented to them, 67 percent of the respondent replied with “no”.⁵²

In yet another survey in 2018 conducted by Martha Farrell Foundation and Society for Participatory Research in Asia conducted survey for 655 districts in the country.⁵³ They found many districts had failed to establish the committees or constitute them in line with the

⁵⁰ India Today webdesk, “airhostesses committed suicide amidst sexual harassment complaint” (25 Oct 2019) <https://www.indiatoday.in/india/story/geetika-sharma-air-hostess-suicide-gopal-kanda-harassment-1612964-2019-10-25>

⁵¹ Apoorva, “Supreme Court gags media from reporting MP judge sexual harassment case,” Livemint, October 28, 2014, <https://www.livemint.com/Politics/Lcsq8tvm5VHNJLmvg95xIN/Supreme-Court-gags-media-from-reporting-MP-judge-sexualhara.html> (accessed Nov 23, 2020).

⁵² INBA, “Sexual Harassment at Workplace”, Indian national Bar association, 2017 <https://www.indianbarassociation.org/wp-content/uploads/2017/07/Garima-1INBAs-Book.pdf>

⁵³ Martha Foundation, “RTI survey on POSH” (Oct 23, 2018) <https://www.marthafarrellfoundation.org/>

legal provisions. Even where they existed, it is difficult to find any information on websites or public spaces displaying their names and location. The study highlighted that there is a lack of responsibilities among the committee members, showing lack of capacity of the ICC to handle sexual harassment complaints. Of the 655 districts, 29 percent replied with having a LC and 15 percent highlighted of having no knowledge of it. The majority decided to opt out of the question.

Even in metropolitan cities like Delhi and Mumbai, LC is not constituted in every district and in Mumbai in May 2020, they received complaints as low as five, and that too from the formal sector. Government as an employer and as an implanter is failing to comply with the provisions. Only in the government sector including state and center, there are more than 3 million women workers working ranging from community health worker to as a cook or as a sweeper. When asked about reporting, they would respond with no knowledge of how to go about it.

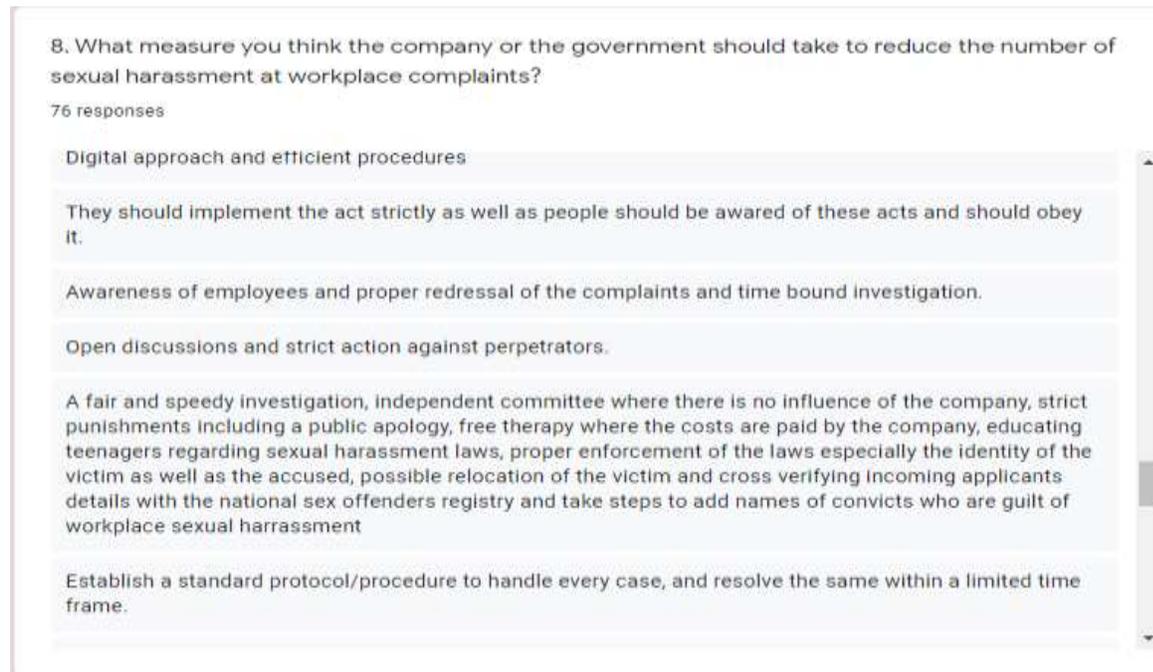
The reasons are vivid when there is no reporting of cases which ranges from fear of losing their job and then feeling like a taboo at work and home, lack of confidentiality, lack of support and lack of proper management on the IC. to fight the case of sexual harassment, the accused often files the reasoning of lack of motive of the accused. However, it is pertinent to note that intent is not required to be proved, the action if malafides is enough to act for punishment. The part of this act is not aware of this and thus not knowing that intent is not necessary.

The composition of ICC includes that a senior level women employee to be the chairperson of the committee, but there is no provision to deal with the situation where there no women present at such senior level. Added to this, there may not even sufficiently number of women to constitute the committee. In case of two employees working at the same company, one accused and one member of the committee, can still unbiased judgment be expected. As in the case of *Somaya gupta vs, Jawaharlala Nehru University and Ors.*⁵⁴, the court held that even if there is a mere apprehension in the mind of normal person then the ICC shall not conduct the enquiry, but who checks it. All these questions are raised only when the case aggrieved goes for appeal in the court. There is also no provision laying down the credibility and expertise of the members who would constitute the committee. The training and capacity building of these members has not been spoken about either. It is also worth noting that the procedure of enquiry and complaints committee procedure is very cumbersome regarding the documents and paperwork.

For a multinational company, having more than 100 offices or branches in the country, where the Act requires the commission of ICC at every level, it is impossible to cater to this demand

⁵⁴ *Somaya Gupta v Jawaharlal Nehru University and Ors.* 2018 (159) FLR 390

due to resource and financial constraint. This suggestion of the POSH seems unrealistic, but how otherwise can this be balanced. The budgetary allocation for the committee and its functioning must be clearly mentioned in the Act. Here the role of company law must also feel because no guidelines as to management of funds with this aspect is a blackhole dug deeper.



In collecting response to question with what the employer of the government should do, 95 percent of the responses were directed to creating awareness and having proper implementation procedure in place. In the case of Usha Padmini and Ors. Vs. State of Karnataka & ors.⁵⁵, the HC clarified that in case a situation has been filled and has been investigated by the ICC, where the ICC finds no merit then filling a same complaint on the same ground in criminal nature is considered to be unjust to the court and the accused.

Mentioning this case, is an attempt of the author to provide that how important it is for the law to clearly put forward its point and for the ICC to have an unbiased and proper and fair hearing, because it is justice and matter of life we are talking about. Some additional suggestions which were made were in case of serious affect on the victim, the free treatment of therapy for the victim borne by the company. Some suggestions were also directed at making the act gender neutral. The rationale behind it could be when everyone we are preaching equality and non-discrimination, having such a legislation is simply believing that no harassment is committed

⁵⁵ Usha Padmini and Ors. V State of Karnataka MANU/KA/0584/2019

towards the man community, may be irrational. Some of the suggestions are already in force which is a sign of the non-awareness about the act.

CHAPTER V: CONCLUSION AND SUGGESTIONS

5.1. ANALYSIS OF THE DATA COLLECTED

Through the research the data collected clearly suggested that more awareness needs to be created amongst the people primarily to be aware of their right and to refute when the same is violated. The aim was mainly to identify the shortcomings of the act which is resulting in woman not using the available mechanism even if it is providing speedy redressal. The shortfalls identified are:

- a) Lack of implementation and zero role of government in helping the working woman.
- b) Not having proper evidentiary rules
- c) Not applied o cases retrospectively
- d) Lack of training
- e) Lack of effective functioning of the ICC.

5.2.SUGGESTIONS

Some of the suggestions based on this empirical research are as follow:

- A) The Act only covers the incidents which happened on or after December 2013. The incidents which happened previously is not under the ambit of this act. During the #MeToo movement, numerous such cases also came into light but where not backed legally due to this shortfall. The only remedy which one can now think of is to increase the timeline of three months of filling the case. The time barred complaints need some sort of protection under the POSH Act.
- B) A clear guideline with respect to who qualifies as an external member to be appointed as the ICC must be mentioned in the act and must be adhered to. This is because, in a situation before the Rajasthan HC, the appointment of a lawyer as an external member was challenged, which created ambiguity on the appointment of external member of ICC.
- C) The tenure of the members of the IC is three years, but it may so happen that the members retire during an ongoing investigation. The act remains silent in a situation like this. So the provision must be created which will either let the same member act as judge in the case until it has finalized its report, else it must brief the newly appointed members about every details of it, resulting in non-compromise of the situation of the victim.
- D) The court interference should not be limited only to appeal but also jurisdiction during conducting the investigation, acts like Suo motto cognizance should be included primarily to give confidence and to have a superior authority have a check. Every decision of the ICC must be impartial, based on the principles of natural justice as held by the Delhi High Court. Even if the biasness of even one member of the ICC is

established then a new committee of IC must be constituted and must proceed afresh with fresh investigation.

- E) The protection can be provided to the victim and allowed to file anonymous complaint. However, providing such a protection, it will be difficult to investigate. So, the existing provision of non-disclosure of the complainant's name must be followed, which shall serve the purpose. As allowing for anonymous complaints may lead to facing of legal challenges and even practical.
- F) The scheme for compensation to the aggrieved women demands clarity and which needs an amendment of the Act. The current provisions are vague and unclear, undermining the situation for ICC to be able to decide a just monetary amount to be imposed upon. Compensation scheme under this act is a rare thing but is suggested to be implemented as a practice.
- G) The very purpose of constituting an ICC or LC under the act is the speedy disposal of complaints unlike the judiciary however, the appeal proceedings for this is defeating the purpose, because of insufficient amount of LC in the state. The non-implementation on the part of government and companies, throws the compliant to the tank of cases of judiciary.
- H) The awareness part of the act is compulsory as the duty of the employer but is yet not implemented. The Act needs the amendment to clarify the role of the government also in the process of implementation. One more important thing which must be added is to where the complaint should lie in case the company has not constituted an ICC and who is eligible to file the complaint as per Section 26 of the Act.
- I) Considering the regularity of incidents have being described and complaints being filed, a Group of Ministers (GoM), controlled by the Home Minister, alongside with three other senior members, was established in October 2018 by the administration. The GoM is meant to be the central authority to investigate the legal and formal structure in dispensing with matters under POSH. This initiative needs to be revived by the government.

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender-based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence.

5.3.SCOPE FOR FURTHER RESEARCH

The topic is barely touched in the opinion of author this is because after 2013 when the act was passed, there has been no amendment to the act, but the question raised to its unclear and

ambiguous situation are many, some as basic as if the employer is not constituting the ICC, then who can file complaint and to come. The definition of sexual harassment can be a topic for further research with certain clarification as to dealings with acts of sexual nature which do not come with evidence, and sexual harassment rules in case of consensual relationship between employees which was terminated. Some innovative proposition can be made with respect to anonymous complaints and help the victim. The topic is very crucial and requires legal attention.

5.4.CONCLUSION

Sexual harassment at workplace has a long way to go, as quoted by Zia Mody on her speech on the 7th anniversary of the law. the long way to go will not be possible without the involvement of the people and the government in the process. Justice served faster, but no actual justice made is the current situation of this Act. The mechanism is available but is not effective and has thus taken a back seat. To be back on the driver seat, the implementation part has to be improvised and the ICC has to be provided with an authority to have checks and balances even when ensuring separation of power.

The power in the hands of the IC cannot be referred as powerful power, but empty power, a power to show, but the real master of the show is the employer as they make the ICC, they implement the decision of the ICC. Which makes ICC as the holder of remainder power to show its decision. With globalization and more and more woman feeling empowered to set out and make a difference are curtailed down by the wings of the sexual predators. The POSH act has a chance of creating a difference subject to proper implementation.

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