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## **LEGAL FRAMEWORK: POSH ACT AND JUDICIAL WORKPLACE GOVERNANCE**

### **Abstract**

This research paper examines the evolution, scope, and effectiveness of India's legal framework on workplace sexual harassment, with particular focus on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and its applicability within judicial workplaces. It traces the development of sexual harassment law from judicial intervention in *Vishaka v. State of Rajasthan* to statutory codification under the POSH Act, highlighting the constitutional foundations rooted in Articles 14, 15, 19, and 21. The paper undertakes a doctrinal and critical analysis of the Act's provisions, including definitions, complaint mechanisms, and the role of Internal Complaints Committees, while identifying structural and practical challenges in implementation—particularly within the judiciary, where traditional employer-employee relationships are often absent.

The study further explores the intersection between civil remedies under the POSH Act and criminal provisions under the Bharatiya Nyaya Sanhita, 2023, revealing conceptual inconsistencies and enforcement gaps. It also evaluates deficiencies in professional regulatory frameworks, notably the absence of explicit sexual harassment provisions in Bar Council rules and judicial service regulations. Through comparative analysis with jurisdictions such as the United Kingdom, United States, and South Africa, the paper identifies best practices and reform pathways. Recent developments, including proposed legislative amendments, Supreme Court directives, and digital complaint mechanisms like the SHe-Box portal, are critically assessed to determine their impact on accessibility and enforcement. The paper concludes that while India has a robust legal framework in theory, its effectiveness is undermined by institutional inertia, ambiguity in applicability to advocates and judges, and inadequate enforcement, necessitating comprehensive legal and structural reforms.

**Keywords:** POSH Act, Sexual Harassment, Judicial Workplace, Gender Justice, Constitutional Law, Internal Complaints Committee, Bharatiya Nyaya Sanhita, Workplace Equality, Legal Profession, Feminist Jurisprudence.

## **Introduction**

Sexual harassment at the workplace constitutes a serious violation of fundamental human rights, undermining the principles of equality, dignity, and freedom guaranteed under the Constitution of India. In professional environments, particularly those characterized by hierarchical power structures, such misconduct not only affects individual victims but also perpetuates systemic gender inequality. The legal recognition of workplace sexual harassment in India has evolved significantly over time, transitioning from fragmented criminal law provisions to a comprehensive rights-based framework anchored in constitutional jurisprudence and statutory enactment.

While the POSH Act represents a significant legislative milestone, its application within judicial workplaces raises complex legal and practical questions. The legal profession operates through unique institutional arrangements, where advocates function as independent practitioners rather than employees, and judges occupy constitutional positions outside conventional employer-employee frameworks. This creates ambiguity regarding the applicability of statutory obligations, particularly in relation to the constitution of Internal Complaints Committees and enforcement of accountability mechanisms. Moreover, despite progressive jurisprudence and statutory provisions, implementation gaps persist. Institutional inertia, lack of awareness, hierarchical culture, and fear of professional retaliation continue to impede effective redressal.



The judiciary, as the guardian of constitutional values, is expected to exemplify adherence to principles of gender justice; however, existing mechanisms within judicial institutions often lack transparency, independence, and accessibility.

In this context, the present research paper seeks to critically examine the legal framework governing workplace sexual harassment in India, with particular emphasis on judicial workplace governance. It analyzes constitutional principles, statutory provisions, criminal law intersections, professional regulatory mechanisms, and recent legal developments to assess whether the current framework adequately addresses the unique challenges faced within the legal profession. The study ultimately aims to identify gaps and propose reforms necessary to ensure a safe, equitable, and dignified working environment for women in judicial spaces.

## **1. EVOLUTION OF SEXUAL HARASSMENT LAW IN INDIA**

The legal recognition of sexual harassment as a distinct workplace violation in India emerged not through legislative initiative but through sustained feminist activism and judicial intervention. Unlike Western jurisdictions, where workplace sexual harassment was addressed through employment discrimination statutes, the Indian legal framework was developed primarily through constitutional interpretation and public interest litigation, reflecting the unique trajectory of gender justice discourse in the country. Before the 1990s, Indian law lacked any specific recognition of sexual harassment as a cognizable legal wrong. Instances of unwelcome sexual conduct were addressed, if at all, through scattered provisions of the Indian Penal Code, 1860, particularly Section 354 (outraging modesty of women) and Section 509 (words or gestures intended to insult the modesty of a woman). These provisions were framed within a narrow conception of honor and modesty rooted in Victorian morality rather than contemporary notions of bodily autonomy and workplace equality. The legislative silence on workplace sexual harassment rendered women workers vulnerable to predatory conduct with minimal recourse to justice.

The transformative moment arrived with the brutal gang rape of Bhanwari Devi in Rajasthan in 1992. Bhanwari Devi, a grassroots social worker employed under a state-sponsored women's development program, was sexually assaulted by upper-caste men as retaliation for her efforts to prevent child marriage. The acquittal of the accused by the trial court and the state government's indifference galvanized women's rights organizations, leading to public interest litigation before the Supreme Court.

The Supreme Court's decision in *Vishaka v. State of Rajasthan*<sup>1</sup> marked a watershed moment in Indian jurisprudence. The Court recognized sexual harassment at the workplace as a violation of fundamental rights guaranteed under Articles 14, 15, 19(1)(g), and 21 of the Constitution. Observing that the absence of domestic legislation created a vacuum incompatible with India's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, which India had ratified in 1993, the Court laid down detailed guidelines to be followed by employers until appropriate legislation was enacted.<sup>2</sup> These "Vishaka Guidelines" mandated the establishment of complaints committees, defined sexual harassment broadly, and imposed obligations on employers to prevent and redress such conduct.

The *Vishaka* judgment represented a paradigm shift by recognizing sexual harassment not merely as an individual tort or criminal offense but as a systemic violation of constitutional rights warranting structural remedies. The Court's expansive interpretation of "workplace" to include any place visited during employment demonstrated judicial progressiveness. However, the guidelines lacked enforcement mechanisms beyond contempt jurisdiction, resulting in inconsistent implementation across sectors.

Following *Vishaka*, judicial pronouncements refined the understanding of sexual harassment. In *Apparel Export Promotion Council v. A.K. Chopra*<sup>3</sup>, the Supreme Court clarified that sexual harassment need not involve physical contact and could be established through unwelcome verbal conduct of a sexual nature, with even a single incident potentially constituting harassment if it created a hostile work environment. Similarly, in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*<sup>4</sup> The Court emphasized that perpetrators' official positions could not shield them from accountability for sexual misconduct.

Despite progressive judicial developments, the absence of comprehensive legislation created enforcement challenges. Many organizations failed to establish complaints committees, and the guidelines' legal status remained uncertain. The impetus for legislative action intensified following sustained advocacy and critical observations by the Supreme Court in *Medha Kotwal Lele v. Union of India*<sup>5</sup>, where the Court expressed concern over non-implementation of *Vishaka* guidelines and directed governments to enforce compliance. The brutal

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<sup>1</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

<sup>2</sup> *Id.*

<sup>3</sup> *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

<sup>4</sup> *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194.

<sup>5</sup> *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

December 2012 Delhi gang rape case, which sparked nationwide protests, created additional political momentum for reform.

In this context, Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which received Presidential assent on April 23, 2013, and came into force on December 9, 2013.<sup>6</sup> The Act represented the statutory crystallization of *Vishaka* principles while expanding protections, clarifying procedures, and imposing penalties for non-compliance. The evolution from *Vishaka* to the POSH Act reflects a broader trajectory in Indian constitutional jurisprudence from judicial activism filling legislative voids to parliamentary codification of judicially recognized rights. However, whether this legislative framework translates into effective protection for women in professional settings, particularly within judicial workplaces where power asymmetries and cultural norms create distinct challenges, remains the central inquiry of this research.

## **2. THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013: A DETAILED ANALYSIS**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, represents India's first comprehensive legislative framework specifically addressing workplace sexual harassment. The Act comprises seven chapters and thirty-two sections, supplemented by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.<sup>7</sup> This section undertakes doctrinal analysis of key provisions with particular attention to their applicability to judicial workplaces.

### **Scope and Applicability**

The Act applies to all workplaces in the public and private sectors, including government organizations, private companies, non-governmental organizations, and the unorganized sectors. Section 2(o) defines "workplace" expansively to include not only traditional office premises but also "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer."<sup>8</sup>This broad definition

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<sup>6</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, India Code (2013).

<sup>7</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, India Gaz. (Dec. 9, 2013).

<sup>8</sup> Sexual Harassment of Women at Workplace Act S.2(o).

holds significance for advocates whose professional engagement spans courtrooms, judges' chambers, Bar association premises, and increasingly, virtual platforms.

However, the Act's applicability to judicial workplaces raises complex questions. While clearly covering court employees such as administrative staff and clerks, the status of advocates presents ambiguity. Advocates are neither employees of courts nor traditional independent contractors. The Supreme Court has characterized advocates as "officers of the court" with special duties and privileges, but this *sui generis* status creates uncertainty regarding whether advocates' chambers constitute "workplaces" under the Act and whether senior advocates engaging junior associates qualify as "employers."

Further complication arises regarding judges. As constitutional functionaries appointed under Articles 124, 217, and 233 of the Constitution, judges do not fit neatly into the employer-employee paradigm underlying the Act. Whether a female advocate can file a complaint under the Act against a judge for harassment in courtrooms or chambers remains legally unresolved, though the in-house procedure established by the Supreme Court for complaints against judges suggests a parallel mechanism exists.

### **Definition of Sexual Harassment**

Section 2(n) defines sexual harassment to include any unwelcome act or behavior, whether directly or by implication, namely: physical contact and advances; demand or request for sexual favors; making sexually colored remarks; showing pornography; or any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.<sup>9</sup> This definition incorporates both *quid pro quo* harassment, where submission to or rejection of sexual advances influences employment decisions, and hostile environment harassment, where conduct creates an intimidating or offensive work environment.

The inclusion of "any other unwelcome physical, verbal or non-verbal conduct of sexual nature" as a residual category ensures the definition is not exhaustive and can encompass emerging forms of harassment, including cyber harassment and harassment in virtual workspaces. The Act recognizes that circumstances constituting sexual harassment may include implied or explicit promises of preferential treatment, threats of detrimental treatment, interference with work performance, or creation of hostile work environments. This acknowledgment of power dynamics proves particularly salient in judicial workplaces

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<sup>9</sup> *Id.* S. 2(n).

where junior advocates depend on senior advocates for mentorship and professional opportunities, and all advocates depend on judicial consideration for case outcomes.

### **Internal Complaints Committee: Structure and Functioning**

The cornerstone of the Act's enforcement mechanism is the Internal Complaints Committee, which every employer with ten or more employees must constitute. Section 4 prescribes the Committee's composition: a Presiding Officer who is a woman employed at senior level; at least two members from amongst employees, preferably committed to women's causes or having legal knowledge; and one external member from NGOs or associations committed to women's rights or familiar with sexual harassment issues.<sup>10</sup>

The mandatory inclusion of an external member aims to ensure independence and prevent institutional bias, recognizing that internal hierarchies may compromise impartiality. However, in judicial workplaces, implementation faces practical challenges. Courts, particularly district courts and High Courts, often lack designated Committees, and where they exist, their composition and independence remain questionable. The hierarchical culture of the judiciary, combined with a lack of transparency regarding Committee proceedings, raises concerns about whether these bodies function effectively or merely serve as paper compliance.

Section 11 mandates that Committee proceedings be completed within ninety days.<sup>11</sup> Inquiries must follow principles of natural justice, providing respondents opportunity to be heard and allowing both parties to present witnesses and evidence. However, the Act does not prescribe detailed procedural rules, leaving Committees with significant discretion which, absent proper training and sensitization, can result in procedurally flawed inquiries that re-traumatize complainants.

### **Complaint Mechanism and Procedure**

Section 9 provides that aggrieved women may file written complaints with the Committee within three months of the incident, extendable by a further three months if the Committee is satisfied that circumstances prevented timely filing.<sup>12</sup> This limitation period, while ensuring prompt resolution, may inadequately account for complex psychological and professional factors delaying reporting in hierarchical settings such as law chambers and courtrooms.

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<sup>10</sup> *Id.* S.4.

<sup>11</sup> *Id.* S.11.

<sup>12</sup> *Id.* S.9.

Upon receiving complaints, Committees must conduct inquiries or, at complainants' request, facilitate settlement through conciliation. However, monetary settlement on a conciliation basis is explicitly prohibited, ensuring employers cannot simply "pay off" complaints. The Act provides that no disciplinary action can be taken against complainants without the Committee's written recommendations, protecting against victimization.

Section 13 empowers Committees to recommend appropriate disciplinary action ranging from written apologies to termination, depending on offense severity.<sup>13</sup> However, the Act is silent on enforcement mechanisms where employers fail to implement recommendations, creating potential accountability gaps, particularly problematic in judicial workplaces where traditional employer-employee relationships do not exist.

### **Duties of Employers**

Section 19 imposes proactive obligations on employers beyond merely establishing Committees, mandating them to: provide safe working environments; display penal consequences of sexual harassment; organize workshops and awareness programs; provide assistance if complainants choose to file police complaints; initiate action under criminal law; treat sexual harassment as misconduct under service rules; and monitor timely submission of Committee reports.<sup>14</sup> These duties reflect a prevention-oriented approach, recognizing that effective redressal requires not merely reactive complaint mechanisms but proactive measures creating gender-sensitive institutional cultures. However, in judicial workplaces, the absence of clear "employer" figures particularly for advocates practicing independently or in chambers raises questions about who bears responsibility for fulfilling these obligations.

### **Penalties and Enforcement**

Sections 26 and 27 prescribe penalties for employers failing to constitute Committees, implement recommendations, or comply with other obligations, including fines up to fifty thousand rupees, with repeat offenses leading to higher penalties and potential business license cancellations.<sup>15</sup> However, the Act does not address how these penalties apply to courts and judicial institutions where traditional regulatory mechanisms may not be appropriate or available.

### **Confidentiality and Protection Against Retaliation**

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<sup>13</sup> *Id.* S.13.

<sup>14</sup> *Id.* S.19.

<sup>15</sup> *Id.* Ss.26–27.

Recognizing that fear of retaliation and loss of privacy deter reporting, the Act mandates strict confidentiality. Section 16 provides that Committees, parties, and witnesses shall not publish or make public identities and addresses of complainants, respondents, or witnesses, with breaches resulting in disciplinary action and penalties.<sup>16</sup> Section 17 protects complainants against adverse employment actions, providing that no woman shall be subject to discharge, dismissal, or employment disadvantage during or consequent to complaint proceedings.<sup>17</sup> However, efficacy of these protections in judicial workplaces where professional consequences may be informal and subtle, such as withdrawal of mentorship or case referrals remains doubtful. The Act represents significant legislative progress, but its effective implementation in judicial workplaces requires recognition of unique features of legal practice, including the absence of traditional employment relationships, hierarchical and insular court culture, and power dynamics between advocates along lines of seniority, gender, and caste.

### 3. CONSTITUTIONAL PROVISIONS AND GENDER JUSTICE

The constitutional foundations protecting against sexual harassment are rooted in the transformative vision of India's Constitution, which guarantees equality, dignity, and freedom while imposing special obligations on the State to eliminate gender-based discrimination. This section examines constitutional provisions underpinning legal protections and jurisprudential principles developed by Indian courts.

#### **Article 14: Equality Before Law**

Article 14 guarantees equality before law and equal protection of laws to all persons within Indian territory.<sup>18</sup> The Supreme Court has interpreted this provision to prohibit not only direct discrimination but also practices having discriminatory effects, even if facially neutral. Sexual harassment constitutes an Article 14 violation because it denies women equal work conditions and creates discriminatory environments impeding professional advancement. In *Vishaka*, the Court explicitly held that sexual harassment violates the fundamental right to gender equality, as it subjects women to adverse working conditions solely based on sex. The Court observed that equality includes the right to work in harassment-free environments, and failure to provide such environments amounts to sex-based discrimination prohibited by Article 14.

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<sup>16</sup> *Id.* S.16.

<sup>17</sup> *Id.* S.17.

<sup>18</sup> India Const. art. 14.

## **Article 15: Prohibition of Discrimination on Grounds of Sex**

Article 15(1) prohibits State discrimination on grounds of sex, while Article 15(3) empowers the State to make special provisions for women and children.<sup>19</sup> Sexual harassment constitutes direct sex-based discrimination within Article 15's meaning, as it is behavior directed at women precisely because of their gender. The Supreme Court has held that Article 15 prohibits not only formal discrimination but also requires positive measures eliminating substantive inequalities faced by women. Importantly, Article 15(3) authorizes affirmative action and special protective measures for women, providing constitutional legitimacy for gender-specific legislation such as the POSH Act. The Court has clarified that such legislation does not violate equality principles but rather advances substantive equality by addressing historical and structural disadvantages women face.

## **Article 19(1)(g): Freedom to Practice Any Profession**

Article 19(1)(g) guarantees all citizens the right to practice any profession, trade, business, or occupation.<sup>20</sup> Sexual harassment interferes with this fundamental right by creating hostile conditions deterring women from entering or continuing in chosen professions. For female lawyers, who constitute a small minority in the legal profession, sexual harassment operates as a systemic barrier to professional participation and advancement. In *Vishaka*, the Court recognized that sexual harassment violates Article 19(1)(g) by creating conditions preventing women from effectively exercising their right to practice professions. The Court observed that this right includes working in conditions of safety, dignity, and equality all compromised by sexual harassment.

## **Article 21: Right to Life and Personal Liberty**

Article 21 guarantees protection of life and personal liberty. The Supreme Court has expansively interpreted this provision to encompass unenumerated rights essential to human dignity. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>21</sup>, the Court held that the right to life includes living with human dignity, encompassing all facets making life worth living. Sexual harassment violates Article 21 by infringing upon women's dignity, bodily autonomy, and psychological integrity. In *Vishaka*, the Court held that sexual harassment amounts to violating the fundamental right to life with dignity guaranteed under Article 21, as it subjects women to psychological trauma, professional insecurity, and

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<sup>19</sup> *Id.* art. 15.

<sup>20</sup> *Id.* art. 19(1)(g).

<sup>21</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

degradation. The Court emphasized that dignity is not merely abstract but a concrete constitutional guarantee imposing obligations on the State and private actors to create conditions enabling individuals to live with self-respect and autonomy.

Subsequent judgments reinforced this interpretation. In *Justice K.S. Puttaswamy v. Union of India*<sup>22</sup>, the Supreme Court recognized privacy as an intrinsic aspect of dignity protected under Article 21, holding that bodily autonomy and freedom from unwanted physical or sexual contact are core privacy components. This jurisprudence provides additional constitutional grounding for sexual harassment protections, framing such conduct not merely as discrimination but as violations of bodily integrity and personal autonomy.

### **Article 51A(e): Fundamental Duty**

Article 51A(e) imposes a fundamental duty on every citizen "to renounce practices derogatory to the dignity of women."<sup>23</sup> While fundamental duties are not directly enforceable through judicial remedies, they serve as interpretive guides for understanding fundamental rights and citizens and institutions. The Supreme Court has invoked Article 51A(e) to underscore that sexual harassment violates not merely legal norms but constitutional duties owed by all society members. This provision reinforces the understanding that combating sexual harassment requires not only legal mechanisms but also cultural and attitudinal shifts within workplaces and professional communities, including the legal profession.

### **International Law and Constitutional Interpretation**

Article 51(c) directs the State to respect international law and treaty obligations.<sup>24</sup> India is signatory to several international instruments relevant to gender equality and sexual harassment protection, including the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, and ILO Convention No. 190 on Violence and Harassment.

In *Vishaka*, the Supreme Court invoked CEDAW to fill the legislative vacuum regarding sexual harassment, holding that absent conflicting domestic law, international conventions can be read into fundamental rights to expand their content. This principle of harmonious construction between domestic constitutional rights and international human rights obligations has since been applied in numerous cases, reflecting India's constitutional commitment to global human rights standards. The constitutional framework establishes that

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<sup>22</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>23</sup> India Const. art. 51A(e).

<sup>24</sup> *Id.* art. 51(c).

protection against sexual harassment is not merely statutory compliance but a fundamental constitutional imperative rooted in equality, dignity, liberty, and non-discrimination principles. For judicial workplaces—institutions charged with upholding and interpreting the Constitution failure to effectively prevent and address sexual harassment represents not only legal failure but profound constitutional contradiction undermining the justice system's legitimacy and integrity.

#### **4. RELEVANT PROVISIONS OF BHARATIYA NYAYA SANHITA, 2023**

On July 1, 2024, India's criminal justice system underwent a historic transformation with the implementation of the Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code, 1860.<sup>25</sup> While maintaining substantive continuity with many IPC provisions, the BNS introduced modifications in structure, language, and certain substantive elements. This section examines BNS provisions relevant to sexual harassment and analyzes their interaction with civil remedies under the POSH Act.

##### **Section 74 BNS: Sexual Harassment**

Section 74 directly addresses sexual harassment, providing that whoever with intention to outrage or knowledge that he is likely to outrage a woman's modesty, makes any sexual or offensive gesture or sound, exhibits any object intending such gesture, shall be observed by the woman, or intrudes upon her privacy, shall be punished with simple imprisonment extending to three years and a fine.<sup>26</sup>

This provision largely replicates erstwhile Section 354A IPC, introduced through the Criminal Law (Amendment) Act, 2013, following the December 2012 Delhi gang rape case. Section 354A IPC had defined sexual harassment to include: physical contact and advances involving unwelcome explicit sexual overtures; demands or requests for sexual favors; showing pornography against women's will; or making sexually colored remarks.

Section 74 BNS adopts slightly modified language, focusing on "intention to outrage modesty" and "sexual or offensive gesture or sound," which appears narrower than the comprehensive definition under Section 354A IPC. This linguistic shift raises interpretive concerns, particularly regarding whether the provision adequately captures all workplace sexual harassment forms recognized under the POSH Act, such as the creation of hostile work environments through repeated non-physical conduct.

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<sup>25</sup> Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India Code (2023).

<sup>26</sup> *Id.* S.74.

The punishment prescribed simple imprisonment up to three years and a fine—remains identical to Section 354A IPC, suggesting no substantive change in the legislature's assessment of offense gravity. However, characterizing the offense as involving "modesty" perpetuates problematic frameworks critiqued by feminist legal scholars, who argue that sexual harassment should be understood as violating bodily autonomy and dignity rather than affronting Victorian notions of female honor.

### **Section 78 BNS: Assault or Criminal Force with Intent to Outrage Modesty**

Section 78 provides that whoever assaults or uses criminal force to any woman, intending to outrage or knowing it is likely to outrage her modesty, shall be punished with imprisonment of either description for terms not less than one year but extending to five years, and shall also be liable to fine.<sup>27</sup>

This provision corresponds to erstwhile Section 354 IPC and addresses physical sexual assault forms involving criminal force. The offense requires actual physical contact or force use, distinguishing it from Section 74 which encompasses non-contact harassment such as sexually colored remarks or gestures. The enhanced punishment mandatory minimum of one year and maximum of five years reflects greater severity attributed to physical assaults.

For female lawyers in judicial workplaces, Section 78 would apply to unwelcome physical touching, groping, or assault instances occurring in courtrooms, chambers, or court premises. However, the provision's reliance on "modesty" continues to frame the offense in terms of moral propriety rather than bodily autonomy, limiting its conceptual alignment with contemporary understandings of sexual violence as fundamental rights violations.

### **Section 79 BNS: Word, Gesture, or Act Intended to Insult Modesty**

Section 79 provides that whoever, intending to insult any woman's modesty, utters any word, makes any sound or gesture, or exhibits any object, intending such word or sound shall be heard or gesture seen by the woman, or intrudes upon her privacy, shall be punished with simple imprisonment extending to three years and a fine.<sup>28</sup> This provision mirrors erstwhile Section 509 IPC and addresses verbal and gestural harassment, including cat-calling, obscene comments, and exhibitionism. The offense does not require physical contact but encompasses conduct insulting or intruding upon women's privacy or dignity.

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<sup>27</sup> *Id.* S.78.

<sup>28</sup> *Id.* S.79.

Section 79 is particularly relevant to judicial workplaces, where harassment may manifest through sexually colored remarks about female lawyers' appearance, demeaning comments about capabilities linked to gender, or inappropriate gestures during court proceedings. However, as with Sections 74 and 78, framing the offense in "modesty" terms rather than dignity or autonomy limits its progressive potential.

### **Interface Between BNS Provisions and POSH Act**

The relationship between criminal law provisions under BNS and civil remedies under the POSH Act presents both complementarity and tension. The POSH Act explicitly provides that nothing prevents aggrieved women from initiating criminal proceedings under the IPC (now BNS) or other laws for the same or related offenses.<sup>29</sup> This allows parallel proceedings criminal prosecution under BNS and internal complaints under the POSH Act recognizing these mechanisms serve different purposes: the former aims at punishment and deterrence, while the latter focuses on workplace remedies and prevention.

However, several practical challenges arise. First, definitions of sexual harassment under the POSH Act and BNS differ significantly. The POSH Act adopts broad, workplace-centric definitions including hostile environment creation and quid pro quo demands, even absent explicit sexual conduct. In contrast, BNS provisions focus on specific acts physical contact, gestures, remarks with intent to outrage modesty, which may not capture all workplace harassment scenarios recognized under the POSH Act.

Second, the burden of proof differs between civil and criminal proceedings. POSH Act inquiries operate on preponderance of probabilities standards, whereas criminal prosecutions require proof beyond a reasonable doubt. This means conduct may constitute sexual harassment under the POSH Act without resulting in a criminal conviction under BNS, and vice versa.

Third, framing BNS offenses around "modesty" perpetuates paternalistic and moralistic understandings of sexual violence, contrasting with the rights-based POSH Act framework emphasizing dignity, equality, and autonomy. This conceptual divergence may lead to inconsistent application and undermine efforts to shift cultural understandings of sexual harassment from personal honor to constitutional rights.

For female lawyers in judicial workplaces, the availability of both civil and criminal remedies theoretically provides comprehensive protection. However, practical barriers

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<sup>29</sup> Sexual Harassment of Women at Workplace Act S.27.

including fear of professional retaliation, lack of functional Committees, delays in criminal justice processes, and social stigma often render both mechanisms inaccessible. Moreover, the absence of BNS case law, given the statute's recent enactment, leaves interpretive questions unresolved, particularly regarding how courts will apply these provisions in professional workplace contexts. The criminal law framework under BNS, while maintaining IPC continuity, requires critical evaluation in light of contemporary feminist legal scholarship and specific vulnerabilities women face in professional workplaces, including judicial settings. Effective protection demands not only robust legal provisions but also cultural shifts in understanding sexual harassment as constitutional rights violations rather than merely offenses against traditional notions of female virtue.

## **5. BAR COUNCIL REGULATIONS AND JUDICIAL SERVICE RULES**

Regulation of professional conduct within the legal profession operates through dual frameworks: the Bar Council of India governs advocates' conduct through rules framed under the Advocates Act, 1961, while judicial service rules govern court employees' and, to some extent, judicial officers' conduct. This section examines relevant provisions of these regulatory frameworks and their implications for addressing sexual harassment in judicial workplaces.

### **The Advocates Act, 1961, and Bar Council of India Rules**

The Advocates Act, 1961, establishes the Bar Council of India as the apex regulatory body for India's legal profession.<sup>30</sup> Section 49 empowers the Bar Council to frame rules laying down standards of professional conduct and etiquette for advocates. Pursuant to this power, the Bar Council has framed the Bar Council of India Rules, including Part VI containing Standards of Professional Conduct and Etiquette.

However, critical examination reveals a conspicuous absence of specific provisions addressing sexual harassment within the legal profession. The Rules primarily focus on traditional professional misconduct issues such as improper work solicitation (Rule 36), conduct unbecoming of advocates (Rule 49), and obligations toward clients and courts. Rule 49 provides that advocates shall not engage in conduct "unworthy of his profession," but this general provision lacks specificity regarding sexual harassment and offers little guidance on complaint mechanisms or disciplinary consequences.

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<sup>30</sup> Advocates Act, 1961, No. 25 of 1961, India Code (1961).

Section 35 of the Advocates Act lists grounds for disciplinary action against advocates, including "professional or other misconduct."<sup>31</sup> While sexual harassment could theoretically fall within the "professional misconduct" ambit, the absence of explicit provisions creates uncertainty and leaves enforcement to State Bar Councils' and disciplinary committees' discretion, which historically show reluctance in addressing gender-based professional misconduct.

The Bar Council's failure to frame comprehensive rules specifically addressing sexual harassment within the profession despite the POSH Act's 2013 enactment reflects institutional inertia and lack of commitment to gender justice within legal professional regulation. This lacuna proves particularly problematic given that advocates' chambers and law firms often lack Committees mandated by the POSH Act, either falling below the ten-employee threshold or because senior advocates contend they are not "employers" within the Act's meaning.

### **State Bar Council Responsibilities**

State Bar Councils, constituted under Section 3 of the Advocates Act, exercise disciplinary jurisdiction over enrolled advocates.<sup>32</sup> Section 56 provides that State Bar Councils may inquire into professional or other misconduct complaints and, if satisfied of guilt, may reprimand, suspend, or remove advocates' names from rolls. Despite this disciplinary authority, State Bar Councils have largely failed to address sexual harassment complaints effectively. Empirical studies and anecdotal evidence suggest that Bar Councils often treat such complaints as private disputes rather than professional misconduct issues, lack trained personnel handling gender-sensitive matters, and are influenced by the same hierarchical and patriarchal culture pervading the legal profession. Moreover, the absence of clear procedural guidelines for handling sexual harassment complaints results in inconsistent and often arbitrary decision-making. Some State Bar Councils have taken tentative steps toward addressing gender issues, with several Bar Associations constituting Gender Sensitization and Sexual Harassment Committees, though these often lack statutory backing, independence, and enforcement powers. Without integration into the Advocates Act's formal disciplinary framework, such committees remain largely symbolic.

### **Judicial Service Rules**

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<sup>31</sup> *Id.* S.35.

<sup>32</sup> *Id.* S.3.

Judicial officers and court employees are governed by service rules framed by respective High Courts under Article 229 of the Constitution, which grants High Courts the power to make rules regulating appointments and conditions of service of persons appointed to the subordinate judiciary and court staff.<sup>33</sup> Additionally, for High Court employees, rules are framed by Chief Justices under Article 229, while Supreme Court employees are governed by the Supreme Court Officers and Servants (Conditions of Service and Conduct) Rules, 1961.

Review of representative service rules from various High Courts reveals most include general conduct provisions prohibiting "unbecoming behavior" or "conduct prejudicial to office dignity," but few explicitly address sexual harassment. Following the POSH Act's enactment, some High Courts issued administrative circulars requiring the establishment of Committees for court staff, but implementation remains inconsistent and opaque. For judicial officers, additional regulatory layers exist through the In-House Procedure established by the Supreme Court in 1997 for addressing misconduct complaints, including sexual harassment, against judges. However, this procedure has been criticized for lack of transparency, independence, and effectiveness, with complainants facing significant barriers accessing the mechanism and little public accountability regarding outcomes.

### **All India Services (Conduct) Rules and Central Civil Services (Conduct) Rules**

Government lawyers, including public prosecutors and legal advisors, are civil servants governed by applicable conduct rules. The All India Services (Conduct) Rules, 1968, applicable to members of the Indian Administrative Service, Indian Police Service, and Indian Forest Service (some serving as law officers), contain general conduct provisions but lacked specific sexual harassment provisions until recently.<sup>34</sup> Following the POSH Act, the Department of Personnel and Training issued guidelines requiring all government departments to establish Committees and comply with the Act's provisions. The Central Civil Services (Conduct) Rules, 1964, have been interpreted to include sexual harassment as misconduct warranting disciplinary action.<sup>35</sup> However, enforcement remains inconsistent, and government lawyers often face similar reporting barriers as private practitioners.

### **Regulatory Gaps and Reform Imperatives**

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<sup>33</sup> India Const. art. 229.

<sup>34</sup> All India Services (Conduct) Rules, 1968, India Gaz. (1968).

<sup>35</sup> Central Civil Services (Conduct) Rules, 1964, India Gaz. (1964).

The existing regulatory framework suffers from significant gaps. First, the Bar Council of India Rules lack explicit sexual harassment provisions, leaving regulatory voids undermining professional accountability for addressing gender-based misconduct. Second, the absence of mandatory Committees in advocates' chambers and law firms particularly those with fewer than ten employees creates enforcement challenges, as the POSH Act's applicability to these settings remains contested. Third, the hierarchical and insular culture of Bar Councils and disciplinary committees, combined with a lack of gender sensitization training, results in inadequate handling of sexual harassment complaints when filed. Fourth, judicial service rules vary across states and lack uniformity in addressing sexual harassment, leading to disparate protection levels for court employees depending on jurisdiction. Fifth, the In-House Procedure for judges, while theoretically addressing complaints against judicial officers, operates with minimal transparency and limited accessibility, particularly for external complainants such as advocates appearing before concerned judges.

Addressing these gaps requires comprehensive reform, including: amendment of Bar Council Rules to explicitly prohibit sexual harassment and establish clear complaint mechanisms; mandatory establishment of independent Gender Sensitization and Sexual Harassment Committees in all Bar Associations with transparent procedures; harmonization of judicial service rules across states ensuring consistent standards; strengthening the In-House Procedure with external oversight; and regular sensitization training for Bar Council members, judges, and senior advocates on gender justice and workplace harassment.

The regulatory framework governing professional conduct in judicial workplaces must evolve beyond general "unbecoming conduct" prohibitions to explicitly recognize and address sexual harassment as professional misconduct violating constitutional rights and undermining legal profession integrity. Without such reform, noble ideals of justice, equality, and dignity the legal profession purports to uphold will remain aspirational rather than lived realities for women lawyers.

## **6. INTERNATIONAL CONVENTIONS AND COMPARATIVE PERSPECTIVE**

India's legal framework addressing workplace sexual harassment operates within broader international human rights standards establishing State obligations to prevent and remedy gender-based violence. This section examines key international instruments relevant to sexual harassment protection and undertakes comparative analysis of legal frameworks in select jurisdictions, offering instructive insights for strengthening protections in Indian judicial workplaces.

## **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

India ratified CEDAW in 1993, undertaking obligations to eliminate discrimination against women in all spheres.<sup>36</sup> General Recommendation No. 19 of the CEDAW Committee explicitly recognizes gender-based violence, including sexual harassment, as a form of discrimination violating women's rights to equality and non-discrimination. The Committee has stated that sexual harassment includes unwelcome sexually determined behavior such as physical contact, advances, sexually colored remarks, showing pornography, and sexual demands, whether by words or actions, creating hostile, humiliating, or offensive environments.

CEDAW Article 11 specifically addresses women's rights in employment, requiring States Parties to take appropriate measures to eliminate discrimination in employment and ensuring rights to work in safe and healthy conditions.<sup>37</sup> The Committee has interpreted this provision to require States to adopt and enforce laws prohibiting sexual harassment in workplaces, establish complaint mechanisms, and provide effective remedies for victims.

India's POSH Act represents compliance with CEDAW obligations, as the Supreme Court in *Vishaka* explicitly invoked CEDAW to justify judicial lawmaking in the absence of domestic legislation. However, effective implementation remains crucial for genuine compliance, as CEDAW obligations extend beyond formal legal enactments to require States ensure laws are effectively enforced and women can access remedies in practice.

## **ILO Convention No. 190 on Violence and Harassment**

The International Labour Organization adopted Convention No. 190 concerning the Elimination of Violence and Harassment in the World of Work in 2019.<sup>38</sup> This landmark convention recognizes the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. The Convention defines "violence and harassment" broadly to include behaviors, practices, or threats that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm.

Significantly, the Convention applies to all sectors, whether private or public, formal or informal economy, and covers workers and other persons in the world of work, including

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<sup>36</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by India July 9, 1993).

<sup>37</sup> *Id.* art. 11.

<sup>38</sup> Violence and Harassment Convention, 2019 (No. 190), International Labour Organization (adopted June 21, 2019).

interns, apprentices, workers whose employment has been terminated, volunteers, job seekers, and job applicants. It explicitly includes violence and harassment occurring in the course of, linked with, or arising out of work, including during work-related trips, events, or social activities, in work-related communications enabled by technology, in employer-provided accommodation, and when commuting to and from work.

While India has not yet ratified ILO Convention No. 190, the instrument represents evolving international standards and provides benchmarks against which domestic frameworks can be evaluated. The Convention's expansive understanding of workplace violence and its emphasis on prevention through risk assessment, training, and policy development align with the POSH Act's approach but exceed its scope in several respects, particularly regarding coverage of informal workers and technology-enabled harassment.

### **Comparative Analysis: United Kingdom**

The United Kingdom addresses workplace sexual harassment through the Equality Act 2010, which prohibits harassment related to protected characteristics, including sex.<sup>39</sup> The Act defines harassment as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment. Importantly, UK law imposes vicarious liability on employers for harassment by employees, unless employers can demonstrate they took all reasonable steps to prevent such harassment.

The Bar Standards Board, regulating barristers in England and Wales, has issued specific guidance on equality and diversity, including sexual harassment provisions. The Handbook explicitly states that barristers must not discriminate unlawfully or victimize any person, and must not harass any other person. Disciplinary mechanisms exist for addressing complaints against barristers, including sexual harassment allegations.

UK law offers instructive lessons for India, particularly regarding vicarious employer liability, incentivizing proactive prevention measures, and professional regulatory bodies' explicit integration of sexual harassment prohibitions into conduct standards. The Bar Standards Board's approach demonstrates how professional regulation can complement employment law in addressing harassment within legal professions.

### **Comparative Analysis: United States**

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<sup>39</sup> Equality Act 2010, c. 15 (UK).

In the United States, workplace sexual harassment is primarily addressed through Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex.<sup>40</sup> The Supreme Court has interpreted Title VII to encompass sexual harassment as a form of sex discrimination, recognizing both quid pro quo harassment and hostile work environment harassment.

The American Bar Association has adopted Model Rule 8.4(g), which provides that it is professional misconduct for lawyers to engage in conduct that constitutes harassment or discrimination based on sex in conduct related to the practice of law.<sup>41</sup> Several state bars have adopted this rule or similar provisions, subjecting lawyers to disciplinary action for sexual harassment. Additionally, many bar associations have established structures to receive and investigate complaints.

US law's distinction between quid pro quo and hostile environment harassment, its development through extensive case law, and professional associations' efforts to address harassment within the legal profession offer valuable comparative insights. However, the US law's employer-centric framework presents challenges for addressing harassment in settings like law firms, where partnership structures complicate traditional employer-employee relationships a challenge shared with Indian advocates' chambers.

### **Comparative Analysis: South Africa**

South Africa addresses workplace sexual harassment through multiple frameworks. The Constitution guarantees equality and prohibits unfair discrimination, including on grounds of sex and gender.<sup>42</sup> The Employment Equity Act, 1998, explicitly prohibits sexual harassment and imposes duties on employers to prevent it. The Code of Good Practice on Harassment provides detailed guidance on prevention and complaint procedures.

Significantly, South African law recognizes that sexual harassment violates constitutional rights to equality and dignity, similar to the Indian constitutional framework articulated in *Vishaka*. The Constitutional Court has emphasized that sexual harassment undermines women's equal participation in the workplace and society.

The General Council of the Bar of South Africa has issued guidelines on sexual harassment applicable to advocates, though implementation challenges persist. South Africa's

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<sup>40</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. Ss. 2000e to 2000e-17).

<sup>41</sup> Model Rules of Pro. Conduct r. 8.4(g) (Am. Bar Ass'n 2016).

<sup>42</sup> Model Rules of Pro. Conduct r. 8.4(g) (Am. Bar Ass'n 2016).

constitutional framework and its explicit recognition of sexual harassment as violating fundamental rights resonate with India's approach, offering comparative validation for rights-based frameworks while also illustrating persistent implementation challenges even with robust legal provisions.

### **Lessons for Indian Judicial Workplaces**

Comparative analysis reveals several instructive lessons for strengthening protections against sexual harassment in Indian judicial workplaces. First, professional regulatory bodies Bar Councils in India's case must explicitly integrate sexual harassment prohibitions into conduct standards with clear disciplinary consequences, as demonstrated by UK and US bar associations. Second, vicarious liability principles, as in UK law, can incentivize proactive prevention measures by employers and senior advocates engaging junior lawyers. Third, an expansive understanding of workplace violence, as articulated in ILO Convention No. 190, suggests Indian law could benefit from greater attention to technology-enabled harassment and informal work settings. Fourth, constitutional frameworks emphasizing sexual harassment as dignity and equality violations, as in South African law, validate India's rights-based approach while underscoring importance of effective implementation mechanisms.

However, comparative law also illustrates that robust legal frameworks alone prove insufficient without cultural shifts, effective enforcement, and accessible remedies. Cross-jurisdictional experiences underscore that addressing sexual harassment in hierarchical professions like law requires multi-faceted approaches combining legal reform, professional regulation, institutional accountability, and cultural transformation.

## **7. JUDICIAL PRECEDENTS AND INTERPRETATION**

Judicial precedents have shaped the understanding and application of laws addressing sexual harassment in India, with courts playing crucial roles in recognizing rights, interpreting statutes, and establishing enforcement standards. This section examines key judgments relevant to sexual harassment in workplaces generally and judicial workplaces specifically, analyzing their implications for protecting female lawyers.

### **Foundational Jurisprudence: Vishaka and Its Progeny**

*Vishaka* remains the foundational judgment establishing sexual harassment as a constitutional rights violation. The Court's recognition that sexual harassment violates Articles 14, 15, 19(1)(g), and 21 established normative foundations for all subsequent legal

developments. The judgment's significance extends beyond its specific guidelines to its methodological approach invoking international human rights instruments to fill domestic legal gaps and employing public interest litigation to address systemic gender injustice.

The *Vishaka* Guidelines mandated employers to: establish complaints committees with women members; define sexual harassment comprehensively; provide complaint procedures ensuring confidentiality; ensure no retaliation against complainants; and conduct awareness programs.<sup>43</sup> These guidelines remained binding law until the POSH Act's enactment, and continue to inform interpretation of statutory provisions.

*Apparel Export Promotion Council* expanded the understanding of what constitutes sexual harassment, clarifying that physical contact is not essential and even single incidents of sexually offensive behavior can constitute harassment if they create hostile environments. This judgment proved significant for recognizing that harassment's impact on victims, not merely perpetrators' intentions or conduct frequency, determines whether behavior crosses legal thresholds.

*Medha Kotwal Lele* addressed implementation gaps, with the Supreme Court expressing concern over widespread non-compliance with *Vishaka* Guidelines and directing governments to ensure strict enforcement. The Court emphasized that mere formal compliance through committee establishment was insufficient; committees must function effectively with trained members, adequate resources, and institutional support.

#### Recent Developments: Aureliano Fernandes and Implementation Deficits

In *Aureliano Fernandes v. State of Goa*<sup>44</sup>, decided in 2023, the Supreme Court expressed grave concern over widespread non-compliance with the POSH Act across India. The Court directed all States and Union Territories to submit compliance reports regarding the establishment of Internal Complaints Committees in government departments and public sector undertakings. The judgment described the situation as an "alarming state of affairs," noting that many workplaces had not constituted committees despite statutory obligations. This judgment assumes particular significance for this research, as it validates central hypotheses regarding gaps between legislative intent and ground-level implementation. The Court's observations suggest that even a decade after the POSH Act's enactment, structural and institutional failures persist in translating legal mandates into effective workplace protections.

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<sup>43</sup> Id.

<sup>44</sup> *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 436.

## **Judicial Workplace Specific Jurisprudence**

*In Re: Matter of Sexual Harassment Allegations Against the Chief Justice of India*<sup>45</sup> represents a controversial moment in the Indian judiciary's history. In 2019, a former Supreme Court employee alleged sexual harassment against the then Chief Justice of India. The Supreme Court constituted an in-house inquiry committee comprising three sitting judges. The proceedings raised significant questions about procedural fairness, independence, and transparency when complaints involve the highest judicial officers.

The complainant withdrew from proceedings citing a lack of procedural safeguards, and the committee ultimately found allegations "not established." Civil society organizations and women's rights groups criticized the procedure's opacity, absence of external members as required under the POSH Act, and inadequate protections for complainants. This episode highlighted unique challenges in addressing sexual harassment allegations within the judiciary, where conventional accountability mechanisms face constraints arising from judicial independence and hierarchical institutional culture.

While the Supreme Court's In-House Procedure provides mechanisms for addressing complaints against judges, its operation outside public scrutiny and without external oversight raises questions about whether it adequately protects complainants, particularly those like advocates who are not court employees but interact with the judiciary professionally. The tension between judicial independence and accountability for sexual harassment remains unresolved in Indian jurisprudence.

## **Interpretation of "Workplace" and "Employer"**

Courts have interpreted "workplace" under the POSH Act expansively, recognizing that harassment can occur in locations beyond traditional office premises. In several judgments, courts have held that places visited during employment courses, including client locations, conferences, and even social events with professional connections, fall within workplace definitions.

However, specific questions regarding advocates' chambers remain unaddressed in authoritative precedents. Whether advocates' chambers constitute "workplaces" for POSH Act purposes, whether senior advocates employing junior lawyers qualify as "employers," and whether advocates can file complaints against judges under the Act have not been

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<sup>45</sup> *In Re: Allegations of Sexual Harassment Against Justice Ranjan Gogoi*, Suo Motu Writ Petition (Crl.) No. 1/2019.

definitively resolved through judicial interpretation. This legal uncertainty creates implementation gaps and deters potential complainants uncertain about available remedies.

### **Burden of Proof and Evidentiary Standards**

Courts have clarified that in sexual harassment proceedings, complainants need not prove allegations beyond a reasonable doubt; the preponderance of probabilities standard applies. In *Medha Kotwal Lele*, the Supreme Court emphasized that committees must not apply criminal law standards when conducting inquiries, as doing so would make it nearly impossible for complainants to establish harassment, particularly since such incidents often occur privately without witnesses. However, courts have also cautioned against false allegations, noting that while genuine complaints must be taken seriously, malicious or fabricated allegations harm both accused individuals and the broader cause of women's rights. This balancing act protecting genuine complainants while preventing misuse represents an ongoing judicial challenge requiring nuanced approaches sensitive to power dynamics and structural inequalities characterizing workplace relationships.

### **Confidentiality and Privacy**

Courts have consistently emphasized confidentiality importance in sexual harassment proceedings, recognizing that breach of privacy can cause additional trauma to complainants and deter reporting. In multiple cases, courts have issued directions prohibiting media publication of complainants' identities and have taken serious views of confidentiality breaches.

In *Justice K.S. Puttaswamy*, the Supreme Court's recognition of privacy as a fundamental right protected under Article 21 has implications for sexual harassment cases, as it establishes constitutional foundations for confidentiality requirements in the POSH Act. However, tensions can arise between confidentiality requirements and transparency demands, particularly in cases involving public officials or when accused persons seek to defend their reputations publicly.

### **Protection Against Retaliation**

Courts have recognized that protection against retaliation constitutes an essential component of effective sexual harassment frameworks. In several cases, courts have held that employers taking adverse actions against complainants during or after complaint proceedings violate the POSH Act and may face penalties. Courts have also awarded compensation to complainants who suffered professional or economic harm due to retaliation. However, proving retaliation remains challenging, particularly in professional settings like legal practice, where adverse actions may be subtle such as withdrawal of mentorship, case referral reductions, or exclusion from professional opportunities rather than formal employment termination. Courts have yet to develop a comprehensive jurisprudence addressing these informal retaliation forms common in hierarchical professions.

### **Intersectionality and Compound Discrimination**

While Indian courts have increasingly recognized intersectionality how multiple identity markers such as caste, class, religion, and sexuality intersect with gender to create compound discrimination sexual harassment jurisprudence has not adequately incorporated intersectional analysis. Research indicates that women from marginalized castes and communities face heightened vulnerabilities to sexual harassment and additional barriers to accessing remedies, yet judicial precedents have not systematically addressed how legal frameworks should account for these intersecting vulnerabilities.

### **Implications for Judicial Workplaces**

The body of judicial precedents examined in this section reveals both progress and persistent challenges in addressing sexual harassment. Courts have established strong normative foundations recognizing sexual harassment as a fundamental rights violation requiring comprehensive legal and institutional responses. However, implementation remains inadequate, and specific challenges facing women in judicial workplaces including legal uncertainties about POSH Act applicability, absence of functional committees, and unique power dynamics have not been adequately addressed through judicial interpretation.

Future judicial developments must grapple with unresolved questions regarding advocates' status under the POSH Act, accountability mechanisms for judges accused of harassment, protection against subtle forms of professional retaliation common in legal practice, and intersectional vulnerabilities faced by women lawyers from marginalized communities. The judiciary's legitimacy as guardian of constitutional rights depends not only on pronouncing progressive judgments but also on ensuring its own institutions model the values of equality, dignity, and justice it seeks to enforce in society at large.

## 8. RECENT DEVELOPMENTS (2024-2026)

The period from 2024 to 2026 has witnessed significant developments in POSH Act implementation through legislative proposals, judicial directives, and technological interventions. These developments reflect growing recognition that formal legal frameworks require robust enforcement mechanisms and accessible complaint systems to effectively address workplace sexual harassment.

### **Proposed Amendment Bill 2024**

On February 2, 2024, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024, was introduced in the Rajya Sabha, proposing two critical changes to address implementation gaps.<sup>46</sup>

First, the Bill extends the complaint filing period from three months to twelve months from the date of incident, with Internal Complaints Committees retaining discretion to condone further delays based on specific circumstances.<sup>47</sup> The current Section 9 limitation of three months, with a possible three-month extension, has proven inadequate for many survivors who experience psychological trauma that delays reporting.<sup>48</sup> This strict timeline has prevented genuine complaints from being heard, particularly in hierarchical workplaces where fear of retaliation runs high. The proposed twelve-month period acknowledges trauma realities and reduces procedural barriers that currently silence women.

Second, the Bill removes the conciliation provision under Section 10, ensuring all complaints must be addressed through formal inquiry procedures.<sup>49</sup> Experience has shown that conciliation can expose survivors to coercion and pressure, with women pushed to accept settlements that undermine their dignity rather than pursuing formal complaints.<sup>50</sup> This change reflects understanding that power imbalances inherent in workplace relationships make truly voluntary settlements difficult to achieve in harassment cases.

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<sup>46</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024, introduced in Rajya Sabha (India, Feb. 2, 2024).

<sup>47</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024, proposed Ss 9.

<sup>48</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, Ss 9, India Code (2013).

<sup>49</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024, proposed Ss 10.

<sup>50</sup> Id.

As of April 2026, this amendment remains a Bill and has not been enacted into law. The original 2013 Act provisions continue to govern complaints.<sup>51</sup> Nevertheless, the Bill's introduction signals legislative recognition of implementation gaps and commitment to strengthening protections.

### **Supreme Court Directives on Nationwide Compliance**

The Supreme Court has taken an increasingly interventionist stance in enforcing POSH Act compliance. In December 2024, following its earlier directions in *Aureliano Fernandes v. State of Goa*,<sup>52</sup> the Court issued comprehensive directions requiring all government offices and public sector enterprises to establish functional Internal Complaints Committees.<sup>53</sup>

The Court directed Chief Secretaries of all States and Union Territories to conduct systematic surveys identifying entities that have failed to constitute Committees as required by law.<sup>54</sup> These surveys must verify not only whether Committees exist on paper but whether they are actually functional and accessible. States were directed to appoint District Officers under Section 5 of the POSH Act and establish Local Complaints Committees.<sup>55</sup>

Specific deadlines were imposed: survey completion and report submission by March 31, 2025, and Internal Complaints Committee constitution in all government ministries, departments, and public sector undertakings by January 31, 2025.<sup>56</sup> The Supreme Court has effectively placed Internal Complaints Committees under judicial supervision, transforming non-compliance from a technical lapse into potential grounds for contempt proceedings.<sup>57</sup> This represents a fundamental shift in how seriously the legal system treats POSH Act violations.

### **SHe-Box Portal and Digital Mechanisms**

The SHe-Box (Sexual Harassment Electronic Box) portal launched by the Ministry of Women and Child Development represents a major technological innovation in complaint

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<sup>51</sup> See Proposed Amendment to the POSH Law in 2024: Overview and Current Status, POSH at Work (Apr. 11, 2025), <https://poshatwork.com/proposed-amendment-to-the-posh-law-in-2024-overview-and-current-status/>.

<sup>52</sup> *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 436 (India).

<sup>53</sup> See PoSH Compliance for Safe & Inclusive Workplaces in 2025, NoMeansNo (Jan. 15, 2025),

<sup>54</sup> See Newsflash: SC's Directions on Nationwide POSH Survey, POSH at Work (Dec. 30, 2024), <https://poshatwork.com/newsflash-scs-directions-on-nationwide-posh-survey/>

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> See Arun Prakash & Rohit Jain, From Policy to Practice: The Next Chapter in POSH Compliance in India, *Bar & Bench* (Oct. 30, 2025), <https://www.barandbench.com/view-point/from-policy-to-practice-the-next-chapter-in-posh-compliance-in-india>.

accessibility. Unlike traditional frameworks serving formal employment sectors, SHe-Box allows any woman to file workplace harassment complaints online regardless of employment status.<sup>58</sup> The portal routes complaints to appropriate Internal Committees or Local Committees and requires organizations to register their Committees for government oversight.<sup>59</sup>

As of April 1, 2026, more than 1.61 lakh organizations with over ten employees had registered on SHe-Box.<sup>60</sup> In June 2025, Delhi directed all public and private entities to register their Internal Committees on the portal.<sup>61</sup> The platform operates in 23 languages and has been integrated with the Mission Shakti mobile application for easier access.<sup>62</sup>

Recent data shows 254 workplace sexual harassment complaints were filed through SHe-Box in 2025, with 296 complaints since the portal's August 2024 revamp.<sup>63</sup> While these numbers may seem modest, they represent important progress toward accessible complaint mechanisms operating outside traditional organizational hierarchies that often discourage reporting.

### **Judicial Developments for Legal Profession**

In July 2025, the Delhi High Court inaugurated a specialized online portal for filing sexual harassment complaints within the judiciary.<sup>64</sup> At the launch, Supreme Court Judge Justice Nongmeikapam Kotiswar Singh stated that "sexual harassment at workplace is antithetical to the core constitutional values of equality, liberty, justice and dignity of individual."<sup>65</sup> This portal specifically addresses the need for accessible and confidential mechanisms for women in judicial institutions and the legal profession.

Current data shows women constitute 15.31 percent of enrolled advocates in India, with 284,507 women among 1,542,855 total advocates across fifteen states.<sup>66</sup> Legal scholarship has highlighted that advocates work in courts and chambers facing harassment risks similar

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<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> SHe-Box Portal Expands Reach: 1.61 Lakh Workplaces Onboarded Under PoSH Act, Impressive Times (Apr. 1, 2026), <https://impressivetimes.com/latest/she-box-portal-posh-act-workplaces-india/>.

<sup>61</sup> Prakash & Jain, *supra* note 102.

<sup>62</sup> SHe-Box Portal Expands Reach, *supra* note 105.

<sup>63</sup> See Divyanshu Pandey, POSH Compliance Updates 2026: What Employers Must Know, ElearnPOSH, [https://elearnposh.com/posh-compliance-updates-2026-india/\(last visited Apr. 7, 2026\)](https://elearnposh.com/posh-compliance-updates-2026-india/(last%20visited%20Apr.%207,%202026)).

<sup>64</sup> See Applicability of the POSH Act to Female Advocates: A Legal and Judicial Overview, POSH Law (July 30, 2025), <https://ssrana.in/posh-law/articles/applicability-of-the-posh-act-to-female-advocates-a-legal-and-judicial-overview/>.

<sup>65</sup> Id.

<sup>66</sup> Id.

to other professionals yet may fall outside POSH Act protection due to their status as independent professionals rather than employees.<sup>67</sup> Some argue that denying female advocates protection based on technical employment classifications subverts legislative intent and violates constitutional mandates.<sup>68</sup>

The POSH Act defines "aggrieved woman" broadly as any woman alleging harassment at a workplace, regardless of age or employment status,<sup>69</sup> suggesting legislative intent to provide protection beyond traditional employer-employee relationships. However, how courts and regulatory bodies interpret this in contexts where formal employment relationships do not exist remains contested.

### **Recent Supreme Court Cases**

Two recent Supreme Court cases have clarified important procedural and jurisdictional aspects of the POSH Act.

In *Dr. Sohail Malik v. Union of India* (December 10, 2025), the Court addressed jurisdictional questions arising when complainant and respondent work in different organizations.<sup>70</sup> The Court held that an aggrieved woman has the right to approach the Internal Complaints Committee of her own workplace even when the alleged harasser belongs to a different organization.<sup>71</sup> The phrase "where the respondent is an employee" in Section 11 refers to which service rules apply in disciplinary action, not which Committee has jurisdiction.<sup>72</sup> This removes a barrier that could deny women access to complaint mechanisms in their own workplaces.

In *Vaneeta Patnaik v. Nirmal Kanti Chakrabarti* (2025), the Supreme Court addressed limitation period consequences.<sup>73</sup> The complainant filed a harassment complaint in December 2023 regarding incidents from months earlier. The Court upheld dismissal of the complaint as time-barred beyond the six-month maximum limitation period but took the unusual step of imposing reputational consequences on the respondent despite not

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<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Sexual Harassment of Women at Workplace Act SS 2(a).

<sup>70</sup> *Dr. Sohail Malik v. Union of India*, Civil Appeal No. 404 of 2024 (S.C., Dec. 10, 2025) (India).

<sup>71</sup> See Aiswarya Krishnan, *Supreme Court Clarifies Jurisdiction of Internal Committees in Inter-Departmental Sexual Harassment Complaints*, POSH Equili (Dec. 12, 2025), <https://poshequili.com/supreme-court-posh-ic-jurisdiction/>.

<sup>72</sup> Id.

<sup>73</sup> *Vaneeta Patnaik v. Nirmal Kanti Chakrabarti*, Special Leave Petition (Civil) No. 17936 of 2025 (S.C. 2025) (India).

adjudicating allegations on merits.<sup>74</sup> This case illustrates precisely why the proposed Amendment Bill's extension to twelve months represents important reform. Many survivors require time to process trauma, gather courage, and navigate complex professional implications before filing complaints.

### **Implications for Judicial Workplaces**

These developments suggest both progress and persistent challenges for judicial workplaces. The Supreme Court's enforcement directives, expansion of digital mechanisms, and procedural clarifications represent steps toward making the POSH Act more effective. The Delhi High Court's specialized portal demonstrates recognition that judicial workplaces require tailored approaches.

However, fundamental questions about the POSH Act's application to advocates, chambers, and judges remain unresolved. The proposed Amendment Bill does not specifically address workplace definition ambiguities in legal professional contexts or clarify employer responsibilities in chambers and Bar Associations. Digital portals and enforcement directives cannot substitute for clear legal frameworks accounting for judicial workplace distinctiveness.

Effective implementation requires not only legislative amendments and technological platforms but fundamental institutional culture shifts within the judiciary and legal profession. Recent developments create infrastructure and enforcement mechanisms, but they cannot guarantee Internal Complaints Committee independence, sensitive complaint handling, or protection from retaliation. The gap between legal mandates and lived realities persists, requiring sustained commitment to transform formal compliance into genuine workplace safety and equality.

## **9. CONCLUSION**

The legal framework governing workplace sexual harassment in India reflects a significant evolution from judicial innovation to statutory consolidation. Beginning with the transformative judgment in *Vishaka v. State of Rajasthan* and culminating in the enactment of the POSH Act, 2013, the law has firmly recognized sexual harassment as a violation of fundamental rights to equality, dignity, and professional freedom. This shift from a

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<sup>74</sup> See Supreme Court Dismisses Complaint of Sexual Harassment Barred by Limitation on Time, DLA Piper GENIE (Nov. 14, 2025), <https://knowledge.dlapiper.com/dlapiperknowledge/globalemploymentlatestdevelopments/2025/supreme-court-dismisses-complaint-of-sexual-harassment-barred-by-limitation-on-time>.

morality-based understanding of “modesty” to a rights-based discourse marks an important milestone in Indian constitutional and gender jurisprudence. However, this research demonstrates that the strength of the framework lies more in its normative aspirations than in its practical implementation—particularly within judicial workplaces. The POSH Act, though comprehensive in design, encounters serious challenges when applied to the legal profession, where traditional employer-employee relationships are absent or ambiguous. Advocates, judicial officers, and court staff operate within layered hierarchies and informal structures that complicate accountability and blur the identification of “employers” responsible for compliance. As a result, key mechanisms such as Internal Complaints Committees often remain either non-existent, ineffective, or inaccessible.

Further, the absence of explicit provisions addressing sexual harassment within Bar Council regulations and judicial service rules reveals a critical regulatory gap. This institutional silence weakens enforcement and allows professional misconduct of a gendered nature to be treated as peripheral rather than central to legal ethics. The coexistence of civil remedies under the POSH Act and criminal provisions under the Bharatiya Nyaya Sanhita, 2023, while theoretically complementary, also exposes conceptual inconsistencies that can hinder effective redressal. Recent developments including proposed legislative amendments, judicial directives for nationwide compliance, and digital initiatives such as the SHe-Box portal indicate a growing institutional recognition of these shortcomings. Nevertheless, procedural reforms and technological tools alone cannot address deeply embedded cultural and structural barriers within the legal profession.

Ultimately, ensuring a safe and equitable judicial workplace requires a multi-dimensional approach: clarifying the POSH Act’s applicability to advocates and judges, reforming professional regulatory frameworks, strengthening independent complaint mechanisms, and fostering a culture of accountability and gender sensitivity within legal institutions. The credibility of the justice delivery system depends not only on its ability to adjudicate rights but also on its commitment to uphold them within its own institutional spaces.