



THE EFFICACY OF THE POSH ACT IN INDIA: ANALYZING THE CHALLENGES OF IMPLEMENTATION AND COMPLIANCE IN CORPORATE AND PUBLIC SECTORS

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ABSTRACT

Prevention of Sexual Harassment (POSH) Act enacted, in 2013, for prevention of any sexual harassment, and to provide measures for its redressal. After its implementation up to a decade, there has been a variation in the different successes recorded across the different sectors. This research assesses the effectiveness of the POSH Act, especially in relation to its enforcement and application by corporate institutions and the government. This paper analyses the provisions of the Act, functioning of ICCs, & major hurdles that entities encounter in eliminating harassment at the workplace. With the help of understanding how the act is hindered, many entities that have complied with the legal requirement of establishing ICCs could increase the act's effectiveness and overcome challenges like organizational resistance, cultural stigmas, bureaucracy, and inadequate training. This paper shows that legal formalism, gender stereotyping, and structural bias influence low reporting rates and an absence of adequate redress, especially in industries dominated by men and government organizations. In the lack of actual quantifiable observations, the research reveals loopholes in the legal interpretations, societal perception, and provisions of the act. The recommendations that were advanced in this paper include increased support to enhance the implementation processes through improvements of ICC structures, better training to the parties involved and strict regulatory frameworks to further promote safety in workplaces throughout India.

Keywords: POSH Act, Sexual Harassment, Workplace Safety, Corporate Compliance, Internal Complaints Committee, Harassment Redressal

INTRODUCTION

Undoubtedly, POSH Act can be considered as an extraordinary legal step for the elimination of sexual harassment in workplaces in India. This act was created to provide that all employees should be protected at work, and particularly women, from sexual harassment. It appreciates the importance of developing structures that protect people from intimidation to foster the core values of every employee's worth and demutualization. Under the POSH Act employers are expected to be more cautious in conducting themselves and their organizations in a certain way, putting in place structures for handling complaints and be ready to deal with instances of misconduct. It gives a clear definition of sexual harassment as extending to the physical contacts and other uncontrolled and unwelcome behavior that has the potential of creating a hostile, intimidating or offensive ambiance at the workplace. This broad coverage recognizes the various and often malicious ways in which harassment can take place, thus highlighting the aim of the act to promote a decent, safe and respectful work environment. With legal responsibility on employer to address, prevent and rectify harassment stated under POSH Act, India asserts its stand to establish the country as a progressive country that supports workplace free from harassment.¹

The roots of the POSH Act lie in the landmark Vishaka Guidelines, which were introduced by Hon'ble Supreme Court in 1997.² These guidelines were formulated in wake of gruesome the case of Bhanwari Devi, a social activist from Rajasthan who was raped by a group of men while trying to prevent child marriage. Her story uncovered the lack of sufficient legal recourse female employees can legally pursue against workplace sexual harassment culminating into public uproar. When the specific laws regarding workplace harassment were still inexistent, the Supreme Court had to intervene and establish those laws. The Vishaka Guidelines, therefore, could be said to have been the first to set a legal direction to practices of workplace safety and more particularly protection against sexual harassment. These guidelines placed mandatory requirement on employers to do what was necessary to prevent workplace harassment by putting in place organizational structures to deal with the problem affecting women. Vishaka case was followed by the setting of guidelines that were later used to establish the more elaborate POSH Act of 2013. The shift from the guidelines to the legislation shows the progress of India in the understanding of harassment as the legal and social problem in workplace.³

¹ Suhani Agarwal, 'Timeline of the POSH Act, 2013' (2022) 2 Jus Corpus LJ 1174.

² Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SUPREME COURT 3011.

³ Kavya Gupta & Elen P. Kurian, 'POSH Act Not Being Gender Neutral' (2022) 2 Jus Corpus LJ 997.

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In the broader context of advancing gender equality, the POSH Act is closely aligned with the constitutional principles enshrined in Articles 14⁵ and 21,⁶ which guarantee the right to equality & right to life with dignity, respectively. In integrating workplace safety, the act aligns these constitutional values toward achievement of its objective of minimizing the systematic prejudice that affects women when they seek employment. The POSH Act is instrumental in tackling not only all the cases of harassment in the immediate future but also in the future by making the employers of the organizations come up with policies that support the mainstreaming gender exercise. It is not limited to the subject organizations and helps society in fighting disrespect and discriminations and in achieving equal opportunities for women and men in the workplace. The provisions of Act require both corporate and public sector bodies to prohibit all forms of harassment, and thereby promote corporate cultural changes towards fostering tolerant work environments throughout India. Lastly, the POSH Act remains as a valuable instrument in the war to make certain that women, and every other worker, can work in any environment without the undue influence of a harasser or discriminator.

⁴ Ashna Sharma, 'Analyzing the Obligation of Employers under the Posh Act, 2013' (2021) 2 Law Essentials J 346.

⁵ Constitution of India, art 14.

⁶ Constitution of India, art 21.

UNDERSTANDING THE KEY PROVISIONS OF THE POSH ACT

POSH Act, 2013 provides comprehensive legal framework for addressing sexual harassment in Indian workplaces. Codified u/s 2(n),⁷ it builds on international standards and the earlier Vishaka Guidelines, established by Hon'ble Supreme Court.⁸ Sexual harassment, as defined by Act, includes any unwelcome act or behavior, whether explicit or implied, that can take various forms. These include physical contact or advances, requests for sexual favors, sexually colored remarks, the display of pornographic content, or any unwelcome physical, verbal, or non-verbal behavior of sexual nature. By clearly defining these behaviors, the POSH Act seeks to create a structured and legally enforceable environment that protects employees from such misconduct in the workplace.

Act classifies sexual harassment into two primary categories, quid pro quo harassment and hostile work environment harassment. Quid pro quo harassment occurs when submission to or rejection of sexual advances becomes basis for employment decisions. This could manifest in situations where an employee's promotions, job assignments, performance evaluations, or even job security are contingent on accepting or rejecting sexual advances. For instance, if the supervisor suggests that favorable treatment, such as a promotion or a raise, depends on the employee engaging in sexual activities, this constitutes quid pro quo harassment. The direct link between career progression and the fulfillment of sexual demands makes this form of harassment particularly egregious, as it exploits the vulnerability of individuals seeking professional growth.⁹

The second form, hostile work environment harassment, arises when repeated unwelcome sexual conduct creates atmosphere of intimidation, hostility, or offensiveness, which affects the employee's ability to perform their job. Unlike quid pro quo harassment, this type does not always involve a direct power imbalance. It can emerge from interactions with colleagues, clients, or even visitors to the workplace. Examples of this type of harassment include inappropriate jokes, suggestive comments, unwarranted physical proximity, or the display of offensive materials. Even if such behavior is not specifically directed at one individual, it may still contribute to a toxic work environment, impacting on the mental and emotional well-being of employees. POSH Act emphasizes that creation of oppressive work environment through repeated sexual misconduct is unlawful, highlighting that such behavior

⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(n).

⁸ *Supra* note 2.

⁹ Aakarsh Saluja, Mudit Gosain & Pranav Mahajan, 'Prevention of Sexual Harassment of Women at Workplace (POSH Act 2013)' (2020) 21 *Supremo Amicus* [769].

disrupts the professional lives of all affected employees, not just the direct victims.¹⁰

A critical feature of the POSH Act is the provision u/s 4,¹¹ which mandates the establishment of ICC in every workplace with ten or more employees. ICC is supposed to conduct inquiries of sexual harassment complaints and guarantee the fair treatment of the accused in a closed process. In a bid to promote fairness and quid for gender power within the ICC, the Act makes it mandatory that the ICC should be chaired by a woman; and that half the members within the ICC should also be female. This composition shows that Act cares for safety of women employees to report any wrongdoing in the organization without prejudices.

Also, the Act requires the ICC to comprise of at least one member outside the organization from NGOs or an organization who has a past experience dealing with matters of sexual harassment. Most importantly, there should be an external member in the committee in order to avoid the influence of internal office politics in the decision making process. This is usually important especially if the accused is a person with authority in the organization as the external member comes in with a different perception. The former is clear where ICC is not just confined to addressing complaints, it also has a mandate of ensuring the workplace is safe from harassment, which is more akin to the latter part of the definition.¹²

Besides its investigation function, ICC has the primary responsibility of observing and ensuring that the gender dimension and equality are respected in the workplace. This involves conducting periodic training and sensitization focusing on enhancing employees' understanding of the provisions of the POSH Act. The sessions emphasize on the clarification of what will be considered as sexual harassment, how to complain and what happens to the perpetrator of the conduct. The ICC is also expected to recommend proper conduct that should be taken by employers in order to eliminate cases of sexual harassment including enforcing non-discrimination of the genders and avoiding biases that are innate. As a result, the ICC actively contributes to creating a culture of conversation and gender respect to prevent sexual harassment at the workplace.

Employers, u/s 19,¹³ also bear significant responsibility for preventing sexual harassment. It involves their having to go out of their way to ensure that workplaces are not characterized by discrimination in any form. This needs to be done through conducting training sessions from

¹⁰ Kirti Singh, Swarnav Bhuyan & Arushi Sharma, 'Sexual Harassment at Workplace: India and USA' (2022) 4 Indian JL & Legal Rsch 1.

¹¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4.

¹² Saksham Chhabra, 'Critical Analysis on Sexual Harassment at Workplace of Women in India' (2020) 3 Int'l JL Mgmt & Human 1147.

¹³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 19.

time to time to enhance understanding about issues to do with gender sensitivity and harassment. Such training should reach all organizational members from executives to junior employees explaining to them what POSH Act entails, the organization's internal policies as to sexual harassment and how to report such incidences. These sessions also seek to raise and neutralize prejudice and gender stereotyping, which form the basis of harassment. Employers are also required to have a specific anti-harassment policy, create visible means for reporting and keep complaints private. Another important consideration is the freedom from reprisal in the promotion of the reporting climate in the workplace and acknowledging the victims to avail themselves or seek protection without repercussions.

Chapter IV of the POSH Act outlines a complaint process, the process by which complaints of sexual harassment can be addressed. Any complaints by employees who undergo harassment may be reported to the ICC in writing within a period of three months from the time of the incident though other extra time may be considered in the event that the ICC finds justifiable causes as to why the time exceeded the stipulated three months. After a complaint has been filed, the duty of the ICC entails that it must work to investigate a complaint, this involves collecting evidence and getting a testimony from both the complainer and the one being complained against. During this process, there is confidentiality, and any violation of this policy is unlawful according to the Act, this implies the need to respect privacy and dignity for any individual involved.

In the event of establishment of LCC cannot be made by registering under the said Act, for the workplaces having less than ten employees, the LCC is to be established at the district level. As for LCC, it overseas provides employees that are comparatively small or centralized justice. This provision is especially valuable for the workers under informal employment because they can have no other legal way to seek justice in case of their unfair dismissal. With both the ICC and LCC in place, no workplace is left out from the implementation of the POSH Act so as to protect all employees from all forms of workplace harassment.¹⁴

To make sure that the complaints can be addressed in time, the POSH Act has set time limits of investigating and addressing of complaints. The ICC is obliged to make an investigation within 90 days from the day it receives the complaint, and the employer must adhere to the recommendations of the committee in 60 days from the date the final report was given to the company. Such measures avoid delay in the determination of harassment cases; this way,

¹⁴Yadvendra Pareek, 'A Study on Sexual Harassment of Women at Workplace in India' (2022) 2 Indian J Integrated Rsch L 1.

justice is served to the intended victims. The employee that is charged with harassment must be penalized according to the gravity of the offense; this may be dismissal or other forms of corrective action. Also, the employer may be compelled to provide some kind of compensation or assistance to the claimed victim. After resolving the complaint, follow-up actions such as counseling or additional workplace measures may be necessary to restore a safe and inclusive environment.¹⁵

CURRENT STATE OF POSH

POSH Act, introduced to provide safe & inclusive working environment for women, has not been as effective as intended. Despite its legal framework, incidents of workplace harassment continue to rise at an alarming rate, indicating that the mere existence of the law is insufficient in addressing the issue on the ground. According to a report, Deloitte's 2024 *Women @ Work* report, approximately 43% of women in India experience non-inclusive behaviors such as harassment or microaggressions in their workplaces. Additionally, nearly half of these women expressed concerns about their safety either at work or while commuting, underscoring the persistent vulnerability many women faces.¹⁶

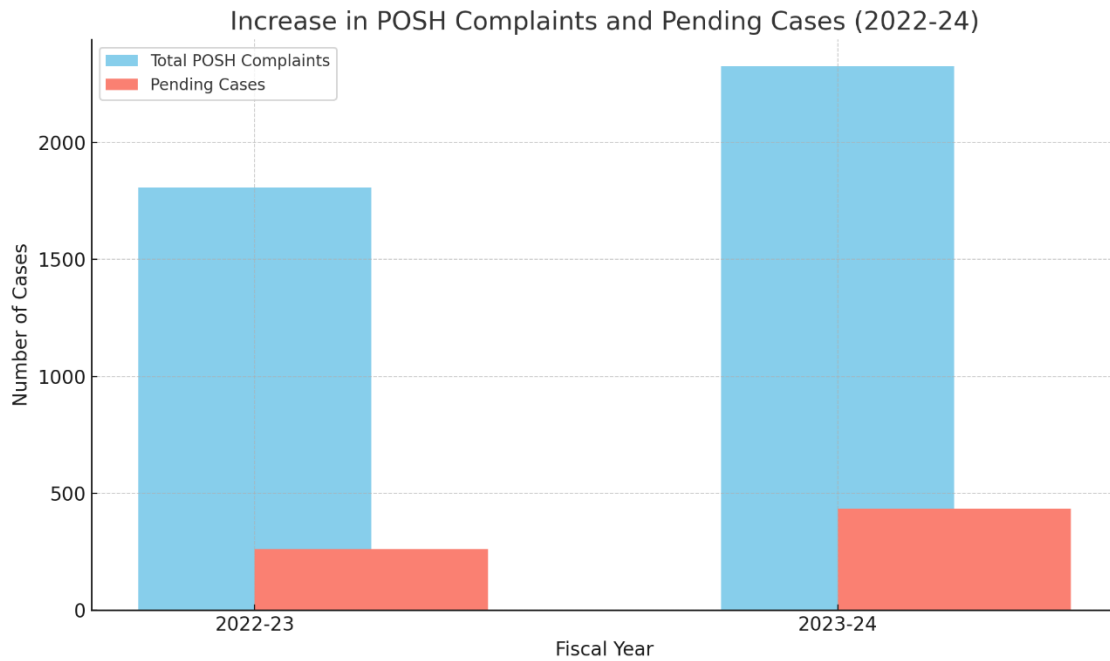
The increasing number of reported cases further highlights the gap between the law's provisions and its enforcement. Data analyzed by the Udaiti Foundation from 700 National Stock Exchange (NSE)-listed companies reveals a significant 29% rise in POSH complaints, from 1,807 in the 2022-23 fiscal year to 2,325 in 2023-24.¹⁷ Even more troubling is the backlog in resolving these complaints. The number of unresolved or pending cases surged by 67%, growing from 260 in 2022-23 to 435 in 2023-24, as delineated under Graph 1 hereinbelow. This backlog not only delays justice but also prolongs the distress of victims, who are left to cope with ongoing challenges in their professional environments while awaiting resolutions.¹⁸

¹⁵Supra note 12.

¹⁶ Deloitte, *Women @ Work 2024: A Global Outlook* (2024) <https://www.deloitte.com/content/dam/assets-shared/docs/collections/2024/deloitte-women-at-work-2024-a-global-outlook.pdf?dl=1> accessed 27 September 2024.

¹⁷'Workplace Sexual Harassment Cases in 700 NSE-Listed Firms Increased 29%, Pending Complaints Rose 67%: Report' (*Hindustan Times*, 24 August 2024) <https://www.hindustantimes.com/business/workplace-sexual-harassment-cases-in-700-nse-listed-firms-increased-29-pending-complaints-rose-67-report-101724509941314.html> accessed 27 September 2024.

¹⁸ The Udaiti Foundation, *JounationFrom Intent to Practice: Fostering Gender-Inclusive Workplaces. Insights from HR Leaders in India Inc.* (2024) <https://backend.udaiti.org/wp-content/uploads/2024/03/docs1-1.pdf>.



Graph 1

Certain industries are disproportionately affected by these issues. The services sector, which includes hospitality, retail, and IT industries, reported the highest number of POSH complaints per 1,000 women. Following closely are the construction materials, metals, and mining sectors, which have also seen significant incidents of sexual harassment. These industries, with traditionally male-dominated workforces and structures, seem to face additional challenges in implementing inclusive practices and ensuring the safety of women employees.

Compounding the problem is the failure of many companies to meet the POSH Act's most basic compliance requirements. A survey conducted by the Udaiti Foundation, involving over 200 HR leaders, revealed that 59% of companies have not established an ICC, which is mandated by the law ICC is a crucial mechanism for handling sexual harassment complaints, but many companies delay setting it up until a formal complaint is filed. This reactive approach not only hinders the timely resolution of cases but also discourages women from reporting incidents, as they may lack confidence in their company's willingness to take immediate action. Moreover, the lack of awareness initiatives by employers further exacerbates the problem. Without proper education on employees' rights and the procedures for reporting harassment, many women remain uninformed and unprotected.¹⁹

¹⁹The Udaiti Foundation, *JounationFrom Intent to Practice*.

The POSH Act provides the legal means for which women can seek redress for verbal, mental or physical sexual abuse; it remains obvious that the current level of enforcement is inadequate. Thus, the existence of the policy is a positive sign although the policy does not ensure its efficiency by default. However, there is a clear need for more preventive measures including enhanced training, awareness creation, and enhanced compliance measures. Further, aggressive complaint management is also crucial to bring back the confidence of the people and to also ensure that complainants cannot be made to wait endlessly for justice. The POSH Act as it stands now, is a redressal mechanism that gives a shot at seeking justice but succeeding in that depends on whether organizations are willing and committed to the provision of the act.²⁰

CHALLENGES IN IMPLEMENTATION AND COMPLIANCE

Cultural and Organizational Resistance

Despite the fact that POSH Act must apply within the corporate sector, several critical barriers emerge owing to deeply rooted organizational cultures and power relations. Power distance is high in many organizations, subordinates feel powerless when dealing with their superiors therefore they do not report cases of harassment all in the name of prestige. Such power relation is also often compounded by proximate structures of power whereby potentially influential co-workers or managers may use their influence to dissuade people from reporting their experiences or even when people do reports they are dismissed as being unreliable or imagining things through instances of harassment. As a result, the precedent of reprisal prevails among the workforce and it is this anxiety that can keep people from filing complaints because they are convinced that this move will not go unrewarded, and they are likely to face such consequences as exclusion, demotion or job loss.

Furthermore, the silence about sexual harassment is encouraged because it may bring the image of the organization into disrepute and have an influence on the investors and business outcomes. Hence, the employees have no other option other than accept harassment in the workplace rather than losing their jobs by complaining or reporting cases of harassment. This mentality creates a culture where CEOs and other executives receiving complaints or credible reports of sexual harassment ignore such information because it is commonplace for powerful executives to mistreat employees, especially women, and cover up the abuse. Lastly, this reluctance to change limits the efficacy of the POSH Act & erodes all initiatives towards making the workplace free from harassment.

²⁰ Kushagra Sharma, 'Sexual Harassment at Workplace in India and Need for Speedy Redressal of Complaints' (2020) 3 Int'l JL Mgmt & Human 1298.



Issues with ICC Functioning

POSH Act requires ICCs to act as core structures of resolving any complaints concerning sexual harassment. However, the effectiveness of the committee is often hampered by such factors as lack of well trained professionals fitted for handling of such matters. There is poor training conducted to many of the ICCs members on investigative procedures, psychological adjustments, and the dynamics of the sexual harassment matters. This deficiency leads to poorly conducted investigations whereby key elements of evidence could go unnoticed or even tampered with, hence deny justice to complainants.

However, privacy still becomes a major challenge when it comes to the ICC framework. Employees often compromise the privacy of others during investigations, and there are high risks that the information will be disclosed to unauthorized individuals or parties in the organization by mistake. Some of these oversights not only worsen the ordeal faced by the victims but also fuel the lack of confidence in the ICC procedure. These committees can be a way to go for years without reporting, which is unhealthy since it does not foster any change; lack of confidence in these committees keeps employees from coming forward in the first place. Therefore, the imperfections in the performance of ICCs do not deliver what victims need, namely a safe place; they perpetuate corporate cultures that continue to present the image and profit as the primary goals while disregarding worker rights and fair compensation.

Private Sector Dynamics

The problems experienced by the small and medium sized enterprises (SMEs), new companies, and the informal businesses in the implementation of the POSH Act are unique. While big companies are capable of creating sound ICCs and elaborate training due to the availability of adequate resources, the small entities for one or the other reason cannot devote adequate time or money to conform to legal requirements. Such a situation puts employees in smaller organizations at a disadvantage since there are likely to be even fewer opportunities for workers to file complaints of harassment.

It is common to note that many of the employed people are in the informal sector where they endure poor working conditions and lack adequate protection; no proper channel to complain about such heinous acts as harassment and abuse are available to them. Further, there is a constant belief that cases of sexual harassment incidences in corporate setting are under reported mainly due to the fact that it is feared that it would negatively impact the organization's image. The fear of the company receiving a raw deal in the media may also



deter employees from coming forward to reporting on some issues; such a situation may shrink its revenues as well as its market share. This fear leads to dramatic under-representation of the events, and therefore skews the extent of workplace harassment and reduces the efficiency of the POSH Act.

Gender Bias and Power Imbalance

Patriarchal attitudes and gender inequalities condition women's employment and experiences of harassment and its consequences for mobility. Female leadership is a rather diverse and rather problematic phenomenon due to the risk factors connected to the cases of harassment that may seriously influence the career of a woman. The fear of being labelled as troublemakers can cause the women allow the organization to continually subject them to inappropriate behaviors or actions that can lead to their demotion or removal from their positions. This has been felt greatly in areas that have in the past been dominated by male employees for instance the manufacturing sector, Information technology sector and the finance sector as these sectors have strong culture on gender and harassment that are not easily letting go.

Targeted employees exposed to harassment suffer not only from social exclusion at their workplaces but also from prejudice on cultural, societal levels, which may hold victims responsible for the outcome. These societal biases create a cycle of silence and stigma, and it becomes extremely challenging for women to seek justice or help. These two factors hence discourage reporting of harassment and any move towards the protection of individual rights is also negated by the reality that one may be fired or demoted for reporting such incidents.

CONCLUSION & THE WAY FORWARD

However, there is criticism common in enforcement and implementation of the POSH Act as a legislative instrument against workplace sexual harassment. In the corporate arena, compliance and utilization studies indicate that larger organizations are often more compliant and have better-trained procedures than those of small business organizations because of available resources and training programs. On the other hand, small firms, and those in the informal sector, find it extremely difficult to form ICCs and create effective reporting of harassment cases. However, in the public sector, there are many barriers about bureaucratic procedures and political interference, which make difficult avenues for redressal: many cases go unreported.

Present statistics show that there is a rising populist awareness of the POSH Act alongside an increase in the number of complaints and simultaneously a low ratio of cases resolved. A



number of organizations including those in the public sector fail to show the required political will to support the act and its principles thus resulting in weak ICCs as well as employee turnover. The culture in many organizations has remained rampant in that such victims do not come out to report for fear of being retaliated against or get dire consequences to their careers, thus defeating the spirit of the act. Moreover, gender sensitivity training that is provided is often poorly developed or rarely conducted, and thus does not make gender harassment understood by most and the means to report it known. These challenges highlight the need for better training and increased compliance and monitoring of the POSH Act.

As for future directions, India must continue with legal changes and societal changes to support workplace harassment laws. The POSH Act should be developed further to consider some shortcomings which were noted: lack of clear definitions of what constitutes harassment, less efficient mechanisms for complaint processing, and inadequate measures for organizations that fail to meet the requirements. However, cultural transformation is also critical; organizations need to address and prevent workplace violence, which are realized by launching multi-faceted awareness campaigns and the support of women's rights. They will be instrumental in this process, and this is why MNCs will be essential for the purpose. It is perhaps important to note that when corporations, government organizations and CSOs come together, we can have an intersectoral approach towards the eradication of harassment and assisting victims. Through involving different authorities such as NGOs, legal consultants and employees, India can develop a stronger framework, which, along with implementing the POSH Act, will also contribute to the enhancement of compliance with fundamental respect for personal dignity in the working environment. Finally, the common desire for these changes will be necessary for building a culture free of harassment to ensure that every worker feels safe and valued in their profession.