

5. POSH Act – Polity

Supreme Court dismisses plea to include women political workers under POSH Act, says it will open a 'Pandora's box'. The Supreme Court has ruled that the Sexual Harassment of Women at Workplace (POSH) Act does not apply to political parties, citing the absence of a formal employer-employee relationship. It has directed that the legislature or the Election Commission of India should formulate specific safeguards for women in politics.

POSH Act and Women in Political Parties

Recently, the Supreme Court of India dismissed a plea seeking to include women political workers under the purview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). This decision upheld a 2022 Kerala High Court ruling that political parties are not legally required to form Internal Complaints Committees (ICCs) as they do not fit the traditional employer-employee model.

Key Observations by the Supreme Court

Absence of an Employer-Employee Relationship – The Court observed that political activity is largely voluntary and lacks the structured, formal relationship of an employer and employee. Applying the POSH Act becomes legally unworkable without clear definitions of who constitutes an "employer" or "employee" in a political setting.

Political Parties Are Not "Workplaces" – The Court determined that political organizations, due to their unique nature, do not qualify as traditional workplaces as defined under the POSH Act. It emphasized that the Act was specifically designed for formal employment environments, not for voluntary political associations or electoral activities.

Warning of Potential Misuse – The bench cautioned that extending the Act to political parties could "open a Pandora's box," leading to its misuse for political vendetta, blackmail, or filing frivolous complaints. Such misuse, it noted, could destabilize democratic processes and make enforcement impractical.

Proper Authority for Redressal – The Court suggested that the Election Commission of India (ECI) is the more appropriate body to devise safeguards for women in political parties. Petitioners were advised to approach the ECI to recommend the framing of party-specific codes of conduct and internal grievance redressal mechanisms.

Legislative vs. Judicial Role – The Court practiced judicial restraint, stating that expanding the scope of the POSH Act to include political settings is a matter for Parliament to decide. It clarified that judicial intervention cannot and should not substitute legislative policy-making in such a domain.

The POSH Act, 2013 – A Detailed Overview

The POSH Act is India's first comprehensive legislation specifically addressing workplace sexual harassment.

Origin and Foundation

Trigger Incident – The gang-rape of Bhanwari Devi, a social worker in Rajasthan, in 1992 for her work in preventing a child marriage, highlighted the urgent need for legal protection.

Vishaka Guidelines (1997) – In the absence of a specific law, the Supreme Court, in the *Vishaka & Others v. State of Rajasthan* case, issued binding guidelines for all workplaces to address sexual harassment. These guidelines served as the foundation for the POSH Act.

Constitutional and International Basis –

Constitutional – Rooted in Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), and Article 21 (Right to Life and Personal Liberty).

International – Aligned with India's obligations after ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

Definition of Sexual Harassment (Section 2(n) & 3) – It includes unwelcome acts such as physical contact, sexual advances, demands for sexual favors, showing pornography, making sexually colored re-

marks, or any other unwelcome conduct of a sexual nature. It also covers circumstances where such behavior is linked to promises of preferential treatment, threats to employment, or creating a hostile or humiliating work environment.

Coverage and Applicability

Workplaces – Covers government bodies, private organizations, hospitals, sports venues, and even the unorganized sector. It also applies to work-related travel and domestic work.

Women Protected – Protects all women, regardless of their age or employment status (regular, temporary, ad-hoc, or daily wage).

Institutional Mechanisms under the POSH Act

Feature	Internal Complaints Committee (ICC)	Local Committee (LC)
Applicability	Workplaces with 10 or more employees.	Districts for workplaces with fewer than 10 employees or when the complaint is against the employer.
Composition	<ul style="list-style-type: none"> - Presiding Officer (senior woman employee) - At least two employee members - One external member from an NGO/expert 	<ul style="list-style-type: none"> - Chairperson (eminent woman in social work) - One member from women working in the block/municipality - Two members from NGOs
Key Mandate	To receive and inquire into complaints of sexual harassment within the organization.	To receive and inquire into complaints from the unorganized sector or smaller establishments.
Membership	At least 50% of members must be women.	As per statutory requirements.
Tenure	Members serve for a maximum of 3 years.	Members serve for a maximum of 3 years.

Complaint and Inquiry Process

Filing – A written complaint must be filed within 3 months of the incident (extendable by another 3 months).

Conciliation – Allowed only at the complainant's request, but monetary settlement is prohibited.

Inquiry – Must be completed within 90 days. Confidentiality must be maintained.

Employer's Action – The employer must act on the committee's recommendations within 60 days.

Duties of the Employer

1. Ensure a safe working environment.
2. Clearly display information about the POSH policy, penalties, and details of ICC members.
3. Conduct regular awareness workshops and orientation programs.
4. Provide all necessary support to the ICC for its functioning.
5. Assist the complainant in filing a criminal case under the Indian Penal Code (IPC) if she chooses to do so.
6. Treat sexual harassment as a "misconduct" under the company's service rules.
7. Include data on POSH cases in the company's annual report.

Exclusions, Gaps, and Challenges

Narrow Definition of "Workplace" – The Act's current definition excludes key areas like political parties, bar associations, and many freelance/gig economy platforms, leaving women in these spaces without statutory protection.

Vulnerability of Women in Politics – The absence of a formal redressal mechanism reduces the safety and participation of women in public life. Women political workers face not only physical or verbal harassment but also extensive online abuse, including trolling, cyberstalking, and doxxing, which requires linking the POSH Act with the IT Act and DPDP Act.

Implementation Deficit – Even in covered workplaces, there is often a lack of awareness, weak implementation, and fear of reporting due to stigma and career repercussions.

Judicial Restraint – As seen in the recent ruling, courts are increasingly hesitant to expand the Act's scope, placing the onus on the legislature to make necessary amendments.

The Way Forward

1. **Expand the Definition of "Workplace"** – Parliament should amend the POSH Act to explicitly include political parties, bar associations, NGOs, and gig economy platforms.
2. **Ratify ILO Convention 190** – India should ratify the ILO's Violence and Harassment Convention (C190), the first international treaty recognizing the right to a workplace free from violence, which explicitly covers political spaces.
3. **Strengthen Accountability** – Establish robust monitoring and reporting systems to ensure effective implementation of the Act across all sectors.
4. **Regulatory Oversight by ECI** – The Election Commission of India can be empowered to mandate that political parties establish internal gender-safety codes and credible grievance redressal mechanisms as a condition for registration and recognition.
5. **Promote Self-Regulation** – Encourage political parties to voluntarily adopt codes of conduct and set up internal committees, with provisions for external audits to ensure fairness and credibility, following the example of parties in countries like Sweden.

Source – <https://www.thehindu.com/news/national/supreme-court-rejects-plea-to-include-women-political-workers-under-posh-act/article70051592.ece>

