



40. Efficacy of POSH Act: A Critical Legal Appraisal

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Abstract

In this research paper the author has made a modest attempt to analyse efficacy of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The researcher has adopted comparative analytical research methodology. Statutory provisions of our domestic legislation have been compared with relevant international instruments such as CEDAW, UDHR, ICESCR and legislative framework of Nepal and Canada. Judicial approach has also been considered and grassroots level perceptions have been gathered through e survey. The findings are indicative of the fact that there is ample scope for making amendments in our POSH Act and ODR mechanism can be explored for reducing the burden of judiciary as far as complaints under this Act are concerned. The paper ends with humble recommendations that more duties of employers should be crafted in our statutory provisions.

Keywords: Sexual Harassment, POSH, ODR, Human Rights

Introduction:

POSH Act provides statutory frame work for protecting human rights of working women. This statute has been enacted in wake of Vishakha guidelines and in aftermath of unfortunate Nirbhaya incident. In this research journey, the author has very humbly attempted to identify the efficacy of our 2013 Act. Relevant international instruments and statutes have been compared with our domestic legal regime to trace lacuna if any. At the same time e survey has also been conducted for gathering perceptions related to efficacy of POSH Act.

Research Methodology:

Both doctrinal and non doctrinal research methodology has been adopted in this academic endeavour. Comparative analysis of our domestic legal regime and international legal regime has been done. E survey has been conducted and grassroots level perceptions have been gathered from seven States of India such as Gujarat, Himachal Pradesh, Rajasthan, Madhya Pradesh, Uttar Pradesh, Jharkhand and Bihar.

Hypothesis:

Our domestic legal regime related to protection of human rights of working women is at par vis a vis international legal regime.

Human rights of working women across all sectors are adequately safeguarded in our country vide existing legal mechanism.

There is ample scope for improvement with reference to our POSH Act.



Judicial pronouncements have holistically contributed towards protection of human rights of women at workplace.

Objectives:

To trace efficacy of POSH Act.

To compare our domestic statute with international instruments, legal framework of other countries and to trace lacuna in POSH Act if any.

To explore scope for improving efficacy of our POSH Act.

To analyse judicial approach with reference to protection of human rights of women at workplace.

Limitations of the study :

Comprehensive comparative analysis of existing statutes of all countries related to protection of human rights of working women could not be undertaken due to time and word constraint.

Hypothesis 1 : Our domestic legal regime related to protection of human rights of working women is at par vis a vis international legal regime.

For testing this first hypothesis, the researcher has compared Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with :

Convention on the Elimination of All Forms of Discrimination against Women, 1979.



Universal Declaration of Human Rights, 1948.

International Covenant on Economic Social Cultural Rights, 1966.

The Sexual Harassment at Workplace (Prevention) Act, 2014 (2071) of Nepal.




Canadian legal framework.

The researcher shall now undertake comparative analysis of Convention on the Elimination of All Forms of Discrimination against Women, 1979¹ and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Sr. No.	CEDAW	Safeguards	POSH
1	Preambular vision	Dignity and worth of human person	
2	Part I - Article 1	Discrimination against women means any restriction on the basis of sex in economic field also.	

¹ <https://www.ohchr.org/sites/default/files/cedaw.pdf>, accessed on 28.08.2025



3	Part I - Article 2	Equality of men and women - appropriate legislation - sanctions - prohibiting all discrimination against women - public authorities and institutions to refrain from discrimination against women.	
	Part III - Article 11	Eliminate discrimination against women in the field of employment - right to work - inalienable right of all human beings - safety in working conditions.	
	Part III - Article 14	Rights of Rural women working in non-monetised sectors of the economy	

Tabular Analysis:

Preambular vision of both CEDAW and POSH acknowledge that right to work with dignity and protection against sexual harassment at workplace are universally recognised human rights.

Article 1 of Part I of CEDAW states that discrimination against women is inclusive of impairment of of human rights of women in economic field also. Section 2(n) of POSH Act defines sexual harassment at workplace.

Under Article 2(b) of Part I of CEDAW State Parties have agreed to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. POSH unfortunately mandates constitution of internal complaint committee only where there are at least 10 employees. For workplaces having less than 10 employees there is provision for Local Committee to be constituted by District Officer.

Under Article 11(1) of Part III of CEDAW, State Parties have agreed to take appropriate measures to eliminate discrimination against women in the field of employment and have acknowledged that right to work is an inalienable right of all human beings. Under Article 11(f) of Part III of CEDAW State Parties have recognised right to protection of health and to safety in working conditions.

























The author gathers that POSH does not in spirit comply with these provisions of CEDAW since there is no proper mechanism to safeguard human rights of working women in workplaces where number of employees is less than 10.

Under Article 14 of Part III of CEDAW State Parties have to consider problems faced by rural women in economic sector which is inclusive of their significant role in non monetised sectors of economy also. But our POSH Act only provides mechanism under Section 6(2) whereby one nodal officer is designated by District Officer in rural areas who will forward complaints to concerned Local Committee. This statutory provision under POSH is also not completely in tune with Article 14 of Part III of CEDAW.

Though CEDAW was adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of Eighteenth December in the year 1979; had entered into



















force on Third September, 198; was ratified by the Government of India on Twenty- fifth June in the year 1993 and our POSH Act received assent of President on Twenty-second April of the year 2013, it does not still holistically comply with all provisions of the said convention as far as adopting appropriate legislative measures for protection of human rights of working women are concerned as can be gathered from the above comparative analysis.

The researcher shall now undertake comparative analysis of relevant provisions of Universal Declaration of Human Rights, 1948;² International Covenant on Economic, Social and Cultural Rights, 1966³ and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Human Rights	UDHR Articles	UDHR Preamble	ICESCR Articles	ICESCR Preamble	POSH Sections	POSH Preamble
Dignity	 Article 1					
No discrimination on Basis of Sex	 Article 2		 Part II Article 2			
Right to security of person	 Article 3		 Implied vide Part III - Article 12			
Right to work	 Article 23		 Part III Article 6			

² https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf, accessed on 28.08.2025

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural->, accessed on 28.08.2025

Human Rights	UDHR Articles	UDHR Preamble	ICESCR Articles	ICESCR Preamble	POSH Sections	POSH Preamble
Just and favourable conditions of work	 Article 23		 Part III Article 7			
Safe and healthy working conditions	 Implied vide Article 23		 Part III Article 7(b)			
Economic Rights	 Implied vide Articles 23 and 25		 Article 3			

Tabular Analysis:

Provisions relating to inherent human dignity are illustrated vide Article 1 of UDHR and interwoven in preambulatory vision of ICESCR and POSH.

Provisions relating to no discrimination on basis of sex are illustrated vide Article 2 of UDHR; Article 2 of Part II of ICESCR and interwoven in preambular vision of POSH.

Provisions relating to right to security of person are illustrated vide Article 3 of UDHR; implied vide Article 12 of Part III of ICESCR and interwoven in preambular vision of POSH.

Provisions related to right to work are illustrated vide Article 23 of UDHR, Article 6 of Part III of ICESCR and interwoven in preambular vision of POSH.

Provisions related to right to just and favourable conditions of work are illustrated vide Article 23 of UDHR, Article 7 of Part III of ICESCR and interwoven in preambular vision of POSH.

Provisions related to safe and healthy working conditions are implied vide Article 23 of UDHR, illustrated vide Article 7(b) of Part III of ICESCR and interwoven in preambular vision of POSH.

Provisions related to economic rights are implied vide Articles 23 and 25 of UDHR, Article 3 of Part II of ICESCR and interwoven in preambular vision of ICESCR and POSH.



From the comparative analysis of provisions of UDHR, ICESCR and POSH; the author gathers that though human civil, economic and social human rights of women such as inherent dignity, no discrimination on basis of sex, right to security of person, right to work, just and favourable conditions of work, safe and healthy working conditions and so on are clearly or impliedly illustrated vide various articles of UDHR and ICESCR, they are only interwoven in preambular vision of POSH and author is unable to trace any relevant specific statutory provisions.

Role of preamble vis a vis specific statutory provisions :

The author hereby relies on judicial approach of our Apex Court and High Court of Gauhati for need of specific above stated provisions related to protection of human rights of women at workplace to be interwoven in our POSH Act.

Judicial Pronouncement - Gauhati High Court⁴ : In this case, Honourable Sarjoo Prosad, C. J. has observed on January 23, 1959 as under, “——— preamble alone cannot be held to be conclusive of the intent and purpose of the legislation. The object, purpose and intent of the legislation have to be gathered from the various provisions of the Statute itself and not merely from an isolated examination of the preamble———.”⁵

Judicial Pronouncement - Supreme Court of India⁶ : In this case, Honourable G. B. Pattanaik, S. R. Babu, D. P. Mohapatra, Doraswamy Raju and S.V. Patil, JJ. have observed on January 10, 2001 as under :“ —— preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a Section of the Act as are other relevant enacting words to be found elsewhere in the Act.”⁷

The researcher shall now undertake comparative analysis of relevant provisions of The Sexual Harassment at Workplace (Prevention) Act, 2014 (2071) of Nepal⁸ and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.











⁴ AIR 1959 GAU 147

⁵ Anil Kumar Bhattacharjee And Ors. vs Deputy Commissioner And Collector

⁶ (2001) 4 SCC 139

⁷ Union Of India vs Elphinstone Spinning & Weaving Co. Ltd. And Others.

⁸ <https://lpr.adb.org/sites/default/files/resource/%5Bnid%5D/nepal-the-sexual-harassment-at-workplace-prevention-act-2014-2071-english.pdf>, accessed on 28.08.2025

Statutory Provisions	SHWP	POSH	Remarks
Definition of Sexual Harassment			Scope for additional grounds of sexual harassment in POSH Act : to tease or annoy with sexual intent
Exclusion Clause with reference to sexual harassment			Scope for inclusion of exclusion clause in Posh Act
Reformative measures so that sexual harassment is not repeated			Scope of inclusion of relevant statutory provisions in POSH Act
Psychological counselling services to the victim.			Scope of inclusion of relevant statutory provisions in POSH Act
Maintain grievance box in workplace.			Scope of inclusion of relevant statutory provisions in POSH Act

Tabular Analysis :

The 2014 Act of Nepal contains the following ground as sexual harassment - "Section 4(1)(e) : To tease or annoy with sexual intent." Section 2(n) of our POSH Act does not expressly cover it. Hence there is scope for its inclusion in our Act of 2013.











The 2014 Act of Nepal contains the following ground as exclusion from from sexual harassment - "Section 2(1) : anything done in course of educational, informative, research oriented, treatment or lifesaving activity shall not be considered to be a sexual harassment." Our POSH Act does not cover it. Hence there is scope for its inclusion in our Act of 2013.

The 2014 Act of Nepal clearly identifies the responsibility of the Manager of workplace to adopt necessary reformative measures in order to ensure that sexual harassment is not repeated vide Section 5(1)(c). POSH Act does not identify any such duty of employer. Hence there is scope for its inclusion in our Act of 2013.

The 2014 Act of Nepal clearly identifies the responsibility of the Manager of workplace to provide psychological counselling services to victims vide Section 5(1)(d). POSH Act does not identify any such duty of employer. Hence there is scope for its inclusion in our Act of 2013.

The 2014 Act of Nepal clearly identifies the responsibility of the Manager of workplace to maintain a grievance box in the workplace vide Section 5(1)(e). POSH Act does not identify any such duty of employer. Hence there is scope for its inclusion in our Act of 2013.

The researcher shall now undertake comparative analysis of of Preventing and addressing workplace harassment and violence - A guide for federally regulated employers of Canada⁹ and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Specific Guidelines For	Canada	POSH	Remarks
Protection of any gender at workplace - including men, women, trans, non- binary and gender diverse individuals.			Scope for making POSH Act gender neutral
Inclusive list of examples related to sexual harassment			Scope for inclusion of examples in POSH Act
Mandatory training courses for new workers			Should be mandated by POSH Act
Mandatory refresher courses for existing workers			Should be mandated by POSH Act
ODR mechanism for amicable redressal			Scope for adopting ODR mechanism by POSH Act

Tabular Analysis :

In Canada there are specific guidelines for protection for any gender at workplace including men, women, trans, non-binary, gender diverse individuals. Hence there is ample scope for making POSH Act gender neutral.

Canadian guidelines contain various examples related to sexual harassment. Researcher is unable to trace such examples in our domestic law. Hence there is scope for inclusion of examples in POSH Act.

Canadian guidelines provide for mandatory training courses for new workers and mandatory refresher courses for existing workers. Provisions related to such mandatory courses can be included in our POSH Act also.

There is scope for adopting ODR mechanism by POSH Act as is provided by Canadian guidelines.

⁹ https://www.chrc-ccdp.gc.ca/sites/default/files/documents/preventing-and-addressing-workplace-harassment-and-violence_0.pdf, accessed on 28.08.2025



Hypothesis II : Human rights of working women across all sectors are adequately safeguarded in our country vide existing legal mechanism.

With reference to our second hypothesis the researcher has gathered grass roots level perceptions and also undertaken comparative tabular analysis. Findings are as under :

Majority responds of the e survey have suggested that specific statutory provisions for protecting human rights of of rural women at workplace should be incorporated in our POSH Act. Rights of Rural women working in non-monetised sectors of the economy are not adequately protected by our domestic legal regime.

Our POSH Act also should include specific statutory provisions as are provided for by Part III - Article 14 of CEDAW as can be gathered by relevant tabular analysis above.

Hypothesis III : There is ample scope for improvement with reference to our POSH Act.

With reference to our third hypothesis the researcher has gathered grass roots level perceptions and also undertaken comparative tabular analysis. Findings are as under :

'To tease or annoy' should be included as a specific ground of sexual harassment in our POSH Act. Psychological counselling services to the victim of sexual harassment should be provided by employers.

Grievance box for sexual harassment related complaints should be provided at workplace.

POSH Act should be made gender neutral.

POSH complaints should be entertained beyond the time limit as is prescribed by Section 9 of 2013 Act.

Hypothesis IV : Judicial pronouncements have holistically contributed towards protection of human rights of women at workplace.

With reference to this hypothesis, the researcher has alluded to observations of our apex court in Vishakha v State of Rajasthan¹⁰ and Vaneeta Patnaik Versus Nirmal Kanti Chakrabarti & Ors.¹¹

Judicial Pronouncement - Supreme Court¹² : In this case, Honourable Sujata V. Manohar and B. N. Kirpal, have observed on August 13, 1997 as under :

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The meaning and content of the fundamental rights guaranteed in the

¹⁰ <https://api.sci.gov.in/jonew/judis/13856.pdf>, accessed on 28.08.2025

¹¹ https://api.sci.gov.in/supremecourt/2025/29049/29049_2025_11_1501_64161_Judgement_12-Sep-2025.pdf, accessed on 28.08.2025

¹² 1997 SCC (CRI) 932



Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse.”¹³

Contemporary Judicial Pronouncement : In this Civil Appeal arising out of Special Leave Petition (C) No. 17936 of 2025¹⁴, Honourable Pankaj Mithal and Prassana B. Varale of Apex Court have observed on September 12, 2025 as under :

“It is advisable to forgive the wrongdoer, but not to forget the wrongdoing. The wrong which has been committed against the appellant may not be investigated on technical grounds, but it must not be forgotten. In this view of the matter, we direct that the incidents of alleged sexual harassment on part of respondent may be forgiven but allowed to haunt the wrongdoer forever. Thus, it is directed that this judgment shall be made part of the resume of respondent, compliance of which shall be strictly ensured by him personally.”¹⁵

With reference to the Vishakha judgment, the author gathers that our judiciary has proactively safeguarded human rights of working women. Guidelines have been crafted by our Apex Court since there was a lacuna in our legal framework. Dignity of working women have been considered to be inherent in our fundamental rights.

With reference to contemporary judicial pronouncement of 2025 the author gathers that there is requirement of relaxation of limitation period for filing complaint under POSH Act.

Findings :

With reference to first hypothesis one can gather that our domestic legal regime related to protection of human rights of working women is to an extent at par with international legal regime. Yet certain human rights of working women which are highlighted in preamble of our 2013 Act can be crafted in the statute itself for better protection of female employees at workplace.

With reference to second hypothesis one can gather that human rights of working women in certain sectors are adequately safeguarded but human rights of women working in workplaces where number of employees is less than ten as well as in rural areas are not adequately safeguarded.

With reference to third hypothesis one can gather that there is ample scope for improvement with reference to our POSH Act.

With reference to fourth hypothesis one can gather that judicial pronouncements of our Apex Court which have been reviewed above have holistically contributed towards protection of human rights of women at workplace.

Conclusion:

POSH Act is not completely in tune with Article 11 of CEDAW as can be gathered by their comparative analysis.

¹³ Vishakha v State of Rajasthan

¹⁴ 2025 INSC 1106

¹⁵ Vaneeta Patnaik Versus Nirmal Kanti Chakrabarti & Ors.



Various human rights of working women are enshrined in preamble of POSH Act but not specifically safeguarded by statutory provisions.

Duties of employers with reference to psychological counselling of working women and so on should be specifically crafted in our POSH Act.

POSH ACT can be amended to safeguard rights of gender diverse individuals at their workplaces.

Our judiciary is overburdened and hence there is ample scope for exploring online disputes redressal mechanism with reference to POSH Act.

Contemporary judicial approach advocates flexibility with reference to limitation period and complaints under POSH Act.

Recommendations:

The researcher would make a humble attempt to provide recommendations with reference to comparative analysis undertaken above and also verbatim reproduce some of the suggestions of respondents of the survey :

Recommendations with reference to comparative analysis :

After comparing POSH Act with UDHR, ICESCR and CEDAW, SHWA, 2014 and Canadian legal framework, the researcher humbly puts forth the following recommendations -

In tune with Article 2(b) of Part I and Article 11(1) of Part III of CEDAW, specific legal mechanism is required to safeguard human rights of women at workplaces where number of employees is less than ten.

Provisions of Section 6 (2) of POSH Act propose a very weak legal mechanism for safeguarding rights of working women in rural areas. This is not in compliance with Article 14 of Part III of CEDAW. Hence there is scope for amending our POSH Act for adequately safeguarding rights of women working in rural areas.

In tune with Canadian legal regime, POSH Act can be made gender neutral and complaints under this Act can be redressed through online disputes redressal mechanism.

In tune with Nepal Act of 2014, more duties of employers can be identified vide POSH Act also.

Certain suggestions of respondents of the survey are shared here :

Strict enforcement of the Act, with regular audits and compliance checks to prevent non-compliance. Mandatory training for employees as well as members of ICC.

Arrange counselling for victims.

Reference

1. Rao, M. (2022). *Law relating to women and children* (4th ed.). Eastern Book Company.
2. Eastern Book Company. (2024). *EBC's sexual harassment of women at workplace (Prevention, Prohibition and Redressal) with case laws* (2024 ed.). Eastern Book Company.
3. Singh, D. (2021). *Human rights: Woman and law* (3rd ed.). Allahabad Law Agency.
4. Joshi, K. C. (2021). *International law and human rights* (4th ed.). Eastern Book Company.