



Protection of Women from Sexual Harassment (POSH) Act, 2013

For Prelims: Article 19, right to information, Open Court

For Mains: Protection of Women Against Sexual Harassment Act, 2013 and its criticism.

Why in News

Recently, a petition has been filed in the [Supreme Court](#) challenging **guidelines** issued by the **Bombay High Court** in cases under the [Protection of Women from Sexual Harassment \(POSH\) Act, 2013](#).

- The provision that challenged pertains to **blanket bar on parties and advocates from sharing records, including orders and judgments, with the media.**
- The guidelines were formed by **Justice G.S. Patel** of the Bombay High Court ostensibly to protect the identities of the parties in a case under the POSH Act.

Key Points

- **Arguments of the Petitioner:**
 - **Against Spirit of Article 19:** The petitioner argued that a blanket bar is against the freedom of speech and expression enshrined under [Article 19](#).
 - The petition said a well-informed citizenry governs itself better.
 - Right to free speech **can be curbed only if it interferes with the administration of justice.**
 - Any injunction on the right of the people to know true and accurate facts is an encroachment on their [right to information](#).
 - **Suppression of Women's Voices:** It can serve as a tool for powerful men to continue sexually harassing women and thereafter suppressing their voices on social media and in the news media.
 - In matters of **social justice and women empowerment, public discourse** plays a crucial role in shaping the nature of legal entitlements that are delivered to women.
 - The order may have a **“ripple effect”** and deter survivors from approaching courts as well as setting a dangerous precedent for trial cases.
 - **Against Principle of Open Court:** The legitimise undue protection to sexual offenders in gross violation of principles of **open court and fundamental rights of survivors.**
 - An **open court serves an educational purpose.**
 - The court becomes a platform for citizens to know how the practical application of the law impacts upon their rights.

Protection of Women Against Sexual Harassment Act, 2013

- **Background:** The Supreme Court in a landmark judgement in the [Vishakha and others v State](#)

of Rajasthan 1997 case gave '**Vishakha guidelines**'.

- These guidelines formed the basis for the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act").
- **Mechanism:** The Act defines sexual harassment at the workplace and creates a **mechanism for redressal of complaints**.
 - Every employer is required to **constitute an Internal Complaints Committee** at each office or branch with 10 or more employees.
 - The Complaints Committees have the **powers of civil courts** for gathering evidence.
 - The Complaints Committees are required to **provide for conciliation** before initiating an inquiry if requested by the complainant.
- **Penal Provisions:** Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine.
 - Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.
- **Responsibility of Administration:** The State Government will notify the District Officer in every district, who will constitute a Local Complaints Committee (LCC) so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment.

Note: SHe-Box

- The Ministry of Women & Child Development has launched [Sexual Harassment electronic Box \(SHe-Box\)](#).
- It is an **effort to provide a single window access to every woman**, irrespective of her work status, whether working in organised or unorganised, private or public sector, to facilitate the registration of complaint related to sexual harassment.
- Any **woman** facing sexual harassment at the workplace **can register their complaint through this portal**.
- Once a complaint is submitted to the 'SHe-Box', it will be directly sent to the concerned authority having jurisdiction to take action into the matter.

Way Forward

- There is a need to implement [JS Verma Committee recommendations](#) on Sexual Harassment at the Workplace Act:
 - **Employment Tribunal:** Setting up of an employment tribunal instead of an internal complaints committee (ICC) in the Sexual Harassment at the Workplace Act.
 - **Power to Form Own Procedure:** To ensure speedy disposal of complaints, the committee proposed that the tribunal should not function as a civil court but may choose its own procedure to deal with each complaint.
 - **Expanding Scope of Act:** Domestic workers should be included within the purview of the Act.
 - The Committee said any "**unwelcome behavior**" should be seen from the subjective perception of the complainant, thus broadening the scope of the definition of sexual harassment.
 - **Responsibility of Employer:** The Verma panel said an employer should be held liable if:
 - he or she facilitated sexual harassment.
 - permitted an environment where sexual misconduct becomes widespread and systematic.
 - Where the employer fails to disclose the company's policy on sexual harassment and ways in which workers can file a complaint.
 - When the employer fails to forward a complaint to the tribunal
 - The company would also be liable to pay compensation to the complainant.
 - The panel opposed penalizing women for false complaints as it can potentially nullify the objective of the law.
 - The Verma panel also said that the time-limit of three months to file a complaint should be done away with and a complainant should not be transferred without her

consent.

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