



APPLICABILITY OF THE POSH ACT TO THE BAR COUNCIL OF INDIA (BCI): STATUTORY PROVISIONS AND JUDICIAL PERSPECTIVES

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ABSTRACT

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), was enacted to ensure a safe working environment for women in India. A subject of recent legal and policy debate is the applicability of this Act to regulatory professional bodies such as the Bar Council of India (BCI) and the extent to which its mechanisms can address sexual harassment involving advocates. This article critically examines the statutory framework of the POSH Act alongside landmark judicial pronouncements, to clarify whether and to what extent the Act is Applicable to the BCI, especially concerning advocates registered with the council and its direct employees. The discussion begins with an exposition of the POSH Act's objectives, definitions, and obligations imposed on "employers". It then analyzes the unique nature of BCI as a statutory regulatory body under the Advocates Act, 1961, and explores whether advocates registered with the BCI or the State Bar Councils can be considered "employees" for POSH compliance. Recent High Court and Supreme Court decisions, including the Bombay High Court's 2025 ruling on the employer-employee relationship, are reviewed to underscore that the POSH Act applies squarely to BCI employees but not to advocates. Parallel redressal mechanisms available under Section 35 of the Advocates Act are discussed, highlighting the legal gap for women advocates facing harassment from peers. This article draws upon statutory interpretations, relevant case laws, and expert commentary to argue for nuanced reforms and improved protection for women in the legal profession.

Keywords: POSH Act, Bar Council of India, Sexual Harassment at Workplace.

INTRODUCTION

Sexual Harassment in the workplace has been a long-standing, pervasive issue hindering

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women's participation and progress in professional environments. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), a legislative response to the Vishaka Guidelines, aims to create a structured redressal mechanism. The legal profession, with the Bar Council of India at its helm, presents special challenges for the Act's implementation, given the unique structure of advocate membership and regulation.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION) PROHIBITION AND REDRESSAL) ACT, 2013

The POSH Act was enacted, superseding the Supreme Court's Vishaka Judgment, which highlighted the absence of effective legal remedies for incidents of sexual harassment in the workplace. The Act's statement of objects and reasons underscores its aim to protect women's fundamental rights under Articles 14, 15 and 21 of the Constitution.

Key Definitions under the Act-

Workplace: According to Section 2(o) "**Workplace**" includes the following;

- any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- hospitals or nursing homes;
- any sports institute, stadium, sports complex or competition or games venue, whether residential or not, used for training, sports or other activities relating thereto;

- any place visited by the employee arising out of or during employment, including transportation by the employer for undertaking such journey;
- a dwelling place or a house;”

Employee: According to Section 2(f) employee means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working voluntarily or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;”

Employer: According to Section 2(g) the term Employer means the following-

- about any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation: For this sub-clause, “management” includes the person or board, or committee responsible for the formulation and administration of policies for such organisation.

- about workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations concerning his or her employees;
- about a dwelling place or house, a person or a household who employs or benefits from the employment of a domestic worker, irrespective of the number, period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

The Act creates an institutional obligation on every employer who employs more than 10 employees to constitute an Internal Complaints Committee (ICC)¹. The committee shall be

¹ The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013, S.4

headed by a woman, ensuring gender-sensitive redressal mechanisms for complaints of sexual harassment.

THE BAR COUNCIL OF INDIA

The Bar Council of India is a statutory body constituted under the Advocates Act, 1961, to regulate the legal profession and education in India. It registers advocates, frames rules, and enforces standards of professional conduct, but it does not “employ” advocates in the conventional sense. The BCI does maintain direct employees (administrative and clerical staff) who fall within standard employer-employee constructs.

INTERPRETATION OF POSH PROVISIONS CONCERNING BCI

The employer-employee relationship is a statutory requirement for the applicability of the POSH Act. The recent Bombay High Court pronouncement has crystallised that the POSH Act imposes duties specifically on employers, and by extension, only employees are entitled to its complaints by or against advocates as lawyers, but only apply to direct employees of the BCI and State Bar Councils.

In *UNS Women Legal Association v. Bar Council of India*² the court clarified the following:

- The BCI and State Bar Councils are regulatory bodies, not employers of advocates.
- Advocates are not “employees” of the BCI or the State Bar Councils for the POSH Act.
- Provisions of the POSH Act, including provisions relating to the constitution of the ICC, apply only to direct employees of such bodies and do not apply to practising advocates.
- Grievances of women advocates must be addressed under Section 35 of the Advocates Act, 1961, for “professional or other misconduct”, which includes harassment².

The BCI employees are covered under POSH due to their employment status, but women advocates can only seek a remedy for sexual harassment by filing complaints under Section 35 of the Advocates Act. This route is less structured, is potentially slower and lacks the

² 2025 SCC OnLine Bom 2647

specialized processes of the POSH Internal Complaints Committee mechanism. There is no statutory liability on BCI to constitute an ICC for women advocates, but it would be best if the BCI voluntarily adopted these policies, considering the sensitivity of the issues.

CASE LAWS ON POSH APPLICABILITY AND SEXUAL HARASSMENT REDRESSAL

Vishaka vs State of Rajasthan (1997): In this case the Supreme Court laid down the guidelines, known as the Vishaka Guidelines, for addressing sexual harassment at the workplace. This led to the enactment of the POSH Act³.

Medha Kotwal Lele vs Union of India (2013): In this case the Supreme Court directed all statutory bodies and institutions, including those in the legal profession, to establish an effective internal complaints committee. While statutory provisions were subsequently codified in the POSH Act, the distinction between “employee” status and professional membership remained unresolved for advocates. In the recent case of **UNS Women Legal Association v. Bar Council of India (2025):** In this case the Bombay High Court clarified that the POSH Act does not apply to advocates and the BCI.

THE ADVOCATES ACT, 1961: SECTION 35 AND REDRESSAL MECHANISMS

Section 35 allows any person to file a complaint alleging “professional or other misconduct” against an advocate. State Bar Councils conduct disciplinary proceedings, which may lead to suspension or removal from the roll of advocates.

Section 35(1): It states that “Where, on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.” It is pertinent to note that the term “other misconduct” is construed broadly to include sexual harassment within its scope.

U. Dakshinamoorthy vs The Commission Of Inquiry(1979): helped to establish a broad interpretation of ‘misconduct’ under Section 35 of the Advocates Act, setting the stage for later application to sexual harassment as a form of ‘other misconduct’. In the case of **UNS Women Legal Association v. Bar Council of India**⁴, the Bombay High Court clarified that the

³ AIR 1997 SUPREME COURT 3011

⁴ 2025 SCC OnLine Bom 2647

remedy for sexual harassment by advocates lies under Section 35 of the Advocates Act, which allows any person, including a woman advocate, to file a complaint for such misconduct before the State Bar Council.⁵

CONCLUSION AND RECOMMENDATIONS

The POSH Act stands as a significant step forward for workplace safety, but its statutory language restricts its applicability to formal employer-employee relationships only. In the case of the BCI, while direct employees are protected, advocates, who are neither employees nor in a contractual work relationship with the Council, remain outside the purview of protection from workplace sexual harassment addressed by the POSH Act. The current legal position, validated by the recent case law, is that such grievances are to be remedied under Section 35 of the Advocates Act as “professional or other misconduct”. However, the lacuna for women advocates urgently calls for structural reforms.

Recommendations include-

- Legislative amendment to clarify or expand the definition of “employee” within POSH for the legal profession.
- Bar councils' voluntary adoption of the POSH Act constitutes the Internal Complaints Committee for women advocates.
- Enhanced awareness campaigns and training for advocates and council members on professional conduct and gender sensitivity.

A future framework must reconcile the regulatory autonomy of legal councils with the urgent requirement for effective remedies against harassment, ensuring every woman in the legal profession is empowered by the law.

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