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## POSH and the Labour Codes: Extending Harassment Protections to India's Gig Workforce

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*Workplaces are no longer confined to office buildings and factory floors; with the rise of the digital economy and platform-based employment, the boundaries of where and how people work have significantly blurred. Women are increasingly entering gig and remote work arrangements, from food delivery and home services to freelancing and online employment, which, while offering flexibility and economic opportunity, also expose them to new vulnerabilities in terms of workplace safety and sexual harassment. This paper undertakes a doctrinal analysis of the application of the Prevention of Sexual Harassment at Workplace Act, 2013 (POSH Act) to such non-traditional work arrangements. Although the Act was enacted to safeguard women against sexual harassment, its statutory framework, particularly the definitions of “employee” and “workplace”, is rooted in conventional employer-employee structures. With the expansion of the digital economy, women delivery personnel, freelancers, and platform-based workers increasingly face forms of harassment that fall outside the spatial and institutional assumptions of the Act. Through a critical examination of statutory provisions, judicial interpretations, and comparative perspectives, this paper interrogates whether the legal framework is sufficiently elastic to extend protection to gig and remote workers. It argues that while purposive interpretation has been attempted in some judicial contexts, the absence of explicit statutory recognition creates significant enforcement gaps.*

**Keywords:** *gig economy, remote work, posh, sexual harassment, women workers.*

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## INTRODUCTION

The nature of work has undergone a quiet but profound transformation over the past decade. Digital platforms, telecommuting, and freelance work have increasingly replaced more conventional structures of work. More specifically, regarding work, the case of contemporary India is reflective of a new culture of freelance work, including, inter alia, online delivery services, ride-sharing, home services, and online freelance work.<sup>1</sup> On one level, these trends offer greater flexibility to workers. However, they have also become synonymous with new forms of insecurity, which fall heaviest upon women.<sup>2</sup>

The typical response of the law to the gig economy has been centred on matters of employment categorisation, minimum wage rates, and social security benefits.<sup>3</sup> In contrast, very little attention has been directed at the implications of already-existing gender-protective regimes of work in the context of these new forms of work arrangements. This is especially true in relation to the risk of sexual harassment, which continues to be one of the most prevalent but inadequately addressed issues for women in the workforce at large.<sup>4</sup> In most cases, for women in gig or telework arrangements, sexual harassment occurs in environments that defy the typical definitions of 'the workplace' in the customer's home, on the streets, or online.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 ('POSH Act') is one of the main enabling laws in India that provides solutions to the issue of workplace sexual harassment. The POSH Act is based on the constitutional provision related to equality, dignity, and the right to work in a secure workplace. The POSH Act was passed in light of the directive in the decision in *Vishaka v State of Rajasthan*.<sup>5</sup> It is important to highlight that in the POSH Act, the workplace is very widely defined, and the legislation imposes obligations on employers to provide solutions against the issue of workplace sexual harassment.<sup>6</sup> However, in light of modern work practices, such as remote work, the

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<sup>1</sup> *World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO 2019)

<sup>2</sup> *Fairwork India Ratings 2023: Labour Standards in the Platform Economy* (Fairwork Foundation 2023)

<sup>3</sup> Jan Breman, *At Work in the Informal Economy of India: A Perspective from the Bottom Up* (1st edn, OUP 2013)

<sup>4</sup> *Violence and Harassment in the World of Work* (ILO 2018)

<sup>5</sup> *Vishaka & Ors v State of Rajasthan & Ors* (1997) 6 SCC 241

<sup>6</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

traditional understanding of the term ‘workplace’ is increasingly rendered less relevant by new work arrangements.

Women gig economy workers and teleworking freelancers are often situated in disorganised, algorithmically-regulated spaces, without actual workplace structures, where liability is distributed through the platform, the third party, and the client.<sup>7</sup> Food delivery personnel and home service workers experience workplace harassment by customers, and teleworking professionals are subjected to online harassment through electronic communication channels, without being able to locate a jurisdiction to lodge complaints.<sup>8</sup> In this scenario, the liability of the platform to provide an organised complaint mechanism for the workers' grievances has been consistently disclaimed because the workers are ‘independent contractors.’<sup>9</sup> Therefore, the pertinent question arises: Where, in the POSH Act, are the provisions against sexual harassment to remain valid if they are based on outmoded ideas of work, employment, and the workplace?

This paper contends that a narrow, formalistic approach to interpreting the POSH Act may actually be used to deny protection to the very women who are most at risk within the modern labour market. By reference to principles of substantive equality, constitutional dignity, and the international human rights obligations of the Government of India,<sup>10</sup> it submits that a lack of a traditional employment relationship does not preclude the denial of protection from sexual harassment, but that a purposive interpretation of the POSH Act, based on modern concepts of control, dependence, or power, as applicable to platform or remote work, is required. While the available research regarding the gig economy in India has focused on the issue of labour and social security, the issue of sexual harassment has been situated within the parameters of the conventional workplace under feminist legal scholarship. This research aims to fill this schism.

In particular, this paper departs from the literature by focusing on the POSH Act as an autonomous law for women’s protection, instead of treating it as a secondary issue peripheral to the discussion of labour classification. The literature on the gig economy in

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<sup>7</sup> Valerio De Stefano, ‘The Rise of the “Just-in-Time Workforce”: On-Demand Work, Crowdsourcing and Labour Protection in the “Gig-Economy”’ (2016) 37(3) *Comparative Labor Law Journal* 471, 475–478

<sup>8</sup> UN Broadband Commission for Digital Development: Working Group on Broadband and Gender, *Cyber Violence Against Women and Girls* (October 2015) 6–9

<sup>9</sup> *Fairwork India Ratings 2023: Labour Standards in the Platform Economy* (n 2)

<sup>10</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597

India has so far concentrated heavily on employment issues, wages, and security, and sexual harassment studies remain only indirect and circumscribed to the framework of the traditional workplace. The POSH Act, as an equality constitutional tool that has the potential to exist outside of the framework of employers and employees, brings into focus issues of power, control, and dependence in the context of platform and remote labour, instead of being focused only on employment. Based on the doctrine of statutory provisions and judicial precedents, and by taking cognisance of the prevailing practice followed by other nations, this research investigates the scope there is to formulate the POSH Act to address the issue of sexual harassment emerging from the gig economy and distance work.

### **POSH ACT WITHIN INDIA'S LABOUR LAW ARCHITECTURE**

The legal issues arising out of the application of the POSH Act to gig and platform workers cannot be analysed in a vacuum, but must be understood in the context of the developing labour law regime in India. Recent developments in the labour law regime indicate an increasing awareness of non-traditional forms of work, but they also indicate a piecemeal approach to labour law.<sup>11</sup> The Code on Social Security, 2020 is the first legislation to recognise the existence of 'gig workers' and 'platform workers' in Indian law, but it only extends them limited benefits of social security in the form of insurance and social security programs. The Code is, however, completely mum on the issue of workplace safety, dignity, and grievance redressal, including sexual harassment.

This is a telling omission that highlights the structural divide in labour legislation, where the economic security of gig workers has now been introduced into the legislative agenda, but dignity rights are still firmly rooted in the employer-employee relationships. Unlike traditional labour legislation, the POSH Act is a gender-protective equality statute rather than a wage-focused employment statute. However, its institutional design, especially the use of employer-nominated Internal Complaints Committees, is particularly ill-equipped for platform-mediated work, where the identity of the employer is deliberately obscured.

Similarly, the Industrial Relations Code, 2020, maintains the classical definition of 'worker' and 'employee,' thus leaving gig workers outside the ambit of dispute resolution. The

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<sup>11</sup> Ministry of Labour and Employment, *Report of the Parliamentary Standing Committee on Labour on the Occupational Safety, Health and Working Conditions Code, 2020* (Rajya Sabha Secretariat 2021)

Unorganised Workers' Social Security Act, 2008, despite covering a vast majority of women engaged in gig and home-based work, focuses more on welfare rather than rights and does not have any provision for dealing with sexual harassment.<sup>12</sup> The lack of coordination between the labour laws and the POSH Act creates a gap in the law, where women gig workers are treated as economic agents but are not protected against gender violence.

### **THE CONCEPT OF 'WORKPLACE' AND 'EMPLOYEE' UNDER POSH ACT**

The foundation of any inquiry into the adequacy of the POSH Act, 2013, lies in its definitional scope. Section 2(o) of the Act defines "workplace" expansively to include "any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit... including any place visited by the employee arising out of or during the course of employment."<sup>13</sup> Judicial interpretation has further expanded this definition. In *Saurabh Kumar Mallick v Comptroller and Auditor General of India*, the Delhi High Court recognised that 'workplace' need not be confined to the physical office of the employer and may extend to off-site or remote contexts.<sup>14</sup> This broad formulation was intended to reflect the fluidity of modern workspaces.

Likewise, Section 2(f) of the Code of Social Security defines "employee" as "a person employed at a workplace for any work on a regular, temporary, ad hoc, or daily wage basis, either directly or through an agent, including a contractor, with or without remuneration."<sup>15</sup> Although the definition seems broad, it is still anchored to the relationship of employment, which is direct or indirect, and assumes a certain level of control on the part of the employer. This is where the definition becomes ambiguous when applied to gig economy workers, freelancers, and delivery partners who work for companies through platforms, who are usually categorised by companies as 'independent contractors' and not employees. For example, food delivery platforms such as Zomato and Swiggy classify their delivery partners as independent contractors, which has been challenged in court in various countries.

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<sup>12</sup> Unorganised Workers' Social Security Act 2008; National Commission for Enterprises in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (2007)

<sup>13</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(o)

<sup>14</sup> *Saurabh Kumar Mallick v Comptroller and Auditor General of India & Anr* WP 8649/2007

<sup>15</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(f)

## PRACTICAL CHALLENGES FOR GIG AND PLATFORM WORKERS

In this context, the statutory ambiguity has had a practical impact on gig workers. According to a report in *The Hindu* in 2022, women gig workers in Urban Company and other such platforms have complained of harassment by clients during home-based service delivery, but could not avail themselves of POSH provisions as they were not classified as ‘employees.’ The *Indian Express* has reported harassment of women drivers and delivery personnel in app-based services, where the absence of a formal workplace makes it difficult to address grievances. These instances illustrate the vulnerability of gig workers under the current statutory framework.

## LESSONS FROM INTERNATIONAL PRACTICES

International practice provides valuable contrasts. The International Labour Organisation (ILO) has stressed that protection against harassment and violence in the workplace must be provided for all workers, regardless of their contractual status, under the Violence and Harassment Convention, 2019 (No. 190).<sup>16</sup> In the United Kingdom, the Equality Act 2010 places a positive duty on employers to prevent harassment, although in some cases, tribunals have extended the protection to gig workers who were found to fall within the definition of ‘worker.’<sup>17</sup> In the United States, Title VII of the Civil Rights Act of 1964 prohibits workplace harassment, although its applicability to independent contractors is limited.<sup>18</sup>

The European Union has adopted a more proactive stance on the issue: the proposed Directive on Improving Working Conditions in Platform Work (2021) aims to reclassify many platform workers as employees, thus extending the scope of workplace protections.<sup>19</sup> These global trends highlight the shortcomings of the definitional framework in the Indian context of POSH in relation to the evolving paradigm of labour models. Unless the definitional scope of ‘employee’ and ‘workplace’ in the POSH Act is reinterpreted or revised, women in the gig

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<sup>16</sup> International Labour Organization Convention 2019

<sup>17</sup> Equality Act 2010 (UK), c 15, s 40; *Uber BV & Ors v Aslam & Ors* [2021] UKSC 5

<sup>18</sup> Civil Rights Act 1964, title VII (US)

<sup>19</sup> Council of the European Union, European Parliament, ‘Directive (EU) 2024/2831 on improving working conditions in platform work’ (Official Journal of the European Union, 11 November 2024)

<<https://www.europeansources.info/record/proposal-for-a-directive-on-improving-working-conditions-in-platform-work/>> accessed 10 January 2026

economy and working from home will continue to be marginalised in the scope of workplace protections.

## JUDICIAL AND STATUTORY INTERPRETATION

The interpretation of terms like ‘workplace’ and ‘employee’ has played a crucial role in the development of jurisprudence in India regarding sexual harassment. The courts have repeatedly relied on the broad and liberal definition of these terms, in line with the constitutional provisions of equality and dignity.

**Expansive Definition of ‘Workplace’:** In the case of *Saurabh Kumar Mallick v16 Comptroller & Auditor General of India*, the Delhi High Court held that the term ‘workplace’ is not restricted to the office premises of the employer.<sup>20</sup> The court reiterated that the spirit of the Vishaka guidelines and the subsequent Prevention of Sexual Harassment (POSH) Act is to safeguard women in any setting that is related to their work, and it is not restricted to the boundaries of the office.

Additionally, in *Ayesha Khatun v State of West Bengal*, the High Court of Judicature at Calcutta has broadly defined ‘workplace’ as including all places and environments where women employees may feel brought about their duties.<sup>21</sup> Therefore, it is confirmed that the POSH Act has a fundamental basis in social responsibility, and therefore is based on a broader definition to result in the effective implementation of the POSH Act.

Similarly, in the case of *Medha Kotwal Lele v Union of India*, the Supreme Court of India has reiterated the same definition of ‘workplace’ established in the Vishaka Guidelines for employers and required private employers to adhere to the Vishaka Guidelines for appropriate measures to be implemented. In addition, to provide clarity to their ruling, the Supreme Court has clarified that the definition of ‘workplace’ is a broad definition of all locations in which women may perform their work, thereby supporting an inclusive purpose of the POSH Act to recognise these types of workplaces in a more inclusive manner.<sup>22</sup>

## POSH AND THE CONSTITUTIONAL FOUNDATIONS OF WORKPLACE DIGNITY

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<sup>20</sup> *Saurabh Kumar Mallick v Comptroller and Auditor General of India & Anr* WP 8649/2007

<sup>21</sup> *Ayesha Khatun v State of West Bengal & Ors* MANU/WB/0071/2012

<sup>22</sup> *Medha Kotwal Lele & Ors v Union of India & Ors* AIRONLINE 2012 SC 632

The POSH Act has a strong legal basis in the Constitution's guarantees of equality, dignity, and a right to an adequate standard of living. The POSH Act represents a legislative manifestation of the constitutional mandates contained in the decision of the Supreme Court of India in the case of *Vishaka v State of Rajasthan*. The Court recognised sexual harassment in the workplace as a violation of fundamental rights under Articles 14, 15, and 21 of the Constitution.<sup>23</sup> The Court stated that Gender equality and the Right to Work with Dignity are not separate rights; therefore, the failure to provide protective systems against sexual harassment will impair women's ability to participate on an equal basis in the workforce.

The right to life and personal liberty under Article 21 also provides protection to all individuals' ability to live a dignified life and pursue economic opportunity in a safe and respectful way.<sup>24</sup> Sexual harassment, whether in a traditional workplace setting or in a more informal or decentralised work environment, deprecates an individual by attacking their bodily integrity, their psychological autonomy and the individual's sense of human dignity. Therefore, the POSH Act should be defined as both procedural in nature as a means of regulating employment, and constitutionally based to give effect to substantive dignity with respect to the employment environment.

Moreover, the requirement set forth by Article 14 of the Constitution, which guarantees that all persons are equal before the law and are afforded equal protection under the law, places upon the state a duty to ensure that protective legislation does not operate in exclusionary or arbitrary ways. Restrictively interpreting 'workplace' or 'employee' to exclude women engaged in gig or platform-based work risks imposing an unconstitutional classification upon women workers simply based on the nature of their labour arrangement.<sup>25</sup> Such an interpretation would also violate the principle of substantive equality as outlined in Article 14, which requires that the law consider structural disadvantage and not merely the formal employment status of an individual.

Article 15(3) creates specific constitutional authority for protective legislation created specifically for the benefit of women. The POSH Act is a prime example of protective legislation created specifically for the benefit of women and addressing a historically male-

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<sup>23</sup> *Vishaka & Ors v State of Rajasthan & Ors* (1997) 6 SCC 241

<sup>24</sup> *Bandhua Mukti Morcha v Union of India & Ors* AIR 1984 SC 802

<sup>25</sup> *E P Royappa v State of Tamil Nadu & Anr* (1974) 4 SCC 3

oriented harm that disproportionately impacts women through their ability to access employment opportunities and become economically independent.<sup>26</sup> When considered in light of Article 19(1)(g), which guarantees a right to practise any profession or occupation, it follows that the constitutional framework requires that women should be able to enjoy their occupational freedoms without concern for harassment or retaliation based on their sex.

The POSH Act's applicability cannot be viewed primarily through a constitutional lens. Instead of adhering to rigid, employer/employee relationships established by industrial-era (i.e., labour law), the context, nature and expression of authority, control, power and vulnerability in current working relationships must guide interpretations of the POSH Act. Digital platforms provide avenues for women to work remotely while still relying on the economic support provided by digital intermediaries. Consequently, while digital platforms have allowed for greater access and flexibility, they have not necessarily resulted in improved outcomes for women.

### **AMBIGUITY FOR GIG AND ATYPICAL WORKERS**

While the courts have made some attempts to clarify how they view the protections afforded by the POSH Act, they have yet to address the status of gig economy workers and/or platform delivery personnel under the POSH Act. Courts have acknowledged that there are types of employment relationships that extend beyond the traditional employer-employee model to protect workers through legislation designed to create a safe work environment. In the case of *National Insurance Co. Ltd. v Kirpal Singh*, the Supreme Court stated that welfare-type legislation must extend to all employees in vulnerable positions.<sup>27</sup> Although the Supreme Court's statements regarding the applicability of POSH protections to gig and platform workers are useful in determining the extent of the protections provided by the POSH Act to these workers, there is still a paucity of explicit appellate-level case law that addresses the applicability of the POSH Act to these types of workers.

### **IMPLICATIONS AND CHALLENGES**

While there has been a gradual increase in the Judicial Interpretation of the terms 'Workplace' and 'Employee' under the Act, there remains a considerable amount of

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<sup>26</sup> *Government of Andhra Pradesh v P B Vijayakumar & Anr* (1995) 4 SCC 520

<sup>27</sup> *National Insurance Co Ltd and Anr v Kirpal Singh* AIR 2014 SC 1440

uncertainty surrounding Digital and Decentralised Work. In the absence of legislation containing relevant definitions or a clear Ruling, Gig Workers or Remote Workers are at a disadvantage due to their inability to access many statutory protections. The ongoing uncertainty faced by these particular workers creates significant potential for them to fall victim to Sexual Harassment, notwithstanding the positive aims of the Act, which seeks to provide all employees with a Safe and Dignified Environment. Therefore, there is an urgent need for Legislative Intervention that defines the New Work Structures, including freelancers and Gig Workers, to ensure they receive the same Comprehensive Protection from Sexual Harassment as other employees.

### CHALLENGES IN APPLICATION TO GIG & REMOTE WORKERS

The enlargement of the POSH Act is an attempt to address the issues faced by gig/remote workers. However, there are many ways in which applying the POSH Act can be difficult in practice and in terms of its interpretation. While there seems to be a broad framework of applicability, it is very uncertain how it applies to other (non-traditional) forms of employment. The Karnataka High Court's decision in the Ola case demonstrates that laws can apply to gig/remote workers based on the relationship between the employee and employer. In this case, the complaint by the victim (on 06 August 2018) involved an injury of emotional distress when the driver showed her an obscene video while he was driving. The Karnataka High Court ordered Ola's parent company, ANI Technologies, to pay ₹5.5 lakh as a compensation package to the victim for her physical and emotional suffering.<sup>28</sup>

Justice M.G.S. Kamal stressed that the definition of 'employee' under the POSH Act should be interpreted broadly to honour the objectives of the Act.<sup>29</sup> He noted the complete insensitivity and lack of urgency exhibited by the Internal Complaints Committee of Ola regarding handling the complaint; hence, the importance of having adequate safeguards for women in the gig economy. He also noted that the decision in this case has serious

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<sup>28</sup> Sucheta, 'Karnataka HC directs ANI Technologies to pay Rs 5 Lakhs as compensation to woman sexually harassed by OLA cab driver in 2018' (SCC Blog, 01 October 2024)

<<https://www.sconline.com/blog/post/2024/10/01/ola-cab-ani-technologies-compensation-5lakhs-sexual-harassment-cab-driver-poshact-karnataka-hc-legal-news/>> accessed 05 January 2026

<sup>29</sup> 'Karnataka HC says cab drivers are company employees, fines Ola Rs 5.5 lakh under PoSh' *The Economic Times* (02 October 2024) <<https://economictimes.indiatimes.com/news/india/karnataka-hc-says-cab-drivers-are-company-employees-fines-ola-rs-5-5-lakh-under-posh/articleshow/113871670.cms?from=mdr>> accessed 05 January 2026

implications in relation to the POSH Act and employees engaged in work through platform-based services, highlighting the requirement for companies that use gig work to take responsibility for it.

**Ambiguity in Employment Status:** According to Section 2(f), an employee as defined in the POSH Act is an individual who is engaged by a business for employment on either a regular or temporary basis, to do work for that company. The definition appears to be broad-based; however, gig economy employees would typically be classified as Independent Contractors, not Employees and therefore, this classification raises issues with respect to the statutory protection of these individuals. The Indian legal system has also used the ‘control and supervision’ tests as the basis to determine whether an employment relationship exists, as articulated in *Dhrangadhra Chemical Works Ltd. v State of Saurashtra*.<sup>30</sup> But the use of the algorithmic control aspect of platform-based work makes this binary test unable to provide a meaningful distinction between employees and Independent Contractors. As a result, gig workers are at a disadvantage because they remain unprotected under the most basic employment laws.

**Non-Traditional Workplaces:** The POSH Act places a broad definition on the term ‘workplace’ as defined by Section 2(o) to cover all locations where an employee travels during work time. The Courts have frequently supported a lenient interpretation of this definition; one instance of this support comes from the Delhi High Court in the case of *Saurabh Kumar Mallick v Comptroller & Auditor General of India*, where the Court recognised that places outside the physical workplace can be utilised as valid work environments.<sup>31</sup> This ambiguity has created challenges for platform workers who conduct business in numerous areas of the public (e.g., Streets, Restaurants, and homeowners), as these workers do not have the benefit of having their employers directly supervise them in these instances. Therefore, the application of POSH becomes unclear and leaves the worker uncertain about what protections they may have under the Act.

**Absence of Internal Complaints Committees (ICCs):** According to the POSH Act, all organisations with more than ten employees must have an Internal Complaints Committee

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<sup>30</sup> *Dhrangadhra Chemical Works Ltd v State of Saurashtra* AIR 1957 SC 264

<sup>31</sup> *Saurabh Kumar Mallick v Comptroller and Auditor General of India & Anr* WP 8649/2007

(ICC).<sup>32</sup> Many gig companies make it difficult to comply by calling their workers ‘partners’ and/or ‘contractors’. This means that women working as delivery partners and drivers do not have access to the legal recourse that was designed to protect them under the POSH Act, which completely defeats the purpose of the POSH Act.

### **LOCAL COMPLAINTS COMMITTEES AND THE UNORGANISED WORKFORCE**

In addition, Sections 5 to 8 of the POSH Act provide for the creation of Local Complaints Committees (LCC) to support women who work in organisations with less than ten employees, as well as women in the unorganised sector.<sup>33</sup> In theory, LCCs would provide coverage for women gig workers, such as delivery partners and home services. In practice, however, LCCs have been generally ineffective and inaccessible.

There have been numerous governmental audits and parliamentary committees highlighting issues with the inconsistent constitution of LCCs in different parts of the country, the lack of trained members for LCCs, and the existence of significant unawareness amongst potential complainants about these mechanisms. The situation is compounded for gig workers by many additional jurisdictional issues; there is still uncertainty as to which district authority is appropriate for complaints related to gig workers and where the ‘workplace’ is considered to be located. Furthermore, the absence of any formal link between platforms and LCCs further renders the existing mechanism unviable for the majority of gig workers.

As a consequence, LCCs are functioning as more of theoretical safety nets than as real options for many gig workers. Notably, the failure to operationalise LCCs for platform-based workers helps demonstrate that the POSH framework is still much the same as before; while the formal definition is quite broad, the POSH framework, by its very structure, is still connected institutionally to traditional labour relations and, therefore, is not adequately prepared for the new realities of decentralised, app-based work.

### **BARRIERS TO REPORTING FOR REMOTE WORKERS**

The rise of remote work has introduced additional hurdles. While harassment conducted through digital communication is indeed within the scope of the POSH Act, remote workers

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<sup>32</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4

<sup>33</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, ss 5-8

face challenges in accessing ICCs. In the case of *Shanta Kumar v Council of Scientific & Industrial Research*, the Delhi High Court recognised that harassment could take place beyond conventional workplaces and instructed employers to facilitate remedies.<sup>34</sup> Nonetheless, the procedural ambiguities surrounding remote reporting often dissuade victims from lodging formal complaints.

**Lack of Awareness and Grievance Redressal:** There is still a lack of awareness about POSH rights among gig and remote workers. Government reports indicate that there is a continued lack of compliance with the requirement for training and sensitisation. Research has shown that a large percentage of women who work as platform workers do not know that they can use the POSH Act to file a sexual harassment complaint. This lack of awareness has been linked to a consistent lack of reporting.

## **PRACTICAL IMPLICATIONS FOR WOMEN DELIVERY WORKERS**

Women delivery partners encounter a unique dilemma with respect to both the safety, dignity and procedural barriers from the intersection of being a public-facing employee, having an algorithmic manager, and having limited protection through institutional support.

**On-the-ground Safety Risks:** Delivery work places women in public and private work environments that are not under the control of traditional employers. Women working in delivery have reported safety risks from customer harassment, verbal abuse, intimidation in low-light or isolated delivery zones, and from the potential for gender-based violence when delivering to homes. Journalistic investigations and reports from NGOs have documented that women delivery workers have experienced inappropriate comments, stalking and physical threats while performing deliveries at residential properties and/or while out on the road while delivering. These risks are even more pronounced when performing deliveries during night shifts and in areas that have low police presence or limited street lighting, which increases both the perceived and actual risk of harm.

Recent early 2025 reports reveal a steady rise in the number of women gig workers complaining about harassing behaviour from various home service platforms and online food delivery firms. Survey data indicated that young female workers (ages 18-24) are

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<sup>34</sup> *Shanta Kumar v Council of Scientific & Industrial Research & Ors* (2018) 156 FLR 719

experiencing a higher incidence of harassment than their male peers during their time working through gig platforms, especially when working within urban delivery areas or along transit routes.<sup>35</sup> However, the extent of underreporting is widespread due to perceived fear of potential repercussions, distrust in avenues for filing complaints, and inability to obtain immediate assistance.<sup>36</sup>

Most delivery apps do not have any form of Automated Safety Systems. They also currently do not feature panic alert buttons, live-sharing location services and emergency assistance telephone numbers that would allow for immediate intervention when they are assigned to unsafe situations. Instead, these apps usually send workers to passive complaint systems that don't offer immediate support when they are assigned a dangerous delivery. First-hand accounts describe incidents of stalking, verbal abuse, and intimidation during late-night deliveries, and they didn't have a way to contact their app's managers or the police at that time. The combination of missing safety features in app design and algorithmic incentives for workers to take every assignment exposes women workers to risk, but there are limited options for making a safe choice.

**Power Imbalance and Algorithmic Dependency:** Platform management systems typically control delivery partners through indirect means such as ratings, response incentives, allocation of work based on algorithmic calculations, and deactivation policies, instead of the traditional means of overseeing workers directly. Therefore, power is in an asymmetrical relationship between women and the algorithms that provide them access to jobs, as well as maintain and provide access to worker incentives and provide access to hours at higher rates of pay. Research supports that improper fears surrounding poor rating systems or possible deactivation deter delivery workers from rejecting unsafe work conditions and reporting incidents of worker-to-worker or customer-to-worker harassment because of potential financial losses. Fairwork and many of the studies on platform labour confirm that the nature of algorithmically derived decisions and punitive deactivations on the part of platform companies serve to control and limit delivery partners' ability to negotiate for fair wages and

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<sup>35</sup> 'NARI 2025 Report: Women's Safety in Urban India' (*Insights IAS*, 29 August 2025)

<<https://www.insightsonindia.com/2025/08/29/nari-2025-report/>> accessed 05 January 2026

<sup>36</sup> 'Safe on paper but unsafe in life: What NARI 2025 reveals about women's safety in Indian cities' *The Economic Times* (29 August 2025) <<https://economictimes.indiatimes.com/news/new-updates/safe-on-paper-but-unsafe-in-life-what-nari-2025-reveals-about-indias-cities/articleshow/123580019.cms?from=mdr>> accessed 05 January 2026

access to adequate work and/or hours, while also limiting their ability to file complaints or seek redress due to fear of an adverse outcome.<sup>37</sup>

## WHETHER POSH COVERS THESE SCENARIOS?

The statutory definitions of ‘workplace’ found in Section 2(f) of the POSH Act are expansive and have been interpreted broadly by courts. However, the legal framework of the POSH Act is not well-suited to address the manner in which platform work operates. The POSH Act requires certain employers to establish Internal Complaints Committees (ICCs) and to create a process to file complaints, investigate complaints, and provide remediation to individuals who experience harassment on the job.<sup>38</sup> In many instances, companies that use platforms will classify delivery partners as independent contractors, arguing that the requirement in the POSH Act to form ICCs does not apply to them. As a result, delivery partners typically have no means of lodging a complaint under the POSH Act because their employers have no internal mechanisms for posting harassment complaints. Even in instances where platform companies have created some sort of process for lodging complaints, those processes are generally corporate customer service mechanisms, rather than formal statutory ICCs, which must adhere to the procedures of the POSH Act.

The Ministry of Corporate Affairs issued a 2025 notification calling for stricter disclosures regarding compliance with POSH (Prevention of Sexual Harassment) in company annual filings, such as the number of harassment complaints received and resolved. Although this action increases accountability for companies, it has not yet been extended to gig companies or platforms that do not classify their workers as employees. The Madras High Court's January 2025 ruling called for an approach that focused on the victim's perception of harassment rather than the alleged perpetrator's intent, thereby potentially broadening the range of possible harassment-related claims.

## FIELD DATA AND EMPIRICAL STUDIES

The evidence from empirical studies and research studies related to platform labour demonstrates the vulnerability of platform workers, as set forth above. The Fairwork India

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<sup>37</sup> *Fairwork India Ratings 2024* (Fairwork Foundation 2024) <[https://fair.work/wp-content/uploads/sites/17/2024/10/Fairwork\\_India\\_Report\\_2024.pdf](https://fair.work/wp-content/uploads/sites/17/2024/10/Fairwork_India_Report_2024.pdf)> accessed 05 January 2026

<sup>38</sup> *Saurabh Kumar Mallick v Comptroller and Auditor General of India & Anr* WP 8649/2007

Reports for the years 2020- 2024 indicate issues of working conditions related to Safety, Fairness, and Transparency and also show evidence of repetitive issues related to the Safety of Workers, Grievance Redressal, and Algorithmic Opacity. Articles published in nationally reputable newspapers related to Investigations indicate firsthand accounts provided by Women working as Delivery Workers or in Home-based Work, indicating how barriers to a Formal Process for Redress under the Act to Prevent Sexual Harassment occur. Reports produced by Non-Governmental Organizations and Labour Unions, as well as by Civil Society organisations that work directly with Platform Workers, indicate that Sexual Harassment is frequently underreported due to Fear of Losing Work, Ignorance Regarding Rights to Redress, and lack of an Accessible and functioning internal complaints committee for Contract Workers. The 2025 Report of SHRM India identified Seven Common Failures regarding the implementation of the Act to Prevent Sexual Harassment, including Ignorance of the Need for and Importance of Educational Programs to raise awareness of Sexual Harassment and Improper Constitution of the Internal Complaints Committee. Collectively, the above findings demonstrate the need for Statutory Clarity and Platform Accountability.

## **GLOBAL INSIGHTS AND REFORM PATHWAYS FOR POSH IN THE GIG ECONOMY**

Federal laws across jurisdictions are evolving as a result of an increased number of court cases confirming that non-traditional types of work provide employees with workplace harassment protections. For instance, California passed Assembly Bill 5 (2019), which formalised the 'ABC Test' in relation to workers in the gig economy, classifying gig workers as employees for the purpose of providing individuals with workplace protections under the law, while this legislation was later amended by Proposition 22 for app-based transportation and delivery services.<sup>39</sup> In the United Kingdom, the Supreme Court in *Uber BV v Aslam* held that Uber drivers are classified as 'workers' under UK law and therefore entitled to minimum wage and rest breaks, among other basic employee protections, even though they were not classed as traditional employees.<sup>40</sup> The EU has also created proposals for labour laws known as Directives pertaining to platform work that presume employment status whenever the

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<sup>39</sup> California Assembly Bill 2019; Kate Conger and Noam Scheiber, 'California's Contractor Law Stirs Confusion Beyond the Gig Economy' *The New York Times* (11 September 2019) <<https://www.nytimes.com/2019/09/11/business/economy/uber-california-bill.html>> accessed 06 January 2026

<sup>40</sup> *Uber BV & Ors v Aslam & Ors* [2021] UKSC 5

platform retains control over the work being performed, thereby granting platform workers access to the full suite of workplace harassment protection rights.

In India, gig workers are not classified under an unambiguous legal framework, still. The definition of ‘employee’ in Section 2(f) of the POSH Act, 2013, is broad enough to include non-traditional forms of employment. Instances of judicial overreach have occurred in cases like *Saurabh Kumar Mallick v Comptroller & Auditor General of India*, wherein some High Courts have interpreted ‘workplace’ as existing in venues that extend well beyond a physical office. Nevertheless, courts have not directly addressed the question of whether platform-based gig workers hold protection under the POSH Act.<sup>41</sup>

## REFORM PROPOSALS FOR INDIA

While the Prevention of Sexual Harassment at Workplace Act, 2013, has undoubtedly marked a significant advancement in securing workplace dignity and gender equality, the transformation of work arrangements necessitates calibrated legal responses. The emergence of platform-based and remote labour does not signal a failure of the POSH framework, but rather exposes the limits of its institutional design when applied to non-traditional forms of work. Viewed in this context, reform measures may be understood as evolutionary adaptations aimed at preserving the Act’s constitutional objectives in changing labour markets.

First, legislative clarification of the definition of ‘employee’ under Section 2(f) could explicitly include platform-based and gig workers. Such clarification would not disturb broader labour law classifications but would reaffirm the remedial intent of POSH as an equality-based statute concerned with power asymmetries rather than contractual form.

Second, platform companies can also be included in the preventive framework created by the Act through regulation or executive order. Companies that employ individuals through digital platforms must constitute themselves. Internal Complaints Committee (ICC) for their employees. Furthermore, since these platforms apply control through algorithmic means, this directive would be an extension of the preventive and accountability objectives of the Act.

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<sup>41</sup> *Saurabh Kumar Mallick v Comptroller and Auditor General of India & Anr* WP 8649/2007

Third, the National Development Agency (NDA) may be established by the Ministry of Women & Child Development to provide a common digital complaint resolution system to overcome the problems faced by remote workers and gig economy workers. A nationwide platform may enhance the effectiveness of current ICC and LCC structures for workers who are engaged in jobs that do not occur at physical locations.

Fourth, State governments can implement pilot projects that are tailored to the respective needs of app-based workers and provide them with protection under the POSH Act through coordinated efforts between the federal and state governments. The development of these initiatives can take into consideration the frameworks for unorganised labour and adapt them to the working environment created by platform-based business models.

Finally, structured engagement with worker collectives and representative associations may strengthen awareness, reporting, and enforcement of POSH norms among gig workers. Participatory mechanisms of this nature would further the Act's substantive equality mandate by ensuring that protective measures respond to lived workplace realities.

Seen in this light, the reform agenda is not one of criticism but of evolution- building on the strong foundation of the POSH Act to ensure that its protective umbrella continues to cover women across the full spectrum of India's labour markets.

## **CONCLUSION**

The analysis undertaken in this paper demonstrates that the Prevention of Sexual Harassment at Workplace Act, 2013 possesses a normative breadth capable of addressing sexual harassment beyond traditional workplaces, yet remains institutionally constrained by labour law assumptions rooted in standard employment relationships. While judicial interpretation has progressively expanded the meaning of 'workplace' and affirmed the constitutional foundations of workplace dignity, the absence of explicit statutory recognition for gig and platform workers has resulted in uneven and often inaccessible protection. The fragmentation of India's labour law framework, where gig workers are acknowledged for welfare purposes under the labour codes but excluded from dignity-based protections under POSH, creates a regulatory vacuum that disproportionately affects women engaged in platform-mediated work. This disjunction undermines the Act's core objective of ensuring substantive equality and safe participation in the workforce.

The labour market is becoming more decentralised, algorithmically controlled and increasingly informalized, which means that workplace dignity is no longer dependent upon the formal status of employment or being located in the 'office'. Recent comparative developments show that extending protections against harassment to gig workers does not necessarily mean compromising on flexibility in the labour market, but rather holding employers to account for the evolution of workplace practices. To include gig workers, POSH should be changed from a procedural statute of employment to a constitutional and equality-enforcement instrument. To provide an effective means of protection against sexual harassment for women who carry out their work through a platform will require legislative clarification, institutional adaptations and purposive interpretations of the role of women, in connection to the Constitutional Mandates. Ultimately, protecting women from sexual harassment in the gig economy does not represent an expansion of rights and entitlements beyond those originally envisioned, but is instead a reaffirmation of the principle that dignity in the workplace is a universal right, regardless of how, where and who one works for.