

News

India dispatch: Supreme Court rejects effort to apply sexual harassment statute to political parties; petitioner prepares to appeal



The correspondent filing this report is a law student in Mumbai who must remain anonymous.

On Friday, the Supreme Court of India (SCI) rejected to hear a plea seeking to apply the country's workplace sexual harassment law—called the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 or the POSH Act—to political parties.

The bench, comprising Chief Justice of India B.R. Gavai and Justice Vinod Chandran, first declared that the case lay within the sphere of legislative policy and that the Court was not inclined to interfere. The petitioner's advocate then withdrew the writ petition with liberty—formally asking the Supreme Court to dismiss the petition but reserving the right to

refile later—indicating they would instead challenge a decision by the Kerala High Court (KHC), which held that political parties are not bound by the POSH Act provisions.

The procedural history of the petition in *Yogyamaya v. Union of India* (Yogyamaya) is significant because the same petitioner approached the SCI in December 2024 seeking the same relief. In that prior case, the petitioner's attorney withdrew the writ petition with liberty to instead approach the Election Commission of India (ECI) seeking an effective system to ensure POSH compliance by political parties. The petition in Yogyamaya was filed due to the ECI's unresponsiveness.

This issue is particularly pertinent here because the POSH Act was created to promote and boost women's participation in India by removing safety barriers. While the government purports to support growing women's roles in politics, such remarks ring hollow when attempts are hindered by a pervasive culture of sexual harassment and abuse. A UN Women research indicated that 58% of women participating in Indian politics identified "members of the same political party" as perpetrators of violence.

On that issue, the Supreme Court of India's reasoning in Yogyamaya—that the remedy sought was a matter of policy—failed to account for the origins and history of the POSH Act. The Act itself is rooted in judicial action: it was established by Parliament following the Court's landmark ruling in *Vishakha v. State of Rajasthan*, in which the Court issued mandatory directives to address workplace sexual harassment. In *Vishakha*, the Court specifically declared that it was not constrained by legislative inaction and may rely on international treaties to formulate enforceable rules in the character of law.

Sixteen sitting Members of Parliament presently face prosecution for crimes against women, with the ruling Bharatiya Janata Party (BJP), which heads the National Democratic Alliance (NDA), having the greatest number of MPs facing such allegations. This reflects a sad state of affairs within India's legislatures, wherein such an entrenched reality makes it unsurprising that there is no political will to bring such a legislation into practice.

Beyond legislators' reluctance to face criticism, the SCI also failed to address deeper structural and institutional barriers. Although the petitioner raised attention to the ECI's inaction, it was the Court that ultimately disregarded the deeper issues of procedural bottlenecks and institutional buck-passing. This absence effectively shields political parties from accountability, underlining the red tape and bureaucratic quagmires that often beset social justice campaigns.

The POSH Act's preamble indicates that the statute's goal was to give effect to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India adopted in 1993. Article 7 of the CEDAW mandates that all reasonable measures must be implemented to "eliminate discrimination against women in the political and public life of the country." The anticipated challenge to the KHC's decision in *Centre for Constitutional Rights Research and Advocacy v. State of Kerala (CCRRA)* gives a great opportunity for the SCI to revisit the definition of the terms "employer" and "employee" under the POSH Act. A contextual and purposive interpretation is required—one that does not defer to the legislation or bureaucracy.

The SCI must acknowledge power inequalities within political party structures and must act to implement and enforce protective obligations—especially considering the significant gender-based damage occurring in political arenas. It will be fascinating to observe how the case evolves before the SCI if the petitioner persists with their dedication to preserving the POSH Act in reference to political parties. Compelling questions of procedure, separation of powers, systemic misogyny, and responsibility are certain to arise. It will be interesting to observe the judiciary struggle to traverse these problems in a nation run by a notoriously careless and unaccountable political class.