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Gender Justice at Work: Evaluating Legal Protection against Sexual Harassment in India's Organised and Unorganised Sectors

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Abstract:
This article examines whether the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 delivers gender justice across India's organised and unorganised sectors. Tracing the movement from the Vishaka guidelines to the statute, it evaluates the Internal Committee framework applicable to organised workplaces and the Local Committee framework designed for informal workers, and assesses judicial interpretation of both. It argues that the Act's substantive definition is sound but that its enforcement architecture is structurally weaker for unorganised workers, whose vulnerability is compounded by class, caste and informality. The article concludes with reforms directed at accountability, access, remedies and scope.

Keywords: sexual harassment; POSH Act; gender justice; unorganised sector; Local Committee; Internal Committee; Vishaka

I. Introduction

Paid work is one of the principal routes through which women claim economic citizenship, and sexual harassment is one of the principal means through which that claim is contested. A woman who must tolerate unwelcome sexual conduct to keep her job, her wages or her safety does not enjoy equality at work in any meaningful sense, whatever the formal guarantees of the Constitution. India's legal response has moved from the penal provisions of the criminal law, through judge-made guidelines in *Vishaka v. State of Rajasthan*,[1] to a dedicated statute, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).[2]

[1] *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

[2] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013 (India) [hereinafter POSH Act].

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The POSH Act is formally comprehensive. It extends to every workplace, public or private, and expressly reaches the unorganised sector and domestic work.[3] Yet a statute that applies to all women does not automatically protect all women. The gap between legal entitlement and practical remedy is widest where employment is informal, dispersed and unrecorded, and an overwhelming majority of India's workforce is employed in that condition.[4] A framework designed around the office, with a human resources function and a permanent employer, sits uneasily with the field, the household, the brick kiln and the street.

This article evaluates the legal protection against sexual harassment at work in India's organised and unorganised sectors. It asks whether the institutional design of the POSH Act, which relies on Internal Committees in the former and Local Committees in the latter, delivers gender justice in both, or only in one. The argument is that the Act's substantive definition is sound and its judicial elaboration has been largely progressive, but that its enforcement architecture is structurally weaker for unorganised workers, and that this weakness reproduces the very hierarchies of class, caste and informality that make such workers vulnerable. The analysis is doctrinal, drawing on statute, case law, international instruments and official reports, and concludes with targeted reforms. Part II sets out the conceptual frame, Part III traces the movement from *Vishaka* to the statute, Parts IV and V examine the organised and unorganised sectors in turn, Part VI identifies gaps common to both, and Part VII proposes reform.

II. Gender Justice and Sexual Harassment: A Conceptual Frame

Sexual harassment became legally intelligible as a wrong only when it was understood as discrimination rather than as private misconduct. Catharine MacKinnon's foundational argument was that harassment is a form of sex discrimination because it burdens women, as women, in the terms and conditions of their work.[5] The United States Supreme Court accepted the core of that insight when it held that a hostile working environment is actionable discrimination, even where no tangible economic loss follows.[6] The conceptual shift matters for India because it locates the injury in the denial of equal participation at work, and not merely in the offence to modesty on which the older penal law relied.

Gender justice in this setting has at least three dimensions. The first is redistributive, since harassment imposes costs of lost income, forced exit and interrupted careers that fall disproportionately on women. The second is recognitive, because the law must name the conduct accurately as a violation of dignity and equality, rather than euphemistically as a breach of decorum. The third is participatory, because remedies must be reachable by those who need them. Martha Nussbaum's capabilities approach supplies a useful standard here, treating bodily integrity and the ability to work on terms of mutual respect as central human capabilities that law must secure in fact and not merely on paper.[7]

[3] POSH Act, *supra* note 2, § 2(o).

[4] Nat'l Comm'n for Enters. in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (2007).

[5] Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (1979).

[6] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

[7] Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (2000).

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A fourth consideration is intersectionality. Kimberlé Crenshaw showed that anti-discrimination doctrine fails women who are disadvantaged along more than one axis at once, because it analyses each ground separately.[8] In India, the woman most exposed to harassment at work is frequently a Dalit, Adivasi, migrant or poor woman engaged in unprotected labour. Evaluating the POSH Act for gender justice therefore requires asking not only what it prohibits but who can actually invoke it.

III. From *Vishaka* to the POSH Act

Before 1997, Indian law had no workplace-specific remedy. Victims relied on provisions of the Indian Penal Code concerned with outraging modesty and insulting the modesty of a woman, which centred on the victim's chastity rather than on equality and did not address the employment relationship.[9] The criminal process also offered no mechanism for interim protection at work or for disciplinary consequences short of conviction.

The turning point was the litigation arising from the 1992 gang rape of Bhanwari Devi, a grassroots worker in the Women's Development Programme of Rajasthan, who was attacked after she tried to prevent a child marriage.[10] Women's groups filed a public interest petition, and the Supreme Court responded by reading the right to gender equality and the right to life with dignity under Articles 14, 15, 19(1)(g) and 21 of the Constitution together with India's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[11] In the absence of legislation, the Court laid down binding guidelines under Article 141, defining sexual harassment as unwelcome sexually determined behaviour and requiring employers to adopt preventive measures, to constitute a complaints committee headed by a woman, and to include an outside member from a non-governmental organisation.[12]

The Court soon showed how the definition would operate. In *Apparel Export Promotion Council v. A.K. Chopra*, it restored the dismissal of a senior officer who had attempted to molest a subordinate, holding that physical contact is not essential and that the test is unwelcome sexually determined conduct, assessed from the standpoint of the woman and in light of the gender equality guarantees.[13] The decision also rejected a technical approach to proof that would defeat the purpose of protective norms.

Parliament enacted the POSH Act in 2013, after the Justice J.S. Verma Committee had criticised the weak implementation of the *Vishaka* regime and recommended a stronger, tribunal-based model.[14] The Act codified and extended the guidelines. It defines sexual harassment to include unwelcome physical contact

[8] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139.

[9] *See Rupan Deol Bajaj v. K.P.S. Gill*, (1995) 6 S.C.C. 194 (India) (applying the penal provisions on outraging and insulting modesty to unwelcome physical conduct by a senior police officer).

[10] *Vishaka*, *supra* note 1, ¶ 1.

[11] India Const. arts. 14, 15, 19(1)(g), 21; Convention on the Elimination of All Forms of Discrimination Against Women art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13; *Vishaka*, *supra* note 1, ¶ 7.

[12] *Vishaka*, *supra* note 1, ¶ 16.

[13] Apparel Exp. Promotion Council v. A.K. Chopra, (1999) 1 S.C.C. 759 (India).

[14] Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013).

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and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.[15] It further identifies circumstances that amount to harassment, including an implied or express promise of preferential treatment, a threat of detrimental treatment, interference with work, and the creation of an intimidating, offensive or hostile environment.[16] The hostile environment limb brings the Indian statute close to the equality-based conception discussed above.

Two further features deserve mention. The Act protects any woman, "whether employed or not", at a workplace, so that visitors, clients, trainees and others fall within it, while in a dwelling place it protects the woman employed there.[17] And it defines the workplace broadly to include any place visited by an employee in the course of employment, including transportation provided by the employer, as well as the dwelling place or house.[18] On paper, therefore, the substantive coverage is wide. The unequal part of the story lies in the institutions through which the right is enforced.

The constitutional status of the *Vishaka* guidelines is worth noting. The Court treated them as law declared under Article 141 that would hold the field until Parliament legislated, and it justified the exercise by reading international norms into the fundamental rights where domestic law was silent and the norms were consistent with them. This was a bold use of judicial power, but it also made the later statute a product of constitutional compulsion and not merely of legislative choice. The POSH Act is accordingly best read as the legislative completion of a constitutional obligation, and ambiguities in it should be resolved in favour of the equality and dignity values that animated the original guidelines.

IV. The Organised Sector: Internal Committees and the Limits of Compliance

In the organised sector the Act's principal instrument is the Internal Committee, which every office or branch employing ten or more employees must constitute.[19] The committee must be presided over by a senior woman employee, must include at least two employee members committed to the cause of women or having social work experience or legal knowledge, and must include one external member from a non-governmental organisation or association committed to women's causes; at least half of its members must be women.[20] The external member is intended to insulate the process from managerial pressure.

The procedure is time-bound and graded. A complaint must be made in writing within three months of the incident, extendable by a further three months for sufficient cause, and the committee must assist a complainant who cannot write.[21] Before an inquiry begins, the aggrieved woman may request conciliation,

[15] POSH Act, *supra* note 2, § 2(n).

[16] *Id.* § 3(2).

[17] *Id.* § 2(a).

[18] *Id.* § 2(o).

[19] *Id.* § 4(1).

[20] *Id.* § 4(2).

[21] *Id.* § 9(1)–(2).

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though no monetary settlement may be made the basis of it.[22] The committee may recommend interim relief, such as transfer or leave of up to three months, during the inquiry,[23] and must complete the inquiry within ninety days.[24] The employer must act on the recommendations within sixty days, and a person aggrieved by the outcome may appeal under the service rules or the Act.[25] Confidentiality of the identity of the parties and of the proceedings is protected, with penalties for disclosure.[26]

Employers carry affirmative duties. They must provide a safe environment, display the penal consequences of harassment and the order constituting the committee, organise awareness programmes, and disclose complaint data in their annual reports.[27] Non-compliance attracts a fine of up to fifty thousand rupees, doubled on repetition, with a possible cancellation of the licence or registration of the establishment.[28] The Ministry of Women and Child Development has supplemented the statute with a handbook for employers and committees and with an online complaint portal, SHe-Box.[29]

The courts have treated the Internal Committee requirement as mandatory and its proper constitution as a condition of validity. In *Medha Kotwal Lele v. Union of India*, the Supreme Court monitored implementation of the *Vishaka* guidelines, directed that complaints committees be treated as inquiry authorities for disciplinary purposes, and required States and statutory bodies to put the machinery in place.[30] More recently, in *Aureliano Fernandes v. State of Goa*, the Court set aside disciplinary proceedings against a university professor because the committee that inquired into the complaint had been improperly constituted, and it directed authorities across the country to ensure that statutory bodies and institutions comply with the Act.[31] The decision is a reminder that procedural fidelity cuts both ways: it protects the respondent against irregular process, and it exposes institutions that treat compliance as a formality.

Two features of the inquiry process deserve emphasis. The inquiry is a departmental or quasi-disciplinary proceeding and is independent of any criminal prosecution, so that a respondent may be disciplined on the committee's findings even where no criminal case is pursued, and the standard applied is the balance of probabilities and not proof beyond reasonable doubt. This difference is important because workplace harassment is rarely witnessed, and a criminal standard would defeat most complaints. At the same time,

[22] *Id.* § 10(1).

[23] *Id.* § 12.

[24] *Id.* § 11(4).

[25] *Id.* §§ 13(4), 18.

[26] *Id.* §§ 16–17.

[27] *Id.* §§ 19, 21–22.

[28] *Id.* § 26.

[29] Ministry of Women & Child Dev., *Handbook on Sexual Harassment of Women at Workplace* (2015); *SHe-Box*, Ministry of Women & Child Dev., https://shebox.wcd.gov.in (last visited Nov. 19, 2026).

[30] *Medha Kotwal Lele v. Union of India*, (2013) 1 S.C.C. 297 (India).

[31] *Aureliano Fernandes v. State of Goa*, Civil Appeal No. 2482 of 2014 (India May 12, 2023).

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the committee must observe natural justice by giving the respondent notice and a fair opportunity to be heard, since a finding of harassment carries serious professional consequences.

Even so, the organised sector reveals several weaknesses. First, many establishments have not constituted committees, or have constituted them without a genuine external member or with members who lack training. Secondly, the committee sits within the employer's hierarchy, and a complainant may reasonably fear retaliation by a superior whose influence over her career persists after the complaint. Thirdly, the three-month limitation period fits poorly with the reality that victims often delay reporting while dependent on the harasser for a reference, a renewal or a promotion. Fourthly, the Act's provision penalising a complaint made with malicious intention carries a risk of deterrence, although the statute itself clarifies that inability to substantiate a complaint is not by itself evidence of malice.[32] Finally, the Act protects only women as aggrieved persons and leaves men and gender-diverse persons to general remedies, a limitation that critics regard as inconsistent with a rights-based conception of workplace dignity.

Further, the formal protection of the organised sector is not uniform. Project-based and informal arrangements within ostensibly organised industries, including film and media, platform work and contract staffing, often fall outside the practical reach of any single employer's committee. The report of the Justice Hema Committee on women in the Malayalam film industry, which was submitted in 2019 and released in redacted form in 2024, exposed how the absence of a stable employer and the pervasive power of gatekeepers can leave even a nominally covered workplace without an operative remedy.[33]

V. The Unorganised Sector: Local Committees and the Problem of Access

The drafters recognised that most women workers have no "office" and no human resources department. The Act therefore creates a second tier. The appropriate government must designate a District Officer for each district, and the District Officer must constitute a Local Committee to receive complaints from women who work in establishments with fewer than ten employees, where no Internal Committee exists, or where the complaint is against the employer himself.[34] The District Officer must also designate a nodal officer in every block, taluka, tehsil, ward or municipality to receive complaints and forward them to the Local Committee within seven days.[35]

The Local Committee is chaired by an eminent woman in the field of social work, and includes a member drawn from among the members of the local body, two members from non-governmental organisations, of whom at least one must be a woman, and an ex officio member who is an officer dealing with social welfare or women and child development.[36] The Act further requires that at least half of the nominated

[32] POSH Act, *supra* note 2, § 14.

[33] Report of the Committee Constituted to Study Issues Faced by Women in the Malayalam Film Industry (Justice K. Hema Comm. 2019, released in redacted form 2024).

[34] POSH Act, *supra* note 2, §§ 5–6.

[35] *Id.* § 6(2).

[36] *Id.* § 7(1).

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members be women, that a nominee preferably have a background in law or legal knowledge, and that a woman from the Scheduled Castes or Scheduled Tribes preferably be among the nominees.[37] This composition is a thoughtful attempt to bring local knowledge and social representation into the process. The Act also expressly covers domestic workers, defined as women employed to do household work for remuneration, in cash or kind, whether directly or through an agency, on any basis from temporary to permanent.[38]

The design is nevertheless fragile in practice, for reasons that are structural rather than accidental. The first is institutional absence. The Local Committee depends on the prior appointment of a District Officer, the notification of nodal officers and the constitution of the committee itself, all of which are executive acts that may be delayed or omitted without immediate consequence to any official. The Supreme Court acknowledged this problem in 2024, when in a public interest petition it directed the States and Union Territories to ensure that District Officers are appointed and that Local Committees and Internal Committees are constituted and made functional.[39] That a court had to issue such a direction more than a decade after the Act came into force is itself an indictment of the enforcement record.

The second problem is awareness and access. A domestic worker, an agricultural labourer or a construction worker is unlikely to know that a Local Committee exists, where it sits, or that the complaint may be oral if assisted. The Act places the duty of creating awareness on the appropriate government,[40] but awareness campaigns directed at employers do little for workers who have no identifiable employer to compel. Geography compounds the difficulty, since the committee is district-based while the worker may be in a remote village or may be a migrant whose workplace changes monthly. The cost of attending hearings, in lost wages and travel, may itself exceed what a poor worker can bear.

The third problem is the dependence of the remedy on the employment relationship. The Act's remedies are primarily service-oriented, such as written apology, warning, withholding of promotion or increments, termination, and monetary compensation to the complainant to be recovered from the respondent's wages.[41] Where the respondent is the employer, or a householder with no payroll from which compensation can be recovered, the Act contemplates recovery as an arrear of land revenue, a mechanism that places an enforcement burden on a revenue administration with little incentive and no specialised capacity. Where the worker's livelihood depends on a single household or a single contractor, the more realistic outcome of complaining is the loss of work. A rational woman in that position may well decide that the remedy is worth less than the job.

The irony of the origin of this jurisprudence should not be lost. Bhanwari Devi was herself a worker of a state development scheme, with no conventional employer, no fixed workplace and no institutional protection, and her case is the paradigm of the unorganised woman worker whom the later statute was

[37] *Id.* § 7.

[38] *Id.* § 2(e).

[39] *Initiative for Inclusion Found. v. Union of India* (India Dec. 3, 2024) (order of the Supreme Court).

[40] POSH Act, *supra* note 2, § 20.

[41] *Id.* §§ 13, 15.

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meant to reach. The same is true today of the very women on whom public programmes depend, including anganwadi workers, accredited social health activists and community mobilisers, who are often classed as volunteers or honorarium-holders rather than employees. If the statutory definition of an employee is read narrowly, these workers risk exclusion from the remedy, and the Act should be interpreted purposively so that functional dependence on a public or private body, and not formal designation, determines coverage.
The fourth problem lies in the interaction with other legal regimes. Sexual harassment is also punishable under the Bharatiya Nyaya Sanhita, 2023, which retains offences of assault or criminal force to outrage modesty, sexual harassment, voyeurism, stalking and acts intended to insult the modesty of a woman.[42] The POSH Act does not displace these remedies, but for unorganised workers the criminal route is often the only one that is practically available, and it carries all the known difficulties of police reluctance, delay and social stigma. Labour legislation, meanwhile, rarely contains any harassment-specific protection, and the schemes of social security for unorganised workers do not integrate a complaints mechanism.[43]

VI. Structural Gaps Across Both Sectors

Four cross-cutting gaps deserve attention. The first is the compliance and data deficit. Although the Act requires Internal Committees to file annual reports with the District Officer and requires the appropriate government to monitor implementation, the information base for assessing performance remains thin, and there is no consolidated public record of the number, composition or functioning of committees across States.[44] Without data, neither Parliament nor the public can distinguish an effective regime from an inactive one.
The second is the absence of a gender-neutral and intersectional design. The statute's single-ground focus on women as complainants and its generic committee composition do not address the compounding disadvantage of Dalit, Adivasi, migrant, disabled and trans women, who face harassment that is simultaneously sexual, caste-based and economic. The preference for a woman from the Scheduled Castes or Scheduled Tribes among Local Committee nominees is a welcome but modest recognition of this reality, and it has no counterpart in the Internal Committee structure.
The third concerns new forms of work. Platform and gig workers, freelancers, home-based workers and those engaged through layered contractors may have no single identifiable employer and no fixed workplace, and the Act's categories of employer, employee and workplace map imperfectly onto these arrangements. Although the broad definition of workplace, which includes any place visited in the course of work, offers an interpretive foothold, there is no clear rule on which committee should receive a complaint when the aggrieved woman, the respondent and the contracting platform are in different places and under different legal entities. Clarifying the allocation of responsibility among principal employers, contractors and platforms is therefore an urgent task for the rule-making authority.

[42] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 74–79 (India).

[43] *See* Unorganised Workers' Social Security Act, 2008, No. 33 of 2008 (India).

[44] POSH Act, *supra* note 2, §§ 21, 23, 25.

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The fourth is India's international position. CEDAW's Committee has long treated workplace sexual harassment as a form of discrimination and violence against women, and its general recommendations call on States to provide effective complaint procedures and remedies.[45] The International Labour Organization's Violence and Harassment Convention, 2019, goes further by explicitly covering informal workers and requiring an inclusive, integrated and gender-responsive approach.[46] To date, India has not ratified that Convention, and its standards offer a useful benchmark against which to measure the unorganised sector's protection.

VII. Towards Reform

Reform should proceed along four lines, each addressed to a gap identified above.

First, institutional accountability must be hardwired. The duty to appoint District Officers and constitute Local Committees should carry a defined time limit and a consequence for default, such as a requirement of public reporting by the State and periodic judicial or legislative review. District-level compliance should be published in a standardised format and aggregated in a national dashboard, building on the existing SHe-Box platform so that a complaint registered online is traceable to the committee that receives it.

Secondly, access must be redesigned around the worker rather than the institution. Local Committees should hold sittings at the block or ward level, accept oral and electronic complaints, and be supported by trained para-legal volunteers and nodal officers drawn from existing grassroots structures such as the Anganwadi and self-help group networks. Legal aid should be made available to complainants as a matter of course, and travel and wage-loss support should be provided for hearings. Registration of domestic and other informal workers on state portals should be linked to information on their rights under the Act.

Thirdly, remedies should be decoupled from the employment relationship where that relationship is the source of vulnerability. A statutory fund, financed from state resources and from penalties collected under the Act, could pay compensation directly to unorganised workers where the respondent cannot be made to pay, with a right of recovery against the respondent. Protection against retaliation, including a presumption of unfair dismissal where termination follows closely upon a complaint, should be stated expressly, as it presently is not.

Fourthly, the Act's scope and limitation provisions should be revisited. The three-month limitation period could be extended or made discretionary where the complainant shows a continuing relationship of dependence. Parliament should consider whether the protection ought to extend, in a gender-neutral form, to all persons subjected to workplace sexual harassment, an approach consistent with the dignity-based reasoning of *Vishaka*, while retaining the special focus on women where the data show that the harm falls disproportionately upon them. The Verma Committee's proposal for a specialised Employment Tribunal,

[45] Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence Against Women*, U.N. Doc. A/47/38 (1992); Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women*, U.N. Doc. CEDAW/C/GC/35 (2017).

[46] Convention Concerning the Elimination of Violence and Harassment in the World of Work, June 21, 2019, ILO No. 190.

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which would stand outside the employer's hierarchy, merits renewed consideration for complaints against senior officials and employers.[47]

VIII. Conclusion

The POSH Act is a significant achievement of constitutional and statutory feminism. Its definition of sexual harassment is faithful to an equality-based understanding of the wrong, its extension to every kind of workplace is principled, and its judicial interpretation, from *Vishaka* through *Apparel Export* and *Medha Kotwal Lele* to *Aureliano Fernandes*, has insisted that its protections be given real effect.

Yet the evaluation undertaken in this article shows that gender justice at work remains unevenly distributed. In the organised sector, the challenge is one of genuine compliance, independence and trust within the employer's own structures. In the unorganised sector, it is one of institutional presence and practical access, because a Local Committee that does not exist, or that cannot be reached, offers no remedy at all. The women with the greatest need of protection are those with the least ability to invoke it. The reforms proposed here, namely enforceable accountability, access built around the worker, remedies independent of the employment relationship, and a revisited scope, seek to close that gap. Until they are adopted, the promise of *Vishaka* will have been fulfilled for the office but not yet for the field.

[47] Verma Comm., *supra* note 14.