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FROM WOMEN-CENTRIC TO INCLUSIVE PROTECTION: ASSESSING THE GENDER NEUTRALITY OF INDIA'S POSH REGIME

~ Priyanka Pillay

INTRODUCTION

In the fast-paced world, work environments do not remain strictly hierarchical and gender-defined, but rather dynamic and complex, adorned by rapidly changing societal norms and technological interfaces. In such an ever-changing landscape, sexual harassment remains a serious threat to dignity, equality, and independence in work environments. Even as the threat of sexual harassment has been addressed by law with a gender-specific outlook, new realities make it imperative to question whether the law adequately addresses the complex phenomenon of sexual harassment in modern workplaces. While the observations remain true, a new reality is also being furnished, namely, that men, in fact, are also being exposed to harassment and consequent ruination, without the benefit of any institutionalized mechanism being in place for them. The recent incidents of sexual harassment and false allegations against men have clearly brought this issue to light. The *Kozhikode case of January 2026*, in which accusations spread through social media are alleged to have led to a younger man's death through suicide, highlights the irreparable harm that may be caused to a defendant through public accusation without procedural safeguards.¹ Similarly, the testimony of a *male worker in Mumbai* who complains of physical harassment by a superior woman suggests a systemic problem regarding access to grievance machinery on the part of men.²

¹ *Video killed him': Kerala woman faces abetment charges after youth ends life over 'harassment' claim; outrage spreads*, *Times of India* (Jan. 20, 2026), <https://timesofindia.indiatimes.com/city/kozhikode/kerala-mans-death-woman-faces-suicide-abetment-charges-after-viral-allegation-shrc-orders-probe/articleshow/126745140.cms>.

² Chhavi Chandani, *Male Employee Alleges Persistent Harassment by Female Boss in Mumbai, Sparking Debate on POSH Laws*, *THE LOGICAL INDIAN*, <https://thelogicalindian.com/male-employee-alleges-persistent-harassment-by-female-boss-in-mumbai-sparking-debate-on-posh-laws/>

These are not exceptional cases. But indeed heart- wrenching knowing that such incidents never catch people's eye due to lack of awareness and diverse perceptions. The paper hopes to critically analyze the issues surrounding the current legal framework that regulates workplace sexual harassment and the level of responsiveness of such law to the current reality surrounding the topic and problem at hand.

SEXUAL HARASSMENT FROM THE PERSPECTIVES OF GENDER AND POWER RELATIONS THEORY

Across historical contexts, it was largely women who had to face the scourge of sexual harassment at the workplace. Silence was taught as virtue, submissiveness as discipline, endurance as destiny. In workplaces carved by louder voices, women learned to shrink, not in talent, but in permission. Their words folded inward, their dissent softened into smiles, their exhaustion renamed '*professionalism*.' This absorbing insult exercised by humans in power gradually gave rise to the authorship of the *POSH Act (2013)*³, which focused primarily on correcting gender invisibility. It's significant to critically analyze that gender vulnerability is not limited to being female. Men, too, are exposed to such acts of sexual harassment, especially when they fall in the subordinate role or do not conform to being gendered males.⁴ Their experiences, however, do not find significant levels of reporting, since such cases might invite further ridicule from both members of their gender and members of other gender identifications.⁵

An examination of sexual harassment, guided by gender and power relations theory, affirms that sexual harassment is far from being treated as mere individual transgression; indeed, it should essentially be viewed as a structural representation and expression of unequal power dynamics which are integral constituents of social and organizational power hierarchies and lattices.⁶ Gender and power relations theory, thus, argues and affirms that harassments and harassers thrive best in power scenarios and scopes characterized by and composed of uneven and unequal power

³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

⁴ M. A. ARANITHI, A Study on Male Sexual Harassment, 2 *Indian Journal of Integrated Research in Law*, Issue II (2022).

⁵ Id

⁶ S. D. S. WALKER & B. L. BONNER, An Approach—Avoidance Lens on Sexual Harassment: The Effects of Relative Attractiveness, Gender, Relationship Status, and Role, 37 *J. BUS. & PSYCHOL.* 127, 127–150 (2022), <https://www.jstor.org/stable/48781138>

dynamics, control, and traction, and thus, in organizational scenarios and scopes, dominance and power far apart and separate from individual power might indeed and essentially encompass and encompass gender, power, and organizational status.⁷

STATUTORY REGULATORY FRAMEWORK ON WORKPLACE SEXUAL HARASSMENT

Since its inception, it has been determined that the legislative and regulatory practice of addressing sexual harassment in workplaces has been shaped through an evolutionary synthesis of international human rights norms and constitutional mandates. At the global level, the Universal Declaration of Human Rights, 1948 (UDHR)⁸, has laid the foundation with the principles of equality and non-discrimination under Articles 1, 2, and 7.⁹ The equal enjoyment of the law, freedom from discrimination, and equality in dignity and rights have also been underscored by the International Covenant on Economic, Social, and Cultural Rights, 1966 (ICESCR)¹⁰. However, the role of the International Labor Organization, which is a specialized agency of the United Nations, has been significant in the conceptualization and understanding of sexual harassment as an area of sexual discrimination. The United Nations Convention on the Elimination of All Types of Discrimination against Women, 1979 (CEDAW)¹¹, offers the most comprehensive and convincing approach to discrimination against women.

From a domestic perspective, the constitutional rationale for sexual harassment in the workplace is seen to be grounded in the Preamble of the Constitution of India, where the need for justice, equality, liberty, dignity, and fraternity is ensured. The turning point for sexual harassment cases in Indian jurisprudence came in 1997 in the Supreme Court decision in *Vishaka and Others v. State*

⁷ K. R. BROWNE, Sex, Power, and Dominance: The Evolutionary Psychology of Sexual Harassment, 27 MANAGERIAL & DECISION ECON. 145, 145–158 (2006), <http://www.jstor.org/stable/25151428>

⁸ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁹ International Labour Organization, Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India (2018), https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_630227.pdf

¹⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, 993 U.N.T.S. 3 (adopted Dec. 16, 1966, entered into force Jan. 3, 1976), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979), 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

of *Rajasthan*¹². Through this judgment, the Hon'ble Supreme Court drew upon the applicability of Articles 14, 15, 19(1)(g), and 21 of Part IV of the Constitution of India, fostering protection of women from sexual harassment in any enclosed spaces. The legislative embodiment commenced with the passing of the *Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act, 2013)*, which can be regarded as the legislative manifestation of the "Vishaka" principles. This Act aims to protect women against the act of sexual harassment occurring within the workplace. The Act has granted the status that the act of sexual harassment has trespassed the fundamental rights granted under Articles 14, 15, and 21.¹³

SCRUTINY OF GENDER-EXCLUSIVE PROTECTION: AN ANALYSIS UNDER ARTICLES 14, 15, AND 21

Even as it is acknowledged that the legislative provision regarding sexual harassment at workplaces is an improvement in protecting women's rights, considering the gender-specific approach is problematic due to many constitutional limitations under Articles 14, 15, and 21 of the Constitution of India.¹⁴ The POSH Act, 2013, itself classifies and defines an 'aggrieved woman' as limited only to biological or female persons and does not include males or members of the transgender and LGBTQIA+ community.¹⁵

Article 14 of the Constitution¹⁶ grants equality before the law and equal protection under the law.¹⁷ The concept of 'reasonable classification' recognizes the use of different standards only based on 'an intelligible differentia' having 'a rational nexus' to the object sought to be attained.¹⁸ Although it can be unanimously agreed that the purpose and objectives of the POSH act, which aims to address the problem of widespread 'sexual harassment of women at the workplace,' it can, however, not be ignored that the complete non-inclusion of other gender categories who are similar

¹² Vishaka v. State of Rajasthan, (1997) 6 SCC 241

¹³ S. K. RANGASAMY & K. K. SINDHU, A Study on Awareness and the Influence of the POSH Act on the Work Environment in the Service Sector, 12 J. MGMT. RES. & ANAL. 23, 23–28 (2025).

¹⁴ Rakhi Dubey, A legal critical analysis of protection of sexual harassment POSH Act 2013 with special reference to Indore District (2022) (Unpublished PhD. Thesis, Oriental University)

¹⁵ Understanding the PoSH Act: A Comprehensive Overview, available at: <https://www.posh.org.in/2024/08/understanding-posh-act-comprehensive.html> (last visited on January 20, 2026)

¹⁶ INDIA CONST. art. 14.

¹⁷ J. K. Mittal, Right to Equality and the Indian Supreme Court, Volume 14, *The American Journal of Comparative Law* 422–458 (1965).

¹⁸ Tarunabh Khaitan, Beyond Reasonableness – A Rigorous Standard of Review for Article 15 Infringement, Volume 50, *Journal of the Indian Law Institute*, Issue 2, pp. 177–208 (2008), <http://www.jstor.org/stable/43952433>

to women or who do not fit into this criteria as ‘*victims of sexual harassment*’ in the workplace raise issues. Sexual harassment, as an act, cannot be ascribed to only one gender, and evidence of the occurrence of such issues amongst those other than ‘women’ keeps growing. Any act that fails to ensure the ‘*equal treatment*’ to those addressing similar ‘*grievances*’ would be violating Article 14.¹⁹

Article 15 (1)²⁰ specifically excludes sex as a ground of discrimination. Although Article 15 (3)²¹ provides for special measures for women, this does not extend to a complete exemption for others. The framework for ensuring compliance as envisaged by the POSH Act does not sufficiently cater to gender issues, keeping in mind the present-day jurisprudence on gender, which does not limit itself to biological accuracy but has moved along a gender spectrum. The view taken by the Supreme Court regarding transgender individuals as falling in the category of ‘*third gender*’ in its judgment in *National Legal Services Authority v. Union of India*.²²

While the right to life and personal liberty, as enshrined in Article 21, encompasses, inter alia, the right to dignity, privacy, and a safe working environment, sexual harassment directly affects these integral parts of Article 21, irrespective of the gender of the victim.²³ In fact, sexual harassment, being restricted to protecting merely female victimization, becomes lopsided in protecting the dignity and mental health of any victim other than females, compelling them to resort to piecemeal criminal or organizational mechanisms.²⁴ Moreover, the gender-specific drafting of the offence of sexual harassment under Section 354A IPC²⁵ (Section 75 BNS)²⁶ defines the act where the ‘*man*’ commits the act on a ‘*woman*,’ thus employing the exclusionary model. In fact, the drafting has not considered the scenario where the perpetrator and the victim are of the same sexes or the victim could be a man or transgender.²⁷

¹⁹ Sudhir Ranjan Chowdhury, Equality before the Law in India, Volume 19, Issue 2, The Cambridge Law Journal, pp. 223–238 (1961), <http://www.jstor.org/stable/4504739>

²⁰ INDIA CONST. art. 15, cl. 1.

²¹ INDIA CONST. art. 15, cl. 1.

²² National Legal Services Authority v. Union of India, (2014) 5 SCC 438

²³ V. M. Bachal, Judicial Interpretation of Article 21 of the Constitution of India, 25 INDIAN J. POL. SCI. 231, 231–40 (1964), <http://www.jstor.org/stable/41854035>

²⁴ S. Khosla & M. M. Semwal, Human Rights Jurisprudence in Indian Constitution: Right to Equality and Life-Concept and Substance, 72 INDIAN J. POL. SCI. 927, 927–36 (2011), <http://www.jstor.org/stable/41856528>

²⁵ Indian Penal Code (Amendment) Act, 2013, No. 45, Acts of Parliament, 2013 (India).

²⁶ The Bharatiya Nyaya Sanhita Act, 2023, No. 45, Acts of Parliament, 2023 (India).

²⁷ Shiv Shankar Singh, Sexual Harassment: The Secret of Law, Due Process, and Justice, 4(1) International Journal of Criminal, Common and Statutory Law 188 (2024).

JUDICIAL ENGAGEMENT WITH WORKPLACE SEXUAL HARASSMENT, EVOLVING CASE LAW, AND INTERPRETATIVE TRENDS

The role of the Indian judiciary has been quite decisive concerning the evolving scope and ambit of the legislative framework that has governed the concept of the law relating to the occurrence of sexual harassment at the workplace, which has transformed quite remarkably and dynamically with the development and articulation of the relevant laws.²⁸ Courts have been circumspect about considering the exclusionary nature of the POSH Act as being gendered and have avoided constitutional scrutiny regarding the exclusion of male and LGBTQIA+ victims. This became more visible during the #MeToo movement, which burst into mainstream consciousness as a force of transformation that shook systems of entrenched workplace power. While the arc of the movement was distinctly skewed toward women's voices, research and anecdotal evidence show that men are sexually harassed too, but are usually silenced by stigma, fear of not being believed, and the absence of recognition under the law.²⁹

The *Vijay Nair scandal*, while it came to light in the midst of the #MeToo movement that swept India, can be cited as a prime example of the influence that a social movement can bring to the issue as a whole, especially within powerful industries within a country like India. While the judiciary has breathed the spirit of the Constitution into the legislation, ensured the stringency of the procedure, and expanded access to justice, the implementation, lack of awareness, and the issue of inclusivity rendering the law ineffective are major drawbacks to the effectiveness thereof.³⁰ Ultimately, the real proof of the effectiveness of the POSH Act is a function of the spirit thereof; it is a function only when the institutions are sincere in the implementation thereof, and the culture adopted in the workplaces is one where a worker feels dignified. That is the only time the law becomes alive and tangible for all employees.

In the context of the LGBTQIA community, individuals have a greater likelihood of double marginalization on the grounds of stigmatization within the community, a sense of non-acceptance within the workplace setting, and the threat to their identities. On the part of male victims, the

²⁸ Gopika P.R., *Evaluating the Efficacy of the POSH Act: Interpretations, Challenges and Future Directions*, 5 *Indian Journal of Integrated Research in Law*, Issue 3 (2025).

²⁹ Ashwini Tambe. (2018). Reckoning with the Silences of #MeToo. *Feminist Studies*, 44(1), 197–203.
<https://doi.org/10.15767/feministstudies.44.1.0197>

³⁰ Angeline Binick, *A Research Follow-Up to "How Often Are Men Sexually Harassed or Assaulted?"*, National Sexual Violence Resource Center.

challenge lies within the non-acceptance attitude that has often associated masculinity with powerlessness/holiness. Where courts have sporadically recognized that harassment does indeed occur outside the ambit of the statute, they have nevertheless avoided extending the reach of the POSH Act and left the onus of reform squarely on the legislature. Such legislative inertia will serve to legitimize informal and disparate remedies, reduce employer liability, and erode faith in institutional mechanisms.

In the case of *Binu Tamta & Anr. v. High Court of Delhi & Ors.*³¹, The Supreme Court of India decided that the POSH Act cannot be applied to members of the LGBTQIA+ community. The Court stated that the Act has defined the term ‘*aggrieved woman*,’ and members of the LGBTQIA+ community are not included in this category. The POSH Act also has a few gender-neutral provisions; *for example*, it states that the respondent is any person, irrespective of gender, against whom the complaint is made. To ensure that employees are protected, apart from the female workforce, organizations can have their own set of guidelines regarding harassment and sexual misconduct in their service rules.

MISUSE ALLEGATIONS, EMPIRICAL INCIDENCES, AND WORKPLACE REALITIES

Although the Act was brought into being as a welfare statute to safeguard women against sexual harassment, it has also been criticized for the potential of making unfounded allegations.³² The difficulty arises in situations involving work-related communication outside working hours, physical contact at the workplace, or common male and female interactions at the workplace, especially if the male colleagues or employers are involved.³³ Such situations have, at times, resulted in allegations of harassment that may not amount to sexual harassment, thus raising questions about the efficacy and fairness of Internal Complaints Committees (ICCs) in holding inquiries into the matter. Therefore, the issue of dealing with abuse at the workplace under the POSH Act has to be balanced in such a way that women are safeguarded against actual abuse while ensuring that allegations are objectively and fairly assessed.

³¹ *Binu Tamta v. High Court of Delhi*, 2013 SCC OnLine SC 1379

³² Hannah Jacob, *Sociological Understanding of Women Sexual Harassment at Workplace*, International Journal of Research Publication and Reviews, ISSN 2582-7421.

³³ Panel, Male Sexual DiGiacomo, Harassment in the Workplace, WINER, BURRITT & TILLIS LLP, <https://www.wmlawyers.com/oakland-sexual-harassment-attorneys/male/>

CONCLUSION

The Prevention of Sexual Harassment of Women at Workplace (POSH) Act of 2013 requires an urgent overhaul in terms of making it more inclusive in its dispensation of justice. The current three-month period to file a complaint under Rule 14 of the POSH Rules is extremely short, considering the emotional distress and fear of retaliation or ostracization that the victims are made to suffer. A time period of at least one year would be more pragmatic, considering the experience of the victims and aligning procedural law with the constitutional imperative of equity and fairness as enshrined under Article 14 of the Constitution. On the other hand, the Internal Complaints Committees (ICCs) and Local Committees (LCs) need to be given more teeth, so that they can offer relief, directions, and even penalties to ensure that the objectives of the POSH Act are largely met. Having a standardized framework of investigation is of critical importance as it will help address the inconsistencies and arbitrariness in every process and procedure. Inclusion of a mandatory annual report to be submitted by every employer organization to the Ministry of Women and Child Development, detailing complaints, outcomes, monetary compensation, and preventive strategies, will go a long way in increasing accountability and transparency. Vagueness and discretion characterize the existing redressal scheme under the POSH Rules, ranging from apologies to terminations, without matching the severity of punishment to that of grosser misconduct. Formal disciplinary action in the form of sanctions such as a formal warning for verbal harassment, monetary fines, and counseling in cases of physical misconduct, and termination with blacklisting of industries in cases of grosser misconduct will curb workplace harassment. Besides, the framework of POSH also needs to be made relevant to constitutional equality and contemporary notions of workplace vulnerability. A stronger ICC needs to be created through diversity and sensitivity training and oversight of digital reporting. Another key stakeholder, whose engagement in the legislative process is essential to the success of reforms, is the judiciary.