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# GENDER NEUTRALITY VIS A VIS POSH ACT

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## ABSTARCT

Enacted in 2013, the Prevention of Sexual Harassment at Workplace Act (POSH Act) is a significant legislative framework intended to safeguard women against sexual harassment in the workplace. It was implemented in response to an increasing amount of workplace harassment complaints, and in accordance with the 1997 Vishaka Guidelines given by the Indian Supreme Court. The POSH Act is an essential step toward establishing safer work environments, but it primarily addresses women's safety, which raises serious concerns about its **inclusivity** and **gender neutrality**.

The POSH Act explicitly defines the "**aggrieved woman**" as a victim of sexual harassment, implying that men, transgender people, and non-binary people are not entitled to the protection that this law provides. Evaluating the Act's emphasis on women alone and taking a gender-neutral approach becomes vital in the light of the growing understanding of gender that goes beyond the binary framework. Sexual harassment is not just experienced by women; males and members of the LGBTQIA+ community also encounter harassment. A framework that is gender-neutral recognizes that harassment is a problem of power and violation rather than a problem that is solely linked to the gender of the victim.

There may be several adverse consequences from the POSH Act's exclusion of other genders. For example, an absence of legal protection, the stigma attached to revealing harassment, or cultural norms that minimize men's victimization might render men reluctant to report harassment. In the same way, members of the LGBTQIA+ community, who are already stigmatized in many contexts, may be increasingly susceptible to harassment and have no legal protections under the POSH Act. These legal loopholes can result in an exploitative workplace where justice is only accessible to one gender, which reinforces prejudice and discrimination. An inclusive corporate culture that promotes equality and dignity for all workers would be encouraged by a gender-neutral law. Gender neutrality would additionally bring the Act into

compliance with international trends toward inclusive law and constitutional values of equality and nondiscrimination. Gender-neutral laws have been implemented in several nations, including the United States and the United Kingdom, to address workplace harassment. These laws recognize that harassment can harm anyone regardless of gender.

Opponents argue that a legislation aimed at women is justified because of the special vulnerabilities faced by women in patriarchal systems. They contend gender-neutral legislation may weaken the protections meant for them and that women are disproportionately affected by workplace sexual harassment. Although valid, this worry can be addressed by designing a law that is gender-neutral but includes protections for women and other vulnerable groups.

## I. INTRODUCTION

The 21st century has brought about a notable shift as to how society views and handles issues related to harassment and gender equality. As advocacy and understanding have increased, it is becoming more widely acknowledged that harassment can frequently be a result of structural gender inequality rather than just being the consequence of one person's actions. To provide a safer environment for people of all genders, laws and regulatory structures have undergone revolutionary changes as an outcome of the efforts made to address this issue. Of all the different kinds of harassment people can experience, sexual harassment is one of the most concerning since it occurs in a variety of settings, most notably the workplace. It entails unwanted sexual advances, remarks, or acts that put the victim in a terrifying, offensive, or hostile situation. Such behaviors not only breach a person's personal boundaries but also compromise their dignity and mental health. Sexual harassment is possible to anyone, regardless of gender or position, and can take many different forms, such as verbal, physical, or visual.

The Australian Human Rights Commission defines sexual harassment as "an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances."<sup>1</sup> In simple words, sexual harassment is a prevalent social problem that affects individuals across various demographics. It encompasses unwelcome sexual advances, requests for sexual favors, or other verbal or

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<sup>1</sup> **Australian Human Rights Commission**, *Sexual Harassment*, <https://humanrights.gov.au/quick-guide/12052> (last visited June 24, 2025).

physical conduct of a sexual nature that interfere with an individual's work or academic performance, or create an intimidating, hostile, or offensive environment. It is not limited to a specific gender or setting; rather, it transcends socio-economic boundaries and organizational hierarchies.

Although the workplace is regarded as a location for professional development and teamwork and promotes moral conduct and transparency, it may also serve as a haven for harassment. This is when the idea of "sexual harassment at work" enters the picture.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, also referred to as the POSH Act, is a fundamental legal framework in India that protects women against harassment in the workplace.<sup>2</sup> Internal Complaints Committees (ICCs) must be established by law to offer a channel for complaints and remedies. Though this is a positive move, specific legislative provisions continue to be inadequate for men and transgender individuals.

The roots of this legislation lie in the **Vishaka Guidelines** laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan*, which recognized sexual harassment as a violation of fundamental rights under Articles 14, 15, 19, and 21 of the Constitution.<sup>3</sup> These judicially crafted guidelines were pivotal until formal legislation was enacted.

The Supreme Court later reiterated and expanded this protection in *Apparel Export Promotion Council v. A.K. Chopra*, holding that even subtle acts of sexual harassment breach the fundamental rights of a woman to live with dignity.<sup>4</sup>

The **Justice Verma Committee Report (2013)** strongly emphasized the need for comprehensive gender-sensitive laws and addressed the gaps in existing frameworks concerning the protection of all genders.<sup>5</sup>

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<sup>2</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 4, *India Code* (2013).

<sup>3</sup> *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

<sup>4</sup> *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.C. 759 (India).

<sup>5</sup> Justice J.S. Verma et al., *Report of the Committee on Amendments to Criminal Law* (2013), available at [https://www.prsindia.org/files/policy/policy\\_committee/1359132636--Justice%20Verma%20Committee%20Report.pdf](https://www.prsindia.org/files/policy/policy_committee/1359132636--Justice%20Verma%20Committee%20Report.pdf).

Additionally, India is a signatory to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which mandates that State parties take appropriate measures to eliminate discrimination, including sexual harassment, in all spheres of life.<sup>6</sup>

The following article explores the topic of eliminating sexual harassment and makes the case for gender neutrality as an essential component of all-encompassing legal frameworks. It begins by going over the laws that are already in place in India to prevent sexual harassment and the legal protections that are particular to a person's gender. It also explains why men and transgender people are not specifically protected.

## II. THE POSH ACT 2013

The legislation addressing workplace sexual harassment against women is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, referred to as the Prevention of Sexual Harassment Act ("POSH Act"). The renowned case of *Vishakha v. the State of Rajasthan*<sup>7</sup> is where the POSH Act's history originated. Enacted with the goal to comply with international obligations under the **Convention on the Elimination of All Forms of Discrimination Against Women, 1979**<sup>8</sup> and incorporate the **Vishakha Guidelines of 2007**, the POSH Act is a crucial piece of legislation that protects women from sexual harassment in a variety of professional settings.

However, prior to the Act's implementation, the Indian Penal Code, 1860, **Sections 354**<sup>9</sup> and **509**<sup>10</sup> provided the only recognized legal pathways for addressing workplace sexual harassment.<sup>11</sup>

The Act functions as a framework for defining important terms and giving affected women remedy. The Act's essence is its explicit definition of sexual harassment, which encompasses a

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<sup>6</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 11, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>7</sup> *Vishakha v. State of Rajasthan*, (1997) 6 SCC 241

<sup>8</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>9</sup> Indian Penal Code § 354 (1860)

<sup>10</sup> Indian Penal Code § 509 (1860)

<sup>11</sup> Malavika Rajkumar, *The History Behind Sexual Harassment at the Workplace Law*, Nyaaya (2022), [https://nyaaya.org/guest-blog/the-history-behind-sexual-harassment-at-the-workplace-law/#:~:text=The%20main%20intention%20of%20these,Act%2C%202013%20\(POSH\).](https://nyaaya.org/guest-blog/the-history-behind-sexual-harassment-at-the-workplace-law/#:~:text=The%20main%20intention%20of%20these,Act%2C%202013%20(POSH).)

wide range of activities from unwanted physical advances to words and deeds with overtly sexual overtones. The following is the **definition of sexual harassment**:

*"sexual harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature".*<sup>12</sup>

The Act also defines the term "workplace," which includes any place an employee visits as a result of or during their employment, including any transportation that the employer arranges for the employee to and from the workplace. Three requirements were laid down in the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*<sup>13</sup> to determine the circumstances in which a premises would be considered a workplace for the purposes of the POSH Act: proximity to the place of employment, management control over the location or residence where the working woman is residing, and the residence having to be an extension or contiguous part of the working place.

Since the Act applies to businesses with more than ten employees, compliance is widely required. The Act also defines a "workplace," which is any location an employee goes as part of their job, including any transportation the employer provides for the worker to and from work. In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*<sup>13</sup>, three conditions were established regarding the conditions under which a location would be deemed a workplace for the purposes of the POSH Act: the location must be close to the place of employment, the working woman's residence must be under management control, and the residence must be an extension or contiguous part of the working place.<sup>14</sup>

In addition to the aforementioned, the Act defines an *investigation procedure*, a *complaint procedure*, *employer obligations*, *secrecy*, etc. The Act changed business culture and established a framework for safeguarding women from sexual harassment.

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<sup>12</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, § 2(n), No. 14 of 2013

<sup>13</sup> *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, (2011) 13 S.C.C. 59

<sup>14</sup> Nishith Desai Associates. *Sexual Harassment: Workplace "Outside the Box."* (2008). <https://www.nishithdesai.com/generateHTML/5861/4>

### III. GENDER NEUTRALITY IN POSH ACT

#### III.I. NEED FOR A GENDER NEUTRAL POSH LAW

Certainly, the Prevention of Sexual Harassment (POSH) Act, which was implemented in India with the aim of combating workplace harassment and promoting a safer work environment for employees, has played a crucial role in defending the rights and dignity of women. However, the Act's lack of gender neutrality is a significant and sometimes disregarded aspect. Although the language, terminology, and procedures of the Act are aimed mainly to prevent harassment against women, men and transgender people are not sufficiently addressed or protected. Such a narrow perspective not only minimizes the real harassment experiences that these cultures face, but it also propagates a misconception that harassment is just a problem for women.

Though the Act does contain some gender-neutral provisions, this approach ought to be expanded to include other parts of the law as well. For instance, the term "any person" qualified to file an appeal is used in **Section 18** of the Act, which provides the procedure for appealing judgments made by the ICC or LCC. This suggests that the person who faces harassment could be a man, a woman, or someone who identifies as someone of any other gender.

In addition, the internal complaints committee of every organization is obligated to provide gender equality in representation. It is required under this provision that the committee be composed of a woman and a man. The Act includes a provision that protects whistleblowers, allowing any employee—regardless of gender—to report incidents of sexual harassment without fear of retaliation. Regardless of how they identify their gender, all businesses and employees are subject to the same accountability.

The Supreme Court ruled in the *Hiral P. Harsora v. Kusum Narottamdas Harsora*<sup>15</sup> case that although the POSH Act's primary objective is to protect women, **Section 2(m)** defines "Respondent" to include people of all genders. Therefore, the POSH Act recognizes that sexual harassment can be committed by both men and women. This acknowledgement suggests that the POSH Act may also be read to cover circumstances involving women engaging in sexual harassment, which would include lesbian-related instances.

Aside from those mentioned above, no legal POSH Act redress is available to any other

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<sup>15</sup> (2016) 10 SCC 165

individual who, as a non-woman, suffers any type of sexual harassment or advances at work. The 239th report<sup>16</sup> of the parliamentary standing committee on the Bill, which was released in December 2011, addressed the issue of gender neutrality in the proposed legislation. The committee suggested looking into the possibilities of adding a provision with a supporting intent to address instances of male-on-male sexual harassment at work.

The committee also proposed that employers and establishments be required to report any instances or cases of male sexual harassment in their yearly reports. The committee figured taking this action could help to get a better understanding of the general context of sexual harassment. However, the gender neutrality component was left out of the Standing Committee Report. The explanation offered for this omission was that women are disproportionately affected by this problem.

However, 19% of the 527 male respondents from different cities around the nation in the 2010 Economic Times-Synovate study stated they had experienced sexual harassment<sup>17</sup>. The study also showed that 51% of the 527 men from various urban locations who took part in the group confirmed experiencing sexual harassment at work. In a same vein, a 2013 Viacom 18 study<sup>18</sup> found that 43% of male business executives have experienced unwanted sexual advances from coworkers. These surveys are essential to comprehending that, prior to the Act's passage, harassment at work also affected men.

The same is true for transgender people; instances of sexual harassment involving gay, bisexual, queer, assailant, and other affiliated people who might not identify as heterosexuals are not specifically acknowledged by the current legislation on the subject.

Many businesses have implemented gender-neutral policies to protect their employees against sexual harassment at work, even though the law does not take a gender-neutral position on the matter.

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<sup>16</sup> Dep't-Related Parliamentary Standing Comm. on Hum. Res. Dev., 239th Report on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2010, Rajya Sabha, Aug. 24, 2010 (India)

<sup>17</sup> <https://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms>

<sup>18</sup> <https://rainmaker.co.in/blog/view/e7a0d608-480c-43f3-8a6e-ae2172e2c397/your-gender-neutral-ic-is-in-violation-of-the-posh-act-2013-heres-why>

### **III.II. CONCERNS REGARDING A GENDER NEUTRAL POSH ON THE CURRENT LAW**

Concerns about the introduction of a gender-neutral Prevention of Sexual Harassment (POSH) policy within the Internal Complaints Committee (ICC) framework are legitimate and should be carefully considered when drafting policy. The current legislation grants the IC the authority of a civil court, and it is required to abide with natural justice standards. Many think that the ICC's primary focus, which has historically been on resolving sexual harassment against women as required by the POSH Act<sup>11</sup>, may be shifted by a gender-neutral policy. Including all genders in the policy's scope could complicate proceedings, delay case resolution, and put more burden on the ICC's resources. The particular rights and protections afforded to women under the Act may unintentionally be overshadowed by such a policy. There are worries that it might be applied improperly and have unexpected effects for non-gender-related problems. However, it's crucial to take a balanced approach when addressing these concerns. While providing protections to all genders, a well-crafted gender-neutral policy should guarantee the maintenance of the progress gained in defending women's rights. The implementation of extensive awareness programs, clear guidelines, continuous monitoring, and robust training may all work together to allay these worries and make the ICC a fair and effective tool for avoiding harassment in the workplace for all workers.

## **IV. GLOBAL PERSPECTIVE ON POSH**

### **IV.I. UNITED KINGDOM**

The Equality Act 2010<sup>19</sup> provides a framework for addressing sexual harassment in the United Kingdom. "*Unwanted conduct that violates someone's dignity or creates an environment that is intimidating, hostile, degrading, humiliating, or offensive*" is how this law defines sexual harassment.<sup>20</sup> Additionally, three specific forms of harassment pertaining to the protected feature of sex are expressly forbidden by Section 26 of the Act:

- Sexual harassment: This includes any unwanted behavior associated with a person's sex as a protected trait.
- Sexual harassment: This type of harassment includes unwanted sexual behavior.
- Unfavorable treatment depending on a person's reaction to sexual harassment or sex-related harassment, including submission or rejection.

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<sup>19</sup> Equality Act 2010, c. 15 (UK)

<sup>20</sup> Equality Act 2010, c. 15, § 26 (UK)

In January 2020, the Equality and Human Rights Commission (EHRC) released technical guidelines pertaining to workplace harassment. This instruction serves as the foundation for the legislative code of practice. Additionally, the EHRC14 has established recommendations against the incorrect use of non-disclosure agreements (NDAs) or confidentiality terms in discrimination cases.

#### IV.II UNITED STATES

Sexual harassment in the workplace is prohibited nationwide since it is considered a form of sex-based discrimination in the United States. The regulations at federal level that deal with sexual harassment in the workplace only apply to companies that employ fifteen or more people.

Employees and job seekers are protected against employment discrimination based on race, color, religion, sex, and national origin under the Civil Rights Act of 1964. This Act's Title VII<sup>21</sup> provides extensive coverage of all areas of employment decisions, including hiring, selecting, terminating, and making decisions about terms and conditions.

Section 703 of Title VII is violated by sex-based harassment, according to the Code of Federal Regulations. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical acts of a sexual character are all considered forms of this type of harassment. When is it deemed sexual harassment?

- *"Submission to such conduct is explicitly or implicitly made a condition of an individual's employment.*
- *Submission to or rejection of such conduct influences employment decisions concerning that individual.*
- *Such conduct unreasonably interferes with an individual's work performance or creates a hostile, intimidating, or offensive work environment"*<sup>17</sup>.

According to the U.S. Equal Employment Opportunity Commission, harassment can include insulting comments about someone's sex as well as sexual harassment. The law does not forbid lighthearted jokes, informal remarks, or sporadic, somewhat violent episodes. When harassment occurs frequently enough to produce a hostile or offensive work environment or when it leads to unfavorable employment measures like termination or demotion, it becomes

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<sup>21</sup> Civil Rights Act of 1964, 42 U.S.C. § 2000e

criminal. The harasser may be a colleague, a supervisor from a different department, a client or customer, or even someone who works for a different company.

The United States has a well-structured legal framework to combat workplace harassment, extending protection to victims regardless of their gender. However, it is significant to note that isolated cases of unwelcome comments or teasing do not typically fall under the category of sexual harassment. Harassment, for it to be legally actionable, should be ongoing, resulting in a hostile work environment. Furthermore, these laws place the responsibility on employers to maintain a zero-tolerance policy towards such behaviour and mandate them to enforce stringent regulations to prevent, address, and combat such incidents effectively.

The Uber sexual harassment lawsuit, which surfaced in early 2017, revealed a poisonous workplace environment at the industry leader in ride-sharing. The case started when former Uber engineer Susan Fowler wrote a blog post about her encounters with sexual harassment, discrimination, and inaction on the part of Uber's HR department.<sup>22</sup> Fowler's story exposed a seriously dysfunctional work environment that permitted harassment and maltreatment of female staff.

Uber hired the legal firm Covington & Burling to carry out an independent investigation into the company's working culture and harassment issues in response to the controversy and public outcry. The ensuing report—referred to as the "Covington Recommendations"<sup>23</sup>—detailed a number of conclusions and suggestions for resolving the issues at Uber.

- The Covington report's main conclusions were as follows:  
**Inadequate HR Procedures:** The report brought attention to the deficiency of efficient HR procedures for handling employee complaints, especially those pertaining to discrimination and sexual harassment.
- **Cultural Issues:** Many employees were hesitant to voice their concerns, as seen by the culture of non-compliance and non-reporting of harassment and discrimination occurrences.
- **Lack of Diversity and Inclusion:** The report emphasized the significance of fostering a more inclusive work environment by pointing out Uber's inadequate diversity and inclusion efforts.

<sup>22</sup> <https://www.theguardian.com/world/2020/mar/01/susan-fowler-uber-whistleblower-interview-travis-kalanick>

<sup>23</sup> Covington & Burling LLP, Report on Workplace Sexual Harassment, at 25 (2021)

The Covington Recommendations listed a number of crucial actions that Uber should take in light of these findings:

**Strengthen HR Practices:** Uber was counseled to enhance its HR protocols, guaranteeing that grievances are received with due gravity, duly examined, and expeditiously addressed.

**Change Company Culture:** The recommendations emphasized how important it is to change the company culture to one that values diversity, inclusivity, and respect. This required dealing with problems pertaining to prejudice, discrimination, and harassment.

**Leadership and Accountability:** Diversity at all organizational levels should be prioritized, and Uber's leadership should be held responsible for creating a healthy work environment.

**Diversity and Inclusion Initiatives:** In order to attract and retain a more diverse workforce, the report recommended the introduction of diversity and inclusion programs and training.

Significant internal changes were made at Uber in reaction to the Covington Recommendations, including the appointment of new management and the dismissal of several top executives. This case and the Covington Recommendations are a well-known illustration of how claims of workplace harassment can force an organization to face up to the issue and implement the required changes in culture. It also emphasizes how crucial it is to create inclusive and courteous work cultures in all sectors of the economy.

## V. CONCLUSION

In conclusion, attitudes in society regarding harassment and gender equality have significantly changed in the twenty-first century. Even though it is now widely acknowledged that systematic gender inequality frequently causes harassment, there are still issues with the legal structure that governs sexual harassment, especially in India. A positive step in protecting women in work environments is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act). Its absence of gender neutrality, nevertheless, raises serious concerns. Although there are gender-neutral clauses, a more thorough approach is required. For example, the phrase "any person" in Section 18's appeal process suggests inclusivity, but the Act ought to specifically safeguard all gender identities.

From the Vishakha Guidelines to the current version, the POSH Act represents progress, but it still excludes men, transgender persons, and non-binary people from the categories of people who can be harassed at work. In order to meet the variety of harassment experiences, the Act needs to be reevaluated. Instead of defining "aggrieved person" as women, the Act should define "individuals irrespective of gender." It is necessary to make changes to protect people

from harassment at work, both from those of the same gender and from those of the other gender. In keeping with the same idea, new and existing regulations that establish standards for companies to safeguard workers of both genders in the workplace may be established.

Internationally, comprehensive frameworks addressing sexual harassment with wording that is more gender inclusive can be found in the United States' Title VII of the Civil Rights Act and the United Kingdom's Equality Act 2010. These rules prioritize the obligation of employers to prevent and handle harassment in addition to providing protection for all genders. India should work to alter the POSH Act to make it more gender-neutral and give everyone equal protection as part of the global movement toward gender equality. It is imperative that work environments continue to be inclusive and safe for all individuals, irrespective of their gender identity.

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