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POSH IS GENDER BIASED

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ABSTRACT

[1]The sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) which transformed judicial guidelines which were stated in Visakha v. State of Rajasthan into a enforceable statutory law . The legal loophole in this is act is that its protection from sexual harassment is limited only to Aggrieved women which creates a social and legal problem in today's corporate, industrial and institutional spaces .This research paper focuses on analysing this legal loophole through article 15 which relates to discrimination and article 14 which is right to equality .This research paper focuses on gender biasedness of Prevention of Sexual Harassment Act,2013 (POSH Act) .

INTRODUCTION

Workplace harassment laws have evolved for a long time since independence Indian workplace laws have evolved through long changing struggle of Constitutional, International human rights framework and also due to social changes .

For many decades after independence Indian workplaces were patriarchal and hierarchical thinking was superior and that time women's who use to face sexual harassment was unable to get proper legal remedy due to lack of proper law related to workplace harassment. And due to this old laws like[2] Indian Penal Code, 1860 provisions used to get implemented its provision like outraging modesty of women and words gestures intended to insult modesty of women but the problem with this provision was that it was made to criminalize public sexual offenses but used to lack proper legal framework which should relate to workplace sexual harassment .

A significant development came with [3]Visakha v. State of Rajasthan where court considered article 14, 19 and 21 of Indian constitution 's part to draw guidelines related to workplace sexual harassment . After 16 years these guidelines were transformed by parliament into statutory law The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 but in this act legal loophole is that it limits its protection strictly to aggrieved woman but in today's era even males are facing sexual harassment and there is no protection laws under POSH for males which is a legal problem . And due to this male professionals who face harassment from seniors or colleagues male victims has no laws to protect them under POSH .

[1] Sexual Harassment of Women at Workplace (Prevention , Prohibition and Redressal) Act 2013 , S 2 (a) .

[2] Indian Penal Code 1860 , ss 354,509 .

[3] **Vishaka v. State of Rajasthan** (1997) 6 SCC 241.

They either endure environment filled with harassment or pursue long criminal proceedings with lack of law relating to modern workplace Harassment related laws .

This research paper focuses on analysing legal loophole in POSH act and also analysis of article 14 and 15 of constitution of India and will suggest legal reform so that male can also seek protection through POSH act .

LITERATURE REVIEW .

Gender Specifity VS Gender Neutrality

1. Reasons for Women only law - According to scholars who support this view as women only law because women have faced gender inequality and Patriarchal power . Feminist thinkers like[4] Catharine Mackinnon she says that workplace harassment is not only personal issue . Even indian scholars like [5]Upendra Baxi and nidhi sharma says that Indian Constitution article 15(3) says that special laws should be made for protection of women and children and due to this if POSH act made gender neutral it will weaken protection for women because if treat unequals in equaling way will deepen inequality .

2. Reasons for Genders neutrality - Modern legal scholars say that if males will not be covered under POSH act then this will go against article 14 of Indian constitution and will be against true fairness .

Constitutional Scrutiny - Article 14, 15, 21 in context of POSH .

1. Article 14 - Article 14 guarantees two things Equality before laws, Equal protection of the laws and under the doctrine of reasonable classification legal differentiation is valid intelligible differentia is used if it has logical link to objective of law . Objective of POSH act is to provide safe working environment free from sexual harassment and of that anyone can be victim completely excluding males especially all citizens creates arbitrary distinction even if males can be a victim of sexual harassment .

2. Article 15 - Article 15 (1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth . where as 15 (3) article of Indian constitution says that there can be special measures for women and children . Article 15 (3) supports affirmative action but does not directs total exclusion of other genders from laws where any gender can be a victim .

3. Article 21 - In Case of[6] K.S. Puttaswamy v. Union of India In this case Supreme Court speaks about bodily autonomy and privacy within article 21 . Forcing male employees who faces sexual harassment to general criminal proceedings is infringement of fundamental right to live with dignity and harassment free working environment .

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[4] Catharine A Mackinnon, *Sexual Harassment of Working Women : A case of Sex Discrimination* (Yale University Press 1979).

[5] Upendra Baxi ,*The Supreme Court of India : A Social Legal Critique of its Juridical Techniques* (Eastern Book Company 1982);Nidhie Sharma ' Gender Justice and the POSH Act : Evaluating the Constitutional Scope of Protective Discrimination' (2020) 48 JILI 112.

[6] *KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

CONCLUSION AND LEGISLATIVE RECOMMENDATIONS .

The Enactment of Sexual Harassment of Women at Workplace Act, 2013, was a commendable step to protect females from Sexual Harassment but a legal loophole of not having a law in it to protect males from sexual harassment causes failure in implementing idea of constitutional egalitarianism under article 14 of Indian constitution and under article 15 no discrimination but for females special measures can be taken but in modern era for justice of all genders Protective law is needed for every worker from sexual harassment insipte of either they male or female . Which is also a legal gap in POSH following amendments are suggested .

1. Should consider males as victim if male has faced sexual harassment .

2. There should be internal committees which should represent male and female both and also should be gender neutral .

3. Training in institutions should be given and necessity of compliance mandates so that culture of professional respect may thrive .