
Towards Gender-Neutral Workplace Sexual Harassment Laws in India: A Critical Legal Analysis

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Abstract

A Perpetrator under the Indian Legal system can be a man or a woman. It does not discriminate while considering his or her as an accused but on the other hand we have come across so many legislation that consider woman as the only victim and not man. And we are living in a developing country where the courts and Indian culture has also given recognition to a third gender, they too can be a perpetrator or a victim as well. That same gap can also seen under various legislation. One such legislation we are talking about here is the Prevention of sexual harassment of women at workplace, 2013. As we all know that the President Draupati Murmu has also highlighted that India need to ensure that 70% of the women participation in the work force. It has already grown from 21% in 2017 to 40.3% in 2023-24. Woman are holding a higher post, Under the Companies Act we can see that it is required by the companies to have one woman independent director. Hence we can see that it is need of the hour to give protection to not just women but also man as we are growing in different area we need to uphold the principles of our Indian Constitution as well i.e. bring equality at the workplace. Equality does not come only by giving participation to all gender but it also comes from giving protection to all gender, making feel secured to all gender. The absence of Gender Neutral laws in this perspective is raising a serious concern against the exploitation of men at the workplace where they also experience nearly similar levels of oppression and psychological trauma like women. The researcher is trying to highlight the gap and need of the gender neutral law at workplace for sexual harassment and protect the safety of all employees irrespective of gender.

Keywords: Sexual Harassment, Gender Equality, Gender Neutral, Workplace, Protection;

INTRODUCTION

Workplace sexual harassment is a serious socio-legal issue that affects individual across all gender and can have a bad impact on each and every individual be it victim, organisation, and society as a whole. Traditionally, due to patriarchy, legal and social discourse had focused primarily on women as a victim but we are living in a 21st century now, women have come so far and now holding a higher position at workplace as well. Just because the reporting rate or the case had come from women side does not mean that it only happen with a women. There are different gender work at workplace. They all need to feel secured and live their life with dignity. Nearly seven out of ten LGBT workers have experienced sexual harassment at work. Men are more likely than women to report witnessing harassment 41% vs 36%. Sexual harassment at workplace is a serious problem that can effect person belonging to any gender and with an inclusive workplace atmosphere in the present times people of different genders not only males and

females but persons belonging to LGBTQ are also apart of inclusive workplace environment that offers equal opportunities to all. However in this perspective the Protection, Prevention and Redressal Act POSH 2013 reflects its gender specificity as it addresses only the cases of harassment and oppression of women at workplace whereas harassment can happen with any individual irrespective of his gender identity. The need for the Gender Neutral laws in this perspective is a must as case studies have reflected that instances of male harassment also takes place in the work atmosphere particularly when there are instances of power imbalances in the organization which involves the female superiors or even male peers and may lead to cases of deterioration of mental , emotional and psychological condition, oppressive work environment due to gender biases, stagnation of the career graph and many times forced resignation. At times there are physical abuses also which involve sexual propositioning, inappropriate touching, bullying which often remain unreported

events due to the presumptions that it is a man's world and men can never become victims of gender exploitation. In reporting of such cases the major hurdles include social norms and cultural aspects that completely deny to accept that men can face workplace abuse and harassments. Men are often ridiculed and mocked at and discouraged from speaking due to strong entrenched notions of masculinity which portray men as dominating and someone unaffected by harassment.

In India there is hardly a specific legal provision of males facing harassment at the workplace and the stats provided on the internet render evidences that how badly the country is in need of a Gender Neutral law for safeguarding workplace harassment of men. When talked about countries like US if an employee is dissatisfied with the organization's investigation process in a case he or she can submit a complaint with the Equal Employment Opportunity Commission (Title VII of the Civil Rights Act 1964). In UK also there is an Equality and Human Rights Commission and the Sex Discrimination Act 1975 which was revised in the year 2008 safeguards the employees from their customers, suppliers and others they may encounter while working. However in India, Men's Sexual Harassment is mostly underreported and discussed and as per the National Commission for Women Study from 2022, about 1.4% of males in India have experienced sexual harassment and there are about 3000 cases of sexual assault on men that have never been reported in the year 2022. This is marking a significant increase above 2500 cases documented in the year 2021.

The Economic Times Synovate survey has reported that men should be a part of the bill and out of the 527 respondents polled in seven cities of Bangalore, Chennai, Hyderabad, Kolkata, Mumbai and Pune 19% of males have stated that they have experienced sexual misconduct at work. The current statistics have reflected 27% of men and 32% of women sexually victimized at the workplace and cases related to the victimization at work place have a negative impact on the physical and mental health of persons resulting in short and long term physical injuries, dread, anxiety, PTSD, Low self-esteem, social problems, suicidal tendencies and heart problems due to continued stress. There are higher risks of sexual and reproductive health difficulties.

In case of the harassment cases filed by the women at workplace there are attempts to rape and murder and to specify that the sexual contact was non consensual wherein she was required to establish that the intercourse was induced by force and against her will. In case of female harassment they are encouraged to fight cases and get the abused punished lawfully. The female victims of the sexual abuse have received much attention and then scholarship of analyzing men as victims of sexual violence is deficient. therefore the body of victimization that reports the cases of women harassment and exploitation is more as compared to fewer cases of adult male sexual victimization or AMSV.

The city survey done by the Economic Times and its results revealed that in Bangalore 51% of the respondents had been sexually harassed and in Delhi and Hyderabad it was around 31 and 28% respectively. The results clearly stated that men were subjected to sexual harassment as women. The main reason which was found behind the non-reporting of these crimes basically included the idea of 'social ridicule' and the presumption in the Indian psyche which says that in India men are as supposed to act in a certain way and they are counted as emblems of strength and power and that acts of rape and molestation can never happen with this strong gender.

A poll was done by the Centre for Civil Society in the year 2023 which stated that about 18% of Indian adult men reported of being compelled or engaged in marital affairs and about 16% identified a female perpetrator and 2% identified the male perpetrator. The data are as under:

A survey conducted by the Economic Times revealed that around 29% to 43% of respondents reported experiencing harassment from female co-workers and the Global data further indicates that approximately 24.8% of men have experienced some form of contact sexual violence, which includes rape (defined in the survey as penetration), being forced to penetrate another person, sexual coercion, and other forms of unwanted sexual contact.=

Studies also indicate that about one in ten men experience sexual coercion, which may occur when an individual is repeatedly pressured for sexual

activity or when sexual demands are made by someone using their authority or influence.

Evidence suggests that many such incidents occur at a young age:

- 51% of men reported experiencing sexual harassment before the age of 18.
- 25.3% experienced victimization between the ages of 11 and 17.
- 26% reported such experiences at the age of 10 or younger.

The legal gap in the POSH Act 2013 showcases the gender specific language that completely excludes men and other members of the LGBTQ Community and gender identities from its protection. As a result the male victims need to seek recourse under law which is not tailored for them to address their issues of harassment at workplace. Now the question arises that what is the alternative legal recourse for men in such cases.

While talking about the legal provisions, the Prevention of sexual harassment of women at workplace, 2013 specifically cover women as an aggrieved person, it is presumed that a man or any other gender person if faced sexual harassment will have to file a criminal complaint under different legislation and if we look into the Indian Penal Code, 1860, there is no specific section that covers the protect man or other gender from sexual harassment, If you look into Section 354A it again refer to 'a man' committing acts against 'a woman', making it gender-specific rather than neutral. Section 509 it protect woman's modesty. There are several other section that talk about criminal intimidation. Grievous hurt, or whosoever provoke breach of the peace but there is no provision specific that protects or provide remedy to man or any other gender for sexual harassment. If at all they want, they will have to seek for fundamental right violation under Article 14 (Right to Equality) guarantees legal challenge ability of any discriminating treatment or neglect to shield male employees from harassment. Should company regulations exclude males from sexual harassment protections, Article 15 (Prohibition of Discrimination) can be used. Moreover, Article 21 (Right to Life and Dignity) preserves a person's right to mental health and dignity.

Men and other genders face several unique challenges when pursuing sexual harassment claims

under IPC or civil laws, unlike women who benefit from the streamlined, workplace-specific POSH Act 2013. These difficulties stem from procedural hurdles, societal bias and lack of dedicated mechanism.

While some organizations have attempted to handle such complaints internally, the absence of a statutory framework leaves men vulnerable to workplace bias and dismissal of their grievances.

India is gradually recognizing that women are not the only victims of workplace harassment. While legal provisions in India currently do not mandate recourse for male victims, some progressive companies have taken the initiative to adopt gender-neutral policies. For instance, Wipro Technologies has implemented a gender-neutral Prevention of Sexual Harassment Committee (PSHC), which ensures that all complaints, regardless of the complainant's gender, are investigated fairly and without bias. Similarly, Infosys in Bangalore has established a gender-neutral Internal Complaints Committee, reinforcing the idea that workplace harassment policies should extend beyond just female employees.

While these measures mark a step in the right direction, they remain limited to select organizations, leaving countless male employees across various industries without formal protection. Addressing workplace harassment effectively requires a more inclusive legal framework that recognizes and safeguards all individuals, irrespective of gender. A crucial step toward this goal is the enactment of a legislation that makes workplace sexual harassment laws truly gender-neutral. Until such reforms are introduced, more companies must acknowledge the pressing need to create an environment where men can also report harassment without fear of stigma, dismissal, or bias. Only by fostering a more inclusive and legally supportive structure can workplaces ensure safety and dignity for all employees.

The lack of reported cases does not indicate the absence of harassment but rather reflects societal stigma and lack of legal support, discouraging male victims from coming forward.

The laws in India that pertain to harassment in the workplace do not have any gender-neutral protections, which leaves men exposed and without the ability to seek appropriate legal

remedies. When it comes to addressing the issue of sexual harassment in the workplace that males confront, this research underlines the vital need for legal reforms, judicial recognition, and social awareness. India can establish a more secure and equitable working environment for all its employees by gaining knowledge from international legal frameworks and implementing inclusive policies.

When it comes to recognizing the rights of males against sexual harassment in the workplace and ensuring that justice is available to all individuals, regardless of gender this research serves as a call to action for lawmakers, policymakers, and society as a whole.

Women can approach the employer-mandated Internal Complaints Committee under POSH for a confidential, time-bound inquiry without police involvement. Men lack this, they must go to the police for FIR or Courts, facing public exposure and no automatic employer accountability. Again Criminal routes under different legislation will drag the matter for 2-5 year and there is no guaranteed workplace reinstatement or transfer like POSH.

Suggestions and Policy Reforms for Introducing Gender-Neutral Sexual Harassment Laws

The growing recognition of sexual harassment as a violation of human dignity and workplace equality necessitates a reconsideration of the gender-specific framework currently prevailing in India. While the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides significant protection to women employees, the absence of similar safeguards for men and transgender individuals highlights a serious legal gap. In order to ensure equal protection and justice, the following reforms may be considered.

1. **Enactment of Gender-Neutral Legal Provisions**
Sexual harassment is not confined to a particular gender. Individuals of all genders may experience harassment in workplaces and other social settings. Therefore, the existing legislative framework should be expanded to incorporate gender-neutral provisions that recognize men, women, and transgender persons as potential victims. Such reform would be consistent with the constitutional guarantee of equality before law under Article

14 of the Constitution of India and the principle of non-discrimination embodied in Article 15 of the Constitution of India.

2. **Addressing Social Stigma and Encouraging Reporting**
One of the most significant barriers faced by male victims of sexual harassment is the social stigma attached to male victimhood. Traditional gender stereotypes portray men as strong and invulnerable, making it difficult for them to report harassment without fear of ridicule or disbelief. Awareness campaigns, educational programs, and community-based initiatives such as street plays (nukkad natak) can help challenge these stereotypes and promote a broader understanding that harassment can affect anyone regardless of gender.
3. **Promotion of Bystander Responsibility and Social Accountability**
Preventing sexual harassment is not solely the responsibility of legal institutions but also of society at large. Individuals should be encouraged to intervene responsibly when they witness acts of harassment or abuse. Bystander intervention programs and awareness initiatives can play a crucial role in preventing incidents of harassment and providing immediate support to victims.
4. **Establishment of Gender-Neutral Helplines and Support System**
While India has developed several helplines and institutional mechanisms to assist women facing harassment, similar support structures for men remain largely absent. Establishing gender-neutral helplines and counselling services would provide victims of all genders with accessible platforms to report incidents, seek psychological support, and obtain legal guidance.
5. **Creation of Specialized Adjudicatory Mechanisms**
Cases involving sexual harassment often require sensitive handling and timely resolution. Establishing specialized benches, committees, or tribunals dedicated to dealing with harassment cases could facilitate faster adjudication and ensure that victims are heard in a safe and supportive environment. Such mechanisms would enhance victims' confidence in the justice delivery system and encourage greater reporting of such incidents.

In conclusion, the adoption of gender-neutral policies and legal frameworks would not diminish the protection available to women but would instead strengthen the broader principle of equality and justice. A more inclusive legal structure would ensure that all individuals, irrespective of gender, are equally protected against harassment and exploitation.

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