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Workplace Justice in Transition: Assessing Gender Neutral Reform in India

Article History:

Name of Author:

Parul Lohia¹, Dr. Apoorva Dixit²

Affiliation:

¹ PhD Scholar, School of Law, GD Goenka University. ² Associate Professor, School of Law, GD Goenka University

Corresponding Author:

Parul Lohia
parul.lohia91@gmail.com

How to cite this article:

P Lohia, A Dixit: Workplace Justice in Transition: Assessing Gender Neutral Reform in India, , 2026:07 (1): 846 - 849

Received: 14-02-2026

Revised: 27-02-2026

Accepted: 13-03-2026

Published: 23-03-2026

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Abstract: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was a much-needed legislative intervention aimed at protecting women from sexual harassment in professional spaces. Enacted in response to a significant legal vacuum, the statute provided a structured redressal mechanism and imposed clear obligations on employers to ensure a safe and dignified working environment for women. In doing so, it addressed a long-standing lacuna in workplace protection and strengthened women's access to justice. However, the Act is explicitly women-centric and does not extend statutory protection to men or individuals of diverse gender identities. In contemporary society, workplace dynamics have evolved considerably. Women participate equally across sectors, traditional gender roles are gradually shifting, and greater openness exists regarding sexual orientation and gender identity. Within this changing social framework, men and LGBTQIA+ individuals may also experience sexual harassment at the workplace. Despite this reality, patriarchal stereotypes often discourage male victims from reporting such incidents, as societal expectations portray men as unlikely victims. The absence of a clear legal framework further compounds the problem, leaving them dependent on internal organizational policies rather than enforceable statutory remedies. This paper examines the growing need for a gender-neutral approach to workplace sexual harassment law and critically evaluates how the absence of legal recognition for male victims may perpetuate inequality. It argues that ensuring equal access to protection is essential for achieving a more inclusive and constitutionally aligned framework of workplace justice.

Keywords:.

INTRODUCTION

A person's understanding of gender is shaped by factors such as culture, race, nationality, economic background and social environment. In many South Asian countries, including India, traditional gender roles are strictly followed. This rigid mindset often encourages sexism and discrimination, which can also influence the way laws are framed. When laws reflect such biases, they may unintentionally strengthen gender inequality. Therefore, it is important to examine how legislation affects the broader goal of achieving gender equality and justice in society.

From the time immemorial women are subject to sexual harassment everywhere and at every stage of life. The statistics suggests that in every 12 minutes a women experiences sexual harassment. According to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), sexual violence against women is a form of discrimination against the women and they are more prone to violence

at the workplace.

In India, prior to 1997, there were no laws or guidelines available for sexual harassment at workplace. In the year 1997, for the first time in the case of Vishakha v. State of Rajasthan, the Supreme Court recognised the sexual harassment at workplace as a crime against women and also asserted it as violation of Articles 14, 15, and 21 of the Constitution of India. The Supreme Court issued binding guidelines for the protection of women against sexual harassment at work place as there was no law in India in this regard. The court was inspired from article 15(3) of the constitution of India and from the International conventions like the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which India ratified in 1993. After approximately 15 years of the judgment, the legislature passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

1. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT 2013: GENDER-SPECIFIC FRAMEWORK

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legal framework to provide protection to women at workplace against sexual harassment. It defines sexual harassment to include unwelcome physical, verbal, or non-verbal conduct of a sexual nature, including quid pro quo harassment and creation of a hostile work environment. The scope of the Act covers women employed at all workplaces, organised or unorganised sector, private or public sector and whether working as full time employee or on contractual basis or as an intern. The Act mandates the constitution of an Internal Committee (IC) in organizations with 10 or more employees and a Local Committee (LC) at the district level for smaller establishments. It prescribes a time-bound complaint and inquiry process, ensures confidentiality, and imposes duties on employers to conduct awareness programs and maintain a safe workplace. Non-compliance may attract penalties and fines.

Gender-specific legislation is enacted to address deep-rooted structural inequalities that women have historically faced in society. For centuries, social, economic, and institutional systems have placed women at a disadvantage, limiting their access to power, resources, and safe working conditions. In the workplace, this imbalance often manifests in the form of harassment, discrimination, and abuse of authority. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is based on the recognition that women are disproportionately vulnerable to sexual harassment due to systemic patriarchy and unequal power relations. Patriarchal norms frequently normalize inappropriate behavior, silence victims, and create hostile work environments where women may fear retaliation or reputational harm if they complain. By specifically protecting women, the Act seeks to correct this imbalance and provide a focused legal remedy to those who have historically been the primary targets of workplace sexual harassment.

This women-centric nature of the Act does not provide any protection to the males against sexual harassment at workplace. The gender-specific framework of the Act critically raises the concern about our understanding of gender identity and workplace realities which continues to evolve. The issue today is not whether women need protection- they certainly do, but the concern is whether limiting legal protection only to women is constitutionally valid and socially sufficient in today's time.

The broader constitutional debate underlying this issue concerns the distinction between substantive equality and formal equality. As provided under Article 15, substantive equality supports special protections for disadvantaged groups, such as women, on the ground that identical treatment may perpetuate existing inequalities. On the other hand, formal equality

emphasizes equal legal protection for all individuals regardless of gender, arguing that rights against harassment should be universally available as assigned under Article 14. The tension between these two models shapes contemporary discussions on whether workplace harassment laws should remain gender-specific or evolve into fully gender-neutral frameworks. Dhawan (2020) critically examines the POSH Act, arguing that its women-only framework excludes men and transgender and non-binary persons, thereby conflicting with constitutional principles of equality and non-discrimination. Although the POSH Act is not gender-neutral, in the case of *Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College* the court clarified that same-gender sexual harassment complaints are maintainable under the Act. The Court held that nothing in the statute bars such complaints and observed that individuals of the same gender can also violate a woman's dignity, especially in the context of evolving social and legal realities.

1. NEED FOR THE GENDER- NEUTRAL LAWS

If a male employee receives any sexual comment by a female employer in the presence or absence of other employees, he cannot complain about this incident even if he felt humiliated or mocked. Whereas, on the other hand, if the same situation happens with a woman where a male employee makes any sexual comment on a female employee then she can file a complaint. A safe working environment in India is only promised to women by the law and not to males or LGBT community. The right to have a safe working environment is a fundamental right and it must be available to all the citizens.

There is nothing more illegal and unjust than an unequal law. Justice Verma Committee report also stated that gender inequality is 'contrary to the unifying idea of a sovereign, democratic republic. Male victims do not have any statutory protection and therefore they can only rely on the organisation's HR policy which does not have force of law. Even where companies address complaints made by men, the absence of a clear legal obligation often leads to inconsistent enforcement and limited accountability.

With the passage of time, demands have been made to convert these women specific laws into gender neutral. The issue of gender neutrality was raised in the 239th Report (2011) of the Parliamentary Standing Committee on the Bill, which suggested examining the inclusion of provisions to address male victims and even recommended that employers report instances of male harassment in annual disclosures to better understand the full scope of the problem. However, the Committee ultimately did not incorporate gender-neutral provisions, reasoning that women are disproportionately affected by workplace sexual harassment. Also in the case of *Binu Tamta & Anr. v. High Court of Delhi & Ors.*, a petition was filed in the Supreme Court to make Sexual Harassment at Workplace Act 2013 as gender neutral but the court denied to pass any such directives and stated that the legislature is the appropriate

authority to make any such amendments.

Gender-neutral laws operate on the principle that protection from harassment should not depend on a person's sex or gender identity. Instead of limiting coverage to women, such laws recognize that workplace harassment is a violation of dignity and equality that can affect anyone. They acknowledge that power imbalances, abuse of authority, and hostile work environments are not confined to male-against-female situations. Accordingly, protection may extend to male victims, LGBTQIA+ individuals, cases of same-sex harassment, and even situations where harassment is committed by subordinates against seniors.

This approach reflects an understanding that gender identity is diverse and evolving, and that workplace dynamics are complex. Harassment may arise from differences in hierarchy, sexuality, gender expression, or social vulnerability rather than only from traditional patriarchal structures.

The research argues that women working in traditionally male-dominated professions are more likely to experience workplace sexual harassment than those in traditionally female roles. This is attributed to entrenched gender stereotypes, where harassment may function as a resistance mechanism against women entering roles historically occupied by men. Sexual harassment often stems not from sexual desire but from an attempt to assert dominance and reinforce power hierarchies. When an individual's gender expression or conduct does not conform to socially expected norms associated with their biological sex, they may be subordinated within workplace hierarchies, leading to harassment. In this context, same-sex sexual harassment can be equally frequent, severe, humiliating, and disruptive as harassment occurring between opposite sexes.

Undoubtedly women need more laws for their protection as the society is patriarchy driven and measures are needed to remove deep seeded injustices and systematic sexism. But there is a need to revise the laws from time to time to meet the needs of dynamics of the society.

2. ARGUMENTS SUPPORTING GENDER-NEUTRAL LEGISLATION

4.1 Constitutional Equality

The principle of equality under Articles 14 and 15 of the Constitution of India guarantees equal protection of the laws to all persons. From a constitutional standpoint, access to a legal remedy should not depend solely on one's gender. If workplace harassment violates dignity, bodily autonomy, and the right to a safe working environment, then the right to seek redress should logically be available to every individual. A gender-neutral framework aligns more closely with the idea that constitutional protections are universal and that justice mechanisms must be equally accessible to all.

4.2 Recognition of LGBTQIA+ Rights

In *Navej Singh Johar v. Union of India*, the Supreme Court recognized the rights of LGBTQIA+ persons to dignity, equality, and sexual autonomy by decriminalizing consensual same-sex relations. The judgment emphasized constitutional morality, inclusiveness, and respect for diverse gender identities and sexual orientations. In light of this transformative decision, it is argued that workplace laws also should reflect the same inclusive constitutional vision. If the Constitution protects dignity and identity irrespective of gender, then laws for sexual harassment at workplace should similarly ensure that LGBTQIA+ individuals are not excluded from statutory protection.

4.3 Emerging Workplace Data

Recent studies and workplace surveys indicate that men and LGBTQIA+ individuals also experience sexual harassment. However, such incidents are frequently underreported due to stigma, societal expectations, fear of ridicule, or lack of a clear legal framework that recognizes them as victims. A gender-neutral law may encourage reporting by legitimizing these experiences and reducing the perception that harassment is a problem affecting only one gender.

Thirty eight percent of all women and fourteen percent of men have reported experiencing sexual harassment at work. Over 85 percent of people who experience sexual harassment never file a formal legal charge, and approximately 70 percent of employees never even complain internally

4.4 Institutional Clarity

A unified gender-neutral statute would provide institutional clarity by establishing a single, comprehensive grievance mechanism for all employees. Currently, where protection is gender-specific, organizations may face fragmented or parallel processes to address complaints from individuals who do not have any protection against sexual harassment. A consolidated framework could simplify compliance, ensure uniform standards of inquiry, and promote consistency in workplace policies, thereby strengthening both fairness and administrative efficiency.

4.5 Societal and psychological impact on men

In India men are believed to be protectors and providers of the society and it is difficult to see them as the victim. Even in the legal system they are mocked and seen with suspicion and discouraged to seek any protection. The disability to seek justice and humiliation faced by man leads to depression and is devastating. The National Crime Records Bureau in its reports stated that 4,863 men committed suicide in the year 2023 however this data for women was 4,180.

SUGGESTIONS

1. Internal Committees must receive regular, structured training not only on procedural compliance but also on gender sensitivity, unconscious bias, trauma-informed inquiry, and evolving understandings of gender identity.

2. Periodic review of workplace harassment laws should be based on reliable data, research studies, reporting trends, and institutional experiences. Empirical evidence can help lawmakers identify gaps, assess the effectiveness of existing mechanisms, and determine whether the law adequately reflects contemporary workplace realities.
3. Modern workplace law must adapt to evolving work structures, including virtual offices, hybrid models, and remote employment. Harassment may now occur through emails, video conferencing platforms, social media, or messaging applications. A future-ready framework must explicitly recognize digital harassment, define accountability in virtual settings, and address power asymmetries that persist even in remote work environments.

CONCLUSION

4. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 marked a transformative moment in the protection of women against sexual violence. By formally recognizing workplace sexual harassment as a violation of women's fundamental rights of equality, life, and dignity, the Act moved the issue from the realm of "misconduct" to that of a rights-based constitutional concern. It imposed institutional responsibility on employers to create safe working environments.
5. However, the constitutional landscape has significantly evolved over the past decade. Judicial decisions increasingly foreground dignity, autonomy, privacy, and identity as core constitutional values. In particular, *Navtej Singh Johar v. Union of India*, the Supreme Court affirmed that constitutional protections extend across sexual orientations and gender identities, emphasizing inclusivity and constitutional morality. This expanded understanding of equality invites reconsideration of whether workplace harassment protections should remain gender-specific or evolve to reflect broader identity realities.
6. Importantly, gender neutrality in workplace harassment law does not imply diluting women's protections. Rather, it seeks to widen the protective framework so that all individuals- regardless of gender- can access remedies for violations of dignity. A carefully designed reform can preserve substantive safeguards for historically disadvantaged groups, recognizing structural inequalities, while simultaneously ensuring that no victim is excluded from statutory protection.
7. Concerns about misuse, often raised in debates around expansion of protective laws, can be addressed through procedural safeguards such as fair inquiry standards, evidentiary thresholds, penalties for malicious complaints, and appellate mechanisms. Exclusion of certain categories of victims is not the only or necessarily the most effective means of preventing abuse of the law. Strong procedural design can maintain balance between victim protection and due process.
8. Therefore, a calibrated amendment introducing gender-inclusive language without weakening structural protections such as Internal Committees, confidentiality safeguards, and employer obligations- offers a balanced and constitutionally coherent path forward. Such reform would harmonize workplace law with contemporary constitutional jurisprudence and reflect India's commitment to equality, constitutional morality, and an inclusive vision of workplace justice suited to modern realities.

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