
FROM COMPLAINT-DRIVEN REGULATION TO POSITIVE EMPLOYER DUTIES: A COMPARATIVE ANALYSIS OF INDIA, AUSTRALIA, AND SWEDEN UNDER ILO CONVENTION NO. 190

Shruti Mishra, RKDF University, Ranchi

ABSTRACT

Workplace sexual harassment has traditionally been regulated through complaint-based legal mechanisms that focus on investigating and redressing individual grievances after harm has occurred. While such frameworks remain essential for accountability, they are often inadequate to address the organisational conditions and structural inequalities that enable workplace sexual harassment. The adoption of the International Labour Organization's Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206 marks a significant normative shift by placing prevention and positive employer duties at the centre of workplace governance.

This article examines how ILO Convention No. 190 transforms employer obligations from a reactive complaint-driven model to a preventive governance framework based on organisational accountability. Using a doctrinal and comparative legal methodology, it analyses the legal frameworks of India, Australia, and Sweden to evaluate the extent to which India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 reflects emerging international labour standards.

The article argues that although the Indian framework incorporates important preventive measures, it remains predominantly centred on procedural compliance and complaint resolution. By contrast, Australia and Sweden impose broader proactive obligations requiring employers to identify workplace risks and implement continuous preventive measures. The article concludes that India's legal framework should adopt clearer preventive employer duties, stronger institutional oversight, and a risk-based approach to workplace governance in line with evolving international labour standards.

Keywords: workplace sexual harassment; employer obligations; ILO convention no. 190; poosh act; preventive governance; positive duty; comparative labour law.

I. Introduction

Workplace sexual harassment remains one of the most pervasive barriers to achieving substantive equality, dignity, and safety in employment.¹ Beyond individual acts of misconduct, it reflects structural inequalities embedded within workplace hierarchies, organisational cultures, and power relations that disproportionately affect women and other vulnerable workers.² Its consequences extend beyond immediate psychological and physical harm, adversely affecting career progression, economic participation, workplace productivity, and institutional trust. As workplaces become increasingly diverse, technologically connected, and characterised by non-standard forms of employment, traditional legal responses centred primarily on individual complaints have proved inadequate to address the systemic nature of workplace sexual harassment.³

For several decades, legal responses to workplace sexual harassment have been shaped primarily by complaint-based mechanisms.⁴ These systems remain important for redress, but they often address harm only after it occurs and therefore struggle to confront the organisational conditions that enable harassment, including unequal power relations, underreporting, and institutional reluctance to act.⁵

The adoption of the International Labour Organization's Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206 marks an important shift in regulatory focus.⁶ Together, these instruments place prevention at the centre of employer responsibility by emphasising risk identification, workplace policies, training, worker participation, and ongoing organisational oversight.⁷

¹ Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 11, Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 17–18, U.N. Doc. A/47/38 (1992).

² Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 20–31, U.N. Doc. CEDAW/C/GC/35 (2017).

³ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 32–47 (Yale Univ. Press 1979); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1687–91 (1998).

⁴ International Labour Organization, *Ending Violence and Harassment in the World of Work* 10–17 (ILO 2021).

⁵ Frank Dobbin & Alexandra Kalev, *The Promise and Peril of Sexual Harassment Programs*, 117 PROC. NAT'L ACAD. SCI. 30284, 30284–89 (2020).

⁶ Violence and Harassment Convention (No. 190), June 21, 2019, International Labour Organization.

⁷ Violence and Harassment Recommendation (No. 206), ¶¶ 6–13, June 21, 2019, International Labour Organization.

Against this background, the central question is whether domestic legal systems have moved beyond procedural compliance towards a more proactive conception of employer responsibility.⁸ India's POSH Act recognises important preventive and remedial duties, but its framework remains centred on internal complaint resolution.⁹ Australia and Sweden, by contrast, offer more developed models of ex ante employer responsibility and therefore provide useful comparators for evaluating the strengths and limits of the Indian framework.¹⁰

Despite the growing body of scholarship on workplace sexual harassment, important gaps remain in the existing literature.¹¹ Much of the research has focused on feminist legal theory, human rights, employer liability, judicial responses, or the implementation of domestic legislation. Comparative studies have generally examined individual jurisdictions or anti-discrimination frameworks without employing ILO Convention No. 190 as a consistent normative benchmark.¹² Consequently, limited attention has been devoted to analysing how the Convention transforms employer obligations from complaint-driven compliance to preventive governance or to evaluating the extent to which different jurisdictions have incorporated this emerging regulatory philosophy into their domestic legal frameworks.

This article seeks to address these gaps by undertaking a comparative doctrinal analysis of employer obligations to prevent workplace sexual harassment in India, Australia, and Sweden through the normative framework established by ILO Convention No. 190 and Recommendation No. 206. It argues that the Convention represents a paradigm shift in international labour law by replacing a predominantly reactive model of employer liability with a preventive governance framework based on positive duties, organisational accountability, and risk-based regulation.¹³ Using this framework as the principal analytical benchmark, the article evaluates the strengths and limitations of the legal approaches adopted in the three jurisdictions and examines the extent to which India's existing legal framework aligns with

⁸ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9.

⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14, Acts of Parliament, 2013 (India).

¹⁰ Sex Discrimination Act 1984 (Cth) pt. IIA (Aust.); Discrimination Act (2008:567) (Swed.); Work Environment Act (1977:1160) (Swed.).

¹¹ Beth Gaze, *Context and Interpretation in Sex Discrimination Law* 39–45 (Cambridge Univ. Press 2002); International Labour Organization, *Safe and Healthy Working Environments Free from Violence and Harassment* (2022).

¹² Shae McCrystal & Beth Gaze, Implementing ILO Convention No. 190: The Emerging Preventive Model of Workplace Harassment Regulation, 35 INT'L J. COMP. LAB. L. & INDUS. REL. 421, 424–31 (2021).

¹³ International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190): Explanatory Report* 18–29 (2019).

evolving international labour standards.

The study adopts a doctrinal and comparative legal methodology based on the analysis of international instruments, national legislation, judicial decisions, regulatory guidance, and scholarly literature. Rather than advocating the direct transplantation of foreign legal models, the comparative analysis seeks to identify legal principles and regulatory practices capable of informing the future development of India's workplace sexual harassment regime in a manner consistent with its constitutional values, institutional framework, and international labour commitments.¹⁴

The article is organised into six Parts. Part II traces the evolution of workplace sexual harassment law from feminist legal scholarship and international human rights law to the emergence of preventive employer governance under ILO Convention No. 190. Part III critically reviews the existing literature and identifies the research gap addressed by the present study. Part IV undertakes a comparative analysis of employer obligations in India, Australia, and Sweden using ILO Convention No. 190 as the principal analytical benchmark. Part V proposes legislative and institutional reforms necessary to strengthen India's legal framework in accordance with the Convention's preventive philosophy. Finally, Part VI summarises the principal findings, evaluates their implications for Indian labour law, and concludes that effective prevention of workplace sexual harassment requires a transition from complaint-driven regulation towards a comprehensive system of proactive employer accountability and preventive governance.¹⁵

II. From Equality to Prevention: The Evolution of Workplace Sexual Harassment Law

2.1 Introduction

The legal regulation of workplace sexual harassment has undergone a profound transformation over the past five decades. Initially viewed as a matter of individual misconduct and workplace discipline, it is now recognised as a manifestation of structural inequality that undermines equality, dignity, and the right to safe and decent work.¹⁶ This evolution has been driven by

¹⁴ INDIA CONST. arts. 14, 15, 21; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

¹⁵ Guy Davidov, *The Status of ILO Conventions in Domestic Legal Systems: A Comparative Perspective*, 26 COMP. LAB. L. & POL'Y J. 87, 91–99 (2004).

¹⁶ Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 11, Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 17–18, U.N. Doc. A/47/38 (1992); Comm. on the Elimination of

feminist legal scholarship, international human rights law, and international labour standards, culminating in the adoption of the International Labour Organization's Violence and Harassment Convention, 2019 (No. 190) and Recommendation No. 206. This Part traces that legal evolution and demonstrates how the emphasis has shifted from reactive complaint mechanisms to preventive employer governance, providing the normative foundation for the comparative analysis undertaken in the subsequent Parts of this article.¹⁷

2.2 Feminist Foundations of Workplace Sexual Harassment Law

The recognition of workplace sexual harassment as a legal wrong owes much to feminist legal scholarship, which challenged the traditional perception of harassment as an issue of personal morality or isolated workplace misconduct.¹⁸ Until the 1970s, unwelcome sexual conduct in employment was generally regarded as a private matter to be resolved through informal disciplinary processes or individual grievance mechanisms. This approach ignored the unequal power relationships that enabled such conduct and failed to acknowledge its detrimental impact on women's equal participation in the workforce.¹⁹ Feminist scholars fundamentally transformed this understanding by demonstrating that workplace sexual harassment is rooted in structural gender inequality and constitutes a form of discrimination rather than merely inappropriate behaviour.²⁰

A seminal contribution to this reconceptualisation was made by feminist legal theorists, particularly Catharine A. MacKinnon, who argued that sexual harassment should be understood as sex discrimination because it imposes unequal conditions of employment on the basis of gender.²¹ According to this analysis, harassment is not simply an abuse of individual power but a mechanism through which existing gender hierarchies are maintained and reinforced. By creating hostile, intimidating, or humiliating work environments, sexual harassment restricts

Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 20–31, U.N. Doc. CEDAW/C/GC/35 (2017).

¹⁷ International Labour Organization, *Ending Violence and Harassment in the World of Work* 9–25 (ILO 2021); Guy Davidov, The Status of ILO Conventions in Domestic Legal Systems: A Comparative Perspective, 26 COMP. LAB. L. & POL'Y J. 87, 91–99 (2004).

¹⁸ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 1–27 (Yale Univ. Press 1979).

¹⁹ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 32–47 (Yale Univ. Press 1979); Lin Farley, *Sexual Shakedown: The Sexual Harassment of Women on the Job* 15–39 (McGraw-Hill 1978).

²⁰ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 174–216 (Yale Univ. Press 1979).

²¹ *Id.* at 174–93.

women's access to equal employment opportunities, career advancement, and economic independence. This shifted the legal discourse from questions of individual misconduct to broader concerns of substantive equality and institutional discrimination.²²

Feminist scholarship also demonstrated that workplace sexual harassment is frequently sustained by organisational cultures characterised by unequal power structures, gender stereotypes, and institutional tolerance of discriminatory behaviour.²³ Consequently, the responsibility for addressing harassment cannot rest solely upon individual victims seeking redress after harm has occurred. Effective legal regulation requires organisations to examine workplace structures, policies, and practices that contribute to the persistence of harassment. This insight laid the intellectual foundation for the modern concept of employer responsibility and the growing emphasis on prevention as an essential component of workplace governance.²⁴

The influence of feminist jurisprudence extended beyond domestic legal systems to the development of international human rights norms. By framing workplace sexual harassment as a barrier to equality, dignity, and women's full participation in employment, feminist scholars shaped the international discourse that culminated in the adoption and subsequent interpretation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).²⁵ These developments marked the beginning of a broader legal transformation in which workplace sexual harassment came to be recognised not merely as inappropriate workplace conduct, but as a violation of fundamental human rights requiring comprehensive legal protection.²⁶ This international human rights framework is examined in the following section.

2.3 International Human Rights Framework

The recognition of workplace sexual harassment as a violation of human rights marked a significant development in international equality law. Building upon the conceptual

²² Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1687–1734 (1998).

²³ Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1750–1796 (1998); Frank Dobbin & Alexandra Kalev, *The Promise and Peril of Sexual Harassment Programs*, 117 PROC. NAT'L ACAD. SCI. 30284, 30284–89 (2020).

²⁴ International Labour Organization, *Ending Violence and Harassment in the World of Work* 11–24 (ILO 2021).

²⁵ Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 11, Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 17–18, U.N. Doc. A/47/38 (1992).

²⁶ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 20–31, U.N. Doc. CEDAW/C/GC/35 (2017).

foundations established by feminist legal scholarship, international human rights law reframed workplace sexual harassment as a form of discrimination that infringes the rights to equality, dignity, security, and decent work.²⁷ This shift expanded the responsibility of States beyond prohibiting discriminatory conduct to ensuring effective legal and institutional measures for its prevention and redress.²⁸

The cornerstone of this development is the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**, which requires States Parties to eliminate discrimination against women in all spheres of public life, including employment.²⁹ Although CEDAW does not expressly refer to workplace sexual harassment, Article 11 guarantees women's right to equality in employment and obliges States to ensure equal opportunities, favourable working conditions, and protection against discrimination. These guarantees provided the normative basis for recognising workplace sexual harassment as a barrier to women's equal participation in the workforce.³⁰

The scope of these obligations was clarified through the Committee on the Elimination of Discrimination against Women's interpretative guidance. **General Recommendation No. 19 (1992)** expressly recognised sexual harassment as a form of gender-based discrimination prohibited by CEDAW and called upon States to adopt legislative, administrative, and educational measures to prevent and address such conduct.³¹ Subsequently, **General Recommendation No. 35 (2017)** strengthened this approach by situating workplace sexual harassment within the broader continuum of gender-based violence and emphasising the due diligence obligation of States to prevent, investigate, punish, and provide effective remedies for violations.³²

²⁷ Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 2, 11, Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 20–31, U.N. Doc. CEDAW/C/GC/35 (2017).

²⁸ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, ¶¶ 9–13, U.N. Doc. CEDAW/C/GC/28 (2010).

²⁹ Convention on the Elimination of All Forms of Discrimination against Women arts. 2, 3, 11, Dec. 18, 1979, 1249 U.N.T.S. 13.

³⁰ Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* 80–87 (Univ. of Pa. Press 2010); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 17–18, U.N. Doc. A/47/38 (1992).

³¹ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 17–18, U.N. Doc. A/47/38 (1992).

³² Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 20–31, 24(c), U.N. Doc.

While CEDAW and its General Recommendations firmly established workplace sexual harassment as an international human rights concern, they primarily articulated the obligations of States. They offered comparatively limited guidance regarding the specific preventive responsibilities of employers within employment relationships. The development of those obligations was undertaken by international labour law, culminating in the adoption of ILO Convention No. 190 and Recommendation No. 206, which transformed the regulation of workplace sexual harassment through a preventive, employer-centred framework.³³

2.4 Evolution of International Labour Standards

While international human rights law established the normative basis for recognising workplace sexual harassment as a violation of equality and dignity, international labour law progressively addressed the issue from the perspective of workers' rights, occupational safety, and employer responsibility. Traditionally, the International Labour Organization (ILO) focused on regulating wages, working hours, social security, and physical working conditions. However, changing patterns of employment and growing recognition of psychosocial risks highlighted that a safe workplace extends beyond protection from physical hazards to include freedom from violence, harassment, and discrimination.

The ILO's **Decent Work Agenda** played a significant role in broadening the understanding of workplace safety by emphasising that productive employment must be accompanied by conditions of freedom, equity, security, and human dignity. This approach recognised that workplace violence and harassment undermine not only individual well-being but also equal access to employment, labour productivity, and social justice. Consequently, the ILO increasingly integrated principles of equality and occupational safety into its labour standards, thereby strengthening the conceptual foundation for preventive workplace regulation.

Several earlier ILO instruments contributed to this development, although none specifically regulated workplace sexual harassment. The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** prohibited discrimination in employment and occupation, including discrimination based on sex, thereby reinforcing the principle of equal treatment at work. Similarly, occupational safety and health instruments increasingly acknowledged

CEDAW/C/GC/35 (2017).

³³ Violence and Harassment Convention (No. 190), arts. 4–9, June 21, 2019, International Labour Organization; Violence and Harassment Recommendation (No. 206), ¶¶ 6–13, June 21, 2019, International Labour Organization.

employers' responsibility to identify workplace hazards and implement preventive measures to protect workers' physical and psychological well-being. Together, these instruments gradually expanded the concept of employer responsibility beyond minimum compliance towards the broader objective of creating safe and respectful workplaces.

Despite these developments, the international labour law framework remained fragmented. Existing conventions addressed discrimination, equality, and occupational safety independently, without establishing a comprehensive legal framework specifically governing violence and harassment in the world of work. As a result, employer obligations varied significantly across jurisdictions, and preventive measures depended largely upon domestic legislative choices. The absence of a dedicated international standard ultimately led to the adoption of **ILO Convention No. 190 and Recommendation No. 206**, which for the first time established a comprehensive and integrated framework for preventing workplace violence and harassment through proactive employer obligations and preventive governance.

2.5 ILO Convention No. 190 and Recommendation No. 206: The Preventive Governance Framework

The adoption of the International Labour Organization's Violence and Harassment Convention, 2019 (No. 190) marked a watershed in the evolution of international labour law.³⁴ As the first legally binding international instrument devoted exclusively to violence and harassment in the world of work, the Convention provides a comprehensive framework that integrates principles of equality, dignity, occupational safety and health, and decent work.³⁵ More importantly, it fundamentally redefines employer obligations by shifting the regulatory emphasis from responding to complaints after workplace harm has occurred to preventing violence and harassment through proactive organisational governance. Recommendation No. 206 complements the Convention by providing detailed guidance on the implementation of these preventive obligations.³⁶

A defining feature of Convention No. 190 is its broad conception of the "world of work."³⁷

³⁴ Violence and Harassment Convention (No. 190), June 21, 2019, International Labour Organization; International Labour Conference, *Ending Violence and Harassment in the World of Work*, Rep. V(2A), 107th Sess. (2018).

³⁵ Violence and Harassment Convention (No. 190) arts. 1–4, June 21, 2019, International Labour Organization.

³⁶ Violence and Harassment Recommendation (No. 206), June 21, 2019, International Labour Organization.

³⁷ Violence and Harassment Convention (No. 190), *supra* note 34, art. 3.

Recognising the changing nature of employment relationships, the Convention extends protection beyond the traditional workplace to include work-related travel, employer-provided accommodation, training programmes, social activities, commuting, and work-related communications, including those facilitated through digital technologies. It also protects a wide range of persons, including employees, trainees, apprentices, interns, volunteers, job applicants, and individuals exercising the authority or responsibilities of an employer.³⁸ This expansive scope reflects the reality that workplace sexual harassment is not confined to a single physical location or a particular category of worker.

The Convention is equally significant for the nature of the obligations it envisages. Rather than treating employers merely as recipients of complaints or participants in disciplinary proceedings, Convention No. 190 recognises them as primary actors in preventing workplace violence and harassment.³⁹ It requires States to adopt measures requiring employers, so far as reasonably practicable, to establish workplace policies, identify and assess risks, implement preventive measures, provide information and training, consult workers and their representatives, and establish accessible reporting and complaint procedures.⁴⁰ These obligations reflect the understanding that workplace sexual harassment frequently arises from organisational conditions and institutional failures rather than isolated acts of individual misconduct.

Recommendation No. 206 reinforces this preventive approach by encouraging employers to adopt comprehensive workplace policies, conduct regular risk assessments, provide education and specialised training, maintain confidential reporting mechanisms, and implement measures to protect workers who may face heightened vulnerability because of gender, disability, migration status, temporary employment, or other intersecting forms of disadvantage.⁴¹ Although not legally binding, the Recommendation provides authoritative guidance on the practical implementation of Convention No. 190 and underscores that prevention requires continuous organisational commitment rather than episodic compliance.

Collectively, Convention No. 190 and Recommendation No. 206 establish a preventive

³⁸ *Id.* arts. 2–3.

³⁹ *Id.* arts. 4, 7–9.

⁴⁰ *Id.* art. 9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–14.

⁴¹ Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 8–10; International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190), and Recommendation No. 206: Promoting the Right of Everyone to a World of Work Free from Violence and Harassment* (2019).

framework in which employers are expected not only to respond to complaints, but also to identify risks, adopt protective measures, and maintain organisational systems capable of preventing workplace harm before it occurs. This framework provides the normative benchmark for the comparative analysis that follows.⁴²

2.6 Conclusion

This Part has traced the legal evolution of workplace sexual harassment from questions of formal equality and discrimination to a broader framework centred on dignity, safety, and prevention. It shows that contemporary international labour law, particularly ILO Convention No. 190, increasingly conceptualises employer responsibility in preventive rather than purely remedial terms. The following Part examines how far existing scholarship has engaged with this shift.

III. Review of Literature and Research Gap

3.1 Introduction

Workplace sexual harassment has generated extensive interdisciplinary scholarship spanning feminist legal theory, international human rights law, labour law, employment regulation, and comparative legal studies.⁴³ Existing literature has significantly advanced understanding of the conceptual foundations of workplace sexual harassment, the evolution of legal protections, and the implementation of domestic regulatory frameworks.⁴⁴ However, the rapid development of international labour standards following the adoption of ILO Convention No. 190 has created new questions regarding the nature of employer obligations and the shift from complaint-based regulation to preventive governance.⁴⁵ This Part critically reviews the existing scholarship,

⁴² International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190), and Recommendation No. 206: Promoting the Right of Everyone to a World of Work Free from Violence and Harassment* (2019); International Labour Organization, *Ending Violence and Harassment in the World of Work* 11–30 (ILO 2021).

⁴³ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale Univ. Press 1979); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683 (1998); Beth Gaze, *Context and Interpretation in Sex Discrimination Law* (Cambridge Univ. Press 2002).

⁴⁴ International Labour Organization, *Ending Violence and Harassment in the World of Work* (ILO 2021); Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020).

⁴⁵ Violence and Harassment Convention (No. 190), June 21, 2019, International Labour Organization; Violence and Harassment Recommendation (No. 206), June 21, 2019, International Labour Organization; International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190), and Recommendation No. 206: Promoting the Right of Everyone to a World of Work Free from Violence and Harassment* (2019).

identifies the principal gaps in the literature, and explains the contribution of the present study to contemporary comparative labour law.⁴⁶

3.2 Critical Review of Existing Scholarship

The existing scholarship on workplace sexual harassment may broadly be classified into four interconnected strands: feminist legal scholarship, international human rights and labour law scholarship, studies on India's legal framework, and comparative analyses of employer obligations.⁴⁷ Collectively, these contributions have significantly shaped contemporary understanding of workplace sexual harassment, although important gaps remain in relation to preventive employer responsibility.

The first strand comprises **feminist legal scholarship**, which transformed workplace sexual harassment from an issue of individual misconduct into a manifestation of structural gender inequality.⁴⁸ Seminal works, particularly those of Catharine A. MacKinnon, conceptualised sexual harassment as a form of sex discrimination that reinforces unequal power relations within the workplace. Subsequent feminist scholarship expanded this analysis by examining the relationship between organisational culture, patriarchal workplace structures, and women's unequal access to employment opportunities.⁴⁹ This body of literature laid the conceptual foundation for recognising workplace sexual harassment as a violation of equality and dignity rather than merely inappropriate personal conduct.

The second strand focuses on **international human rights and labour law**. Scholars have extensively examined the contribution of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its General Recommendations in establishing workplace sexual harassment as a form of gender-based discrimination.⁵⁰ More recent studies

⁴⁶ Guy Davidov, *The Status of ILO Conventions in Domestic Legal Systems: A Comparative Perspective*, 26 COMP. LAB. L. & POL'Y J. 87 (2004).

⁴⁷ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale Univ. Press 1979); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683 (1998); Beth Gaze, *Context and Interpretation in Sex Discrimination Law* (Cambridge Univ. Press 2002).

⁴⁸ Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* 1–27, 174–216 (Yale Univ. Press 1979).

⁴⁹ Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1687–1734 (1998); Lin Farley, *Sexual Shakedown: The Sexual Harassment of Women on the Job* (McGraw-Hill 1978).

⁵⁰ Convention on the Elimination of All Forms of Discrimination against Women arts. 1, 11, Dec. 18, 1979, 1249 U.N.T.S. 13; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, U.N. Doc. A/47/38 (1992); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, U.N. Doc. CEDAW/C/GC/35 (2017).

have analysed the significance of ILO Convention No. 190 and Recommendation No. 206, highlighting their comprehensive understanding of violence and harassment in the world of work and their emphasis on prevention, due diligence, and organisational responsibility.⁵¹ However, much of this scholarship remains descriptive, concentrating on the Convention's provisions rather than critically evaluating how its preventive philosophy influences domestic employer obligations.⁵²

The third strand concerns **India's legal framework**, particularly the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.⁵³ Existing studies primarily examine the legislative evolution of the POSH Act, the continuing influence of *Vishaka v. State of Rajasthan*⁵⁴, the functioning of Internal Committees, judicial interpretation, and implementation challenges.⁵⁵ While these works identify deficiencies such as weak compliance, underreporting, procedural irregularities, and limited awareness, they generally assess employer responsibility from the perspective of statutory compliance rather than proactive prevention.⁵⁶

The fourth strand comprises **comparative scholarship**, which has increasingly examined legislative developments in jurisdictions such as Australia and Sweden.⁵⁷ Australian scholarship largely focuses on the statutory positive duty introduced following the Respect@Work reforms, whereas Swedish literature examines the interaction between equality law and occupational health and safety regulation. Although these studies provide valuable insights into preventive employer obligations, comparative analyses remain limited and seldom evaluate these jurisdictions using ILO Convention No. 190 as a common analytical benchmark.⁵⁸

⁵¹ Violence and Harassment Convention (No. 190), June 21, 2019, International Labour Organization; Violence and Harassment Recommendation (No. 206), June 21, 2019, International Labour Organization; International Labour Organization, *Ending Violence and Harassment in the World of Work* (ILO 2021).

⁵² Shae McCrystal & Beth Gaze, Implementing ILO Convention No. 190: Emerging Challenges for Domestic Labour Law, 35 INT'L J. COMP. LAB. L. & INDUS. REL. 421 (2021).

⁵³ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14, Acts of Parliament, 2013 (India).

⁵⁴ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁵⁵ Mrinal Satish, *Disciplining Gender: The Indian Legal Response to Sexual Harassment at the Workplace*, in *Law and Gender* (Oxford Univ. Press).

⁵⁶ Ministry of Women & Child Development, Government of India, *Handbook on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (2015).

⁵⁷ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020); Discrimination Act (2008:567) (Swed.); Work Environment Act (1977:1160) (Swed.).

⁵⁸ International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190)*, and

Taken together, the existing literature has substantially advanced understanding of workplace sexual harassment from doctrinal, human rights, and policy perspectives. Nevertheless, it has not comprehensively examined the transformation of employer obligations through the preventive governance framework established by ILO Convention No. 190, leaving an important area for further comparative legal analysis.⁵⁹

3.3 Research Gap and Contribution of the Present Study

The foregoing review demonstrates that, despite the substantial body of scholarship on workplace sexual harassment, important doctrinal and comparative gaps remain. Existing literature has made significant contributions to understanding the conceptual foundations of workplace sexual harassment, the development of international human rights standards, and the implementation of domestic legal frameworks. However, most studies continue to examine these issues in isolation, with limited attention to the evolving nature of employer obligations under contemporary international labour law.⁶⁰

A notable limitation of the existing scholarship is its continued emphasis on complaint-based regulation and post-incident redressal.⁶¹ Research on domestic legal frameworks, particularly India's POSH Act, has largely focused on legislative development, judicial interpretation, institutional implementation, and procedural compliance.⁶² While these studies have identified deficiencies in enforcement, awareness, and the functioning of Internal Committees, comparatively little attention has been devoted to assessing whether existing employer obligations are designed to prevent workplace sexual harassment before it occurs. Consequently, the emerging shift from reactive compliance to proactive organisational responsibility remains insufficiently explored.⁶³

A similar limitation is evident in the scholarship on ILO Convention No. 190 and

Recommendation No. 206: Promoting the Right of Everyone to a World of Work Free from Violence and Harassment (2019).

⁵⁹ Guy Davidov, *The Status of ILO Conventions in Domestic Legal Systems: A Comparative Perspective*, 26 COMP. LAB. L. & POL'Y J. 87 (2004).

⁶⁰ Violence and Harassment Convention (No. 190), June 21, 2019, International Labour Organization; International Labour Organization, *Ending Violence and Harassment in the World of Work* (ILO 2021).

⁶¹ Frank Dobbin & Alexandra Kalev, *The Promise and Peril of Sexual Harassment Programs*, 117 PROC. NAT'L ACAD. SCI. 30284, 30284–89 (2020).

⁶² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14, Acts of Parliament, 2013 (India); *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁶³ International Labour Organization, *Violence and Harassment Convention, 2019 (No. 190)*, and *Recommendation No. 206: Promoting the Right of Everyone to a World of Work Free from Violence and Harassment* (2019).

Recommendation No. 206. Although commentators widely acknowledge these instruments as significant developments in international labour law, much of the existing literature is descriptive, concentrating on their substantive provisions or their relationship with international human rights standards.⁶⁴ Relatively few studies employ Convention No. 190 as a normative framework for evaluating domestic legal systems or critically examine how its preventive philosophy reshapes the legal responsibilities of employers.

The comparative literature also remains fragmented. Existing studies generally focus on individual jurisdictions or compare selected aspects of anti-discrimination law without undertaking a systematic evaluation of employer obligations across different regulatory models. In particular, there is limited scholarship comparing India's complaint-driven framework with Australia's statutory positive duty model and Sweden's integrated preventive approach through the common analytical lens of ILO Convention No. 190.⁶⁵

This article addresses that gap by using ILO Convention No. 190 and Recommendation No. 206 as the principal analytical benchmark for comparing India, Australia, and Sweden. Its contribution lies in examining how different legal systems structure employer obligations before misconduct occurs, and in identifying reforms that may strengthen the Indian framework in light of emerging international labour standards.⁶⁶

3.4 Conclusion

The existing literature demonstrates significant engagement with workplace sexual harassment across feminist, human rights, labour law, and comparative perspectives. However, it lacks a sustained analysis of employer obligations through the preventive governance framework of ILO Convention No. 190. This gap provides the foundation for the comparative analysis undertaken in the following Part.

⁶⁴ International Labour Organization, *Ending Violence and Harassment in the World of Work* (ILO 2021).

⁶⁵ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020); Sex Discrimination Act 1984 (Cth) pt. IIA (Aust.); Discrimination Act (2008:567) (Swed.); Work Environment Act (1977:1160) (Swed.).

⁶⁶ Violence and Harassment Convention (No. 190), arts. 4–9, June 21, 2019, International Labour Organization; Violence and Harassment Recommendation (No. 206), ¶¶ 6–13, June 21, 2019, International Labour Organization.

IV. Comparative Analysis of Employer Obligations in India, Australia and Sweden

4.1 Introduction

Building on the preventive governance framework established in Part II, this Part undertakes a comparative analysis of employer obligations to prevent workplace sexual harassment in India, Australia, and Sweden. The three jurisdictions have been selected for their distinct regulatory approaches: India represents a predominantly complaint-driven statutory framework under the POSH Act,⁶⁷ Australia reflects a statutory positive duty model requiring proactive employer action, and Sweden integrates preventive obligations within its equality and occupational safety and health regime. Using the normative benchmark of ILO Convention No. 190 and Recommendation No. 206, this Part evaluates the extent to which each jurisdiction moves beyond reactive compliance towards preventive employer governance and identifies the strengths and limitations of each legal approach.

4.2 India: Employer Obligations under the POSH Framework

India's legal framework on workplace sexual harassment is primarily governed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), which was enacted following the Supreme Court's landmark decision in *Vishaka v. State of Rajasthan*.⁶⁸ The POSH Act⁶⁹ represents a significant legislative intervention aimed at ensuring the protection of women's right to a safe working environment under Articles 14, 15, and 21 of the Constitution of India. It formally recognises the responsibility of employers to prevent and address workplace sexual harassment through institutional mechanisms, particularly the constitution of Internal Committees (ICs) and the establishment of complaint redressal procedures.⁷⁰

Under the POSH Act, employer obligations are primarily structured around procedural compliance. Employers are required to constitute an Internal Committee, organise awareness programmes, provide a safe working environment, assist in securing attendance of witnesses,

⁶⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9.

⁶⁸ *Vishaka v. State of Rajasthan*, *supra* note 14; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9.

⁶⁹ INDIA CONST. arts. 14, 15, 21; *Vishaka v. State of Rajasthan*, *supra* note 14.

⁷⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4–9, 19.

and ensure the implementation of IC recommendations.⁷¹ The Act also imposes penalties for non-compliance, thereby creating a formal enforcement structure.⁷² At a textual level, these provisions suggest an intention to move beyond purely reactive regulation by incorporating elements of prevention, awareness, and institutional accountability.⁷³

However, in practice, the POSH framework continues to operate largely within a complaint-driven model.⁷⁴ The Internal Committee is activated only upon receipt of a complaint, and the primary focus of the legal process remains investigation and redressal rather than prevention of workplace sexual harassment. While the statute mandates the creation of a “safe working environment,” it does not comprehensively define or operationalise preventive obligations such as structured risk assessment, continuous workplace monitoring, or mandatory organisational audits for identifying systemic risks of harassment. As a result, prevention remains largely implicit rather than embedded as a structured legal duty.⁷⁵

Judicial interpretation has reinforced both the strengths and limitations of this framework. Courts have consistently emphasised the importance of strict compliance with procedural safeguards and the constitution of properly trained Internal Committees.⁷⁶ At the same time, judicial decisions have primarily addressed issues of procedural fairness and institutional compliance rather than expanding substantive employer obligations in preventive terms. Consequently, the development of employer responsibility has remained largely compliance-oriented rather than governance-oriented.⁷⁷

A significant limitation of the Indian framework is the absence of a statutory **positive duty model** akin to those emerging in comparative jurisdictions.⁷⁸ Employers are not expressly required to proactively identify and eliminate risks of workplace sexual harassment. Preventive measures such as training, sensitisation programmes, and policy formulation are mandated, but

⁷¹ *Id.* §§ 4, 19.

⁷² *Id.* § 26.

⁷³ Ministry of Women & Child Development, Government of India, *Handbook on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (2015)*.

⁷⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 9–18.

⁷⁵ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 7–9.

⁷⁶ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297; *Aureliano Fernandes v. State of Goa*, (2023) 6 SCC 105.

⁷⁷ *Aureliano Fernandes v. State of Goa*, *supra* note 84.

⁷⁸ Sex Discrimination Act 1984 (Cth) pt. IIA (Aust.), as amended by the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth); Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4–9.

their implementation is often treated as a one-time compliance requirement rather than a continuous organisational obligation. This results in a regulatory structure that emphasises post-incident adjudication over pre-emptive risk management.

Further, the effectiveness of the POSH framework is constrained by implementation challenges. Empirical studies and institutional reports indicate uneven compliance across organisations, inadequate training of Internal Committee members, lack of awareness among employees, and weak monitoring mechanisms. In many workplaces, compliance is reduced to formal documentation rather than substantive cultural change.⁷⁹ This gap between legislative intent and practical implementation undermines the preventive potential of the Act.

From the perspective of ILO Convention No. 190, the POSH Act reflects an incomplete transition towards preventive governance.⁸⁰ While it incorporates elements of prevention through awareness and institutional mechanisms, it does not impose a comprehensive and continuous duty on employers to manage workplace risks or foster a proactive organisational culture of dignity and equality. The framework remains largely reactive in structure, with prevention operating as a subsidiary objective rather than the central organising principle of employer responsibility.

Accordingly, while the POSH Act represents a foundational step in recognising employer responsibility for workplace sexual harassment in India, it falls short of the preventive governance model envisaged under contemporary international labour standards. This limitation becomes more evident when compared with jurisdictions such as Australia and Sweden, where employer obligations are increasingly framed as ongoing positive duties rather than procedural compliance requirements.⁸¹

4.3 Australia: The Positive Duty Model

Australia represents one of the most significant contemporary shifts towards preventive governance in the regulation of workplace sexual harassment. Traditionally governed by a

⁷⁹ Federation of Indian Chambers of Commerce & Industry & EY India, *Fostering Safe Workplaces: POSH Compliance Report* (latest ed.); Ministry of Women & Child Development, Government of India, *Handbook on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (2015).

⁸⁰ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13.

⁸¹ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020); Violence and Harassment Convention (No. 190), *supra* note 6.

complaint-based anti-discrimination framework under the Sex Discrimination Act, 1984,⁸² the Australian approach underwent substantial reform following the landmark *Respect@Work* Report (2020).⁸³ The reforms introduced a structural transformation by imposing a statutory **positive duty** on employers and persons conducting a business or undertaking (PCBUs) to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment, sex discrimination, and victimisation in the workplace.⁸⁴

The positive duty model marks a decisive departure from reactive, complaint-driven enforcement. Unlike traditional systems where legal obligations are triggered only upon receipt of a complaint, the Australian framework imposes an ongoing and anticipatory obligation on employers to actively identify, prevent, and address workplace risks before harm occurs. This duty is embedded in section 47C of the Sex Discrimination Act, 1984 (as amended),⁸⁵ which requires employers to adopt a proactive compliance posture grounded in risk management and organisational accountability.⁸⁶

A key institutional development accompanying this reform is the enhanced role of the Australian Human Rights Commission (AHRC),⁸⁷ which is now empowered to monitor and enforce compliance with the positive duty. The Commission has issued detailed guidelines outlining expectations for employers, including the implementation of workplace policies, regular risk assessments, staff training, leadership accountability, reporting mechanisms, and mechanisms for continuous review and improvement. Importantly, compliance is assessed not merely on the existence of policies but on their effectiveness in preventing unlawful conduct.⁸⁸

The Australian model also integrates preventive obligations into a broader regulatory ecosystem. Employers are expected to adopt a systematic approach to risk management that identifies workplace factors contributing to sexual harassment, including power imbalances, gendered workplace cultures, isolated work environments, and inadequate reporting structures.

⁸² Sex Discrimination Act 1984 (Cth) (Aust.).

⁸³ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020).

⁸⁴ Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) (Aust.); Sex Discrimination Act 1984 (Cth), *supra* note 90, pt. IIA.

⁸⁵ Sex Discrimination Act 1984 (Cth) s 47C (Aust.).

⁸⁶ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 7–9.

⁸⁷ Australian Human Rights Commission Act 1986 (Cth) (Aust.); Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)* (2023).

⁸⁸ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, *supra* note 95.

This risk-based approach aligns closely with occupational health and safety principles, thereby conceptualising sexual harassment not only as unlawful conduct but also as a foreseeable workplace hazard requiring active prevention.⁸⁹

Another significant feature of the Australian framework is its emphasis on cultural change within organisations. The positive duty is not limited to procedural compliance but extends to fostering respectful workplace cultures.⁹⁰ Employers are expected to demonstrate leadership commitment, ensure accountability at managerial levels, and embed equality principles into organisational decision-making. This reflects a broader regulatory understanding that workplace sexual harassment is sustained by structural and cultural factors rather than isolated incidents alone.

Enforcement mechanisms further distinguish the Australian model from complaint-driven systems such as India's POSH framework. The AHRC has the authority to conduct inquiries, issue compliance notices, and take enforcement action against organisations that fail to meet their obligations.⁹¹ This proactive regulatory oversight ensures that employer responsibility is not dependent on individual complaints but is instead continuously monitored through institutional mechanisms.

From a comparative perspective, the Australian positive duty model represents a clear articulation of the preventive governance framework envisaged under ILO Convention No. 190.⁹² It operationalises the idea that employers must take affirmative steps to eliminate workplace sexual harassment as part of their ongoing governance responsibilities. Unlike India's POSH Act, which primarily activates employer obligations post-complaint, the Australian framework embeds prevention as a continuous statutory duty.

However, despite its progressive design, challenges remain in implementation, particularly regarding the measurement of compliance effectiveness and the practical integration of risk management practices across diverse organisational contexts. Nevertheless, the Australian

⁸⁹ Work Health and Safety Act 2011 (Cth) (Aust.); Australian Human Rights Commission, *Respect@Work*, **supra** note 91.

⁹⁰ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, **supra** note 95.

⁹¹ Australian Human Rights Commission Act 1986 (Cth), **supra** note 95; Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, **supra** note 95.

⁹² Violence and Harassment Convention (No. 190), **supra** note 6, arts. 4–9; Violence and Harassment Recommendation (No. 206), **supra** note 7, ¶¶ 6–13.

model stands as a significant example of how preventive employer obligations can be legally institutionalised within a national regulatory framework.

In comparison to India, Australia demonstrates a more explicit shift from procedural compliance to preventive governance. While both jurisdictions recognise employer responsibility, Australia clearly elevates prevention to a primary legal obligation rather than a subsidiary objective. This contrast becomes more evident when examined alongside Sweden's integrated equality and occupational safety framework, which further expands the scope of preventive employer duties.⁹³

4.4 Sweden: Integrated Preventive Equality and Work Environment Framework

Sweden represents one of the most advanced regulatory approaches to preventing workplace sexual harassment through an integrated legal framework that combines equality law with occupational safety and health regulation. Unlike jurisdictions that address workplace sexual harassment primarily through anti-discrimination statutes, Sweden adopts a dual legislative structure under the **Discrimination Act (2008:567)** and the **Work Environment Act (1977:1160)**, both of which impose extensive preventive obligations on employers.⁹⁴

A defining feature of the Swedish model is the imposition of continuous and structured preventive duties on employers.⁹⁵ Under the Discrimination Act, employers are required to conduct **systematic preventive work** to counteract discrimination and promote equal rights and opportunities in the workplace. This includes obligations to investigate risks, implement preventive measures, and follow up on outcomes. These duties are not triggered by complaints but operate as ongoing statutory responsibilities embedded within organisational governance.⁹⁶

Complementing this, the Work Environment Act requires employers to ensure a safe and healthy working environment, explicitly including psychosocial risks such as stress, harassment, and offensive treatment.⁹⁷ The Swedish Work Environment Authority (SWEA) issues binding regulations and guidance requiring employers to engage in **systematic work**

⁹³ Australian Human Rights Commission, *Respect@Work*, **supra** note 91; Violence and Harassment Convention (No. 190), **supra** note 6.

⁹⁴ Discrimination Act (2008:567) (Swed.); Work Environment Act (1977:1160) (Swed.).

⁹⁵ Discrimination Act (2008:567), **supra** note 102, ch. 3.

⁹⁶ *Id.* ch. 3, §§ 2–13.

⁹⁷ Work Environment Act (1977:1160), **supra** note 102, ch. 3; Swedish Work Environment Authority, *Organisational and Social Work Environment Provisions* (AFS 2015:4).

environment management, which includes risk assessment, policy development, monitoring, and continuous improvement.⁹⁸ This integration of psychosocial safety into occupational health and safety law is particularly significant, as it frames workplace sexual harassment as a foreseeable workplace risk comparable to physical hazards.⁹⁹

A key strength of the Swedish framework is its emphasis on **systematic prevention as a cyclical process**.¹⁰⁰ Employers are required to regularly investigate working conditions, assess risks, implement corrective measures, and evaluate effectiveness. This continuous cycle ensures that prevention is not treated as a one-time compliance exercise but as an ongoing governance responsibility. In addition, employers must ensure worker participation in preventive processes, thereby embedding collective responsibility within organisational structures.¹⁰¹

Sweden also places strong emphasis on organisational accountability and documentation. Employers are required to maintain records of preventive measures and demonstrate compliance with systematic work environment obligations.¹⁰² Regulatory authorities have the power to conduct inspections and issue enforcement orders, ensuring that preventive duties are not merely theoretical but subject to institutional oversight.

From a conceptual perspective, the Swedish model reflects a highly developed form of preventive governance.¹⁰³ By integrating equality law with occupational safety principles, it recognises that workplace sexual harassment is both a discrimination issue and a work environment hazard. This dual framing strengthens employer obligations by requiring them to address both structural inequality and workplace risk factors simultaneously.

In comparison with Australia and India, Sweden represents the most comprehensive preventive system. While Australia introduces a statutory positive duty focused on eliminating sexual harassment through reasonable and proportionate measures, Sweden goes further by

⁹⁸ Swedish Work Environment Authority, *Systematic Work Environment Management Provisions* (AFS 2001:1); Swedish Work Environment Authority, *Organisational and Social Work Environment Provisions* (AFS 2015:4).

⁹⁹ Work Environment Act (1977:1160), **supra** note 98; Violence and Harassment Convention (No. 190), **supra** note 6, arts. 7–9.

¹⁰⁰ Swedish Work Environment Authority, *Systematic Work Environment Management Provisions* (AFS 2001:1), **supra** note 98.

¹⁰¹ Work Environment Act (1977:1160), **supra** note 102, ch. 6.

¹⁰² Swedish Work Environment Authority, *Systematic Work Environment Management Provisions* (AFS 2001:1), **supra** note 98.

¹⁰³ Violence and Harassment Convention (No. 190), **supra** note 6, arts. 4–9; Violence and Harassment Recommendation (No. 206), **supra** note 7, ¶¶ 6–13.

embedding prevention into a broader occupational safety framework that mandates continuous organisational management of psychosocial risks.¹⁰⁴ India, by contrast, remains primarily complaint-driven under the POSH Act, with preventive obligations largely limited to awareness, policy formulation, and the constitution of Internal Committees.¹⁰⁵

However, despite its strengths, the Swedish model also faces practical challenges, particularly regarding consistent enforcement across workplaces and the varying capacity of organisations to implement systematic work environment management. Nevertheless, its integrated regulatory structure offers a robust example of how preventive employer obligations can be institutionalised through a combination of equality law and occupational health and safety regulation.

Overall, Sweden illustrates the most mature expression of preventive governance among the three jurisdictions. Its approach demonstrates that effective prevention of workplace sexual harassment requires not only legal obligations but also institutional systems that embed risk management, equality promotion, and continuous organisational accountability into everyday workplace governance.¹⁰⁶

4.5 Comparative Evaluation

Jurisdiction	Regulatory logic	Preventive content	Enforcement structure	Main limitation
India	Complaint-centred model under POSH	ICs, awareness, policy, safe workplace duty	Internal mechanisms; limited external monitoring	No general positive duty; prevention is secondary
Australia	Statutory positive duty model	Risk mgmt, training, leadership, reasonable steps	AHRC monitoring and compliance powers	Depends on implementation and capacity
Sweden	Integrated equality and work-env model	Risk assessment, prevention, follow-up, participation	Equality and work-environment oversight	Needs sustained institutional capacity

¹⁰⁴ Sex Discrimination Act 1984 (Cth), *supra* note 90, pt. IIA; Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) (Aust.).

¹⁰⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9.

¹⁰⁶ Swedish Work Environment Authority, *Systematic Work Environment Management Provisions* (AFS 2001:1), *supra* note 98; Violence and Harassment Convention (No. 190), *supra* note 6.

The comparative analysis demonstrates three distinct models of employer responsibility for preventing workplace sexual harassment.¹⁰⁷ India adopts a predominantly complaint-driven framework in which the POSH Act incorporates important preventive elements but continues to centre employer obligations on internal complaint resolution and procedural compliance.¹⁰⁸ Australia represents a more advanced regulatory approach by imposing an express statutory positive duty requiring employers to take reasonable and proportionate measures to eliminate workplace sexual harassment before harm occurs. Sweden adopts the most comprehensive preventive model by integrating equality law with occupational safety and health regulation, thereby treating workplace sexual harassment simultaneously as a discrimination issue and a foreseeable workplace risk requiring continuous organisational management..

Measured against the preventive framework established by ILO Convention No. 190 and Recommendation No. 206, the three jurisdictions illustrate a progressive spectrum of employer responsibility rather than uniform regulatory convergence.¹⁰⁹ India reflects a partial incorporation of preventive obligations within a predominantly reactive legal structure. Australia moves towards preventive governance through an enforceable statutory positive duty supported by regulatory oversight, while Sweden embeds prevention within a comprehensive system of continuous risk assessment, equality promotion, and work-environment management. The principal comparative lesson is not that India should replicate either foreign model in its entirety, but that meaningful reform requires the adoption of clearer preventive employer duties, stronger institutional monitoring, and closer integration between workplace equality obligations and organisational risk management.¹¹⁰

V. Recommendations for Strengthening Employer Obligations in India

5.1 Introduction

The comparative analysis in Part IV reveals significant divergences in the manner in which India, Australia, and Sweden structure employer obligations to prevent workplace sexual

¹⁰⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9; Sex Discrimination Act 1984 (Cth), *supra* note 90; Discrimination Act (2008:567) (Swed.), *supra* note 102.

¹⁰⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19, 26.

¹⁰⁹ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13.

¹¹⁰ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, *supra* note 91; Swedish Work Environment Authority, *Systematic Work Environment Management Provisions* (AFS 2001:1), *supra* note 98.

harassment.¹¹¹ While India continues to operate within a largely complaint-driven framework under the POSH Act, Australia and Sweden demonstrate more advanced preventive governance models grounded in positive duties and systematic risk management.¹¹² In light of the standards established under ILO Convention No. 190 and Recommendation No. 206, this Part proposes reforms aimed at strengthening India's legal framework by shifting the focus from reactive compliance to proactive, preventive, and employer-centred regulatory governance.¹¹³

5.2 Shift from Complaint-Driven Model to Preventive Governance

The first reform priority is to make prevention an express organising principle of employer responsibility under the POSH Act.¹¹⁴ At present, the statute contains preventive elements, but they remain ancillary to the complaint-resolution structure built around the Internal Committee.¹¹⁵ A stronger framework would require employers to assess workplace risks, review organisational practices, and adopt continuing measures aimed at reducing the likelihood of harassment before complaints arise.¹¹⁶ Such an approach would better align Indian law with the preventive orientation reflected in ILO Convention No. 190.¹¹⁷

5.3 Introducing a Statutory Positive Duty in India

A central limitation of the existing POSH framework is the absence of an explicit statutory positive duty requiring employers to take proactive and continuous measures to prevent workplace sexual harassment.¹¹⁸ Unlike jurisdictions such as Australia, where employers are legally obligated to take reasonable and proportionate steps to eliminate harassment risks, the Indian framework primarily relies on procedural compliance mechanisms triggered after the

¹¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9; Sex Discrimination Act 1984 (Cth), *supra* note 90; Discrimination Act (2008:567) (Swed.), *supra* note 102.

¹¹² Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13; Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, *supra* note 91

¹¹³ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4–9.

¹¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19, 26.

¹¹⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4–18.

¹¹⁶ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 7–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13.

¹¹⁷ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9; Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, *supra* note 95.

¹¹⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9.

occurrence of an incident.¹¹⁹ In order to align domestic law with the preventive governance model envisaged under ILO Convention No. 190, India must consider the incorporation of a statutory positive duty into the POSH Act.¹²⁰

A positive duty would fundamentally reconfigure employer obligations from reactive compliance to proactive prevention. Instead of limiting responsibilities to the constitution of Internal Committees and adherence to procedural safeguards, employers would be legally required to actively identify, assess, and mitigate risks of workplace sexual harassment on an ongoing basis. This would include obligations such as conducting periodic workplace risk assessments, evaluating organisational culture and power hierarchies, implementing targeted preventive strategies, and ensuring continuous monitoring of workplace environments.¹²¹

Importantly, such a duty would not replace the existing complaint redressal mechanism under the POSH Act but would operate alongside it.¹²² The Internal Committee would continue to function as an adjudicatory body for complaints; however, the employer's responsibility would extend beyond this reactive role to encompass systemic prevention. This dual structure would ensure both effective redressal of grievances and sustained prevention of workplace harassment.

To ensure enforceability, the statutory positive duty could be supported by regulatory oversight mechanisms similar to those adopted in comparative jurisdictions. A designated regulatory authority, such as the Local Complaints Committees or a specialised statutory body, could be empowered to issue compliance guidelines, conduct audits, and monitor employer adherence to preventive obligations.¹²³ This would strengthen accountability and reduce the gap between formal compliance and substantive workplace safety.

The introduction of a positive duty would also require a shift in legal interpretation from

¹¹⁹ Sex Discrimination Act 1984 (Cth), *supra* note 90, pt. IIA; Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) (Aust.).

¹²⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19; Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13.

¹²¹ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, *supra* note 95.

¹²² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4–18.

¹²³ Australian Human Rights Commission Act 1986 (Cth), *supra* note 95; Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, *supra* note 95.

procedural adequacy to substantive effectiveness. Employer compliance would need to be assessed not merely on the existence of policies or committees but on demonstrable efforts to prevent workplace sexual harassment. This would align Indian law more closely with the preventive ethos of ILO Convention No. 190, which emphasises continuous risk management and organisational responsibility.¹²⁴

Ultimately, incorporating a statutory positive duty into the POSH framework would represent a significant normative shift in Indian labour law.¹²⁵ It would transform employer obligations from reactive responders to proactive governors of workplace safety, thereby embedding prevention as a central pillar of legal compliance. This reform would not only enhance legal protection for employees but also bring India's regulatory framework into closer conformity with emerging international labour standards.

5.5 Capacity Building and Workplace Compliance Mechanisms

The effectiveness of a preventive governance framework depends not only on statutory duties and institutional enforcement but also on the capacity of workplaces to implement these obligations in practice. In the Indian context, one of the persistent challenges under the POSH framework is the uneven level of awareness, training, and institutional capacity across organisations.¹²⁶ While the Act mandates awareness programmes and the constitution of Internal Committees, these requirements are often treated as formal compliance exercises rather than substantive capacity-building measures aimed at transforming workplace culture.¹²⁷

A strengthened preventive framework therefore requires a systematic approach to capacity building within organisations. Employers must be encouraged, and where necessary mandated, to undertake regular and structured training programmes for employees, managers, and Internal Committee members.¹²⁸ Such training should extend beyond legal compliance and focus on recognising subtle forms of harassment, understanding power dynamics in workplaces, and fostering gender-sensitive organisational behaviour. The objective is to develop institutional

¹²⁴ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9.

¹²⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19.

¹²⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, § 19.

¹²⁷ Ministry of Women & Child Development, Government of India, *Handbook on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, *supra* note 81.

¹²⁸ Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 8–10.

sensitivity rather than merely procedural familiarity with the law.¹²⁹

Equally important is the professionalization of Internal Committees.¹³⁰ Members of these committees should receive specialised training in legal principles, inquiry procedures, and psychosocial aspects of workplace harassment. Consideration may also be given to developing accreditation standards or certification requirements for committee members to ensure consistency and competence across organisations.¹³¹ This would enhance the credibility and effectiveness of the internal redressal mechanism and reduce the risk of procedural irregularities.

Workplace compliance mechanisms must also move towards continuous monitoring rather than one-time compliance declarations. Employers should be required to periodically review and update their anti-harassment policies, conduct internal audits of workplace culture, and assess the effectiveness of preventive measures.¹³² These processes should be integrated into broader human resource governance frameworks to ensure sustainability and institutional ownership.

Furthermore, fostering workplace compliance requires active engagement from senior management and leadership.¹³³ Preventive governance cannot function effectively without demonstrable commitment from organisational leadership in promoting safe and inclusive workplaces. This includes embedding anti-harassment principles into organisational policies, performance evaluations, and workplace ethics frameworks.

Ultimately, capacity building and compliance mechanisms are essential to operationalise the preventive obligations envisaged in a reformed POSH framework.¹³⁴ Without strengthening institutional capacity at the workplace level, even well-designed statutory reforms risk remaining ineffective in practice. A comprehensive preventive model must therefore combine legal reform with sustained organisational capacity development to ensure meaningful

¹²⁹ Australian Human Rights Commission, *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)*, **supra** note 95.

¹³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, **supra** note 9, §§ 4, 11.

¹³¹ Violence and Harassment Recommendation (No. 206), **supra** note 7, ¶¶ 8–13.

¹³² Violence and Harassment Convention (No. 190), **supra** note 6, arts. 7–9.

¹³³ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*, **supra** note 91.

¹³⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, **supra** note 9, §§ 4, 19.

protection against workplace sexual harassment.¹³⁵

VI. Conclusion

The evolution of workplace sexual harassment law reflects a broader transformation in the legal understanding of equality, dignity, and decent work. Feminist legal scholarship shifted the issue from the realm of individual misconduct to one of structural discrimination, while international human rights law, particularly CEDAW, reinforced the obligation of States to secure effective protection against such harm.¹³⁶ The adoption of ILO Convention No. 190 and Recommendation No. 206 marks a further development in this trajectory by framing workplace sexual harassment as an organisational and occupational risk that requires prevention, institutional responsibility, and continuous oversight.¹³⁷

The comparative analysis undertaken in this article demonstrates that India, Australia, and Sweden reflect different stages and models of this regulatory development. India's POSH Act represents a significant legal advance in recognising workplace sexual harassment and imposing employer obligations relating to prevention and redress, yet its structure remains centered predominantly on complaint resolution and procedural compliance.¹³⁸ Australia's statutory positive duty model moves further towards proactive employer responsibility by requiring reasonable and proportionate measures to eliminate harassment and related unlawful conduct, supported by enhanced regulatory powers.¹³⁹ Sweden, through the combined operation of equality law and work-environment regulation, provides a more integrated model in which prevention is embedded within continuous organisational governance and risk management.

Viewed against the normative framework established by ILO Convention No. 190, the Indian

¹³⁵ Violence and Harassment Convention (No. 190), *supra* note 6; Violence and Harassment Recommendation (No. 206), *supra* note 7.

¹³⁶ Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 16, arts. 2, 11; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, *supra* note 16, ¶¶ 17–18; Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, *supra* note 16, ¶¶ 20–31.

¹³⁷ Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9; Violence and Harassment Recommendation (No. 206), *supra* note 7, ¶¶ 6–13.

¹³⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19, 26; *Vishaka v. State of Rajasthan*, *supra* note 14.

¹³⁹ Sex Discrimination Act 1984 (Cth), *supra* note 90, pt. IIA; Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) (Aust.); Discrimination Act (2008:567) (Swed.), *supra* note 102; Work Environment Act (1977:1160) (Swed.), *supra* note 102.

legal position reflects only a partial movement towards preventive governance. While the POSH Act incorporates important preventive elements, it does not yet impose a sufficiently clear and continuous duty on employers to identify risks, address structural workplace conditions, and institutionalise preventive strategies beyond the handling of individual complaints.¹⁴⁰ The comparative experience of Australia and Sweden therefore offers useful lessons, not for direct legal transplantation, but for understanding how employer responsibility may be reoriented from reactive compliance towards more substantive and anticipatory forms of regulation.

Accordingly, strengthening the Indian framework requires more than procedural refinement. It calls for a clearer articulation of preventive employer duties, stronger mechanisms of monitoring and accountability, and closer integration between workplace equality norms and broader systems of organisational risk regulation. Such reforms would not only bring Indian law into closer alignment with evolving international labour standards but would also advance the constitutional commitment to ensuring that workplaces are genuinely safe, equal, and dignified for all workers.¹⁴¹

¹⁴⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, *supra* note 9, §§ 4, 19; Violence and Harassment Convention (No. 190), *supra* note 6, arts. 4, 7–9.

¹⁴¹ Violence and Harassment Convention (No. 190), *supra* note 6; INDIA CONST. arts. 14, 15, 21.