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# FROM VISHAKA TO POSH: THE CONSTITUTIONALIZATION OF GENDER JUSTICE IN INDIAN LABOUR LAW

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## ABSTRACT

Sexual harassment at the workplace constitutes a structural barrier to women's equal participation in economic life, undermining constitutional guarantees of equality, dignity, and freedom of occupation. In India, the legal recognition of this harm did not originate in legislative foresight but emerged through constitutional adjudication that reimagined workplace safety as a fundamental right. The Supreme Court's decision in *Vishaka v. State of Rajasthan*<sup>1</sup> marked a decisive shift by treating sexual harassment as a violation of Articles 14, 15, and 21 of the Constitution and by formulating binding guidelines in the absence of statutory law. The subsequent enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents the legislative codification of this constitutional vision. This paper undertakes a doctrinal analysis of the Vishaka–POSH trajectory as a process of constitutionalization of labour law, critically examining its normative foundations, institutional design, and enforcement limitations. It argues that while the POSH framework embodies constitutional morality in form, its transformative potential remains constrained by structural weaknesses that demand renewed constitutional engagement.

**Keywords:** Sexual Harassment; Gender Justice; Constitutional Morality; Labour Law; POSH Act; Vishaka Guidelines

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<sup>1</sup> *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

## 1. Introduction

For much of India's post-independence history, labour law failed to acknowledge sexual harassment as a legal injury, reflecting a deeper constitutional blind spot regarding gendered power relations in the workplace. Employment was conceptualized as a contractual domain governed by managerial authority, while harassment was relegated to the realm of personal misconduct or moral impropriety. This separation insulated workplaces from constitutional scrutiny and normalized conditions that systematically excluded women from equal participation. The absence of statutory safeguards prior to 1997 was therefore not merely legislative omission but a manifestation of structural patriarchy embedded within legal regulation of work.<sup>2</sup>

The intervention of the Supreme Court in *Vishaka v. State of Rajasthan* fundamentally altered this legal landscape by reframing sexual harassment as a constitutional violation rather than an interpersonal dispute. The Court recognized that harassment directly impairs women's right to equality under Article 14, constitutes sex-based discrimination under Article 15, restricts freedom of occupation under Article 19(1)(g), and violates the right to live with dignity under Article 21. By locating workplace safety within the core of fundamental rights, the Court dismantled the public-private divide that had previously shielded employment relations from constitutional accountability.<sup>3</sup>

The factual context of *Vishaka* underscores the structural nature of the harm addressed by the Court. The case arose from the gang rape of Bhanwari Devi, a village-level worker employed under a government programme, who was targeted for attempting to prevent a child marriage. The failure of state institutions to provide redress exposed the compounded vulnerability faced by working women situated at the intersections of gender, caste, and class. Women's rights groups approached the Supreme Court through a public interest petition, arguing that the absence of legal protection rendered constitutional guarantees illusory for large sections of working women.<sup>4</sup>

Confronted with legislative silence, the Supreme Court adopted an explicitly constitutional approach that treated judicial intervention as a necessity rather than an encroachment. The

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<sup>2</sup> Flavia Agnes, *Gender Justice and the Indian Legal System* 203–207 (Oxford Univ. Press 2020).

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

<sup>4</sup> Agnes, *Gender Justice and the Indian Legal System*, supra note 2, at 210–213.

Court held that where fundamental rights are threatened by the absence of law, constitutional courts are empowered to lay down normative guidelines to ensure effective protection. This reasoning reflects a purposive understanding of constitutional adjudication, one that prioritizes the realization of rights over formal adherence to institutional boundaries.<sup>5</sup>

The Vishaka Guidelines, framed as interim measures, acquired binding force under Article 141 of the Constitution and applied uniformly across public and private workplaces. They introduced a comprehensive definition of sexual harassment, mandated preventive obligations on employers, and established complaints committees with external representation. In doing so, the Court translated abstract constitutional values into concrete institutional mechanisms, effectively constitutionalizing workplace governance in the absence of legislative action.<sup>6</sup>

The eventual enactment of the POSH Act in 2013 must be understood against this jurisprudential backdrop. Far from being an autonomous legislative initiative, the Act represents the statutory crystallization of judicially articulated constitutional norms. Its preambular reference to equality and dignity signals continuity with Vishaka, while its institutional framework seeks to embed constitutional morality within organizational structures. Yet, the persistence of non-compliance and structural weaknesses raises questions about the extent to which constitutionalization has translated into substantive workplace justice.<sup>7</sup>

This paper examines the Vishaka–POSH continuum as an instance of transformative constitutionalism within Indian labour law. It argues that the constitutionalization of sexual harassment law reflects an evolving understanding of equality as substantive and dignity-based, rather than formal and abstract. At the same time, it critically interrogates the limitations of statutory implementation, emphasizing the need for institutional independence, inclusivity, and effective enforcement to realize the Constitution's egalitarian promise.<sup>8</sup>

## **2. Constitutional Foundations of Gender Justice in Indian Labour Law**

The constitutional framework of India embeds gender justice as a substantive commitment

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<sup>5</sup> Upendra Baxi, *The Indian Supreme Court and Politics* 176–179 (Eastern Book Co. 1980).

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

<sup>7</sup> *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, pmbL., INDIA CODE (2013).

<sup>8</sup> Tarunabh Khaitan, *Equality: Legislative and Constitutional Dimensions in India* 421–425 (Oxford Univ. Press 2019).

rather than a formal declaration, requiring the State to dismantle structural barriers that impede equal participation in social and economic life. Articles 14, 15, and 21 together constitute the normative core of this framework, shaping judicial understanding of equality, non-discrimination, and dignity. In the context of labour relations, these provisions acquire particular significance because employment structures often reflect entrenched hierarchies that render women disproportionately vulnerable to coercion, exclusion, and violence. Constitutional interpretation has therefore evolved to address not merely overt discrimination but the systemic conditions that enable gendered harm within workplaces.<sup>9</sup>

Article 14's guarantee of equality before the law has been judicially transformed from a formal rule of equal treatment into a substantive doctrine aimed at preventing arbitrariness and structural disadvantage. The Supreme Court has consistently held that equality is violated not only when similarly situated persons are treated differently, but also when unequal social realities are ignored by ostensibly neutral rules. This understanding is crucial for addressing workplace sexual harassment, which often persists precisely because organizational norms and power relations are treated as neutral or inevitable rather than constitutionally suspect.<sup>10</sup>

Article 15 complements this substantive vision by explicitly prohibiting discrimination on the ground of sex while authorizing the State to make special provisions for women. Judicial interpretation has clarified that Article 15(3) is not an exception to equality but an enabling provision that facilitates the achievement of substantive equality. In labour law, this principle rejects paternalistic protection that restricts women's autonomy and instead supports measures that expand their capacity to participate in work on equal terms, free from fear and coercion.<sup>11</sup>

The jurisprudential expansion of Article 21 has been central to constitutionalizing workplace safety as a fundamental right. By interpreting "life" to include dignity, privacy, and bodily integrity, the Supreme Court has established that conditions which humiliate, intimidate, or degrade individuals are constitutionally impermissible. Sexual harassment at work directly implicates this expanded conception of life, as it subjects women to environments that undermine self-worth and autonomy, thereby denying them the full enjoyment of their

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<sup>9</sup> Tarunabh Khaitan, *A Theory of Discrimination Law* 84–90 (Oxford Univ. Press 2015).

<sup>10</sup> *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3.

<sup>11</sup> *Anuj Garg v. Hotel Ass'n of India*, (2008) 3 S.C.C. 1.

constitutional freedoms.<sup>12</sup>

The recognition of dignity as a constitutional value has particular resonance in labour jurisprudence because it reframes employment from a purely economic exchange into a relationship governed by constitutional norms. This shift challenges the traditional view that private workplaces lie beyond the reach of fundamental rights. By treating dignity as indivisible and context-independent, constitutional doctrine affirms that the protection of fundamental rights does not cease at the threshold of the workplace.<sup>13</sup>

The horizontal application of fundamental rights represents a decisive doctrinal development enabling constitutional regulation of private power. Although the Constitution primarily envisages rights as enforceable against the State, judicial interpretation has recognized that private actors exercising significant control over individuals' lives may also be bound by constitutional norms. In the context of employment, employers wield substantial power over access to livelihood, making constitutional oversight essential where that power is abused through harassment or discrimination.<sup>14</sup>

Directive Principles of State Policy further reinforce this constitutional vision by articulating socio-economic commitments that inform the interpretation of fundamental rights. Provisions mandating humane conditions of work, equal pay, and adequate livelihood reflect an understanding that dignity and equality cannot be realized without addressing material conditions. Courts have repeatedly relied on these principles to expand the content of Article 21, thereby integrating labour welfare into the constitutional guarantee of life.<sup>15</sup>

International human rights law has played a significant role in shaping India's constitutional response to workplace sexual harassment. The Supreme Court's engagement with the Convention on the Elimination of All Forms of Discrimination against Women reflects an interpretive approach that treats international obligations as relevant to domestic constitutional meaning. This approach is grounded in the constitutional directive to respect international law and enables courts to draw upon global standards where domestic law is silent or

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<sup>12</sup> *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608.

<sup>13</sup> Upendra Baxi, *The Indian Supreme Court and Politics* 181–183 (Eastern Book Co. 1980).

<sup>14</sup> Gautam Bhatia, *The Transformative Constitution* 142–146 (HarperCollins India 2019).

<sup>15</sup> INDIA CONST. arts. 39(a), 39(d), 42; *State of Kerala v. N.M. Thomas*, (1976) 2 S.C.C. 310.

underdeveloped.<sup>16</sup>

The interpretive use of CEDAW in Indian constitutional jurisprudence underscores the convergence between equality and freedom from violence. General Recommendation No. 19, which identifies sexual harassment as a form of discrimination that impairs women's right to work, provided a normative framework for recognizing harassment as a constitutional injury. By adopting this framework, Indian courts affirmed that equality cannot be achieved in the absence of safety and dignity within workplaces.<sup>17</sup>

Feminist constitutional scholarship reinforces this understanding by conceptualizing sexual harassment as a manifestation of structural power rather than isolated misconduct. This perspective highlights the inadequacy of purely individualistic legal responses and emphasizes the need for institutional and normative transformation. Within labour law, this translates into a demand for mechanisms that address not only individual grievances but also the organizational cultures that sustain inequality.<sup>18</sup>

The constitutional foundations of gender justice thus provide the normative justification for treating workplace sexual harassment as a matter of fundamental rights. By integrating equality, dignity, international norms, and feminist insight, constitutional doctrine creates a framework in which labour regulation becomes a site of constitutional governance. This framework directly informed the Supreme Court's intervention in *Vishaka* and continues to shape the statutory architecture of the POSH regime.<sup>19</sup>

### 3. The Vishaka Guidelines as Constitutional Law-Making

The judgment in *Vishaka v. State of Rajasthan* represents one of the most significant moments of constitutional law-making by the Indian Supreme Court, arising directly from legislative silence in the face of systemic rights violations. Rather than treating the absence of statutory law as a barrier to adjudication, the Court framed it as a constitutional failure demanding judicial response. This approach reflects a purposive understanding of constitutional

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<sup>16</sup> Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 11, 24.

<sup>17</sup> CEDAW Comm., General Recommendation No. 19, pp 17–18, U.N. Doc. A/47/38 (1992).

<sup>18</sup> Catharine A. MacKinnon, *Sexual Harassment of Working Women* 193–198 (Yale Univ. Press 1979).

<sup>19</sup> Tarunabh Khaitan, *Equality: Legislative and Constitutional Dimensions in India* 427–430 (Oxford Univ. Press 2019).

adjudication in which courts assume a proactive role to prevent the erosion of fundamental rights caused by institutional inaction.<sup>20</sup>

The Court's reasoning was grounded in the recognition that sexual harassment at the workplace is not an isolated wrong but a structural form of discrimination that impairs women's equal access to employment. By linking harassment to Articles 14 and 15, the Court acknowledged that workplace environments structured by fear and coercion produce unequal outcomes even in the absence of formal exclusion. This doctrinal move situates sexual harassment within the broader constitutional prohibition against sex-based disadvantage rather than treating it as a matter of personal morality or internal discipline.<sup>21</sup>

Article 19(1)(g) further informed the Court's analysis by framing safe working conditions as integral to the freedom to practice any profession or occupation. The Court observed that women cannot meaningfully exercise occupational freedom where the workplace itself becomes a site of intimidation or exploitation. This interpretation expands the scope of economic liberty to include conditions necessary for its effective enjoyment, reinforcing the interdependence of civil and socio-economic rights within constitutional doctrine.<sup>22</sup>

The reliance on Article 21 was central to the Court's constitutionalization of workplace sexual harassment. By characterizing harassment as a violation of dignity and bodily integrity, the Court integrated its earlier dignity jurisprudence into labour relations. This reasoning underscores that dignity is not a context-specific entitlement but a continuous constitutional guarantee that governs all social institutions, including private workplaces.<sup>23</sup>

A distinctive feature of the Vishaka judgment is its explicit engagement with international law, particularly the Convention on the Elimination of All Forms of Discrimination against Women. The Court invoked Articles 51(c) and 253 of the Constitution to justify the interpretive use of international norms in expanding the content of fundamental rights. This approach reflects an understanding of the Constitution as an open-textured document capable of absorbing global

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<sup>20</sup> Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241.

<sup>21</sup> Vishaka, (1997) 6 S.C.C. at 12–13; Tarunabh Khaitan, A Theory of Discrimination Law 115–118 (Oxford Univ. Press 2015).

<sup>22</sup> Vishaka, (1997) 6 S.C.C. at 14; Gautam Bhatia, The Transformative Constitution 156–158 (HarperCollins India 2019).

<sup>23</sup> Vishaka, (1997) 6 S.C.C. at 15; Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608, pp 615–616.

human rights standards where domestic law is deficient.<sup>24</sup>

CEDAW General Recommendation No. 19 provided the normative bridge between international human rights law and domestic constitutional doctrine. By identifying sexual harassment as a form of discrimination that undermines women's right to work, the Recommendation enabled the Court to treat harassment as constitutionally cognizable harm. This interpretive move reinforced the idea that equality cannot be separated from freedom from violence and coercion in institutional spaces.<sup>25</sup>

The Vishaka Guidelines themselves reflect a deliberate effort to translate constitutional principles into enforceable institutional mechanisms. The Court articulated a comprehensive definition of sexual harassment that included physical contact, verbal conduct, and the creation of a hostile work environment. This inclusive definition acknowledges that harm often manifests through cumulative patterns of behavior rather than singular incidents, aligning constitutional doctrine with feminist understandings of power and subordination.<sup>26</sup>

The mandatory constitution of complaints committees constituted the institutional core of the Guidelines. By requiring a woman chairperson and external representation from civil society, the Court sought to counteract internal power imbalances and ensure procedural fairness. This design reflects an awareness that internal disciplinary mechanisms often fail to inspire confidence where harassment implicates hierarchical authority.<sup>27</sup>

The binding nature of the Guidelines under Article 141 elevated them from advisory norms to constitutional obligations applicable across public and private sectors. This transformation effectively extended constitutional governance into private employment relations, marking a significant expansion of horizontal rights enforcement. While this raised concerns regarding separation of powers, the Court justified its intervention as a temporary constitutional necessity rather than a claim to legislative supremacy.<sup>28</sup>

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<sup>24</sup> CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13, arts. 11, 24; Vishaka, (1997) 6 S.C.C. at ¶ 16.

<sup>25</sup> CEDAW Comm., General Recommendation No. 19, pp 17–18, U.N. Doc. A/47/38 (1992).

<sup>26</sup> Vishaka, (1997) 6 S.C.C. at 17–18; Catharine A. MacKinnon, *Sexual Harassment of Working Women* 197–201 (Yale Univ. Press 1979).

<sup>27</sup> Vishaka, (1997) 6 S.C.C. at 19; Flavia Agnes, *Gender Justice and the Indian Legal System* 226–229 (Oxford Univ. Press 2020).

<sup>28</sup> INDIA CONST. art. 141; Upendra Baxi, *The Indian Supreme Court and Politics* 184–186 (Eastern Book Co. 1980).



Subsequent judicial developments revealed the limitations of guideline-based regulation without statutory backing. Widespread non-compliance and institutional resistance undermined the effectiveness of the Vishaka framework, particularly in the private and informal sectors. Judicial acknowledgement of these failures underscored the fragility of constitutional enforcement in the absence of sustained administrative and legislative support.<sup>29</sup>

The Supreme Court's intervention in *Medha Kotwal Lele v. Union of India* reaffirmed the binding nature of the Guidelines and emphasized the duty of all employers to ensure compliance. By directing central and state authorities to monitor implementation, the Court reinforced the constitutional status of workplace harassment regulation while implicitly recognizing the limits of judicial law-making without legislative codification.<sup>30</sup>

The Vishaka Guidelines thus occupy a dual position within Indian constitutional law. They exemplify judicial creativity driven by constitutional necessity, while simultaneously exposing the structural constraints of rights enforcement in the absence of comprehensive legislation. Their legacy lies not only in immediate protection but in shaping the normative framework that ultimately informed the statutory architecture of the POSH Act.<sup>31</sup>

#### **4. The POSH Act, 2013: Statutory Constitutionalization of Workplace Equality**

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents the legislative consolidation of constitutional principles articulated in Vishaka. Unlike ordinary labour statutes that primarily regulate economic relations, the POSH Act expressly situates itself within the constitutional framework of equality and dignity. Its Preamble affirms that sexual harassment violates women's fundamental rights under Articles 14, 15, and 21, thereby acknowledging that the statute is not merely remedial but constitutionally mandated. This explicit constitutional anchoring distinguishes the POSH Act from conventional regulatory legislation and underscores its transformative ambition.<sup>32</sup>

The definitional framework of the Act reflects continuity with the Vishaka Guidelines while introducing statutory certainty. Section 2(n) defines sexual harassment through an inclusive

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<sup>29</sup> National Comm'n for Women, Annual Report 2010–11, at 12–15 (Gov't of India 2011).

<sup>30</sup> *Medha Kotwal Lele v. Union of India*, (2013) 1 S.C.C. 297.

<sup>31</sup> Tarunabh Khaitan, *Equality: Legislative and Constitutional Dimensions in India* 431–434 (Oxford Univ. Press 2019).

<sup>32</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, pmbi., INDIA CODE (2013).

enumeration of conduct, encompassing physical contact, demands for sexual favours, sexually coloured remarks, and any other unwelcome conduct of a sexual nature. The inclusion of “hostile work environment” as a statutory concept marks a doctrinal advance, recognizing that harassment may be constituted through cumulative conditions that undermine dignity rather than discrete acts alone.<sup>33</sup>

The breadth of the statutory definition of “workplace” under Section 2(o) further demonstrates the legislature’s engagement with substantive equality. By extending coverage to places visited during the course of employment, including transportation and off-site locations, the Act acknowledges the fluidity of modern work arrangements. This approach rejects a spatially rigid understanding of employment and aligns legal protection with the lived realities of workers whose vulnerability extends beyond formal office premises.<sup>34</sup>

Institutionally, the POSH Act establishes Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs) as the primary mechanisms for redressal. Sections 4 and 6 mandate ICCs in establishments employing ten or more persons and LCCs for smaller or unorganized workplaces. These bodies are vested with inquiry powers akin to those of a civil court, reflecting the quasi-judicial nature of their function. The statutory insistence on female leadership and external representation seeks to embed gender sensitivity and procedural fairness within institutional design.<sup>35</sup>

Despite these safeguards, the employer-centric structure of ICCs raises concerns regarding independence and impartiality. Because ICCs are constituted within organizational hierarchies, their ability to adjudicate complaints against senior management remains contested. Feminist legal scholars have argued that this structural dependence may discourage reporting and compromise outcomes, particularly in contexts where retaliation is subtle and informal power operates outside formal disciplinary rules.<sup>36</sup>

The POSH Act imposes affirmative duties on employers that extend beyond complaint resolution to prevention and awareness. Section 19 enumerates obligations such as organizing

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<sup>33</sup> POSH Act sec 2(n); Catharine A. MacKinnon, *Sexual Harassment of Working Women* 200–203 (Yale Univ. Press 1979).

<sup>34</sup> POSH Act sec 2(o); Flavia Agnes, *Gender Justice and the Indian Legal System* 234–236 (Oxford Univ. Press 2020).

<sup>35</sup> POSH Act §§ 4, 6, 11; Shreya Atrey, “Reconceptualizing Sexual Harassment Law in India,” 34 *Oxford J. Legal Stud.* 98, 109–112 (2021).

<sup>36</sup> Atrey, *supra* note 35, at 113–115.

training programmes, disseminating policy statements, and providing assistance to complainants. These provisions reflect a constitutional understanding that rights protection requires proactive institutional engagement rather than passive compliance. By framing prevention as a statutory duty, the Act seeks to transform organizational culture rather than merely respond to violations.<sup>37</sup>

Enforcement mechanisms under the Act are anchored in Section 26, which prescribes penalties for non-compliance, including monetary fines and potential cancellation of business licenses. While these sanctions signal legislative intent to ensure seriousness of compliance, empirical studies suggest that enforcement has been inconsistent. The limited invocation of penalty provisions reflects administrative reluctance and underscores the gap between statutory deterrence and practical accountability.<sup>38</sup>

Judicial interpretation has played a critical role in reinforcing the quasi-judicial character of ICC proceedings. Courts have emphasized that ICCs must adhere to principles of natural justice, including fairness, reasoned decision-making, and opportunity to be heard. By subjecting ICC processes to judicial review, courts have reinforced the constitutional dimension of the POSH framework and prevented its reduction to internal managerial discretion.<sup>39</sup>

Confidentiality provisions under Section 16 of the Act further illustrate the integration of constitutional dignity into statutory design. By prohibiting disclosure of identities and proceedings, the statute seeks to protect complainants from stigma and retaliation. Judicial interpretation has linked these provisions to the right to privacy under Article 21, affirming that effective redressal depends upon safeguarding the dignity of those who invoke the law.<sup>40</sup>

However, the gender-specific scope of the POSH Act presents a constitutional tension. By defining the “aggrieved woman” as the sole beneficiary, the statute excludes men and gender-diverse persons from its protection. This limitation sits uneasily with subsequent constitutional jurisprudence recognizing gender identity and sexual orientation as protected grounds under Articles 14 and 15. While the historical context of the Act explains its protective focus, its

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<sup>37</sup> POSH Act sec 19; Tarunabh Khaitan, *A Theory of Discrimination Law* 129–131 (Oxford Univ. Press 2015).

<sup>38</sup> POSH Act sec 26; National Comm’n for Women, *Annual Report 2018–19*, at 14–17 (Gov’t of India 2019).

<sup>39</sup> *Vivek Garg v. Univ. of Delhi*, 2015 SCC OnLine Del 11137.

<sup>40</sup> POSH Act sec 16; *T. v. Registrar, Indian Inst. of Tech. Bombay*, 2022 SCC OnLine Bom.

continued exclusivity raises questions about its alignment with evolving constitutional equality norms.<sup>41</sup>

The statutory treatment of the informal sector further exposes the limits of legislative constitutionalization. Although Local Complaints Committees were designed to extend protection to unorganized workers, their implementation has been uneven and under-resourced. Empirical assessments reveal that many districts lack functional LCCs, leaving vulnerable workers without meaningful access to redress and undermining the constitutional promise of equal protection.<sup>42</sup>

Taken together, the POSH Act represents a significant yet incomplete effort to institutionalize constitutional morality within labour law. It translates judicial principles into statutory mechanisms and affirms dignity as a workplace norm, but its reliance on employer-based enforcement and limited administrative oversight constrains its transformative potential. The Act thus exemplifies both the promise and the limits of statutory constitutionalization in addressing deeply embedded social hierarchies.<sup>43</sup>

## 5. Implementation Challenges, Reform Trajectories

The effectiveness of the POSH framework ultimately depends not on doctrinal coherence alone but on its capacity to be implemented across diverse workplace contexts. Empirical assessments and judicial observations reveal that compliance remains uneven, particularly outside large, formal organizations. Many establishments either fail to constitute Internal Complaints Committees or treat them as nominal bodies without training, independence, or institutional support. This gap between statutory design and lived practice reflects broader challenges in translating constitutional mandates into administrative reality.<sup>44</sup>

A central obstacle to effective implementation is the employer-centric enforcement model adopted by the POSH Act. While decentralized redressal was intended to enhance accessibility, it has often resulted in conflicts of interest where complaints implicate senior management. The absence of an independent supervisory authority limits accountability and fosters a

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<sup>41</sup> POSH Act sec 2(a); National Legal Services Auth. v. Union of India, (2014) 5 S.C.C. 438; Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.

<sup>42</sup> Centre for Policy Research, District-Level Implementation of POSH Act 18–22 (2021).

<sup>43</sup> Tarunabh Khaitan, Equality: Legislative and Constitutional Dimensions in India 438–441 (Oxford Univ. Press 2019).

<sup>44</sup> National Comm'n for Women, Annual Report 2019–20, at 10–14 (Gov't of India 2020).

compliance culture focused on procedural formalities rather than substantive justice. Comparative experience suggests that independent or external adjudicatory mechanisms can enhance credibility and encourage reporting.<sup>45</sup>

The challenges are more acute in the informal sector, where awareness of legal rights is limited and Local Complaints Committees remain under-resourced. Despite statutory recognition, many districts lack functional LCCs, and where they exist, they often suffer from inadequate staffing and training. This institutional fragility disproportionately affects women engaged in domestic work, agriculture, and informal services, whose vulnerability is compounded by socio-economic dependence and limited access to legal remedies.<sup>46</sup>

The transformation of workplaces through digitalization presents additional challenges to the existing statutory framework. Remote work and online communication have expanded the spaces in which harassment can occur, often beyond the physical premises contemplated by traditional regulatory models. While judicial interpretation has occasionally adopted an expansive understanding of “workplace,” the absence of explicit statutory recognition of virtual environments creates uncertainty and undermines consistent enforcement.<sup>47</sup>

Another significant limitation of the POSH Act lies in its gender-specific scope. By restricting protection to women, the statute excludes men and gender-diverse persons from its remedial framework, despite constitutional recognition of gender identity and sexual orientation as protected grounds. This exclusion raises questions about the statute’s compatibility with the principle of substantive equality and suggests the need for a more inclusive legislative approach that addresses harassment as an abuse of power rather than a gender-exclusive harm.<sup>48</sup>

Reform trajectories must therefore address both institutional design and normative scope. Proposals advanced in scholarly literature include the creation of independent regional tribunals for appeals, mandatory external audits of compliance, and enhanced penalties for persistent non-compliance. Such measures would reduce reliance on internal employer

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<sup>45</sup> Shreya Atrey, “Reconceptualizing Sexual Harassment Law in India,” 34 Oxford J. Legal Stud. 98, 116–118 (2021).

<sup>46</sup> Centre for Policy Research, District-Level Implementation of POSH Act 22–26 (2021).

<sup>47</sup> Aparajita Bhattacharya, “Workplace Harassment in the Digital Era,” 45 Economic & Political Weekly 23, 25–27 (2021).

<sup>48</sup> National Legal Services Auth. v. Union of India, (2014) 5 S.C.C. 438; Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1.

mechanisms and strengthen the alignment between statutory enforcement and constitutional guarantees of impartial justice.<sup>49</sup>

Equally important is the integration of preventive and restorative approaches within the POSH framework. While disciplinary sanctions are necessary, they are insufficient to address the broader cultural and organizational conditions that enable harassment. Training programmes grounded in constitutional values, survivor-centered support mechanisms, and transparent reporting processes can contribute to a workplace environment that actively promotes dignity and equality rather than merely responding to violations.<sup>50</sup>

From a constitutional perspective, the evolution from *Vishaka* to the POSH Act exemplifies transformative constitutionalism in action. The Supreme Court's intervention reimagined the workplace as a constitutional space governed by fundamental rights, while legislative codification sought to institutionalize this vision. However, transformative constitutionalism is an ongoing process rather than a completed project; it requires continuous engagement by courts, legislatures, administrators, and civil society to ensure that constitutional values are realized in everyday practice.<sup>51</sup>

In conclusion, the constitutionalization of gender justice in Indian labour law represents a significant achievement in rights-based jurisprudence. The *Vishaka* Guidelines and the POSH Act together articulate a normative framework that recognizes sexual harassment as a violation of equality and dignity. Yet, the persistence of implementation deficits, institutional dependency, and exclusionary scope underscores the distance between constitutional promise and lived reality. Bridging this gap requires not only statutory refinement but also sustained constitutional commitment to equality as a lived experience rather than a formal guarantee.<sup>52</sup>

## 6. Conclusion

The journey from *Vishaka v. State of Rajasthan* to the enactment and operation of the POSH Act illustrates the dynamic capacity of the Indian Constitution to respond to emerging forms of injustice through judicial creativity and legislative action. By embedding gender justice

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<sup>49</sup> Tarunabh Khaitan, *Equality: Legislative and Constitutional Dimensions in India* 442–445 (Oxford Univ. Press 2019).

<sup>50</sup> Catharine A. MacKinnon, *Sexual Harassment of Working Women* 204–207 (Yale Univ. Press 1979).

<sup>51</sup> Gautam Bhatia, *The Transformative Constitution* 161–165 (HarperCollins India 2019).

<sup>52</sup> Upendra Baxi, *Law and Poverty: Critical Essays* 192–195 (Tripathi 1988).

within labour law, constitutional adjudication transformed the workplace into a site of rights realization. The challenge that remains is to ensure that this constitutionalization transcends symbolic compliance and delivers substantive equality across all sectors of work. Only through robust enforcement, institutional independence, and inclusive reform can the constitutional promise of dignity and equality in the workplace be fully realized.<sup>53</sup>

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<sup>53</sup> Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241.

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