
FROM SILENCE TO RESISTANCE: A CRITICAL EXAMINATION OF SEXUAL HARASSMENT OF WOMEN IN THE WORKPLACE

Tanu Priya, Institute of Legal Studies, Chandigarh University

Dr. Radhika Dev Varma, Professor, Institute of Legal Studies, Chandigarh University

ABSTRACT

Sexual harassment of women in the workplace represents one of the most pervasive yet underreported forms of gender-based violence, undermining not only individual dignity but also the principles of equality and justice central to modern employment frameworks. This research, titled “From Silence to Resistance: A Critical Examination of Sexual Harassment of Women in the Workplace,” explores the multifaceted dimensions of sexual harassment through a socio-legal lens. It examines the historical evolution of workplace gender relations, the systemic power asymmetries that perpetuate harassment, and the socio-cultural barriers that silence victims. The study critically analyses the legal framework governing workplace sexual harassment in India, particularly focusing on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), and evaluates its effectiveness in ensuring safe and inclusive work environments. Drawing upon case law, empirical studies, and feminist jurisprudence, the paper interrogates the gap between law and practice, emphasizing how organizational hierarchies, inadequate implementation, and societal stigma continue to restrict women’s access to justice. Ultimately, the research highlights the ongoing shift from silence to resistance—where women’s collective voices, institutional accountability, and gender-sensitive reforms are redefining workplace culture. The study concludes by proposing strategic measures for strengthening legal enforcement, fostering awareness, and promoting gender justice, thereby contributing to the broader discourse on women’s rights and workplace equality.

Keywords: Sexual Harassment, Workplace, Gender Justice, Posh Act, Socio-Legal Analysis, Feminist Jurisprudence.

I. Introduction

Sexual harassment of women in the workplace is among the most pervasive yet underreported forms of gender-based violence, violating both individual dignity and the foundational principles of equality and justice. The workplace, ideally a site of productivity and opportunity, too often becomes a space where patriarchal power dynamics are reproduced, leaving women vulnerable to humiliation, intimidation, and exploitation.

The recognition of sexual harassment as a legal wrong in India is the outcome of a long socio-legal struggle. Historically, gender discrimination at work was treated as a private or moral issue rather than a matter of rights. It was only with the feminist movement of the late twentieth century and judicial activism in the 1990s that the Indian legal system began acknowledging sexual harassment as a violation of constitutional and human rights. The landmark judgment in *Vishaka case*¹ transformed the discourse by holding that gender equality and workplace dignity are integral to Articles 14, 15, 19(1)(g), and 21 of the Constitution.

Subsequently, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter *POSH Act*) codified and institutionalized the *Vishaka* principles, providing a structured mechanism for prevention and redressal. However, despite this progressive legislation, systemic barriers persist. Institutional bias, lack of awareness, and social stigma continue to silence many victims.

This paper critically examines the issue from a socio-legal perspective, tracing the historical evolution of workplace gender relations, the development of legal norms, and the role of feminist jurisprudence in challenging patriarchal assumptions. It argues that while the law provides a framework for justice, true gender equality requires cultural transformation, institutional accountability, and collective resistance.

II. Historical Evolution of Workplace Gender Relations in India

A. Ancient and Medieval Periods

In ancient India, women's participation in social and economic life was more significant than often assumed. Texts such as the *Rig Veda* mention female scholars and philosophers like *Gargi*

¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

Vachaknavi and *Maitreyi*, who engaged in intellectual debates alongside men.² Women were allowed to pursue education, property rights under *Stridhan*, and spiritual learning.

However, over time, patriarchal interpretations of scriptures led to the subordination of women. By the medieval period, social norms became increasingly restrictive, emphasizing domesticity and chastity over autonomy. The prevalence of *pardah*, child marriage, and lack of education curtailed women's public presence³ and with limited mobility and economic independence, women's vulnerability to exploitation and dependence on male authority intensified.

B. Colonial Period and Industrialization

British colonial rule introduced Western legal structures and economic modernization, which paradoxically both restricted and enabled women's participation. Industrialization in the nineteenth century opened limited employment opportunities for women in textile mills, plantations, and domestic service. Yet, colonial labour laws such as the *Factories Act, 1881* focused narrowly on working hours and safety, neglecting dignity and equality concerns.⁴

Social reform movements led by figures like Raja Ram Mohan Roy, Jyotibha Phule, and Pandita Ramabai advocated for women's education and emancipation. Still, the concept of sexual harassment remained invisible in public discourse. The workplace itself was seen as male-dominated territory, with women's entry being viewed as a social deviation rather than empowerment.

C. Post-Independence Developments

The adoption of the **Constitution of India (1950)** marked a paradigm shift. The framers explicitly guaranteed gender equality through Articles 14, 15, and 16, and Directive Principles like Article 39(a) called for equal livelihood opportunities.⁵

Despite these provisions, workplace gender discrimination continued due to social conditioning and lack of legal recognition of harassment. The women's movement in the 1970s

² A.S. Altekar, *The Position of Women in Hindu Civilization* (Delhi: Motilal Banarsidas, 1956) p. 25.

³ Romila Thapar, *Early India: From the Origins to AD 1300* (Penguin, 2003) p. 347.

⁴ K. P. Kannan, "Women and Work in Colonial India," *Indian Economic & Social History Review*, Vol. 28 (1991), p. 181.

⁵ The Constitution of India, Arts. 14, 15, 16 and 39(a).

and 1980s began challenging the silence surrounding sexual violence. The Mathura rape case⁶ triggered nationwide protests, highlighting the judiciary's insensitivity and ultimately leading to reforms in rape laws through the Criminal Law (Amendment) Act, 1983.

This momentum paved the way for addressing sexual harassment as a form of workplace violence. The *Vishaka* case (1997) marked the formal recognition of this issue, setting the stage for the POSH Act sixteen years later.

III. Understanding Sexual Harassment: Concept and Dimensions

Sexual harassment is not merely about sexual conduct but it is about power and control. The *Vishaka* judgment defined it as any unwelcome sexually determined behaviour, including physical contact, requests for sexual favours, sexually coloured remarks, showing pornography, or other conduct of a sexual nature that creates an intimidating or hostile environment.⁷

Section 2(n) of the POSH Act codifies this definition, identifying both quid pro quo harassment and hostile work environment harassment. The first involves explicit exchange of sexual favours for employment benefits; the latter involves conduct that, even without direct solicitation, undermines a woman's sense of safety and dignity.⁸

This framework aligns with international instruments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993. CEDAW requires states to take appropriate measures to eliminate discrimination in employment and to ensure safe working conditions for women.⁹

However, despite definitional clarity, the social perception of sexual harassment remains clouded by patriarchal stereotypes. Many still view such incidents as minor flirtation or misunderstandings rather than abuse of authority. This trivialization perpetuates silence and victim-blaming.

IV. Socio-Cultural and Power Dynamics

Sexual harassment thrives within hierarchical and patriarchal power structures. In most

⁶ Tukaram v. State of Maharashtra, AIR 1979 SC 185.

⁷ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011, para 10.

⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s. 2(n).

⁹ CEDAW, Art. 11, adopted 1979 (India ratified 1993).

workplaces, authority whether economic, social, or institutional is concentrated in male hands. Women, especially those from marginalized communities, often occupy subordinate positions, making it difficult to resist or report harassment.

A. Patriarchy and Social Conditioning

Patriarchy dictates not only who holds power but also how gender roles are perceived. From early childhood, women are conditioned to be accommodating, submissive, and non-confrontational.¹⁰ As a result, confronting harassment is seen as socially disruptive, even shameful.

Fear of professional repercussions, defamation, or social ostracism discourages reporting. A 2022 survey by the Indian National Bar Association found that nearly 70% of women who faced workplace harassment chose not to report it due to fear of retaliation.¹¹ This “culture of silence” is sustained by both organizational complicity and societal indifference.

B. Intersectionality and Vulnerability

The experiences of harassment are not uniform. Women belonging to Scheduled Castes, Scheduled Tribes, or minority communities often face compounded discrimination. Dalit and Adivasi women in informal sectors such as domestic work or agriculture are particularly vulnerable due to the absence of formal complaint mechanisms.¹²

The case of *Medha Kotwal Lele* it was revealed that even after *Vishaka*, many institutions—including government bodies—had failed to implement the required committees. The Court expressed concern that lack of compliance perpetuated structural inequality.¹³

C. Institutional Hierarchies

In corporate and academic settings, hierarchies often protect perpetrators. When the accused holds power, such as a supervisor or professor, the internal redressal mechanisms may become biased or inactive. Victims are pressured to “resolve” matters quietly to protect the institution’s

¹⁰ Leela Dube, *Anthropological Explorations in Gender* (Sage, 2001) p. 63.

¹¹ Indian National Bar Association, *Survey Report on Sexual Harassment at Workplace* (2022).

¹² Anupama Rao, *Gender and Caste* (Kali for Women, 2003) p. 52.

¹³ *Medha Kotwal Lele v. Union of India*, AIR 2013 SC 93.

image. The Delhi High Court in *Dr. Punita K. Sodhi case*¹⁴ warned against using internal inquiries to intimidate complainants.

Thus, while the law provides formal protection, informal workplace cultures often discourage its use.

V. Legal Framework: The POSH Act, 2013

The POSH Act, 2013 represents India's first comprehensive legislation on workplace sexual harassment. It was enacted following decades of advocacy and the Supreme Court's *Vishaka* guidelines. The Act operationalizes constitutional guarantees of equality and dignity, transforming judicial directives into statutory duties.

A. Objectives and Scope

The Act's threefold objectives are prevention, prohibition, and redressal of sexual harassment. Section 2(o) defines "workplace" expansively to include public and private organizations, hospitals, educational institutions, and even homes where domestic workers are employed.¹⁵ This wide definition acknowledges the diversity of employment spaces in India.

B. Institutional Mechanisms

Every organization with ten or more employees must establish an Internal Committee (IC), chaired by a senior woman employee, to receive and inquire into complaints. For smaller establishments and the informal sector, District Officers are required to form Local Committees (LC).¹⁶

The Act prescribes procedural safeguards—such as time-bound inquiries, confidentiality, and protection from retaliation. It also places affirmative duties on employers under Section 19 to organize workshops, display information, and ensure compliance.

C. Procedural Safeguards and Remedies

The complainant can file a written complaint within three months of the incident (extendable

¹⁴ *Dr. Punita K. Sodhi v. Union of India* (2010 SCC OnLine Del 2121).

¹⁵ *POSH Act*, s. 2(o).

¹⁶ *Id.*, s. 4.

by another three months for sufficient cause). The Internal Committee has powers similar to civil courts under the Code of Civil Procedure, 1908, for summoning and evidence collection.¹⁷

If the allegations are proven, the Committee may recommend disciplinary action against the respondent or monetary compensation to the aggrieved woman. Non-compliance can attract fines up to ₹50,000 and cancellation of business licenses.¹⁸

D. Judicial Interpretation

Courts have repeatedly reinforced the mandatory nature of these provisions. In *Punjab and Sind Bank case* the Madhya Pradesh High Court held that failure to constitute an Internal Committee amounts to violation of the POSH Act and the right to a safe workplace.¹⁹

Similarly, in *Aureliano Fernandes case*²⁰ the Supreme Court observed that the Act's purpose is defeated when employers treat committees as token bodies. The Court urged for regular audits and sensitization programs to ensure compliance.

E. Comparative and International Perspective

Globally, workplace harassment laws have evolved through feminist advocacy. The United States recognized sexual harassment as a violation of the Civil Rights Act, 1964 in *Meritor Savings Bank case*. The UK's Equality Act, 2010, and the ILO's Convention No. 190 (2019) on Violence and Harassment have set international standards emphasizing prevention and cultural reform.²¹

India's POSH Act reflects these developments but faces unique challenges due to informal employment, social hierarchies, and cultural stigma. The challenge, therefore, lies not only in enacting laws but in transforming workplace culture to ensure genuine gender equality.

VI. Feminist Jurisprudence and the Law–Practice Gap

Feminist jurisprudence provides a critical framework for understanding the deeper structural roots of sexual harassment. It challenges the assumption that the law is neutral, arguing instead

¹⁷ *Id.*, s. 11.

¹⁸ *Id.*, s. 26.

¹⁹ *Punjab and Sind Bank v. Durgesh Kuwar*, 2018 SCC OnLine MP 1452.

²⁰ *Aureliano Fernandes v. State of Goa* (2023 SCC OnLine SC 204).

²¹ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); ILO Convention No. 190 (2019).

that legal institutions and procedures often mirror the patriarchal order from which they arise.²² Legal feminist scholars such as Catharine A. MacKinnon maintain that sexual harassment is not an individual aberration but a mechanism through which male dominance is maintained in professional and social life.²³

Although the *POSH Act* symbolises the legislative success of feminist mobilisation, its implementation exposes the continuing gender biases within workplaces. Internal Committees, which should act as impartial quasi-judicial bodies, sometimes reproduce patriarchal attitudes questioning a woman's credibility, trivialising her experience, or prioritising the employer's reputation.²⁴ This phenomenon shows how formal equality in law can coexist with substantive inequality in practice.

A 2021 study by the International Labour Organization revealed that women often refrain from using internal mechanisms because of disbelief, retaliation, and lack of confidentiality.²⁵ These structural barriers transform a legal right into a procedural maze. Feminist theorists therefore emphasise transformative justice which means a process that not only punishes misconduct but also reconstructs institutional cultures through education, empathy, and accountability.

A. Feminist Theories and Judicial Discourse

Indian courts have occasionally incorporated feminist reasoning into their judgments. In *Apparel Export Promotion Council case* the Supreme Court recognised that even an "attempt" to sexually harass a woman constitutes a violation of her dignity.²⁶ The Court's insistence that "a woman employee is entitled to a working environment free from sexual harassment" marked an important step toward a rights-based understanding.

In *Vishaka v. State of Rajasthan*, the Supreme Court relied on CEDAW to interpret Articles 14, 15, 19(1)(g) and 21 of the Constitution, thereby adopting a feminist-human-rights approach.²⁷ Such reliance on international norms underscores the judiciary's recognition that gender equality cannot be realised through domestic law alone; it requires alignment with universal

²² Martha Fineman, "The Vulnerable Subject," *Yale J. Law & Fem.*, Vol. 20 (2008) p. 1.

²³ Catharine A. MacKinnon, *Sexual Harassment of Working Women* (Yale University Press, 1979) p. 3.

²⁴ Indira Jaising, "Implementation of the POSH Act: A Feminist Critique," *Indian Law Review*, Vol. 4 (2019), p. 245.

²⁵ ILO, *Experiences of Violence and Harassment at Work* (Geneva, 2021).

²⁶ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

²⁷ *Vishaka*, supra note 1, para 12.

principles of human dignity.

B. Substantive Equality and Cultural Transformation

Formal equality i.e., treating men and women alike, fails to capture the social realities that perpetuate disadvantage. Feminist jurisprudence advocates substantive equality, which focuses on dismantling structural barriers rather than merely ensuring identical treatment.²⁸ For instance, while the *POSH Act* mandates complaint mechanisms, substantive equality would demand ensuring that women feel safe and empowered enough to use them.

This requires gender-sensitive training, leadership accountability, and psychological support systems. The presence of women in decision-making positions, both within and beyond Internal Committees, is essential to shift institutional attitudes from compliance to conviction.²⁹

VII. From Silence to Resistance: Changing Narratives

For decades, the dominant response to sexual harassment was silence. The fear of victim-blaming, disbelief, and professional reprisal forced women to endure humiliation privately. However, the twenty-first century has witnessed a profound cultural shift from silence to resistance and propelled by feminist movements and digital activism.

A. The #MeToo Movement and its Indian Resonance

The *#MeToo movement*, which began globally in 2017, found powerful expression in India in 2018 when numerous women across media, academia, and entertainment industries came forward to share their experiences.³⁰ social media became an alternative forum for truth-telling, especially when institutional mechanisms had failed.

The movement's impact was multifold. Several organisations re-examined their Internal Committee procedures, high-profile resignations followed, and public discourse on consent and workplace ethics intensified. Yet, it also faced backlash through defamation suits and online harassment.³¹ The Delhi High Court's decision in *Priya Ramani* has become emblematic of judicial acknowledgment of women's right to speak out. The Court acquitted journalist Priya

²⁸ Sandra Fredman, *Discrimination Law* (Oxford University Press, 2011) p. 31.

²⁹ K. L. Bansal, *Gender Justice in India* (Universal Law Publishing, 2017) p. 162.

³⁰ Nisha Susan, "#MeToo in India: A Digital Revolution," *Economic & Political Weekly*, Vol. 53 (2018).

³¹ Manisha Desai, *Gender and the Digital Public Sphere* (Routledge, 2020) p. 89.

Ramani of criminal defamation, holding that a woman has the right to voice her experience of sexual harassment even decades later.³²

B. Role of Media and Civil Society

The media and civil-society organisations have played a vital role in transforming resistance into reform. Advocacy groups such as the *National Commission for Women (NCW)* and the *All-India Democratic Women's Association (AIDWA)* conduct awareness programmes and monitor compliance.³³ However, media trials sometimes sensationalise allegations, reducing complex gender struggles to headlines. Responsible journalism and data-driven research are essential for sustaining a constructive dialogue.

C. Collective Solidarity

Collective action amplifies individual voices. Employee unions, women's collectives, and student bodies have begun incorporating anti-harassment clauses into their charters.³⁴ This horizontal solidarity undermines hierarchical power and normalises accountability. The very act of collective resistance signifies a cultural evolution where silence is no longer equated with dignity but with oppression.

VIII. Implementation Challenges

Despite an elaborate statutory framework, implementation of the *POSH Act* remains uneven. The gap between law and practice arises from administrative inertia, social stigma, and institutional apathy.

A. Lack of Awareness and Training

Many employees are unaware of their rights under the Act. In several small-scale and unorganised sectors, workers are unfamiliar even with the existence of Local Committees.³⁵ Employers often view compliance as a formality rather than a moral duty. Periodic training and dissemination of information are therefore indispensable.

³² *Priya Ramani v. M.J. Akbar*, 2021 SCC OnLine Del 623.

³³ National Commission for Women, *Annual Report 2022–23* (New Delhi, 2023).

³⁴ S. Anandhi, "Women's Collectives and Gender Justice," *EPW*, Vol. 57 (2022) p. 45.

³⁵ Ministry of Women and Child Development, *POSH Compliance Audit Report* (2021).

B. Token Compliance

Internal Committees sometimes exist only on paper. In *Aureliano Fernandes case*, the Supreme Court observed that “mere constitution of a committee without ensuring its functional independence defeats the purpose of the Act.”³⁶ Lack of external oversight encourages tokenism and protects repeat offenders.

C. Informal Sector and Domestic Work

Over 80 percent of Indian women work in the informal sector such as domestic service, agriculture, construction, where hierarchical power and absence of documentation render them invisible to the law.³⁷ Though Section 2(o) of the *POSH Act* covers domestic work, Local Committees are often non-functional. Strengthening district-level monitoring is critical for inclusion.

D. Fear of Retaliation and Stigma

Victims often face character assassination, transfers, or dismissal after filing complaints.³⁸ The 2019 case of *Dr. S.K. Sharma* reaffirmed that employers have a continuing responsibility to protect complainants from victimisation.³⁹ Yet retaliation remains widespread, undermining faith in the justice process.

E. Judicial Delays and Procedural Complexities

Although Internal Committees are designed for speed, appeals and enforcement often involve prolonged litigation.⁴⁰ Many organisations lack clear appellate mechanisms or standard operating procedures, resulting in inconsistent outcomes.

IX. Comparative and International Perspectives

Comparative jurisprudence offers valuable insights into how other jurisdictions address workplace harassment.

³⁶ *Aureliano Fernandes*, supra note 19.

³⁷ NCEUS, *Report on Informal Sector in India* (2008), p. 41.

³⁸ Sharmila Rege, “Patriarchy and Workplace Violence,” *Indian Journal of Gender Studies*, Vol. 17 (2010) p. 21.

³⁹ *Dr. S.K. Sharma v. University of Delhi*, 2018 SCC OnLine Del 9335.

⁴⁰ Neha Tripathi, “Delays in POSH Adjudication,” *ILI Law Review*, Vol. 7 (2022) p. 78.

In the **United States**, Title VII of the *Civil Rights Act, 1964* prohibits discrimination “because of sex.” The landmark case *Meritor Savings Bank* US Supreme Court recognised sexual harassment as a form of sex discrimination under this provision.⁴¹ Subsequent judgments such as *Harris v. Forklift Systems* (1993), refined the “hostile environment” standard, focusing on whether conduct creates an intimidating atmosphere rather than requiring proof of psychological injury.⁴²

In the **United Kingdom**, the *Equality Act 2010* consolidates previous anti-discrimination laws and explicitly defines harassment as “unwanted conduct related to sex” that violates dignity or creates an offensive environment.⁴³ European Union directives further emphasise employer liability and preventive training.

The **International Labour Organization’s Convention No. 190 (2019)** on Violence and Harassment in the World of Work, which India has yet to ratify, expands protection to all workers, including informal and gig-economy workers.⁴⁴ It’s holistic approach will be linking workplace safety with human rights and offers a model for future Indian reforms.

By aligning domestic law with these global standards, India can move beyond procedural compliance to a culture of zero tolerance toward gender-based violence.

X. Recommendations and the Way Forward

The persistence of harassment despite legal safeguards reveals that legislation alone cannot transform entrenched patriarchy. A multi-pronged strategy is essential.

1. **Comprehensive Awareness and Sensitisation:** Regular workshops, posters, and digital modules must familiarise employees with rights and complaint procedures. Employers should integrate gender training into induction programmes.
2. **Strengthening Internal and Local Committees:** Committees should include external experts with legal or psychological backgrounds to ensure neutrality. Government must publish annual compliance reports of all registered establishments.

⁴¹ *Meritor Savings Bank v. Vinson*, supra note 20.

⁴² *Harris v. Forklift Systems Inc.*, 510 U.S. 17 (1993).

⁴³ Equality Act 2010 (UK), s. 26.

⁴⁴ ILO Convention No. 190 on Violence and Harassment, 2019.

3. **Digital Grievance Portals:** Establishing an online, centralised complaint system under the Ministry of Women and Child Development would enhance accessibility and transparency.
4. **Whistle-blower and Victim Protection:** Statutory safeguards against retaliation must be enforced. Offenders and institutions found engaging in victimisation should face enhanced penalties.
5. **Focus on Informal Sector:** District Magistrates should proactively form Local Committees, conduct outreach programmes, and collaborate with NGOs to reach domestic and agricultural workers.
6. **Periodic Audits and Certification:** A compliance audit similar to labour-safety inspections could ensure that organisations follow the *POSH Act* genuinely.
7. **Educational and Cultural Reforms:** School and university curricula should incorporate gender equality, consent, and workplace ethics. Changing mind-sets is a precondition for enduring reform.
8. **Ratification of ILO Convention 190:** Aligning domestic law with international standards would demonstrate India's global commitment to gender justice.

XI. Conclusion

Sexual harassment of women in the workplace is not an isolated behavioural problem but a manifestation of historical patriarchy and institutional inequality. From the silence that defined earlier decades to the growing resistance of today, Indian society has traversed a long path. The *Vishaka* judgment planted the constitutional seed of gender-sensitive justice; the *POSH Act, 2013* gave it statutory life. Yet, genuine transformation depends on everyday enforcement, empathy, and education.

The journey from silence to resistance signifies more than the courage of individual women as it symbolises the evolution of democratic morality. A workplace that respects women's dignity is the truest reflection of constitutional values. As the Supreme Court observed in *Apparel*

*Export Promotion Council case*⁴⁵ that “there can be no compromise with the dignity of a woman.” Realising that vision demands not only laws and committees but a collective re-imagining of equality.

A society that listens when women speak, acts when rights are violated, and educates before injustice occurs, will complete the unfinished promise of the Constitution about justice, liberty, equality, and dignity for all.

⁴⁵ *Apparel Export Promotion Council v. A.K. Chopra*.