



BEYOND COMPLIANCE: ADVANCED LEGAL APPROACHES TO SEXUAL HARASSMENT PREVENTION AND THE ADVANCEMENT OF WORKPLACE EQUITY FOR GENDER AND LGBTQ+ RIGHTS

THEME:

Gender Justice, Law, and Society Gender, Law, and Political Representation

SUB-THEME:

Sexual Harassment, Law, and Workplace Equity Advocacy for Gender and LGBTQ+ Rights

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ABSTRACT:

This paper, "Beyond Compliance: Advanced Legal Approaches to Sexual Harassment Prevention and the Advancement of Workplace Equity for Gender and LGBTQIA+ Rights," examines the legal and institutional approaches necessary to foster and embrace inclusive, harassment-free workplaces in India. It provides various meanings and interpretations of sexual harassment in the workplace, including the scope and application of the Prevention of Sexual Harassment Act, 2013 in addressing harassment. While the POSH Act has significantly advanced protections for women, it lacks inclusive provisions for the LGBTQIA+ community, underscoring a gap in ensuring equity across all gender employees.

This paper offers insights into the advanced preventive measures adopted by organizations to foster proactive approaches beyond mere workplace compliance and enhance workplace safety. Additionally, the role of corporate policies is analysed, showing how far organizations can adopt anti-harassment policies and encourage inclusivity in the workplace. The paper also highlights the major challenges in implementing advanced workplace policies, including resistance to change, social stigma, and the complexity of enforcing such new policies across different organizations. This paper offers insights into the future scope of enhancing legal protections and workplace inclusivity in India, advocating for reforms that integrate LGBTQIA+ rights in the workplace.

KEYWORDS: Sexual Harassment Prevention, Workplace Equity, The POSH Act, 2013, LGBTQIA+ Rights, Corporate Policies

1. INTRODUCTION

The increasing awareness of sexual harassment in the workplace has created a critical examination of existing laws, particularly in the context of gender and LGBTQIA+ rights. Despite legislative development such as the Prevention of Sexual Harassment (PoSH) Act in India, many gaps remain that hinder effective protection and equity for all the employees. The

oSH act mainly focuses on women excluding men and LGBTQIA+ individuals vulnerable to discrimination and harassment without adequate legal resources. Because of this circumstance, the Act needs to be thoroughly re-examined to make sure that it includes safeguards for people of all genders and sexual orientations.

Sexual harassment in workplace negatively impacts employees' health and well-being as well as their job commitment and productivity. Despite the increasing number of women employees in the workplace in India, safety of women remains a significant concern. The PoSH act gives a clarity upon the definition of sexual harassment at workplace which extends to physical contact and other uncontrolled and unwelcoming behaviour that has potential of creating a hostile and intimidating the ambience of the workplace. The origin of the PoSH act lies in the landmark case of Vishakha guidelines by the Supreme Court in the year 1977.¹ This case highlighted the lack of safety in the workplace for women. And the Supreme court had to intervene and establish those guidelines. The PoSH act plays a crucial role in addressing all harassment cases both now and in the future by making the companies develop their policies facilitating the mainstreaming of gender equality. It helps society to combat discrimination and disrespect for men and women in the workplace. When it comes to equitable hiring of LGBTQIA+ individuals significant gaps exist and they also face compounded Discrimination. By integrating awareness campaigns and supporting systems that are adjusted to the needs of LGBTQIA+ employees, organisations can create an environment that encourages reporting and accountability. As a society towards greater acceptance towards diverse identities, it is vitally important that laws evolve accordingly to protect individual identities from sexual harassment and discrimination, eventually advancing workplace equitableness for gender and LGBTQIA+ rights.

1.1. OBJECTIVES OF THE STUDY

- To identify current legal frameworks governing the LGBTQIA+ Community and the challenges faced by these members.
- To identify the limitations of the POSH Act in addressing Sexual harassment in the workplace, specifically concerning the LGBTQIA+ Community.
- To propose advanced preventive measures that can be incorporated by organizations to foster a harassment-free workplace.

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

- To analyze the need and rationale for including the LGBTQIA+ Community under the purview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

1.2. **RESEARCH QUESTIONS**

- What are the current laws governing the LGBTQIA+ Community in India and what are the challenges faced by them?
- What are the limitations of the POSH Act in addressing Sexual harassment in the workplace concerning the LGBTQIA+ Community?
- What advanced preventive measures can be incorporated by organizations to foster a harassment-free workplace?
- Why should the LGBTQIA+ Community be included under the purview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

2. **VARIOUS INTERPRETATIONS AND DEFINITIONS OF SEXUAL HARASSMENT**

Sexual Harassment is a widespread issue that has been defined and interpreted in various ways across the globe. These definitions aim to capture the broad spectrum of behaviors that encapsulate the meaning of sexual harassment. The definitions include unwelcome advances, discriminatory practices and abuse of power in professional and personal settings.

Sexual Harassment has been defined and interpreted in various contexts, reflecting in diverse manifestations and serious implications, worldwide.

In India, Sexual harassment is defined under Section 2(n) of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*,² also referred to as the POSH Act. Physical contact, solicitations for sexual favors, sexually suggestive comments, displaying pornography, and any other unwanted sexual behavior are all included. This provision provides a precise legal foundation for recognizing and dealing with workplace harassment.

The *Vishaka Guidelines*³ offers a foundational interpretation, equating sexual harassment with unwelcome

sexually determined behaviour, encompassing physical, verbal, or non-verbal

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

³ Vishakha and others v the state of Rajasthan 6 SCC 241, AIR 1997 SC 3011

conduct. These guidelines laid the ground for subsequent legislation. At the international level, the ILO Violence and Harassment Convention, 2019 (No. 190) provides a definition for sexual harassment. It emphasizes the behaviors that cause or are likely to cause physical, psychological, sexual or economic harm.⁴

The *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, in its General Recommendation No. 19 (1992), defines sexual harassment as gender-based violence that undermines women's rights and freedoms. This interpretation reinforces the connection between harassment and systemic gender discrimination.⁵

In the U.S.A., the *Equal Employment Opportunity Commission (EEOC)* recognizes sexual harassment under Title VII of the Civil Rights Act of 1964. It includes unwelcome advances, sexual favors, and other harassing behaviors that lead to a hostile work environment or affect employment decisions.⁶

The *European Union Directives, Council Directive 2002/73/EC*, defines sexual harassment as any unwanted conduct based on sex that violates a person's dignity and creates an intimidating or hostile environment. This definition highlights the broader societal implications of harassment.⁷

These interpretations and definitions demonstrate the broad nature of sexual harassment, emphasizing the necessity for inclusive and robust frameworks. These definitions highlight the national as well as the international challenges of combating harassment and protecting individuals' dignity in both workplaces and in society.

3. CURRENT LEGAL FRAMEWORKS IN INDIA AND THEIR LIMITATIONS

The prevention of sexual harassment at the workplace is a legislation enacted by the government of India in 2013 to address the issue of sexual harassment which came into effect as a result of the Vishakha and others v The state of Rajasthan (1997)⁸ Guidelines that make up with a judgment from the Supreme Court, require every organization with ten or more employees to have an Internal Complaints Committee (ICC) to which complaints regarding sexual harassment can be made. The POSH Act was enacted to ensure women's rights to

⁴ ILO Convention, 2019

⁵ CEDAW General Recommendation No. 19, 1992

⁶ EEOC, Title VII, Civil Rights Act of 1964

⁷ Council Directive 2002/73/EC

⁸ Vishakha and others v The state of Rajasthan 6 SCC 241, AIR 1997 SC 3011

equality and to live with dignity in the sphere of employment. Article 14 of the Indian Constitution, the right to equality prevents discrimination based on religion, caste, sex or place of birth laying the foundation for gender equality.

In the case of Nisha Priya Bhatia v. Union of India,⁹ The Supreme Court ruled that the statute also applies to circumstances where a female employee faces discrimination, prejudice, and humiliation during her daily employment.

3.1 LEGAL FRAMEWORK FOR WORKPLACE SAFETY FOR WOMEN

Women in India pick employment to balance with household responsibilities and are primarily employed in the unorganized sector. Numerous sociocultural variables, such as the unequal allocation of unpaid household work, gender-based skill and educational inequalities, limited access to digital literacy, mobility limitations, and a lack of institutional support in the workplace, all contribute to this pattern.

3.1.1. HISTORICAL JUDICIAL REFORMS

- The Mathura rape case¹⁰ and Bhanwari devi¹¹ created the way for judicial reforms through the Vishaka guidelines laid down by the Supreme Court of India in 1997 to combat sexual harassment at workplace till legislation was laid down. *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* served as the basis for these procedural recommendations, which mandate that employers create a preventative and redressal committee in order to handle accusations of sexual harassment of women in the workplace. The Vishaka standards lacked legal compliance for required provisions, notwithstanding their importance.
- The Nirbhaya rape case paved way for judicial reforms in women's laws.¹² The Justice J S Verma committee came into effect in 2012 and the report was released in 2013. It emphasized the importance of a law on sexual harassment at the workplace as one that should have a wide scope to include "every female member of the national workforce" within its ambit. The report further underlined the importance of including the

⁹ Nisha Priya Bhatia vs Union Of India and Ors 2010 AIR SCW 1410, 2010 (3) AIR JHAR

¹⁰ Tukaram v. State of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810

¹¹ Smt. Bhanwari Devi vs The State of Rajasthan 1997(1)WLC42, 1996(2)WLN387

¹² Mukesh & Anr v. State for NCT of Delhi & Ors., (2017) 6 SCC 1

unorganised sector within its purview and ensuring that the informal sector was not exempted from the legislation.¹³

3.1.2. PROVISIONS

Section 375 of the Indian Penal Code, 1860,¹⁴ which addresses sexual harassment, was expanded by the Criminal Law Amendment Act of 2013. Additionally, the lawmakers passed "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act, 2013)" into law, incorporating the Vishakha guidelines. A thorough legislative framework for the prevention and reparation of workplace sexual harassment is necessary to avoid overtaxing the judiciary. According to the act, companies with ten or more workers must set up an Internal Committee (IC) to handle sexual harassment allegations. The Local Committee (LC) handles sexual harassment accusations for women employed in the

unorganized sector or in businesses with fewer than ten employees. The three components of this statute are redressal, prohibition, and prevention. The ministry of women and child development, Indian Government have taken steps to prevent sexual harassment at work place by developing a single window online portal for registering complaints related to sexual harassment at the workplace called 'The Sexual Harassment Electronic-Box (She-Box)'. The She-Box portal directly connects the complainant with the concerned authority having the jurisdiction to handle the matter. It also serves as a central repository for information on LCs and ICs across the country'¹⁵

3.2. CHALLENGES FACED BY LGBTQIA+ MEMBERS

a) Gender exclusivity

The act primarily focuses only on women and does not include any laws for men, or other genders or those of LGBTQIA+ communities. A case in Karnataka High Court has exposed the harsh outcome of workplace harassment faced by an LGBTQIA+ individual. The passing of 35-year-old Vivek Raj has forced a thorough examination of the existing legal system, particularly the PoSH Act of 2013.¹⁶ It has become evident that a substantial change to the law

¹³ Team, Ungender Blog, "Does The POSH Law Protect Women Working in The Informal Sector?" *Ungender / Empanelled by GoI*, 5 Jan. 2021 <https://www.ungender.in/sexual-harassment-against-women-in-the-unorganised-sector/>

¹⁴ SECTION 375 of The Indian Penal Code, 1860

¹⁵ [https://shebox.wcd.gov.in/#:~:text=Sexual%20Harassment%20electronic%20Box%20\(SHe.complaint%20related%20to%20sexual%20harassment](https://shebox.wcd.gov.in/#:~:text=Sexual%20Harassment%20electronic%20Box%20(SHe.complaint%20related%20to%20sexual%20harassment)

¹⁶ <https://www.thenewsminute.com/karnataka/bengaluru-lifestyle-employee-who-died-suicide-complained-many-times-about-harassment-181239>

is necessary to guarantee everyone's protection, regardless of sexual orientation or gender identity. The act should be more gender neutral.

b) Confidentiality

It is not possible to file a sexual harassment complaint anonymously. Even while the Indian Ministry for Women's SHE-Box helps women file complaints directly with the ICC, it does not permit anonymous complaints, which may be crucial in a nation where women are stigmatized when they must name a perpetrator.

c) Limitations of filing the complaint-

Allegations of sexual harassment must be made within three months of the occurrence, with a six-month extension possible if necessary. However, as sexual harassment is a serious out-turn in the victim's life, the six-month term should be extended further to allow the victim to recover from the trauma before filing a complaint.

d) Government audit and compliance

In the absence of compliance audits by the Government, in the year 2017, only 539 charges were recorded under the PoSH Act¹⁷. This amounts to two instances of harassment in corporate India every day and seems to be a questionable representation of the situation on the ground. The government must conduct stringent audits

of Act compliance in order for the Act to have greater significance. It will be a powerful law when combined with the Internal Complaints Committee's required disclosure requirements.

e) Fear of retaliation:

Even with the Act's protections, many workers are nevertheless afraid of reprisals from superiors or coworkers for reporting harassment, which can discourage them from doing so.

f) Issues with ICC functioning

According to the POSH Act, ICCs must serve as the central hub for addressing any sexual harassment accusations. However, issues including a shortage of qualified experts who are qualified to handle such concerns frequently hinder the committee's efficacy. Many ICC members receive inadequate training on the dynamics of sexual harassment cases,

¹⁷ Kelp Blog, Advantages and Disadvantages of POSH Act, POSH,(Sept. 17, 2018), available at [https://www.kelphr.com/blogs/advantages-and-disadvantages-of-posh-act]

psychological adjustments, and investigation techniques. This shortcoming results in subpar investigations where important pieces of evidence may be overlooked or even tampered with. Nonetheless, privacy remains a significant obstacle concerning the ICC framework. During investigations, employees frequently jeopardize the privacy of others, and there is a significant chance that the information will inadvertently be revealed to parties or unauthorized individuals within the company. Some of these mistakes not only make the victims' experience worse, but they also contribute to the public's distrust in the ICC process. Lack of trust in these committees prevents employees from coming forward in the first place, and they can be a means of going years without reporting, which is detrimental because it does not promote any change.

3.2.1. CHALLENGES FACED BY LGBTQIA+ IN THE WORKPLACE

- a) Discrimination in hiring and employment – members of LGBTQIA+ community often face discrimination during the process of employment and throughout their career.
- b) Hostility and harassment – they often have to face passive aggressiveness in the workplace. apart from that verbal harassment, bullying, and even physical assault. This not only leads to psychological stress but also affects job satisfaction.
- c) Lack of supportive policies- There are comprehensive discrimination policies specifically addressing the concerns of the LGBTQIA+ community but implementation of the same is not effective as it should have been.

In the case of Vivek Raj, employee of Lifestyle International in Bengaluru, who tragically died by suicide after enduring the repeated harassment related to his caste and sexuality.¹⁸ Under the POSH Act, he lodged numerous complaints with the company's Internal Complaints Committee (ICC), but his complaints were never addressed. He attempted to rescind his resignation after a tense discussion with his team lead, but was turned down for reinstatement. Three coworkers were charged with aiding and abetting the suicide after his

death. This incident brings to light important problems with harassment and discrimination in the workplace, highlighting the pressing need for efficient systems to safeguard workers and provide a secure workplace.

4. DVANCED PREVENTIVE MEASURES TO PROMOTE WORKPLACE EQUITY

The #MeToo movement witnessed thousands of stories about sexual harassment and sexual assault at work. The stories shed light on the lives of women whose experiences of workplace sexual harassment were all too often dismissed, normalized, and swept under the carpet.

However, the voices of LGBTQIA+ people have rarely been heard on this issue and little to no consideration was given to understanding their experiences properly. Through the research conducted by reputable institutions on LGBT people at work, it can be concluded that their knowledge of the workplace is all too often marked by prejudice and hostility.¹⁹

4.1 CHALLENGES FACED BY THE LGBTQIA+ COMMUNITY

As the cases on civil rights concerning LGBTQIA+ individuals continue to rise, many issues remain to be resolved. According to a survey conducted by *The State of the LGBTQ Community in 2020: A National Public Opinion Study*, by Gruberg, Mahowald, and Halpin (October 6, 2020):²⁰

- *Discrimination appears to affect the economic security of LGBTQI+ individuals. Nearly one-third of the people report that discrimination moderately or significantly affected their financial well-being—including 37% of Black respondents and more than half (54 %) of transgender respondents.*
- *Transgender individuals report the greatest difficulty with employment discrimination. More than half (53%) of transgender individuals expressed that discrimination moderately or significantly affected their capacity to be hired, with 4 in 10 saying that their ability to be employed was negatively affected to a significant degree. Nearly half (47%) of transgender respondents reported that discrimination had a moderate or significant impact on their ability to retain employment.*
- *While LGBTQI+ Baby Boomers (generally defined as those individuals born between 1946 and 1964) reported lower rates of negative impacts from discrimination on their psychological or physical well-being, they were the generation most likely to report that discrimination negatively affected their ability to be hired, their ability to retain*

¹⁹ TUC (2017) The Cost of Being Out at Work: LGBT+ workers' experiences of harassment and discrimination

²⁰ *The State of the LGBTQ Community in 2020: A National Public Opinion Study*, Mahowald, Gruberg, and Halpin (Oct. 6, 2020)

employment, and their financial well-being to a significant degree. These effects appear larger among lower-income LGBTQI+ Baby Boomers than among higher-income ones: Nearly half (47%) of those earning less than \$25,000 per year reported negative impacts from discrimination on their ability to be hired, compared with around one-quarter (26%) of those making more than \$100,000 annually.

There is sufficient evidence that stigma and exclusion exist for LGBTQIA+ people in India.²¹

*Data on public opinion from 2006 shows that 41 percent of Indians would not want a homosexual neighbour, and 64 percent believe that homosexuality is never justified. However, negative attitudes have diminished over time.*²²

In India, homosexuality remains criminalized, and there is no specific legal framework offering protection to LGBTQIA+ individuals.

A conceptual framework suggests that such exclusion undermines economic growth by:

1. Reducing productivity and output due to employment discrimination and limited labour market opportunities.
2. Diminishing the return on educational investment due to biased practices in educational institutions.
3. Lowering overall economic output as a result of health disparities linked to social exclusion.
4. Increasing expenditures on social and health services to address the adverse effects of exclusion, diverting resources from other critical needs.

Although precise estimates of the economic cost of LGBTQIA+ exclusion in India are lacking, it is evident that the impact could be significant, warranting urgent attention and reform.

4.2 RECOMMENDATIONS ²³

²¹ Badgett, M. V. (2014). *The economic cost of stigma and the exclusion of LGBTQIA+ people: A case study of India*.

²² World Values Survey (2006) "Public opinion on homosexuality in India shows that 41% would not want a homosexual neighbour, and 64% believe homosexuality is never justified.", Wave 5: 2005-2009, at <http://www.worldvaluessurvey.org>

²³ A Message from EEOC Chair Charlotte A. Burrows for Pride Month and the Anniversary of the Supreme Court's Decision in Bostock v. Clayton County, available on the EEOC's website at: [A Message from EEOC Chair Charlotte A. Burrows for Pride Month and the Anniversary of the Supreme Court's Decision in Bostock v. Clayton County | U.S. Equal Employment Opportunity EEOC](#)

Government

The government must take steps to ensure LGBTQIA+ workers are effectively protected from sexual harassment in the workplace.

- **Introduce a new legal duty to prevent harassment.** The government must introduce a mandatory duty for employers to protect workers from all forms of harassment (including sexual harassment) and victimization.
- **Strengthen evidence base.** In any future research exploring sexual harassment at work, the government should ensure that the distinct experiences of LGBT people are analysed.

Regulatory bodies

- **Guidance for employers.** The regulatory bodies must issue LGBT-inclusive guidance for employers on how to address sexual harassment in the workplace that is LGBTQIA+ Community inclusive in nature.

- **Strengthen the role of regulatory bodies.** - There is an obvious need for increased engagement , including enforcement effort, given the alarmingly high rates of rape, sexual harassment, sexual assault, and serious sexual assault that the research identified in the workplace.

Employers

- **Make all work policies inclusive.** Ensure all workplace policies, including sexual harassment, are explicitly inclusive of LGBTQIA+ individuals. The employers must use clear and appropriate language, practical examples, and relevant cases to foster inclusivity. The employers must conduct training sessions for all employees, to ensure everyone understands the policies and their responsibilities in maintaining a workplace free from harassment.
- **Review existing policies.** In this report, workplace regulations should be reviewed with the participation of the relevant unions to guarantee that sexual harassment complaints from the employees, including LGBTQIA+ employees, are taken seriously and addressed adequately.
- **Adopt a zero-tolerance approach.** All employers need to adopt this approach to better ensure that there is no form of sexual harassment in their organization .Employees need to be given training and education with regard to anti-harassment. Stringent procedures must be established to provide appropriate support to victims and LGBTQIA+ community.
- **Training.** HR and all levels of management should receive training on sexual harassment, what amounts to sexual harassment, stalking, and online harassment, relevant law and workplace policies, and how to respond to complaints of sexual harassment.

Trade unions

- **Review employer policies on sexual harassment.** Employers and unions should collaborate to examine sexual harassment policies and make sure they are LGBTQIA+ inclusive by incorporating case studies, examples and language.
- **Negotiate robust workplace policies.** All the policies that tackle sexual-harassment issues need to be clearly implemented, and the policies must be implemented in a way that recognizes the employer's duty to prevent and/or deal with any harassment from third parties. Unions need to collect anonymized information about members' experiences of third-party harassment, abuse, or violence to help strengthen negotiations with an employer.
- **Workplace campaigns.** Trade unions must run workplace campaigns and organize and publicize the support they can offer in all cases of harassment, abuse, and violence and proactively target recruitment.

5. NEED FOR INCLUSION OF LGBTQIA+ UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The National Human Rights Commission's study on "Human Rights of Transgender as Third Gender" stated

that the scope of legal provisions is minimal and does not cover social protection, healthcare, education, and access to goods and services, making transgender people vulnerable.²⁴ The Supreme Court of India, in the case of *NALSA vs. Union of India*²⁵, recognized the transgender individuals as “Third Gender” under the ambit of Indian law. This landmark judgment affirmed that transgender persons should be entitled to all fundamental

²⁴ NHRC, Study on Human Rights of Transgender as a Third Gender, (2017)

²⁵ National Legal Services Authority v. Union of India AIR 2014 5 SCC 438

rights guaranteed under the Constitution of India, including the right to self-identification as a male or a female or a third gender.

This ruling marked a transformative step in the protection of the rights of the LGBTQIA+ Community in India, providing a legal foundation for their inclusion and equal treatment in society. Despite this recognition, challenges remain in the effective implementation of policies and laws that protect the transgender people.

In *Navtej Singh Johar vs Union of India*²⁶, the Hon’ble Supreme Court of India decriminalized homosexuality by striking down a part of Section 377 of the Indian Penal Code, 1860²⁷, which had criminalized same-sex relationships. It was ruled that the relationships shared amongst the LGBTQIA+ Community members are protected under the right to equality and privacy. This decision was held to be a major victory for the LGBTQIA+ Community in India, as it provided legal recognition and protection for individuals engaging in same-sex or consensual relationships.

However, despite progress, the LGBTQIA+ Community continues to face significant challenges, particularly about workplace rights, discrimination and harassment. ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*** was designed to provide a legal framework to address the sexual harassment issues faced by women at the workplace. This has created a gap in the legal protection of the LGBTQIA+ employees particularly.

Many studies highlight the inclusion of the LGBTQIA+ Community members under the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.²⁸ The studies highlighted that transgender individuals are not covered by the current law's provisions, despite their increased susceptibility to harassment and discrimination at work. The decriminalization of homosexuality and the legal recognition of the third gender are important advancements. Still, the lack of specific laws protecting LGBTQIA+ people in the workplace exposes them to possible harassment and discrimination.

²⁶ Navtej Singh Johar and Ors. vs. Union of India is AIR 2018 SC 4321, (2018) 10 SCC 1

²⁷ SECTION 377- **Unnatural offences.**

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with ¹ [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

²⁸ Gautam, Solkhe, & Singh, *Gender Inclusivity under the POSH Act: A Bibliometric Review* (2022)

India's journey toward addressing the challenges faced by the transgender community remained stagnant until

2019, despite the group enduring systemic marginalization for decades. That year marked a milestone with the passage of the *Transgender Persons (Protection of Rights) Act, 2019*, approved by Parliament following a brief three-day discussion in the Rajya Sabha, during which no amendments were made. Section 2(k) of this Act²⁹, defines transgender persons, which includes those whose gender identity differs from the gender they were assigned at birth. People with intersex variants, genderqueer people, transmen, transwomen, and people with socio-cultural identities like kinner, hijra, aravani, and jogta are all included. This definition recognizes that transgender people might have different sexual orientations regardless of their gender identity and frequently deviate from conventional gender identities.

Section 3(c)³⁰ expressly forbids discrimination in the workplace, including termination or opportunity rejection based on gender identification. Nonetheless, there are still a number of serious issues with the law. The necessity that transgender people seek a certificate of identity from a District Magistrate is one noteworthy concern. This requirement has been challenged for infringing the right to privacy guaranteed by the constitution, as stated in the *K.S. Puttaswamy v. Union of India*³¹ ruling. The Act's failure to outline recourse procedures for those whose certification petitions are rejected also leaves a significant protection gap.

The right to work is still not a fundamental right in India, however, under Article 41³² the State shall endeavour to secure the right to work for the unemployed as a mandate under the Directive Principles of State Policy. Article 19(1)(g) grants all its citizens freedom of profession and occupation. India ratified ILO's Discrimination (Employment and Occupation) Convention, 1958³³, as early as in 1960. It prohibits discrimination on the grounds of "race, colour, sex, religion, political opinion, national extraction or social origin". However, transgender people are the most marginalized section of society and lack a security net of any kind. They are the most vulnerable people in society and they are constantly at risk of sexual harassment in the

²⁹**SECTION 2(K)**- transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

³⁰ **3. Prohibition against discrimination** - No person or establishment shall discriminate against a transgender person on any of the following grounds, namely: -(c) the denial of, or termination from, employment or occupation;

³¹ Justice K. S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors. (2017) 10 SCC 1, AIR 2017 SC 4161.

³² ARTICLE 41 OF THE CONSTITUTION OF INDIA, 1950³ ILO (C 111): Discrimination (Employment and Occupation) Convention, 1958

workforce. Less than 6% of transgender people currently work in the formal sector and they are almost negligible in the government sector.³⁴

According to a recent research study, countries that discriminate against LGBTQIA+ people suffer severe economic consequences.³⁵ For example, it is estimated that prejudice of this kind costs Kenya \$1.3 billion a year. According to the research, inclusive cultures promote greater economic growth because people are more productive in settings that value and accept a range of sexual orientations. This proves that including

LGBTQIA+ people not only protect human rights but also boosts the economy as a whole.

The *Violence and Harassment Convention*,³⁶ which was introduced by the International Labour Organization (ILO) in 2019, defines gender-based violence and harassment as acts that are directed at people based on their sex or gender or that disproportionately affect them. This Convention is a progressive move because it is gender-neutral. The Convention can be a useful basis for developing workplace harassment regulations, even though India has not yet ratified it. Even though Indian laws have steadily changed to acknowledge the rights of LGBTQIA+ and transgender people, significant loopholes still exist in these laws. The non-inclusion of transgender people and LGBTQIA+ people by the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 itself is a loophole. Amendment of the Act to replace the term "woman" with "person" in the definition of "aggrieved" would ensure greater inclusivity, aligning with constitutional principles of equality and non-discrimination.

Thus, there is an urgent need to protect LGBTQIA+ members via the amendment of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

6. FUTURE SCOPE AND CONCLUSION

The future of workplace equality for gender and LGBTQIA+ rights in India demands a transformative approach towards the laws, particularly in the light of the limitations of the PoSH Act, 2013. To ensure comprehensive protection against sexual harassment, it is essential to amend the existing laws to explicitly include provisions for all the genders and sexual orientations. Beyond compliance organizations must also make a commitment to putting advanced preventive measures into effect. This involves creating strong anti-discriminatory guidelines, establishing in developing transparent reporting procedures, and encouraging and inclusive workplace culture by inculcating training and awareness programs supporting the requirements of the LGBTQIA+ staff members.

Advancing workplace equity and preventing harassment require a shift from reactive compliance to proactive transformation. Organizations must implement anti-sexual harassment measures into their core values. Addressing the rights of the LGBTQIA+ Community members and promoting gender equality align with the broader human rights and contribute to fostering a better productive workforce.

Legal reforms and inclusive practices can create safer workplaces, uphold constitutional values of equality and personal dignity, and ensure every individual can thrive without fear. This advancement is both a moral and a legal necessity, signalling a commitment to a more inclusive and harmonious future.

7. REFERENCES

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- b. *European Union Directives, Council Directive 2002/73/EC*

- c. *ILO Convention, 2019*
- d. *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
- e. *The Indian Penal Code, 1860*
- f. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*
- g. *Transgender Persons (Protection of Rights) Act, 2019*
- h. *Violence and Harassment Convention*

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