

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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SEXUAL HARASSMENT IN INDIA: A CRITICAL ANALYSIS OF LEGAL FRAMEWORK, CONSTITUTIONAL SAFEGUARDS, AND IMPLEMENTATION CHALLENGES

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ABSTRACT

Sexual harassment remains one of the most pervasive yet underreported violations of human dignity in India. Straddling the intersection of constitutional jurisprudence, labour law, criminal justice, and social norms, this issue demands rigorous scholarly scrutiny. This article undertakes a comprehensive and critical examination of the legal architecture governing sexual harassment in India — from the foundational constitutional guarantees enshrined in Articles 14, 15, 19, and 21 of the Constitution of India, to the landmark judicial intervention in *Vishaka v. State of Rajasthan* (1997), and the eventual legislative consolidation through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the POSH Act). Beyond statutory analysis, the article critically engages with the systemic, structural, and socio-cultural impediments that undermine effective implementation, including institutional inertia, the informal economy's exclusion, inadequate sensitisation of Internal Complaints Committees, and the chilling effect of power asymmetry on victims. Drawing upon judicial precedents, empirical data, comparative international perspectives, and feminist legal theory, the article argues that the existing legal framework, while normatively sound, suffers from profound implementation deficits. It concludes with a set of reform recommendations aimed at bridging the gap between law on paper and law in action.

Keywords: Sexual Harassment, POSH Act 2013, Vishaka Guidelines, Constitutional Safeguards, Internal Complaints Committee, Workplace Dignity, Gender Justice, Implementation Challenges.

1. INTRODUCTION

Sexual harassment is a global phenomenon that strikes at the heart of human dignity, equality, and bodily autonomy. In India, a country grappling with deep-seated patriarchal structures, caste hierarchies, and socio-economic inequalities, sexual harassment — particularly at the workplace — represents a profound and systemic injustice. It is both a symptom of broader gender inequality and a mechanism that perpetuates it, trapping women in cycles of silence, stigma, and professional marginalisation.

The legal journey in India from near-complete silence on the subject to a dedicated statutory framework has been neither swift nor straightforward. For decades, women who experienced harassment at work had no specific legal remedy. They relied on an inadequate patchwork of civil tort claims, service conduct rules, and provisions under the Indian Penal Code, 1860 (IPC) — none of which were designed with their particular vulnerability in mind.

The turning point came with the Supreme Court of India's path-breaking judgment in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, where the Court, in the absence of domestic legislation, invoked its constitutional mandate under Article 32 and derived binding guidelines from international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Vishaka Guidelines, as they came to be known, represented a judicial law-making exercise unprecedented in scope and normative ambition.

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) fulfilled — albeit with significant delay — the Supreme Court's directive for comprehensive legislation. Yet, nearly a decade after its enactment, empirical evidence reveals a stark gap between the statute's aspirational objectives and the ground realities of implementation. Studies consistently show alarmingly low rates of complaint registration, widespread non-compliance by employers, particularly in the unorganised sector, and a systemic reluctance among victims to invoke formal mechanisms.

This article proceeds in ten substantive sections. It first situates sexual harassment within broader conceptual and definitional frameworks, then traces the constitutional foundations and pre-legislative developments, before providing a detailed exegesis of the POSH Act. It subsequently examines the criminal law dimensions, surveys judicial interpretations, critically maps implementation challenges, and draws comparative lessons from international jurisdictions. The article concludes with targeted reform proposals aimed at making the legal framework not merely prescriptive on paper but genuinely protective in practice.

2. CONCEPTUAL FOUNDATIONS: DEFINING SEXUAL HARASSMENT

2.1 International Definitional Standards

The conceptual contours of sexual harassment were first systematically articulated in international law. The United Nations' CEDAW General Recommendation No. 19 (1992) identified sexual harassment as a form of sex discrimination and violence against women, encompassing unwelcome sexually determined behaviour including physical contact, sexually coloured remarks, and showing pornography. The International Labour Organization (ILO) Convention No. 190 (2019) on violence and harassment at work further expanded this understanding to cover a continuum of unacceptable behaviours extending beyond the physical workplace to include digital spaces and commuting contexts.

The concept of 'quid pro quo' harassment — where submission to sexual demands is made an explicit or implicit condition of employment, pay, promotion, or other job-related benefits — was distinguished from 'hostile work environment' harassment, where a pattern of unwelcome conduct creates an intimidating or offensive professional atmosphere. Both typologies have been incorporated, in varying degrees of explicitness, into the Indian legal framework.

2.2 The Indian Statutory Definition

Section 2(n) of the POSH Act, 2013 defines 'sexual harassment' as including any one or more of the following unwelcome acts or behaviour: physical contact and advances; a demand or request for sexual favours; making sexually coloured remarks; showing pornography; and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Crucially, Section 3(2) extends the definition to cover circumstances such as implied or explicit threats of detrimental treatment linked to the rejection of sexual advances (quid pro quo) and the creation of a hostile work environment.

The use of the word 'unwelcome' as the threshold marker, while consistent with international practice, introduces a significant evidentiary challenge. The subjective experience of the complainant — rather than a purely objective community standard — is intended to be determinative. However, adjudicatory bodies have not always applied this subjective lens consistently, sometimes importing paternalistic assessments of how a 'reasonable woman' ought to have felt, inadvertently burdening the complainant with justifying her own distress.

2.3 Beyond the Formal Definition: Intersectional Dimensions

Feminist legal scholars, including Professors Ratna Kapur and Brenda Cossman, have argued that formal legal definitions of sexual harassment frequently fail to capture the intersectional nature of the harm. Women from marginalised communities — Dalit women, tribal women, domestic workers, migrant labourers — experience harassment compounded by caste-based discrimination, economic vulnerability, and social invisibility. The law's relative silence on these compounded identities represents a significant analytical and normative gap that formal equality frameworks cannot adequately address.

3. CONSTITUTIONAL SAFEGUARDS

3.1 Article 14: The Right to Equality

The right to equality before law and equal protection of laws under Article 14 of the Constitution of India constitutes the bedrock of anti-discrimination jurisprudence. Sexual harassment, by its very nature, targets individuals primarily because of their gender and thereby creates a discriminatory condition of work that Article 14 is designed to prohibit. The Supreme Court in *Vishaka* explicitly held that the guarantee of equality necessarily implies the right to work in an environment free from discrimination, and that gender-based harassment constitutes a form of sex discrimination actionable under constitutional law.

3.2 Article 15: Prohibition of Sex-Based Discrimination

Article 15(1) prohibits the State from discriminating against citizens on grounds of sex, inter alia, while Article 15(3) permits the State to make special provisions for women and children. Sexual harassment at the workplace being a form of gender-based discrimination directly engages Article

15(1). The Supreme Court's reasoning in *Vishaka* relied on this provision to ground both the State's obligation to protect women from workplace harassment and its duty to take affirmative action through legislation and institutional mechanisms.

The *Vishaka* Court further held that the failure of the State to enact appropriate legislation was itself a violation of its positive constitutional duty to secure gender equality — a recognition of the State's obligation to act against private wrongs through regulatory frameworks, moving beyond the classical negative liberty reading of fundamental rights.

3.3 Article 19(1)(g): The Right to Practise Any Profession

Article 19(1)(g) guarantees every citizen the right to practise any profession or to carry on any occupation, trade or business. The Supreme Court in Vishaka made the seminal observation that the right to work with dignity is a fundamental right under Article 19(1)(g), and that sexual harassment impairs the effective exercise of this right. A woman who faces harassment is effectively denied the full realisation of her professional autonomy — she may be compelled to leave employment, refuse promotions, or avoid certain work environments entirely. This economic dimension of harassment was a crucial contribution of the Vishaka judgment to Indian constitutional jurisprudence.

3.4 Article 21: The Right to Life and Personal Liberty

Article 21 has been interpreted expansively by the Supreme Court to encompass the right to live with dignity, the right to health, and the right to a safe environment. In the context of sexual harassment, this Article assumes particular significance: the Court in Vishaka held that sexual harassment is a violation of the fundamental right to dignity guaranteed under Article 21. The holistic reading of Articles 14, 15, 19, and 21 together formed the constitutional matrix from which the Vishaka Guidelines derived their legal authority and which continues to inform the interpretation of the POSH Act.

3.5 Directive Principles and International Conventions

Beyond Part III, the Directive Principles of State Policy — particularly Articles 39, 42, and 46 — impose obligations on the State to secure just and humane conditions of work, to provide for maternity relief, and to promote the educational and economic interests of weaker sections. These provisions, while not justiciable per se, have been read harmoniously with fundamental rights to reinforce the constitutional imperative of protecting women at the workplace. Moreover, the Court in Vishaka invoked India's obligations under CEDAW and the Beijing Platform for Action to fill the legislative vacuum, establishing an important precedent for the use of international law in constitutional adjudication.

4. PRE-LEGISLATIVE ERA: VISHAKA AND ITS LEGACY

4.1 Bhanwari Devi and the Catalyst for Change

The origin story of sexual harassment jurisprudence in India is inseparable from the harrowing experience of Bhanwari Devi, a saathin (community development worker) employed under the

Women's Development Programme of the Government of Rajasthan. In 1992, while attempting to prevent a child marriage — as part of her official duties — she was gang-raped by members of a dominant-caste family. The State's failure to prosecute her attackers effectively, compounded by institutional indifference, galvanised several women's rights organisations to file a public interest litigation before the Supreme Court under the case name *Vishaka v. State of Rajasthan*.

The petitioners framed the litigation not merely as a criminal justice matter but as a constitutional challenge to the systemic failure of state machinery to protect women in the workplace. They argued that the absence of any legislative framework addressing workplace sexual harassment constituted an ongoing violation of women's fundamental rights to equality, dignity, and the right to practise a profession.

4.2 The Supreme Court's Intervention: Vishaka Guidelines

In its 1997 judgment, a three-judge bench of the Supreme Court, authored by Justice J.S. Verma (then Chief Justice), issued a set of binding guidelines — known as the Vishaka Guidelines — which were to have the force of law until appropriate legislation was enacted. These Guidelines defined sexual harassment, imposed mandatory obligations on employers (including both State and private sector entities) to prohibit harassment, provide mechanisms for complaints, and create awareness. Significantly, the Court held that the guidelines were derived from the fundamental rights provisions and international conventions to which India was a signatory.

The Vishaka judgment was a landmark in several respects. First, it represented an exercise of judicial law-making in the absence of legislative action — an assertion of the Court's role as the guardian of constitutional rights. Second, it explicitly imported international human rights norms into domestic constitutional adjudication, legitimising a dualist-bridging approach. Third, it recognised the employer's positive duty to prevent and address sexual harassment, shifting the framing from individual criminality to institutional accountability.

4.3 Apparel Export Promotion Council v. A.K. Chopra (1999)

The Supreme Court further consolidated the Vishaka framework in *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759, where it upheld the dismissal of a senior officer for sexual harassment of a subordinate female employee. The Court articulated that sexual harassment constitutes a violation of the fundamental right to work with dignity and that even an attempt to sexually harass — absent actual physical contact — justifies the most severe disciplinary consequences. This judgment introduced the important proposition that intent and

attempt, not merely completion, of the harassing act are sufficient to ground liability.

5. THE POSH ACT, 2013: ARCHITECTURE AND PROVISIONS

5.1 Scope and Coverage

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 received presidential assent on 22 April 2013 and came into force on 9 December 2013. Its enactment followed sixteen years after the Vishaka judgment and was precipitated, in part, by sustained advocacy by women's organisations and a belated recognition by Parliament of its constitutional obligations.

Section 2(o) defines 'workplace' broadly to include government bodies, private sector organisations, non-governmental organisations, commercial enterprises, and even non-traditional settings such as the homes of domestic workers, hospitals, educational institutions, and transport services provided by employers. This expansive definition was a significant legislative advance, though, as discussed below, its actual application to the unorganised sector has remained largely theoretical.

5.2 The Internal Complaints Committee (ICC)

Section 4 of the POSH Act mandates every employer with ten or more employees to constitute an Internal Complaints Committee (ICC) at each office or branch. The ICC must be chaired by a senior woman employee, include at least two other employees committed to women's causes, and — crucially — include one external member from an NGO or legal background familiar with issues of sexual harassment. The external member requirement was specifically designed to prevent institutional capture of the complaints process and to ensure independence in adjudication.

The ICC is empowered to receive complaints (Section 9), conduct conciliation where requested by the complainant (Section 10), inquire into complaints (Section 11), and recommend penalties to the employer (Section 13). The inquiry must be completed within ninety days, and the employer is required to act on the recommendations within sixty days. The Act also provides for interim relief to the complainant during the pendency of inquiry, including a transfer of the aggrieved woman or the respondent, or a grant of leave.

5.3 The Local Complaints Committee (LCC)

Recognising that a large proportion of India's workforce is employed in the unorganised sector

— where employers often lack the capacity, resources, or will to constitute ICCs — the Act establishes Local Complaints Committees (LCCs) at the district level under Section 6. The LCC is chaired by a woman nominated by the State Government and is designed to receive complaints from women employed in establishments with fewer than ten employees or where the complaint is against the employer himself.

The LCC mechanism was a progressive legislative innovation, but its effectiveness has been severely compromised by inadequate funding, lack of awareness among potential complainants, and insufficient training and capacity-building for LCC members. In several states, LCCs remain constituted in name only, without the administrative infrastructure to function meaningfully.

5.4 Employer Obligations

Section 19 imposes a comprehensive set of obligations on employers: to provide a safe working environment; display penal provisions at conspicuous places in the workplace; organise workshops and awareness programmes; provide necessary facilities for the ICC; assist in securing attendance of respondents and witnesses; make available information to the District Officer; treat sexual harassment as a misconduct under service rules; and monitor timely submission of annual reports by the ICC.

The Act in Section 26 provides for monetary penalties on employers who fail to comply with these obligations: a fine of up to Rs. 50,000 for a first offence, with provision for cancellation or non-renewal of business licences for repeated violations. These penal provisions, while symbolically significant, have been largely unenforced in practice.

5.5 Protections for the Complainant and False Complaints

A distinctive and contested feature of the POSH Act is its provision under Section 14 for action against women who file false complaints with malicious intent. The provision was intended to prevent abuse of the mechanism but has been criticised by feminist scholars and practitioners for creating a chilling effect on genuine complainants who fear being penalised if their complaint is not upheld. The distinction between a false complaint (which attracts action) and an unproven complaint (which does not) has not always been clearly understood or applied by ICCs.

6. CRIMINAL LAW DIMENSIONS: IPC AND THE BHARATIYA NYAYA SANHITA

6.1 Relevant Provisions under the IPC, 1860

Prior to the POSH Act, and continuing to operate alongside it, the Indian Penal Code, 1860 contained provisions that could be invoked in cases of sexual harassment. Section 354 penalised assault or criminal force on a woman with the intent to outrage her modesty; Section 354A (inserted by the Criminal Law (Amendment) Act, 2013) specifically criminalised sexual harassment by defining it to include unwelcome physical contact, demands for sexual favours, and showing pornography. Section 509 penalised words, gestures, or acts intended to insult the modesty of a woman.

The Criminal Law (Amendment) Act, 2013, enacted in the aftermath of the December 2012 Delhi gang-rape, significantly strengthened the criminal law framework. The amended IPC broadened the definition of rape, introduced new offences such as stalking (Section 354D) and voyeurism (Section 354C), and enhanced penalties for offences against women. However, the criminalisation approach has limitations: criminal proceedings require proof beyond reasonable doubt, police officers often lack sensitisation, and the adversarial criminal justice process can be re-traumatising for victims.

6.2 The Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita (BNS), 2023 — which replaced the IPC with effect from 1 July 2024

— largely retains the criminal law provisions on sexual offences. Sections 74–79 of the BNS re-enact provisions corresponding to the IPC sections on assault, sexual harassment, stalking, and voyeurism, with some modifications in language and sentencing. The BNS also retains the broad definition of rape introduced by the 2013 amendments. While the re-codification was an opportunity for substantive reform, the BNS's provisions on sexual harassment are largely a continuation of the existing regime, with limited innovation in addressing the specific challenges of digital harassment or street harassment.

6.3 Interplay between Civil (POSH) and Criminal Proceedings

A common source of confusion among both complainants and employers is the relationship between a complaint under the POSH Act and a criminal complaint under the IPC/BNS. The two remedies are legally distinct and can run concurrently. The inquiry under the POSH Act is

a quasi-judicial civil proceeding governed by the preponderance of probability standard; criminal proceedings require proof beyond reasonable doubt. Section 11(3) of the POSH Act explicitly provides that the ICC shall not be bound by the rules of evidence contained in the Evidence Act, enabling a more accessible and less formal inquiry process.

7. JUDICIAL INTERPRETATION AND EVOLVING JURISPRUDENCE

7.1 Broadening the Concept of Workplace

Courts have progressively expanded the concept of 'workplace' beyond traditional brick-and-mortar office settings. In *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297, the Supreme Court directed States and Union Territories to comply with Vishaka Guidelines, emphasising that the principles applied to all forms of employment, including in the informal and agricultural sectors. The increasing prevalence of remote work and digital communication has further necessitated judicial interpretation of whether virtual environments — email, messaging platforms, video calls constitute 'workplace' for the purposes of the POSH Act, with emerging judicial consensus suggesting they do.

7.2 Procedural Fairness in ICC Proceedings

A significant strand of judicial intervention has focused on ensuring procedural fairness in ICC proceedings. Courts have emphasised that while ICC proceedings are not bound by the strict Evidence Act standards, the principles of natural justice — particularly the right to a fair hearing and the right to know the evidence against oneself — must be scrupulously observed. In *Ruchika Singh Chhabra v. Air France India*, (2018) SCC Online Del 12641, the Delhi High Court held that an ICC inquiry conducted without providing the respondent with a proper opportunity to cross-examine witnesses was vitiated by a violation of natural justice principles, setting aside the ICC's findings.

7.3 The #MeToo Movement and Judicial Response

The #MeToo movement, which gained significant traction in India in 2018, brought into sharp relief both the pervasiveness of sexual harassment in professional settings — particularly in media, entertainment, academia, and politics — and the inadequacies of formal complaint mechanisms. Several women chose to speak out on social media rather than approach ICCs or police, citing fears of retaliation, lack of confidentiality, and distrust of institutional processes. This extra-judicial mode of accountability prompted legal debates about defamation, the right

to speak out about harassment, and the State's obligation to create trustworthy formal mechanisms. Courts have generally been sympathetic to women's right to speak about their experiences, though the boundary between protected speech and actionable defamation remains contested.

7.4 Supreme Court on Compliance Monitoring

In *Aureliano Fernandes v. State of Goa*, (2023) 4 SCC 1, the Supreme Court took serious note of widespread non-compliance with the POSH Act, particularly the failure of many government departments to constitute ICCs and the inadequate functioning of LCCs. The Court directed all High Courts to monitor compliance within their jurisdictions and required State Governments to file compliance reports. This judgment reflects the Court's continuing role as a supervisory authority in the implementation of protective legislation for women, a role it first assumed in *Vishaka*.

8. IMPLEMENTATION CHALLENGES

8.1 Low Complaint Rates and the Dark Figure of Harassment

Empirical research consistently reveals that the number of complaints formally filed under the POSH Act represents only a small fraction of the actual incidence of sexual harassment. A 2020 survey by the Centre for Catalyzing Change found that while approximately 54% of women surveyed had experienced some form of sexual harassment at work, only about 1% had filed formal complaints. This staggering underreporting is attributable to multiple, intersecting factors: fear of retaliation by the employer or respondent; lack of confidentiality in the complaint process; distrust of ICCs perceived as institutional tools rather than neutral adjudicators; social stigma and victim-blaming; and a widespread belief — often borne out in practice — that formal complaints lead to professional marginalisation of the complainant rather than accountability for the respondent.

8.2 Non-Constitution and Non-Functionality of ICCs

Despite the legal mandate, a significant proportion of employers — particularly in the private sector and small enterprises — have not constituted ICCs. A survey conducted by the Internet and Mobile Association of India (IAMAI) in 2021 estimated that only about 16% of companies in India had fully compliant ICCs. Even among those where ICCs nominally exist, many lack the requisite external member, have not received adequate training, and have no standard

operating procedures for conducting inquiries. The annual reports required under Section 21 are routinely not submitted, and the regulatory penalties under Section 26 remain largely unenforced.

8.3 The Informal Economy and Domestic Workers

Perhaps the most profound implementation gap concerns women working in the informal economy agricultural labourers, domestic workers, street vendors, construction workers, and home-based workers — who constitute the vast majority of India's female workforce. The LCC mechanism was designed to address this segment, but the LCCs are chronically under-resourced, under-staffed, and inaccessible. The Unorganised Workers' Social Security Act, 2008 and the National Policy for Domestic Workers have not adequately integrated with the POSH framework, leaving millions of women in precarious work situations without any effective redressal mechanism.

The case of domestic workers is particularly acute. Section 2(o)(vi) of the POSH Act specifically includes domestic workers within its definition of 'aggrieved woman', but the LCC mechanism requires a domestic worker to approach a district-level authority — often geographically distant, administratively complex, and socially intimidating — rather than any workplace-level body. Practical barriers of language, literacy, and economic dependence on employers make the LCC an ineffective remedy for domestic workers in practice.

8.4 Power Asymmetry and the Chilling Effect

The inherently hierarchical nature of most workplace relationships creates profound power asymmetries that deter women from using formal complaint mechanisms. Where the respondent is in a supervisory position over the complainant — as is typically the case in quid pro quo harassment the threat of adverse professional consequences for filing a complaint is not merely perceived but frequently real. Studies of ICC outcomes show that women who file complaints frequently face transfers, demotion, denial of opportunities, or hostile work environments even before the inquiry concludes. The Act's provisions for interim protection — including the right to transfer or obtain leave — are seldom proactively offered by employers and infrequently demanded by complainants unaware of their entitlements.

8.5 Confidentiality Breaches and Victim Re-Traumatisation

Section 16 of the POSH Act mandates confidentiality of the identity of complainants and witnesses. In practice, confidentiality is routinely breached — sometimes inadvertently through

administrative carelessness, sometimes deliberately as a means of intimidating complainants or mobilising social pressure against them. Breaches of confidentiality in high-profile cases have been extensively documented in the media, leading to secondary victimisation of complainants who face public scrutiny, social ostracism, and threats of legal action for defamation by respondents.

8.6 Inadequate Training and Gender Sensitisation

Section 19(b) of the POSH Act requires employers to organise workshops and awareness programmes. However, compliance with this mandate is frequently perfunctory: annual presentations consisting of distributing printed copies of the Act, or online modules completed in minutes, do not constitute meaningful sensitisation. ICC members themselves often lack adequate training in trauma-informed inquiry techniques, evidentiary standards appropriate to civil proceedings, and procedures for maintaining confidentiality. The external member requirement — a crucial safeguard against institutional capture — is frequently circumvented by appointing token external members who are affiliated with the employer.

8.7 Digital Harassment and Emerging Challenges

The rapid digitalisation of workplaces — dramatically accelerated by the COVID-19 pandemic — has created new vectors of harassment that the POSH Act, conceived in an era of primarily physical workplaces, does not adequately address. Harassment through official communication channels, social media platforms, messaging applications, and email poses evidentiary challenges (preservation of digital evidence, admissibility, authentication) and raises questions about jurisdictional boundaries, particularly for workers engaged across multiple geographies. The Information Technology Act, 2000 contains provisions on cyberstalking and online harassment, but these operate in an uncoordinated manner with the POSH framework.

9. COMPARATIVE INTERNATIONAL PERSPECTIVES

9.1 United States: Title VII and the EEOC Framework

The United States has one of the most developed legal frameworks for sexual harassment under Title VII of the Civil Rights Act, 1964, as interpreted by the Equal Employment Opportunity Commission (EEOC) and the Supreme Court. The landmark judgments in *Meritor Savings Bank v. Vinson* (1986) and *Oncale v. Sundowner Offshore Services* (1998) established, respectively, that sexual harassment violates Title VII and that same-sex harassment is actionable. The

EEOC's proactive enforcement role — including suo motu investigations, mediation services, and systemic litigation — provides a model for institutional enforcement that India's POSH Act lacks.

9.2 United Kingdom: The Equality Act 2010

The United Kingdom's Equality Act, 2010 addresses sexual harassment as a form of sex discrimination with a sophisticated regulatory framework. The Equality and Human Rights Commission (EHRC) exercises proactive regulatory oversight, including the power to conduct sectoral inquiries and issue compliance notices. The Worker Protection (Amendment of Equality Act 2010) Act, 2023, which came into force in October 2024, introduced a new positive duty on employers to take reasonable steps to prevent sexual harassment — a shift from a reactive complaints-based model to a proactive prevention model. India's POSH Act imposes prevention obligations, but without a comparable regulatory body with enforcement powers.

9.3 South Africa: An Integrated Model

South Africa's legal framework addresses workplace harassment through the Employment Equity Act, 1998 and the Code of Good Practice on the Handling of Sexual Harassment in the Workplace (2005), supplemented by the Protection from Harassment Act, 2011 which covers online harassment. The South African framework is notable for its explicit recognition of intersectional grounds of discrimination — race, gender, disability, sexual orientation — and its emphasis on restorative justice approaches alongside disciplinary processes. The integration of labour law, equality law, and civil harassment law into a coherent framework offers a model for India's fragmented approach.

9.4 ILO Convention No. 190 and India's Position

The ILO Violence and Harassment Convention, 2019 (C190) is the first international labour standard to address violence and harassment in the world of work comprehensively, covering both formal and informal work settings, workers of all genders, and digital work environments. India has not yet ratified C190, despite being a founding member of the ILO and despite C190 directly addressing many of the implementation gaps in the POSH framework. Ratification would entail bringing India's legal framework into conformity with C190's requirements and would create an international accountability mechanism for compliance.

10. REFORM RECOMMENDATIONS

10.1 Establishing a Dedicated Regulatory Authority

The most significant structural reform required is the creation of a dedicated National Authority for Prevention of Sexual Harassment — or empowering the National Commission for Women with explicit enforcement powers under the POSH Act. Such a body should be mandated to conduct proactive employer compliance audits, maintain a public registry of non-compliant employers, impose and recover penalties, and compile and publish disaggregated national data on complaints and outcomes. Without an institutional watchdog with enforcement teeth, the POSH Act will continue to be a statute more honoured in the breach than in the observance.

10.2 Mandatory Compliance Reporting and Public Transparency

Annual reports under Section 21 of the POSH Act should be mandatorily filed with a central digital repository accessible to the public, regulators, and researchers. Listed companies should be required to disclose POSH compliance in their Annual Reports and Corporate Social Responsibility disclosures, creating market-based accountability alongside regulatory enforcement. The current anonymity of non-compliance enables chronic defaulters to avoid accountability.

10.3 Strengthening the LCC Mechanism for the Informal Sector

The LCC mechanism requires a fundamental redesign to serve its intended beneficiaries. State Governments should establish mobile LCC units, designate block-level or gram panchayat-level nodal officers for POSH matters, and invest in awareness campaigns in regional languages targeting women in the informal economy. Dedicated capacity-building and training for LCC members — including on trauma-informed practices — should be funded through the Nirbhaya Fund and labour welfare schemes.

10.4 Mandatory Training Standards and ICC Accreditation

The 'workshops and awareness programmes' obligation under Section 19(b) should be converted into a mandatory training standard with minimum content requirements specified by regulation. ICC members should be required to complete accredited training programmes and obtain certification before they can conduct inquiries. The external member requirement should be strengthened by maintaining a State-level panel of vetted, trained external members, and prohibiting employers from appointing external members with any financial or professional

relationship with the organisation.

10.5 Addressing Digital Harassment

The POSH Act and the Information Technology Act should be harmonised through a comprehensive amendment or a dedicated Digital Workplace Harassment Guidelines framework, clearly establishing that digital harassment constitutes 'sexual harassment' under the Act, specifying procedures for preservation and admissibility of digital evidence, and extending the Act's coverage to remote work and virtual workplaces. The POSH Act should be aligned with the Digital Personal Data Protection Act, 2023 to ensure that digital evidence handling in ICC proceedings complies with data protection requirements.

10.6 Ratification of ILO C190

India should expedite its ratification of ILO Convention No. 190, bringing the domestic legal framework into conformity with international standards on violence and harassment at work. Ratification would require extending the POSH framework to cover agricultural workers, self-employed persons, and workers in informal settings more comprehensively, as well as addressing harassment during work-related travel, training, and digital communications.

11. CONCLUSION

The legal framework governing sexual harassment in India has undergone a remarkable transformation over the past three decades — from a constitutional vacuum filled by judicial creativity in Vishaka (1997) to a comprehensive statutory architecture in the POSH Act, 2013. The constitutional foundations in Articles 14, 15, 19, and 21 provide a robust normative platform, and the POSH Act's institutional mechanisms — the ICC and LCC — offer, in design, a sophisticated model for workplace redressal.

Yet, the gap between the law's aspirational vision and its empirical reality remains vast and troubling. Millions of women — particularly in the informal economy, domestic work, and the agricultural sector — remain beyond the practical reach of legal protection. ICCs are frequently non-existent, inadequately constituted, or insufficiently trained. Complaint rates bear no relationship to the true incidence of harassment. Power asymmetries, confidentiality breaches, and institutional inertia continue to silence victims and shield perpetrators.

Bridging this gap demands more than incremental tinkering. It requires a paradigm shift in regulatory philosophy: from reactive complaints-based enforcement to proactive prevention,

from voluntary employer compliance to mandatory regulatory oversight, and from formal equality to substantive, intersectional justice. The reform recommendations outlined in this article — establishing a dedicated regulatory authority, redesigning the LCC mechanism, strengthening training standards, addressing digital harassment, and ratifying ILO C190 — represent a minimum agenda for making the law's promise a lived reality for India's women workers.

Ultimately, the effectiveness of legal frameworks against sexual harassment is determined not by the sophistication of their drafting but by the commitment of institutions — employers, regulators, courts, and the State — to treat workplace dignity as a genuine and enforceable entitlement rather than a symbolic aspiration. That commitment remains the central, unfinished task of India's gender justice project.

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