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# The Necessity of a Gender-Neutral Law on Sexual Harassment in the Workplace: Specifying the Lacuna in the Legislation

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## ABSTRACT

*The article examines the need for a gender-neutral law on sexual harassment in the workplace, with some critiques of the gaps in the available legislations, particularly regarding protection for men and the third gender. The article traces the development of laws for the protection of women from sexual harassment in the workplace from the landmark Vishaka judgment of 1997 and the enactment of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013. It also traces the legislative history of the Protection of Women against Sexual Harassment Bill, 2010, with special emphasis on the key objections raised during the course, namely the gender-specific nature of the law itself. The article states that, although the bill seeks to ameliorate some conditions of workplace harassment, it does very little in terms of accepting the wide ambit of sexual harassment with respect to all genders, especially regarding men who are becoming increasingly victims of workplace harassment by women in a position of power. A case for a redefined perspective on sexual harassment laws is made in favor of gender neutrality, which would safeguard all in equal measure regardless of gender, age, or social status. The absence of provisions for the third gender is again criticized in the existing framework, which also suffers for want of an enforcement mechanism backed by empirical data. From a juxtaposition with some progressive international norms, the article argues that the approach towards workplace harassment legislation should, therefore, take into account the changing social mores and defend the rights of all employees. To conclude, the article proposes that though the 2013 Act represents some measure of achievement with regard to the protection of women, there is also an urgent need for India to implement an inclusive law that extends full protection to all workers from sexual harassment.*

**Keywords:** Sexual Harassment, Gender Neutral, POSH Act, 2013.

## I. INTRODUCTION

The Article delves into the legislation enacted in 2013 to protect women from sexual harassment

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in the workplace. The statute not only offers protection but also includes measures for prevention and redressal. It critically examines the existing system to assess its effectiveness and advocates for a gender-neutral law. The genesis of this Act can be traced back to the Vishaka guidelines<sup>3</sup>, various Bills, and extensive deliberations before it evolved into the final Act. A critical analysis of these aspects is presented, along with an examination of existing policies on sexual harassment to evaluate their efficacy in addressing the issue.

## II. THE FORMATION OF ACT

India ratified the CEDAW in July 1993<sup>4</sup>, and in August 1997, the Honorable Supreme Court of India delivered a landmark judgment in *Vishaka and others v. State of Rajasthan* regarding sexual harassment in the workplace. The Supreme Court, while laying down guidelines to combat such discrimination, emphasized the necessity of legislation, indicating that the guidelines were interim measures until a comprehensive law was enacted.

Vishaka Guidelines, On August 13, 1997, nearly 50 years after Indian independence, the Honorable Supreme Court passed a groundbreaking judgment in the Vishaka case and in a class action lawsuit which is brought by a few social activists and NGOs to address sexual harassment in the workplace. The primary reason for filing the petition was a horrific gang rape incident. The case involving 'saathin' Bhanwari Devi<sup>5</sup> from Rajasthan highlighted the call for improved safety measures for all women employees in the workplace. This event not only exposed the indifference experienced by working women but also underscored the critical necessity for laws to safeguard women in their work environments. Consequently, the Court established several guidelines.

### (A) The Protection Of Women Against Sexual Harassment at Workplace Bill, 2010

To align with the CEDAW convention and the Vishaka Guidelines, the Protection of Women Against Sexual Harassment at Workplace Bill, 2010 was presented to the Lok Sabha on December 7, 2010. The Bill was subsequently sent to the Department-related Parliamentary Standing Committee on Human Resource Development (referred to as DPSRC). The Ministry of Women and Child Development and the National Commission for Women (NCW) conducted thorough research and developed the draft proposal for the 2010 Bill. The NCW took further steps beyond the provisions outlined in the Vishaka Guidelines to ensure a secure work environment for women. In recognizing the necessity for such legislation, the Ministry collected

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<sup>3</sup> *Vishaka and others v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>4</sup> United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18 December 1979, G.A. Res. 34/180, U.N. Doc. A/34/46, ratified by India on 25 June 1993.

<sup>5</sup> Bhanwari Devi Case, reported in *Vishaka and others v. State of Rajasthan*, (1997) 6 SCC 241

feedback from approximately 20 state governments.

It is also important to mention that information was requested from approximately 68 Central Ministries and Departments regarding the number of cases reported from 2007 to 2010. While this was a parliamentary inquiry, only 49 ministries responded, and among those, 33 indicated that they had reported no cases of sexual harassment<sup>6</sup>. The Member Secretary of the NCW noted that the final Draft Bill of 2010 omitted several suggestions from its earlier draft, leading to a dilution of the following points:

- a) The inclusion of domestic workers
- b) The necessity for budgetary provisions within the Act
- c) Transforming the NCW and the State Women Commission from mere compliance bodies into active participants in complaint hearings
- d) The NCW opposed the clause concerning conciliation, as it believed that it could pressure women into reconciling, potentially exposing them to further victimization.
- e) Additionally, the Bill did not include any penalty clauses that would make the employer accountable for failing to implement the recommendations made by the Complaints Committee.

**(B) Report From The Department Related To Parliamentary Standing Committee On Human Resource Development ( DRPSC)<sup>7</sup>**

The DRPSC received the draft 2010 Bill on December 30, 2010, and subsequently issued a press release on January 10, 2011, encouraging feedback from stakeholders and the public. They obtained a significant amount of feedback, resulting in 366 memoranda containing various suggestions. The DRPSC convened multiple meetings with various stakeholders, including Saheli, PRIA, YWCA, the National Coalition for Men, Chief Labour Commissioners, NASSCOM, and CII, among others. In reviewing the submitted memoranda, the DRPSC noted that several important areas had been overlooked and believed that these were crucial for the effectiveness of the proposed legislation.

- a) The matter of Gender-Neutrality

During discussions with several men's organizations regarding this issue, it became evident that they held strong opposition to the legislation being gender-specific. Their primary concerns included:

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<sup>6</sup>Report of DPSRC, Compendium of Parliamentary Enactments, 3rd Report on Right to Information Bill, 2004, Parliament of India, Rajya Sabha.

<sup>7</sup> Id.at 4

- i) The assumption that women are the sole victims is misguided, especially with an expanding workforce where women are no longer in subordinate positions.
- ii) Human rights considerations should take precedence over gender biases.
- iii) Employers have an obligation to ensure the safety of all employees, regardless of gender.
- iv) The Ministry lacked statistical evidence to support the claim that only women experience harassment and not men.
- v) They highlighted that in numerous countries, the laws are already gender-neutral.

When these concerns were raised to the Ministry for clarification, they acknowledged the absence of data on this issue but argued that although there may be instances of men facing sexual harassment, such cases are relatively rare compared to those involving women; hence, the need for the legislation to be gender-specific rather than gender-neutral. The DRPSC also expressed strong disapproval of the draft's lack of gender neutrality.

The text also recognized the precarious situation of women and acknowledged their disadvantages in both organized and unorganized sectors. Despite its acknowledgment of women's status, it suggested that additional measures to safeguard men in the workplace should also be considered. Furthermore, it proposed that when submitting their annual reports, employers or establishments should be required to document instances of male sexual harassment to gain a clearer understanding of the issue.

b) Another point raised was the lack of consideration for domestic workers. The reality that they faced challenges regarding wages, education, and healthy working conditions warranted their inclusion under the Act. Moreover, since India is a signatory to the ILO Convention 189 regarding Decent Work for Domestic Workers, it was deemed essential<sup>8</sup> to include them.

### **(C) The 239th Report By The Parliamentary Standing Committee On Human Resources Development**

The National Commission for Women submitted the draft Bill<sup>9</sup> concerning sexual harassment in the workplace to the Parliamentary Standing Committee on Human Resources Development on August 2, 2004. A national consultation regarding the prohibition of sexual harassment at the workplace Bill was conducted on October 6-7, 2005. Additionally, a special meeting was

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<sup>8</sup> ILO Convention 189 for Decent Work for Domestic Workers, 2011, [https://www.ilo.org/dyn/normlex/en/f?p=NO\\_RMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NO_RMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189) (last visited Aug 24, 2019)

<sup>9</sup> Protection of Women Against Sexual Harassment Workplace Bill 2010

held on August 7, 2009, to further discuss the draft. It is noteworthy that the finalization of the draft legislation took more than six to seven years. It is important to mention that various NGOs and women's groups were involved in the acceptance process, but there was no consideration of inputs from men's advocacy stakeholders. On January 10, 2011, the Committee released a press statement inviting feedback and suggestions from the general public as well as relevant stakeholders.

The Committee also noted that employers should be required to report incidents in their annual reports, making this mandatory. Furthermore, it recommended that the National Commission for Women and the Ministry promote the Act in order to achieve its intended goals. It also emphasized that training for members of the Complaints Committee should be compulsory. The provision for anonymous complaints is lacking, and the Bill fails to address SMS, phone calls to home, and other communication methods. In addition to standard written complaints, alternative means such as email, Dropbox, and secure telephone lines have not been included. There is no outline provided for the procedures involved in recording evidence, the process of examination, or the types of questions that are prohibited. The Committee identified that the purpose of the Act is threefold: a) to protect, b) to prevent, c) to redress. They acknowledged that women or employees who file complaints against their employers often face victimization, suggesting that the Act should encompass this victimization and offer redress for affected women, incorporating them into the definition of aggrieved women. Concerning enforcement regarding third parties, the Committee found the applicability to be unconvincing. They recommended that given the increasing use of technology, the definition should encompass actions that are verbal, textual, physical, graphic, electronic, or any other form. The Bill primarily targets the organized sector, yet over 90% of women work in the unorganized sector; therefore, it should include a segment addressing the specific working conditions to mitigate harassment faced by these women. The Ministry conveyed that addressing issues in the unorganized sectors is quite challenging. They further asserted that employers must not only safeguard the victimization of the aggrieved women but also protect anyone who supports them and provides evidence from facing victimization. Moreover, members of the Internal Committee (IC) should be trained and knowledgeable about the legal requirements necessary for managing cases of sexual harassment. The Report<sup>10</sup> also highlights the absence of a grading system for offenses and corresponding penalties, and the requirement for a victim to engage in conciliation was a significant issue raised by stakeholders. The Committee emphasized that the

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<sup>10</sup> 239th Report by The Parliamentary Standing Committee on Human Resources Development, [https://prsindia.org/files/bills\\_acts/bills\\_parliament/SCR\\_Protection\\_of\\_Women.pdf](https://prsindia.org/files/bills_acts/bills_parliament/SCR_Protection_of_Women.pdf)(last visited march 3,2025)

IC/LC should consider the seriousness of the offense, noting that requiring an apology may not be proportional if the wrongdoing is of a severe nature.

**(D) Objections Raised Against To The 2010, Bill**

1. The Ministry of Women and Child Development lacks the legal standing to put forward the Bill.
2. The protection provided under Article 15 (3) is flawed as it contradicts the fundamental principle of the Constitution that prohibits discrimination solely based on sex.
3. When the Ministry requested feedback from the public, the consensus among citizens was that the law should be gender-neutral, as workplaces ought to be inclusive for all. However, this perspective went unnoticed, and the law was enacted solely to safeguard women. Therefore, the term ‘woman’ should be changed to ‘person’.
4. It appears that the Ministry has demonstrated an anti-male bias by crafting a gender-specific Bill, despite the fact that men constitute more than 50% of the workforce.
5. Additionally, a Bill originating from the Department of Law and Justice would have been more suitable, addressing the issue from a more pragmatic viewpoint.

**(E) The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013: Legislative Process And Debates**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012, underwent a significant legislative journey, originating from the 2010 Protection of Women against Sexual Harassment at Workplace Bill. Initially introduced in the Lok Sabha in December 2010, the bill was referred to the Department-related Parliamentary Standing Committee on Human Resource Development, which subsequently presented its report in December 2011. Following amendments, the bill, now titled the 2012 Act, was passed by the Lok Sabha in a brief 16-minute session in September 2012, and later discussed in the Rajya Sabha for nearly three hours in February 2013, involving 16 members.

During the Rajya Sabha deliberations, several critical issues were raised. Dr. Najma A. Heptulla questioned the bill's limited focus on sexual harassment, highlighting the existence of other forms of workplace harassment, including those perpetrated by women against women. Dr. T.N. Seema emphasized the need for clear implementation strategies in the unorganized sector and advocated for explicit inclusion of institutions like the Armed Forces, Police, and educational establishments.

Shrimati Maya Singh expressed concern over the protracted legislative process and called for

enhanced powers for District Officers and a separate authority for the unorganized sector. She stressed the importance of effective implementation beyond mere documentation. Shrimati Gundu Sudharani highlighted the exclusion of "eve teasing" and advocated for the inclusion of domestic workers, which was subsequently addressed by the Minister. She also pointed out the challenges of proving clandestine acts of harassment under Clause 14's evidentiary requirements.

Shrimati Kanimozhi advocated for the inclusion of oral complaints to accommodate illiterate workers in the unorganized sector, particularly agricultural laborers. Dr. Vijayalakshmi Sadho stressed the need to address mental and physical harassment alongside sexual harassment.

In response, Minister Shrimati Krishna Tirath clarified the bill's provisions, outlining the roles of Internal Complaints Committees for the organized sector and Local Complaints Committees for the unorganized sector. She affirmed the inclusion of students within educational institutions and highlighted the confidentiality provisions under Clause 16. The Minister emphasized the bill's alignment with the Supreme Court's Vishaka guidelines and reiterated the government's commitment to creating a safe working environment for women, acknowledging the societal need to respect women beyond symbolic reverence.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was enacted after receiving presidential approval on April 22, 2013, becoming Act No. 14 of that year. The legislation was officially implemented on December 9, 2013, following its publication in the official gazette.

#### **(F) Critical Evolution Of The Sexual Harassment Of Women At Workplace Act, 2013**

While the 2013 Act addressed the prior absence of specific legislation protecting women from workplace sexual harassment, its effectiveness and comprehensive relief remain subjects of scrutiny. This analysis explores the Act's impact on combating sexual harassment, highlighting potential shortcomings and the need for possible legislative revisions. Although women are undeniably more susceptible to sexual harassment in both professional and social spheres, the Act notably lacks provisions for protecting male and transgender employees, who also face risks. This omission raises questions about the law's inclusivity and its ability to provide comprehensive protection against workplace harassment.



### **(G)Provisions That Seem To Offer Gender-Neutral Protection**

The terms “employee” as defined in Section 2 (f)<sup>11</sup>, “employer” in Section 2 (g)<sup>12</sup>, and “workplace” in Section 2 (o) are clear and all-encompassing<sup>13</sup>. They are gender-neutral and include all potential categories outlined in their respective sections. For instance, the definition of employee pertains to situations where the victim is an employee and where the offender is also an employee of any kind. Therefore, it does not adhere to the conventional definitions of an employee or worker as per the Factories Act of 1948 or the Industrial Disputes Act of 1947. Instead, it aligns well with the Act's objective of extending protection to anyone who can be classified as an employee. However, since the Act primarily aims to protect women, it is inherently gender-specific and thus can be seen as discriminatory. While men indeed dominate the workforce in many sectors, it is crucial to note that women are represented in significant numbers across various industries. The Act should apply to all employees, regardless of their gender, given the mix of male and female employees. The definitions of ‘employer’ and ‘workplace’ are comprehensive enough to encompass all types of work settings, whether they are governmental or non-governmental, urban or rural, indoors or outdoors, part-time or full-

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<sup>11</sup> Section 2 (f) “employee” means a person employed at a workplace for any work on regular, temporary ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether, for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

<sup>12</sup> (g) "employer" means:—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf; {ii) in any workplace not covered under sub-clause (i), any person responsible for the arrangement, supervision and control of the workplace.

Explanation.-- For the purposes of this sub-clause "management" includes the person or board or Committee responsible for formulation and administration of policies for such organisation:

(iii) in relation to workplace covered under sub-clauses (1) and (ii), the person discharging contractual obligations with respect to his or her employees.

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

<sup>13</sup>Section 2 (o) "workplace" includes -

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes.

(iv) any sports institute, stadium, sports complex or competition or games venue. Whether residential or not used for training, sports or other activities relating thereto:

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey:

(vi) a dwelling place or a house.

time, contractual, or professional in any field; the definitions are exhaustive. This definition has been effectively crafted after considering every potential area that could threaten a safe work environment. There is no need to modify this definition, although the unorganized sectors are not clearly outlined. However, this aspect has not been emphasized here as it falls outside the scope of this study.

### **(H) Definition of Sexual Harassment**

The definition of sexual harassment has generally remained stable; however, some interpretations have provided more detail and examples, while others have opted for brevity to allow for case-by-case interpretation. Below are comparisons of a few key definitions.

#### **a) Oxford Lexico**

“Conduct characterized by making unwelcome and inappropriate sexual comments or advances in a workplace or other professional or social context.”<sup>14</sup>

#### **b) Oxford Learner’s Dictionary**

“Unacceptable physical contact and comments regarding sex, typically occurring in the workplace, that an individual finds offensive and irritating.”<sup>15</sup>

#### **c) Merriam-Webster Dictionary**

“Uninvited and unwelcome verbal or physical behaviors of a sexual nature, particularly by someone in a position of authority towards a subordinate (like an employee or student)”<sup>16</sup>

#### **d) Cambridge Dictionary**

“Unwanted or offensive sexual attention, suggestions, or discussions, particularly from an employer or another individual in a position of power”<sup>17</sup>

#### **e) Committee on the Elimination of Discrimination Against Women (CEDAW)**

The UN Committee on the Elimination of Discrimination Against Women (CEDAW) defines sexual harassment in its General Recommendation No.19 as including “unwelcome sexually motivated behavior such as physical contact and advances, sexually charged remarks, displaying pornography, and sexual demands, whether expressed through words or actions. This

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<sup>14</sup> Sexual Harassment, [https://www.lexico.com/definition/sexual\\_harassment](https://www.lexico.com/definition/sexual_harassment), (last accessed on march 5,2025)

<sup>15</sup> SexualHarassment, <https://www.oxfordlearnersdictionaries.com/definition/english/sexualharassment>, (last accessed on March 05,2025)

<sup>16</sup> Sexual Harassment , <https://www.merriam-webster.com/dictionary/sexual%20harassment>, (last accessed on march 05,2025 )

<sup>17</sup><https://dictionary.cambridge.org/dictionary/english/sexual-harassment>, (last accessed on march 5,2025)

type of conduct can be degrading and may pose a health and safety issue; it is discriminatory if the woman has reasonable grounds to believe that opposing such behavior would disadvantage her in relation to her employment, including recruitment or promotion, or when it creates a hostile work environment.”<sup>18</sup>

#### **f) According to ILO**

According to the International Labour Organization (ILO)<sup>19</sup>, sexual harassment refers to inappropriate conduct of a sexual nature that causes an individual to feel offended, humiliated, or intimidated. This type of harassment can take many forms, including unwelcome touching, hugging, or kissing, along with staring or leering, suggestive remarks or jokes, unwanted sexual advances or persistent requests for dates, intrusive inquiries about someone’s private matters or body, unnecessary familiarity like intentionally brushing against someone, sexual insults or taunts, explicit images, posters, screensavers, emails, tweets, SMS, instant messages, accessing pornographic websites, inappropriate interactions on social media, and behaviors that are also criminal offenses, including physical assault, indecent exposure, sexual assault, stalking, or obscene communications.

In its Special Survey on ILO Convention 111 carried out in 1996, the Committee describes sexual harassment as any insult or inappropriate comment, joke, insinuation, or remark regarding an individual’s attire, appearance, age, or family circumstances; a condescending or paternalistic demeanor with sexual overtones that undermines dignity; any unsolicited invitation or demand, whether directly stated or implied, even if not accompanied by threats; any lascivious glance or gesture related to sexuality; and any unnecessary physical contact such as touching, caressing, pinching, or assault.

#### **g) The Equal Employment Opportunity Commission (EEOC)**

The Equal Employment Opportunity Commission in the United States has established a practical definition that is widely accepted globally: unwelcome sexual advances, requests for sexual favors, and other verbal or physical acts of a sexual nature amount to sexual harassment when,

- (1) an individual’s submission to such behavior is explicitly or implicitly made a term or condition of their employment, or
- (2) an individual’s acceptance or refusal of such conduct is utilized as a factor in employment

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<sup>18</sup> CEDAW Committee General Recommendation No.19, 1992 -

<sup>19</sup>[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-beijing/documents/publication/wcms\\_157626.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-beijing/documents/publication/wcms_157626.pdf) (last visited March 5,2025)

decisions that affect them.

(3) Such behavior aims to unreasonably disrupt a person's work performance or to establish a workplace that is intimidating, hostile, or offensive.

**h) University Grants Commission (Regulations for the Prevention, Protection, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) 2015<sup>20</sup>.**

Definition of Sexual Harassment as per Section 2(k):

- i. Sexual harassment is characterized as any unwelcome behavior of a sexual nature that is either persistent or demeaning, humiliating, or creates a hostile and intimidating atmosphere. Such conduct may be intended to compel submission through actual or threatened negative consequences and encompasses one or more of the following unwelcome actions or behaviors, whether direct or implied:
  - a) Any unwelcome physical, verbal, or non-verbal conduct of a sexual nature
  - b) Requests or demands for sexual favors
  - c) Making remarks of a sexual nature
  - d) Engaging in physical contact or advances
  - e) Displaying pornographic material
- ii. The presence of any of the following circumstances, whether explicit or implicit, in relation to behaviors with sexual undertones constitutes sexual harassment:
  - a) An implied or explicit promise of favorable treatment in exchange for sexual favors
  - b) An implied or explicit threat of adverse treatment in the workplace
  - c) An implied or explicit threat regarding the current or future status of the individual involved
  - d) The creation of an intimidating, offensive, or hostile educational environment
  - e) Humiliating treatment that may impact the health, safety, dignity, or physical integrity of the individual involved.

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<sup>20</sup> [https://www.ugc.gov.in/pdfnews/7203627\\_UGC\\_regulations-harassment.pdf](https://www.ugc.gov.in/pdfnews/7203627_UGC_regulations-harassment.pdf) (last visited on march 08,2025)

According to Section 2 (n) of the Act, "sexual harassment" encompasses one or more of the following unwelcome actions or behaviors, whether expressed directly or impliedly:

- (i) physical contact and advances;
- (ii) requests or demands for sexual favors;
- (iii) making remarks of a sexual nature;
- (iv) displaying pornography;
- (v) any other unwelcome conduct, whether physical, verbal, or non-verbal, of a sexual character.

While these definitions may appear similar, their interpretations can vary. The definitions outlined above do not restrict the perpetrator or victim to individuals of a specific sex. The nature of the actions is broad enough to include behaviors by any individual towards any other individual.

#### **(I) Other Unwanted Physical, Verbal, Or Non-Verbal Conduct Of A Sexual Nature**

This clause is designed to include any additional actions that the victim perceives as unwelcome and objectionable.

In the case of *Sanchez v. City of Miami*<sup>21</sup> Beach, the Court upheld a jury's decision in favor of a female police officer who experienced harassment from male colleagues for not adhering to their standards of acceptable femininity. She was subjected to sexually explicit sounds broadcasted over the police radio.

Following the #MeToo movement<sup>22</sup>, numerous instances of sexual harassment against women in the workplace have come to light. As a direct consequence, men who have faced abuse began to come forward, leading to the emergence of a counter-movement known as #MenToo, which highlighted cases of harassment against men. Notable figures in the film industry, such as M.J. Akbar, whose defamation lawsuit was recently dismissed, Kollywood lyricist Vairamuthu, and Bollywood actor Nana Patekar, have faced allegations of sexual harassment from multiple women as part of the #MeToo movement. The #MenToo initiative does not oppose the essential protections afforded to women; rather, it raises concerns about false accusations against men, which can adversely affect their employment, family dynamics, and social standing, leaving them vulnerable without adequate support.

Section 3 of the Act outlines the prevention of sexual harassment:

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<sup>21</sup> 720 F. Supp. 974 (S.D. Fla. 1989)

<sup>22</sup> Now a #MenToo movement to 'expose' harassment by women

- (1) No woman shall be subjected to sexual harassment in any workplace.
- (2) The following situations, among others, may constitute sexual harassment if they occur or are related to any act or behavior of sexual harassment:
  - (i) an implied or explicit promise of favorable treatment in her employment;
  - (ii) an implied or explicit threat of adverse treatment in her employment;
  - (iii) an implied or explicit threat regarding her current or future employment status;
  - (iv) interference with her work or the creation of an intimidating, offensive, or hostile work environment;
  - (v) humiliating treatment that could impact her health or safety.

### **(J) The Necessity For A Gender-Neutral Definition**

Sexual harassment can affect individuals regardless of their age, gender, marital status, social standing, or educational qualifications. While women are often perceived as more vulnerable and consequently experience higher rates of abuse, this perspective is also reflected in the attitudes of lawmakers and judicial authorities. The issue of sexual harassment against women has garnered significant attention, leading to widespread protests, legislation, and policies aimed at their protection. However, the situation for men is markedly different. Increasingly, there are reports of sexual harassment involving men as victims. Women in positions of authority may exploit their power, subjecting some men to unwanted advances, such as pressuring them to attend social events, consume alcohol, or engage in dancing. Men who refuse such requests may be viewed as lacking masculinity or as being arrogant. The outcome remains unfavorable; they may face dismissal or be labeled as offenders. This creates a pervasive anxiety among men when interacting socially with women.

## **III. JUDICIAL PRONOUNCEMENTS POST-ENACTMENT OF THE STATUTE**

An examination of several recent rulings reveals various challenges encountered in the application of the Act.

### **1. Vidya Akhave v. Union Of India & Ors<sup>23</sup>**

In this case, the employee petitioner experienced sexual harassment from her supervisor, yet her initial complaint was disregarded. Subsequently, she submitted another complaint requesting the formation of an Internal Complaints Committee (IC), which was mandated by the Supreme Court of India in the landmark case of *Vishakha v. State of Rajasthan*. Following

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<sup>23</sup> (2017) 1 LLR 357

the IC's findings, the Disciplinary Authority issued a ruling that included (a) demoting the Supervisor by two ranks, (b) transferring him to a different city, and (c) imposing a salary reduction. The Petitioner, however, argued that the disciplinary action was insufficiently severe. Citing the precedent set in *Om Kumar v. Union of India*<sup>24</sup>, the petition was ultimately dismissed. The Court determined that any interference with the Order would only be warranted if it met the standards established by the Wednesbury Principle. Nonetheless, it acknowledged that the obligation for employers to establish an IC is compulsory and noted that numerous organizations, both public and private, have failed to comply with this requirement.

This ruling indicates that the legislative intent has largely been overlooked by numerous employers, and in the absence of an Internal Committee (IC), the prospect of the victim obtaining justice under the Act remains a distant aspiration.

## **2. Dr. Punita K. Sodhi v. Union Of India & Ors<sup>25</sup>.**

In the case of *Dr. Punita K. Sodhi v. Union of India & Others*, the petitioner, Dr. Sodhi, served as an Assistant Professor in Ophthalmology at Lady Harding Medical College (LMC), which operates under the Ministry of Health and Family Welfare (MHFW). She experienced repeated instances of sexual harassment from Dr. Malik, who approached her with the knowledge that her husband was stationed elsewhere and that she was responsible for raising two young children. He exploited every opportunity to work closely with her, despite her formal requests to the authorities for the transfer of the perpetrator due to his inappropriate conduct. When she ultimately reported the harassment to the IC, she faced a countercharge that questioned her academic performance. It is noteworthy that the IC comprised three doctors who were junior to the perpetrator, and the committee was not formed in accordance with the established guidelines, which stipulate that at least 50% of the members should be women and that an external member should be included. Consequently, the outcome was predictable; not only was the perpetrator exonerated, but the committee also issued a notice to the victim, demanding an explanation as to why she should not face action for allegedly making false sexual harassment claims against him. Upon escalating the issue to the National Commission for Women (NCW), a new inquiry was initiated, yet it involved the same trio of doctors. Aware of the likely outcome, Dr. Sodhi declined to appear before them. Subsequently, a writ was filed, and the Court noted that during the inquiry process, it is a fundamental principle to prevent the complainant and the accused from sharing the same work environment, as this would hinder an

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<sup>24</sup> (2001) 2 SCC 386

<sup>25</sup> 2010 (172) DLT 409.

impartial investigation. This underscores the necessity for the IC to adopt a highly objective stance when addressing complaints of sexual harassment.

### **3. Dr. Malabika Battacharjee v. Internal Complaint Committee, Vivekananda College & Ors<sup>26</sup>**

In a recent ruling delivered on November 27, 2020, the Honorable High Court determined that the definition provided in Section 2(n) of the Act “cannot be a static concept and must be interpreted within the context of social perspectives.” The case addressed the issue of same-sex sexual harassment on campus, with the petitioner arguing that such harassment fell outside the scope of the Act. The Court ruled that the complaint could not be dismissed solely because it involved a perpetrator of the same sex, thus establishing a significant precedent that affirms the applicability of the Act to cases of same-sex sexual harassment.

#### **(A) False Cases Under The Act**

Section 14 of the Act<sup>27</sup> establishes the framework for addressing false complaints, with the procedures for initiating such actions outlined in Rule 10<sup>28</sup>. The legislature acknowledged the potential for false allegations when drafting the Act, recognizing that previous laws aimed at protecting women have often been misused. Notable examples include Section 498A of the Indian Penal Code which is Section 84 of *Bhartiya Nyaya Sanhita* and the Domestic Violence Act<sup>29</sup>. Below are several high-profile incidents of false accusations under the Act that have garnered significant media attention:

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<sup>26</sup> WPA N. 9141/2000, High court at Calcutta

<sup>27</sup> (1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

<sup>28</sup> Rule 10. Action for false or malicious complaint or false evidence.- Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of rule 9

<sup>29</sup> Protection of Women from Domestic Violence Act, 2005



- i) In a case presented before the Hon'ble Delhi High Court, the legislation addressing false complaints encompasses not only the alleged perpetrator but also the victim, who may face re-victimization through the submission of a false allegation against her<sup>30</sup>.
- ii) In the incident during the COVID-19 pandemic, a research student accused Dr. Suresh Arker from the Dharwad Institute of Mental Health and Neurosciences (DIMHANS) of sexual harassment. Following an investigation by the Internal Committee, it was determined that the allegations were unfounded<sup>31</sup>.
- iii) In the matter of P. Krishna Bhat, his promotion to the High Court was delayed due to accusations of false sexual harassment made against him. The complaint was ultimately deemed baseless, and he was subsequently elevated. This situation raises concerns among the general public regarding the vulnerability of individuals in high-ranking positions to such unfounded attacks.
- iv) Air India pilots Aditya Chopra and Amit Khanna faced accusations of inappropriate conduct from air hostess Komal Singh, who claimed lewd behavior occurred in the cockpit. An investigative committee from Air India later found the allegations to be false, revealing that Komal had actually violated flight protocols by entering the cockpit when she was not permitted. Furthermore, when the pilots requested her to leave, she refused, leading to her making false claims.
- v) Another notable case that garnered media attention involved KPMG, where a female executive sued four of its senior leaders, alleging they failed to address her complaints of sexual harassment against three of her senior colleagues. It was later revealed that the four executives had indeed established a committee to investigate the allegations; however, the

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<sup>30</sup> Delhi HC imposes Rs 50,000 cost on woman for filing false sexual harassment plea, INDIA TODAY ( Jul 12, 2019) <https://www.indiatoday.in/india/story/delhi-high-court-rs-50000-cost-woman-false-sexual-harassment-plea-1567985-2019-07-12-> last visited on march 10,2025

<sup>31</sup> Charges of sexual harassment false: Dimhans, TIMES OF INDIA (march 10,2025) [https://timesofindia.indiatimes.com/city/hubballi/charges-of-sexual-harassment-false-dimhans/articleshow/75742949.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://timesofindia.indiatimes.com/city/hubballi/charges-of-sexual-harassment-false-dimhans/articleshow/75742949.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

complainant did not appear before the committee. This case also resulted in a media-driven conviction.

- vi) Another notable case involves Dominic Strauss-Kahn, the head of the International Monetary Fund, who faced accusations of attempted harassment by a hotel maid, which were later proven to be unfounded.
- vii) Recently, Anish Vohra, a representative of IBM, filed a complaint of sexual misconduct against his female supervisor, who was accused of using inappropriate language during their conversations at work. As a result of this complaint, the company compelled him to resign and he was also required to pay a substantial sum in compensation. This situation exemplifies the societal tendency to dismiss men without justification when allegations are made against them.
- viii) An allegation against Ranjan Gogoi, the Chief Justice of India, was declared false following an investigation. The accuser, a former employee of the Supreme Court, claimed that on October 10 and 11, 2018, the judge pressed his body against hers in his office. She further alleged that she faced threats of adverse repercussions if she reported the incident and that she and her family endured significant distress as a result. On April 30, she retracted her complaint. If even the Chief Justice of India is not immune to false accusations, it raises concerns about the protection of less privileged male employees from similar claims. In a recent ruling<sup>32</sup>, the Honorable Supreme Court of India reminded the judiciary of its responsibilities, stating, “Courts should be aware of both ends of the spectrum the necessity to uphold criminal law enforcement on one side and the imperative to prevent the law from being misused for targeted harassment on the other.” While justice must always be upheld, it is essential that both parties receive equitable treatment, and the gender of one party should not serve as a weapon against the other.

### **(B) Sexual Harassment Against Men That Made Headlines**

The nation was taken aback when Saif Ali Khan recounted an incident of sexual harassment he experienced during his first year in the Bollywood industry. While filming his debut movie, he received weekly payments from a female producer who asked him to kiss her. On every occasion, she made the payment to him. Ultimately, he withdrew from that project, and the film

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<sup>32</sup> Arnab Manoranjan Goswami v. State of Maharashtra, 2020 SCC Online SC 964

was never produced with his involvement. Another instance of shocking inappropriate behavior was revealed when a young comedian, Kaneez Surkha, recounted her experience of misconduct at the hands of fellow comedian Aditi Mittal, in front of an audience of 100 people. This incident occurred when Mittal, during a comedy show, kissed Surkha inappropriately and with great intensity, without her consent. This act took place in front of a crowd of progressive individuals. Had a male comedian committed such an act, he would likely have faced accusations and been held accountable for sexual misconduct. Surkha detailed the entire incident on Twitter. Following this event, Aditi Mittal issued an apology for her actions, although she maintained that her kiss was intended to be humorous rather than sexual in nature.

#### **IV. CONCLUSION**

The Act not only represents an essential step in fulfilling the obligations of CEDAW signatories but also enhances the principles established by the Hon'ble Supreme Court in the Visakha case. Although it took 15 years for the Act to develop from the Supreme Court's guidelines, it overlooked the significant social changes that occurred during that period, which should have been integrated into this dynamic piece of legislation that was urgently needed. Women have been safeguarded under criminal law, and the Act provides additional protection against similar actions. While the penal code offers more precise protections due to its alignment with criminal jurisprudence, labor legislation aimed at employee protection should ideally be gender-neutral. It is important to note that the roles of the Internal Committee (IC) and the Local Committee (LC) have been questioned, as highlighted in the Justice Verma Committee report, which recommended the establishment of an Employee Tribunal for this purpose. Furthermore, the Act was formulated without any available data or analysis, and there was a lack of comparative studies with more progressive countries. Many nations have already adopted gender-neutral rape laws, yet workplace protections remain significantly behind. Additionally, the recognition and inclusion of the third gender in the workforce are rarely addressed.

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