
GENDER-NEUTRALITY VERSUS GENDER-SPECIFIC PROTECTION: A COMPARATIVE CONSTITUTIONAL ANALYSIS OF THE POSH ACT, 2013

By Nishant Aggarwal¹

Abstract

Sexual harassment at the workplace has been firmly recognised within Indian constitutional jurisprudence as a violation of fundamental rights, particularly the guarantees of equality and dignity under Articles 14 and 21 of the Constitution of India. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted to translate this constitutional mandate into an enforceable statutory framework by institutionalising preventive mechanisms and redressal procedures. While the Act represents a significant legislative intervention in addressing workplace harassment, it adopts a strictly gender-specific approach by confining statutory protection exclusively to women.

This paper critically examines whether the continued gender-specific framework of the POSH Act remains constitutionally sustainable in light of evolving equality jurisprudence and contemporary understandings of dignity. Using a doctrinal method grounded in constitutional interpretation, the paper analyses the compatibility of the Act with Articles 14 and 21, focusing on the doctrines of reasonable classification, arbitrariness, and under-inclusiveness. The study traces the evolution of workplace sexual harassment law in India from the judicial formulation of the Vishaka Guidelines to the enactment and operation of the POSH Act, highlighting the shift from constitutional universality to statutory selectivity.

The paper further undertakes a comparative analysis of workplace harassment regimes in the United Kingdom and the United States, where gender-neutral frameworks conceptualise sexual harassment as a form of discrimination rooted in power imbalance rather than gender identity alone. It argues that while women-centric protection under the POSH Act was constitutionally justified at the time of enactment due to historical and structural disadvantage, the permanent exclusion of other similarly situated victims increasingly renders the framework constitutionally incomplete. The paper concludes that a calibrated statutory reform, expanding access to remedies while retaining gender-sensitive safeguards, is necessary to harmonise the POSH Act with constitutional principles of equality and dignity.

¹ The author is a law student at School of Law, Christ (Deemed to be University), Bangalore.

I. INTRODUCTION

Sexual harassment at the workplace is no longer perceived merely as an instance of individual misconduct, moral impropriety, or a lapse in professional etiquette. Contemporary constitutional and labour law scholarship increasingly recognises workplace sexual harassment as a structural and systemic harm that directly undermines equality, dignity, autonomy, and the right to safe and secure working conditions.² This shift reflects a broader understanding that harassment is not an isolated aberration but a manifestation of entrenched power imbalances within professional environments, where hierarchical authority, economic dependence, and social conditioning often converge to silence victims and normalise abusive conduct.³

Workplaces are not neutral spaces. They are shaped by unequal distributions of power, authority, and vulnerability. Sexual harassment operates within these structures, using professional dependence and institutional hierarchy as tools of coercion. Consequently, legal responses that focus solely on individual culpability or post-facto punishment fail to address the systemic nature of the harm. Effective legal regulation of workplace sexual harassment therefore requires a framework that recognises its constitutional dimensions and imposes affirmative obligations on institutions rather than merely responding to individual wrongdoing.⁴

In India, the constitutional understanding of workplace sexual harassment developed primarily through judicial intervention rather than legislative foresight. For a considerable period, Indian law lacked a comprehensive framework addressing sexual harassment in professional spaces. Victims were compelled to rely on fragmented provisions of criminal law that were neither designed to capture the institutional character of workplace harassment nor equipped to impose preventive duties on employers.⁵ These provisions addressed isolated criminal acts but failed to recognise harassment as a continuing violation embedded in organisational structures. As a result, legal responses remained reactive, individualised, and largely ineffective in addressing the root causes of workplace harassment.

The absence of a specialised legal framework also contributed to widespread under-reporting. Victims often faced fear of retaliation, professional stigma, and disbelief, particularly in hierarchical work environments. Without institutional mechanisms for redress, complaints were frequently suppressed or trivialised, reinforcing a culture of silence.⁶ This legal vacuum highlighted the inadequacy of existing remedies and underscored the need for a constitutional approach that treated workplace sexual harassment as a violation of fundamental rights rather than a private dispute.

² Catharine A. MacKinnon, *Sexual Harassment of Working Women* 1–3 (Yale Univ. Press 1979).

³ Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 Yale L.J. 1683 (1998)

⁴ Tarunabh Khaitan, *Equality: Legislative Review under Article 14*, 4 NUJS L. Rev. 1 (2011)

⁵ Flavia Agnes, *Sexual Harassment Law in India*, 47 Econ. & Pol. Wkly. 22 (2012)

⁶ Law Comm'n of India, 201st Report on Sexual Harassment at Workplace (2006)

The Supreme Court's decision in *Vishaka v. State of Rajasthan* marked a decisive turning point in this trajectory.⁷ The Court explicitly recognised sexual harassment at the workplace as a violation of fundamental rights, locating the harm within the guarantees of equality, dignity, and the freedom to practise any profession. By framing binding guidelines in the absence of legislation, the Court transformed workplace sexual harassment from a matter of moral concern into a constitutional wrong. The judgment imposed affirmative obligations upon both the State and employers to prevent harassment, signalling a shift from punitive responses to structural prevention.

The significance of *Vishaka* lies not merely in the guidelines it formulated but in the constitutional reasoning that underpinned them. The Court recognised that safe working conditions are intrinsic to the right to life and dignity, and that equality in employment is illusory if workplaces are hostile or unsafe.⁸ By drawing upon international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination Against Women, the Court reinforced the constitutional obligation of the State to address workplace sexual harassment as part of its duty to protect fundamental rights.⁹

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was intended to give statutory expression to these constitutional principles. The legislation sought to institutionalise preventive mechanisms, establish accessible grievance redressal procedures, and assign clear responsibilities to employers.¹⁰ It represented a significant legislative acknowledgment of the systemic nature of workplace sexual harassment and the necessity of institutional accountability. At the time of its enactment, the statute was widely welcomed as a progressive intervention, particularly in a socio-legal context marked by patriarchal norms, gendered power hierarchies, and the historical marginalisation of women's experiences in professional spaces.

However, despite its progressive intent, the statutory framework adopts a strictly gender-specific approach. The Act confines its definition of an aggrieved person exclusively to women, thereby excluding men and persons of diverse gender identities from its protective ambit.¹¹ This exclusion is not incidental but structural, as it determines who may access the statutory mechanisms of prevention and redress. While women remain disproportionately affected by workplace sexual harassment, the harm itself is not inherently gender-exclusive. Individuals of different genders may experience comparable violations of dignity, safety, and autonomy within professional environments.

This legislative choice raises a fundamental constitutional question. If workplace sexual harassment is recognised as a violation of dignity and equality, can access to statutory remedies be permanently restricted on the basis of gender alone? Article 14 guarantees equality before the law and equal protection of laws to all persons, while Article 21 recognises dignity as an

⁷ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

⁹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹¹ *Id.* § 2(a)

intrinsic component of the right to life.¹² Constitutional jurisprudence has consistently emphasised that equality is substantive rather than merely formal, requiring the law to respond to comparable harm in a non-arbitrary and inclusive manner. When individuals who suffer similar violations of dignity and safety are excluded from statutory protection, concerns of under-inclusiveness and arbitrariness inevitably arise.¹³

The tension underlying the existing legal framework therefore lies between protective discrimination and constitutional inclusivity. While special measures for women may be justified as a response to historical disadvantage and structural inequality, constitutional law does not endorse permanent exclusion of other similarly situated individuals. Protective legislation must remain proportionate, responsive to evolving social realities, and aligned with the broader constitutional commitment to substantive equality and dignity.¹⁴

This paper interrogates whether the gender-specific structure of the POSH Act continues to withstand constitutional scrutiny in light of evolving equality jurisprudence. It does not seek to dilute safeguards for women or deny the structural vulnerabilities they face in professional spaces. Instead, it critically examines whether the continued exclusion of other victims from statutory remedies remains constitutionally defensible, or whether it renders the framework incomplete when measured against contemporary constitutional principles. By situating the POSH Act within the broader evolution of workplace sexual harassment law and constitutional doctrine, the paper aims to assess whether the statute, while progressive in intent, requires recalibration to fully realise the constitutional values it seeks to uphold.

II. LITERATURE REVIEW

Academic engagement with workplace sexual harassment law has evolved across multiple disciplines, including feminist legal theory, constitutional law, labour law, and comparative human rights scholarship. Early legal scholarship treated sexual harassment primarily as a form of personal misconduct or moral impropriety, often relegating it to the margins of employment law. This approach failed to recognise the structural dimensions of harassment and its impact on equality and participation in the workplace. Feminist legal theorists played a central role in challenging this narrow framing by reconceptualising sexual harassment as a manifestation of systemic power imbalance rather than isolated deviant behaviour.

Catharine MacKinnon's foundational work remains central to this reconceptualization. She argued that sexual harassment constitutes sex-based discrimination because it reinforces women's subordinate position in professional hierarchies and conditions access to employment on sexual compliance or tolerance of abuse.¹⁵ MacKinnon's analysis shifted the focus from individual intent to structural inequality, laying the groundwork for recognising sexual harassment as an equality violation rather than merely a workplace grievance. This theoretical

¹² Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608

¹³ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3

¹⁴ Joseph Shine v. Union of India, (2019) 3 SCC 39

¹⁵ Catharine A. MacKinnon, *Sexual Harassment of Working Women* (Yale Univ. Press 1979)

framework significantly influenced the development of anti-harassment jurisprudence in several jurisdictions, including India.

Indian feminist scholars adopted and adapted these insights to local socio-legal conditions. They highlighted how patriarchal norms, economic dependence, and hierarchical workplaces exacerbate women's vulnerability to harassment and silence complaints. Scholars such as Flavia Agnes argued that formal equality frameworks are insufficient in the Indian context, where substantive inequalities shape access to justice and institutional responses to gender-based harm.¹⁶ This body of work strongly influenced the Supreme Court's approach in *Vishaka v. State of Rajasthan*, where sexual harassment was explicitly linked to violations of equality and dignity.

The *Vishaka* judgment itself generated extensive academic commentary. Constitutional scholars praised the Court's reliance on international human rights law, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as an example of transformative constitutionalism.¹⁷ The judgment has been analysed as a moment where the Court assumed a quasi-legislative role to fill a normative vacuum and embed gender justice within constitutional interpretation. At the same time, some commentators expressed concern about the limits of judicial law-making and the sustainability of guideline-based regulation in the absence of statutory backing.¹⁸

Following the enactment of the POSH Act in 2013, scholarly focus shifted from judicial innovation to statutory design and implementation. A significant portion of the literature critiques the effectiveness of the Act in practice. Empirical studies and policy analyses point to persistent non-compliance by employers, inadequate constitution of Internal Complaints Committees, lack of training, and procedural delays.¹⁹ Scholars argue that these failures undermine the constitutional promise of dignity and safe working conditions articulated in *Vishaka*. The Supreme Court's decision in *Medha Kotwal Lele v. Union of India* is frequently cited in this context, as it reaffirmed that non-implementation of the *Vishaka* framework amounts to a violation of fundamental rights.²⁰

Beyond implementation concerns, a more recent strand of scholarship interrogates the conceptual limits of the POSH Act itself. These critiques focus on the Act's gender-specific definition of "aggrieved woman" and argue that it results in constitutional under-inclusiveness. Aparna Chandra has examined how equality jurisprudence under Article 14 addresses under-inclusive classifications and cautions that exclusion of similarly situated individuals from legal protection may violate substantive equality principles.²¹ This line of analysis reframes the debate from one of gender politics to constitutional consistency.

¹⁶ Flavia Agnes, *Sexual Harassment Law in India*, 47 *Econ. & Pol. Wkly.* 22 (2012)

¹⁷ Ratna Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side*, 28 *Sydney L. Rev.* 665 (2006)

¹⁸ Upendra Baxi, *The Supreme Court under Trial*, 34 *Econ. & Pol. Wkly.* 891 (1999)

¹⁹ National Commission for Women, *Review of Sexual Harassment at Workplace Law* (2017)

²⁰ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297

²¹ Aparna Chandra, *Under-Inclusive Equality*, 8 *NUJS L. Rev.* 1 (2015)

Comparative constitutional scholars further strengthen this critique by examining how other jurisdictions address workplace harassment through gender-neutral frameworks. Studies of UK and US law demonstrate that recognising sexual harassment as a form of discrimination or dignity violation does not require gender-exclusive statutory protection.²² Instead, these frameworks focus on the nature of the harm and the abuse of power, while still acknowledging that women are disproportionately affected. Comparative literature suggests that inclusive legal regimes may enhance clarity, consistency, and access to remedies without undermining gender-sensitive safeguards.

At the same time, feminist critiques of gender neutrality caution against uncritical expansion of statutory protection. Scholars such as Pratiksha Baxi warn that formal neutrality may obscure structural inequalities and weaken hard-won protections for women if not carefully designed.²³ This literature emphasises that gender-neutral reform must be accompanied by safeguards that account for power asymmetries, social conditioning, and differential access to justice.

Taken together, the literature reveals a clear shift in academic discourse. While early scholarship prioritised the need for women-specific protection to counter systemic discrimination, contemporary constitutional analysis increasingly interrogates whether permanent gender exclusivity remains justified. The unresolved tension between protective discrimination and constitutional inclusivity forms the core intellectual backdrop against which this paper situates its analysis of the POSH Act.

III. EVOLUTION OF WORKPLACE SEXUAL HARASSMENT LAW IN INDIA

The legal regulation of workplace sexual harassment in India did not emerge through a gradual legislative process but through judicial recognition of a constitutional vacuum. Prior to the late 1990s, Indian law did not conceptualise workplace sexual harassment as a distinct legal wrong. Victims were compelled to rely on general provisions of the Indian Penal Code dealing with offences such as outraging modesty or criminal intimidation.²⁴ These provisions were framed to address isolated criminal conduct and were ill-equipped to capture the structural and institutional dimensions of harassment occurring within professional environments. Crucially, they imposed no affirmative obligations on employers and offered no preventive framework.

This absence of a specialised legal regime reflected a deeper normative failure. Workplace harassment was often trivialised, normalised, or treated as a personal dispute rather than a systemic violation of rights. The lack of institutional redress mechanisms created an environment where victims faced retaliation, stigma, and professional isolation, resulting in widespread under-reporting.²⁵ The legal framework thus failed both in prevention and in remedy.

²² Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 Yale L.J. 1683 (1998)

²³ Pratiksha Baxi, *Rethinking Gender Neutrality*, 50 Econ. & Pol. Wkly. 15 (2015)

²⁴ Indian Penal Code, 1860, §§ 294, 354, 506

²⁵ Law Comm'n of India, 201st Report on Sexual Harassment at Workplace (2006)

The turning point came with the Supreme Court's decision in *Vishaka v. State of Rajasthan*.²⁶ In this case, the Court was confronted with the gang rape of a social worker during the course of her employment and the absence of any effective legal mechanism to address workplace sexual violence. Acknowledging this vacuum, the Court held that sexual harassment at the workplace constitutes a violation of fundamental rights under Articles 14, 15, and 21 of the Constitution, as well as the freedom to practise any profession under Article 19(1)(g). The Court's reasoning marked a decisive shift by recognising workplace sexual harassment as a constitutional harm rather than a matter of internal workplace discipline.

In the absence of legislative action, the Court framed the Vishaka Guidelines, which were declared binding and enforceable until appropriate legislation was enacted. These guidelines imposed affirmative duties on employers to prevent sexual harassment, mandated the establishment of complaints committees, and articulated procedural safeguards for inquiry and redress. The significance of *Vishaka* lies not merely in the content of the guidelines but in the constitutional logic underlying them. The Court recognised that safe working conditions are intrinsic to the right to life and dignity, and that equality in employment is illusory if workplaces are hostile or unsafe.²⁷

The Vishaka framework also marked an important moment in the Court's engagement with international law. By relying on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Court reinforced the constitutional obligation of the State to protect women from workplace harassment as part of its commitment to gender equality.²⁸ This approach embedded international human rights norms within domestic constitutional interpretation and strengthened the normative foundation of the guidelines.

Despite the binding nature of the Vishaka Guidelines, implementation across workplaces remained uneven. Many employers failed to constitute complaints committees, and where committees existed, they often lacked independence or procedural integrity. This persistent non-compliance prompted further judicial intervention. In *Medha Kotwal Lele v. Union of India*, the Supreme Court reiterated that the Vishaka Guidelines were not advisory and that failure to implement them amounted to a violation of fundamental rights.²⁹ The Court directed all States and employers to ensure strict compliance, underscoring the constitutional status of workplace harassment regulation.

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was intended to give statutory force to these judicial mandates. The Act institutionalised Internal Complaints Committees, prescribed detailed inquiry procedures, and imposed explicit duties on employers to prevent and redress harassment.³⁰ From a legislative

²⁶ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

²⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

²⁸ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13

²⁹ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297

³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

perspective, the Act represented a significant acknowledgment of workplace sexual harassment as a systemic issue requiring institutional accountability rather than ad hoc responses.

However, in codifying the Vishaka framework, the legislature made a deliberate choice to restrict statutory protection exclusively to women. While the Vishaka Guidelines spoke in broader constitutional terms of dignity and equality, the POSH Act defines the “aggrieved person” narrowly, thereby excluding men and persons of diverse gender identities from its ambit.³¹ This shift marked a movement from constitutional universality to statutory selectivity.

IV. CONSTITUTIONAL ANALYSIS OF THE POSH ACT UNDER ARTICLES 14 AND 21

A. Article 14: Equality, Reasonable Classification, and Under-Inclusiveness

Article 14 of the Constitution guarantees equality before the law and equal protection of laws to all persons. Indian equality jurisprudence has evolved from a narrow formal conception of equality to a substantive model that condemns arbitrariness, unreasonable classification, and exclusion that lacks constitutional justification.³² The classical test under Article 14 requires that any legislative classification must be founded on an intelligible differentia and that such differentia must bear a rational nexus to the object sought to be achieved.³³

At the time of its enactment, the POSH Act’s classification of women as the exclusive beneficiaries of statutory protection satisfied this test. The legislature recognised that women, as a class, faced historical and structural disadvantage in workplaces characterised by patriarchal hierarchies, economic dependence, and social stigma. Sexual harassment disproportionately affected women, and the absence of legal protection reinforced systemic exclusion from professional spaces. The object of the Act to prevent and redress workplace sexual harassment therefore bore a rational nexus with a women-centric framework.

However, Article 14 analysis does not end with initial justification. Constitutional scrutiny is dynamic rather than static. The Supreme Court has repeatedly held that a classification that may have been constitutionally valid at one point in time can become arbitrary if it fails to respond to changing social realities. In *E.P. Royappa v. State of Tamil Nadu*, the Court famously held that arbitrariness is antithetical to equality, thereby expanding Article 14 beyond traditional classification analysis.³⁴ Under this expanded doctrine, legislation may violate Article 14 not only by hostile discrimination but also by unreasonable exclusion.

The contemporary constitutional concern with the POSH Act lies in its permanent under-inclusiveness. Sexual harassment is not a harm confined exclusively to women. Men and persons of diverse gender identities may experience comparable violations of dignity, safety, and autonomy in workplace environments, often arising from abuse of authority rather than gender alone. When individuals who are similarly situated in terms of the nature of harm

³¹ Id. § 2(a)

³² *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75

³³ *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191

³⁴ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3

suffered are excluded from statutory protection, the classification risks losing its rational nexus with the object of the legislation.

Indian constitutional jurisprudence increasingly recognises under-inclusiveness as a ground of constitutional infirmity. In *Navtej Singh Johar v. Union of India*, the Supreme Court held that the Constitution does not permit selective denial of dignity and protection to certain classes of persons when the harm sought to be addressed is universal in nature.³⁵ Although *Navtej* arose in a different context, the principle that constitutional protection cannot be confined to a privileged subset of affected persons is directly relevant. A statutory framework that recognises sexual harassment as a violation of dignity but restricts remedies to one gender alone raises serious equality concerns.

The State may argue that Article 15(3), which permits special provisions for women, justifies the gender-specific structure of the POSH Act. While this argument carries weight, it is not dispositive. Article 15(3) enables protective discrimination but does not mandate exclusion of all others. Protective measures must remain proportionate and constitutionally reasonable. When protection for one group operates through the complete denial of remedies to others who suffer comparable harm, the measure risks crossing the line from protection into arbitrary exclusion.³⁶

Thus, while the POSH Act may have been constitutionally valid at inception, its continued gender exclusivity increasingly appears difficult to justify under Article 14's evolved understanding of equality. The issue is not whether women deserve special protection—they undoubtedly do—but whether such protection must necessarily operate through permanent statutory exclusion of other victims.

B. Article 21: Dignity, Autonomy, and Safe Working Conditions

Article 21 has been expansively interpreted by the Supreme Court to include the right to live with dignity, autonomy, and security. Beginning with *Maneka Gandhi v. Union of India*, the Court has consistently held that the right to life is not confined to mere animal existence but encompasses conditions necessary for meaningful human existence.³⁷ Dignity has emerged as a central constitutional value flowing from Article 21.

In *Vishaka v. State of Rajasthan*, the Court explicitly recognised workplace sexual harassment as a violation of dignity and the right to life.³⁸ The judgment conceptualised safe working conditions as an integral component of Article 21 and imposed positive obligations on employers and the State to prevent harassment. Importantly, dignity, as a constitutional value, is universal. It is not contingent on gender, class, or identity.

³⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

³⁶ *Joseph Shine v. Union of India*, (2019) 3 SCC 39

³⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

³⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

The POSH Act acknowledges sexual harassment as a violation of dignity but limits statutory recognition of this violation to women alone. While constitutional remedies under Article 32 or 226 may theoretically remain available to other victims, the absence of specialised statutory mechanisms creates a fragmented protection regime. In practical terms, statutory remedies are far more accessible, structured, and effective than abstract constitutional claims. Denial of access to such mechanisms, therefore results in substantive, not merely formal, deprivation of the right to dignity.

The Supreme Court has repeatedly held that Article 21 imposes positive obligations on the State. In cases concerning health, environment, and labour welfare, the Court has emphasised that the State must create institutional frameworks that meaningfully protect dignity and safety.³⁹ When a statute recognises a particular harm as constitutionally significant but restricts institutional remedies to a limited class, the State's obligation under Article 21 is only partially discharged.

Moreover, workplace sexual harassment directly implicates autonomy and decisional freedom. Fear of harassment constrains professional choices, suppresses participation, and reinforces exclusion from public and economic life. These effects are not gender-exclusive. By denying statutory protection to certain victims, the POSH Act indirectly permits continuing violations of autonomy and dignity, undermining the substantive content of Article 21.

C. Constitutional Incompleteness, Not Unconstitutionality

It is important to clarify the nature of the constitutional critique advanced here. The argument is not that the POSH Act is unconstitutional per se. Rather, the claim is that the statute is constitutionally incomplete. It recognises a constitutional harm but does not extend statutory protection to all persons who may suffer that harm. This incompleteness becomes increasingly problematic as constitutional jurisprudence evolves towards inclusivity, dignity, and substantive equality.

A finding of constitutional incompleteness does not necessitate striking down the statute. Instead, it calls for legislative recalibration. Expanding the definition of "aggrieved person" to include all victims, while retaining gender-sensitive safeguards, would better align the POSH Act with Articles 14 and 21. Such an approach preserves the protective intent of the legislation while fulfilling the Constitution's universal guarantees.

V. COMPARATIVE ANALYSIS: UNITED KINGDOM AND UNITED STATES

A comparative examination of workplace sexual harassment laws in other constitutional democracies provides useful insight into how legal systems reconcile the protection of vulnerable groups with the constitutional commitment to equality and inclusivity. The experiences of the United Kingdom and the United States are particularly instructive, as both jurisdictions recognise sexual harassment as a serious workplace wrong while adopting gender-neutral legal frameworks.

³⁹ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608

A. United Kingdom

In the United Kingdom, workplace sexual harassment is primarily regulated under the Equality Act, 2010. The Act defines harassment as unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment.⁴⁰ Significantly, the statutory framework is gender-neutral: protection is available to all persons, regardless of gender, and the focus is placed on the nature of the conduct and the harm caused rather than the identity of the victim.

UK courts have consistently interpreted workplace harassment as a violation of dignity and equality rather than a private employment dispute. In *Majrowski v. Guy's and St Thomas' NHS Trust*, the House of Lords affirmed that employers may be held vicariously liable for harassment committed by employees in the course of employment.⁴¹ This emphasis on employer responsibility reflects an understanding that harassment arises from organisational structures and power relations rather than isolated individual behaviour.

The UK framework demonstrates that gender-neutral protection does not dilute safeguards for women. Instead, it reinforces the normative condemnation of harassment as incompatible with workplace equality. By focusing on dignity and hostile work environments, the law accommodates the reality that women remain disproportionately affected while ensuring that similarly situated victims are not excluded from protection.

From a constitutional perspective, the UK approach avoids the problem of under-inclusiveness that characterises the POSH Act. By extending protection to all persons while recognising power imbalances through judicial interpretation and employer liability, the framework aligns equality with inclusivity without resorting to formal exclusion.

B. United States

In the United States, workplace sexual harassment is addressed under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment. Sexual harassment was recognised as a form of sex discrimination by the U.S. Supreme Court in *Meritor Savings Bank v. Vinson*, where the Court held that hostile work environment harassment violates Title VII even in the absence of economic injury.⁴² The Court's reasoning framed harassment as an equality violation rather than mere misconduct.

Crucially, U.S. jurisprudence has consistently rejected gender-exclusive interpretations of harassment law. In *Oncale v. Sundowner Offshore Services*, the Supreme Court held that same-sex harassment is actionable under Title VII, emphasising that the central inquiry is whether the conduct constitutes discrimination, not the gender of the victim or the perpetrator.⁴³ This

⁴⁰ Equality Act 2010, c. 15, § 26 (UK)

⁴¹ *Majrowski v. Guy's & St Thomas' NHS Trust*, [2006] UKHL 34

⁴² *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986)

⁴³ *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998)

reasoning underscores the principle that workplace harassment arises from abuse of power and discriminatory conduct rather than gender identity alone.

The U.S. framework also places significant emphasis on employer liability and preventive responsibility. Subsequent decisions have developed standards for employer accountability based on the existence of preventive policies and grievance mechanisms. This approach mirrors, in part, the preventive orientation of the POSH Act but applies it within an inclusive statutory framework.

From a comparative standpoint, the U.S. experience demonstrates that gender-neutral harassment laws can coexist with robust recognition of gender-based vulnerability. Courts continue to acknowledge that women face disproportionate harm, yet statutory protection is not restricted on that basis. Instead, vulnerability is addressed through evidentiary standards, judicial interpretation, and remedies rather than through exclusion.

C. Comparative Lessons for the Indian Context

The experiences of the United Kingdom and the United States offer two important lessons for the Indian context. First, both jurisdictions conceptualise workplace sexual harassment as a violation of dignity and equality rather than as a gender-specific grievance. This conceptualisation allows legal protection to remain inclusive while still responding sensitively to power asymmetries. Second, neither framework relies on statutory exclusion to protect women. Instead, protection is achieved through employer accountability, judicial interpretation, and institutional safeguards.

These comparative models do not suggest that India must mechanically adopt gender-neutral legislation. Socio-legal contexts differ, and women in India continue to face distinct structural vulnerabilities. However, the comparative experience demonstrates that inclusivity and protection are not mutually exclusive. A statutory framework that extends protection to all victims while retaining gender-sensitive safeguards is both feasible and constitutionally coherent.

By contrast, the POSH Act's gender-exclusive design appears increasingly anomalous when viewed against these comparative standards. While constitutionally justified at inception, its continued exclusion of other victims lacks strong comparative or constitutional support. Comparative analysis thus strengthens the argument that recalibrating the POSH Act to include all victims, without diluting protections for women, would better align Indian law with contemporary equality and dignity jurisprudence.

VI. CONCLUSION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents a significant milestone in Indian workplace jurisprudence. By statutorily recognising sexual harassment as a serious legal wrong and institutionalising preventive and remedial mechanisms, the Act translated the constitutional vision articulated in *Vishaka v. State of Rajasthan* into an enforceable legislative framework. In doing so, it acknowledged that

workplace sexual harassment is not merely a matter of individual misconduct but a structural violation of equality, dignity, and safe working conditions.

At the time of its enactment, the gender-specific framework of the POSH Act was constitutionally justified. Women in India have historically faced disproportionate vulnerability to sexual harassment due to entrenched patriarchy, economic dependence, and hierarchical workplace structures. A women-centric statute therefore served an important corrective function by addressing systemic disadvantage and ensuring that constitutional guarantees of equality and dignity were meaningfully realised in professional spaces.

However, constitutional legitimacy is not static. As this paper has demonstrated, the continued exclusion of other similarly situated victims from the statutory framework increasingly raises concerns under Articles 14 and 21 of the Constitution. Equality jurisprudence has evolved from formal classification to a substantive understanding that condemns arbitrariness and under-inclusiveness. Dignity, as a core constitutional value, is universal and cannot be selectively protected. When a statute recognises sexual harassment as a constitutional harm but restricts institutional remedies to a single gender, it risks falling short of the Constitution's broader commitment to inclusivity and substantive justice.

The comparative analysis of the United Kingdom and the United States reinforces this conclusion. Both jurisdictions conceptualise workplace sexual harassment as a violation of dignity and equality rather than as a gender-exclusive grievance. Their gender-neutral frameworks have not diluted protection for women; instead, they have strengthened enforcement by focusing on power imbalance, employer accountability, and hostile work environments. While the Indian socio-legal context differs and warrants gender-sensitive safeguards, comparative experience demonstrates that inclusivity and protection are not mutually exclusive.

Importantly, the argument advanced in this paper is not that the POSH Act is unconstitutional per se. Rather, the statute is best understood as constitutionally incomplete. It fulfils the Constitution's mandate partially by protecting women but does not extend equivalent statutory recognition to all victims of the same constitutional harm. This incompleteness becomes increasingly problematic as constitutional jurisprudence moves towards dignity-centred and inclusive interpretations of fundamental rights.

A calibrated legislative reform offers a constitutionally coherent solution. Expanding the definition of "aggrieved person" to include all victims of workplace sexual harassment, while retaining gender-sensitive procedures and safeguards, would better align the statute with Articles 14 and 21. Such reform need not undermine women's protection; instead, it can preserve the protective intent of the law while eliminating arbitrary exclusion. Safeguards against misuse, contextual assessment of power asymmetries, and specialised training of complaints committees can ensure that inclusivity does not come at the cost of effectiveness.

Ultimately, the constitutional promise of equality and dignity demands more than symbolic protection. It requires legal frameworks that respond to harm in a manner that is inclusive, proportionate, and consistent with evolving constitutional values. Re-examining the gender-

exclusive structure of the POSH Act through the lens of constitutional incompleteness is therefore not a retreat from gender justice but an advancement of it. Aligning workplace harassment law with contemporary constitutional principles would strengthen, rather than weaken, the legitimacy and effectiveness of India's commitment to safe and dignified workplaces for all.

