

**WORKPLACE HARASSMENT AND DISCRIMINATION IN INDIA: A
COMPARATIVE ANALYSIS OF NATIONAL AND INTERNATIONAL LEGAL
FRAMEWORKS FOR GENDER EQUITY**

Dr. Modi Umangkumar Champaklal

Assistant Professor,

Faculty Of Law,

The Maharaja Sayajirao University Of Baroda

ABSTRACT

Workplace harassment and discrimination continue to undermine gender equality, dignity, and safe working conditions in India, despite constitutional guarantees and the enactment of specialised legislation such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This paper situates workplace harassment as a structural and rights-based issue rather than an isolated instance of misconduct, examining how constitutional principles of equality and dignity have been translated into statutory and institutional mechanisms.

The study reviews existing feminist legal scholarship and empirical literature to highlight persistent gaps in implementation, awareness, and institutional autonomy. It outlines clear objectives focused on assessing the effectiveness of statutory safeguards, judicial interventions, and recent criminal law reforms under the Bharatiya Nyaya Sanhita, 2023. Adopting a doctrinal and comparative research methodology, the paper analyses constitutional provisions, statutes, case law, and international instruments such as ILO Convention No. 190 and CEDAW.

The research problem centres on the disconnect between normative legal recognition and lived workplace realities. The findings reveal that India's framework remains largely reactive, compliance-driven, and exclusionary, with weak enforcement and limited emphasis on prevention, employer accountability, and inclusivity. Comparative analysis with jurisdictions such as Sweden, South Africa, and the United Kingdom demonstrates the effectiveness of preventive and accountability-based models. The paper concludes with recommendations advocating a shift towards a preventive, inclusive, and rights-based framework supported by

institutional strengthening, cultural change, and alignment with international labour and human rights standards.

Keywords: Workplace Harassment; Gender Discrimination; POSH Act, 2013; Gender Equity at Work

INTRODUCTION

Workplace harassment and discrimination strike at the very core of equality, dignity, and the right to work in a safe and respectful environment. In India, despite constitutional guarantees and a growing body of protective legislation, gender-based harassment continues to remain a widespread and deeply entrenched problem across sectors. From formal corporate offices and educational institutions to the vast informal economy, unequal power relations, patriarchal attitudes, and silence surrounding misconduct continue to undermine women's participation and advancement in the workforce. Workplace harassment is therefore not merely an individual grievance but a structural issue that reflects broader social inequalities.¹

The constitutional vision of India places equality and dignity at the centre of public and private life. Articles 14, 15, and 16 guarantee equality before law, prohibit discrimination on grounds of sex, and ensure equal opportunity in public employment. Article 21, as interpreted by the judiciary, extends the right to life to include the right to live with dignity, privacy, and safety. The Supreme Court's landmark judgment in *Vishaka v. State of Rajasthan* (1997) was a watershed moment in recognising sexual harassment at the workplace as a violation of fundamental rights. By framing workplace harassment as a constitutional issue rather than a matter of personal misconduct, the Court laid the foundation for a rights-based approach to workplace safety.

The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represented a significant legislative response to *Vishaka*. The law institutionalised preventive and remedial mechanisms through Internal Complaints Committees and Local Complaints Committees, seeking to ensure accessible redressal for women across organised and unorganised sectors. However, more than a decade after its

¹Singh, S., & Kumar, S. (2025). *Gender inequality at the workplace in India: A human rights perspective and critical analysis*. [Journal Name], 16, 79–91.

enactment, the continued prevalence of harassment cases highlights the limitations of legal formalism. Weak enforcement, inadequate training of committees, fear of retaliation, and lack of awareness have reduced compliance to a procedural formality in many workplaces.

At the international level, workplace harassment is increasingly recognised as a violation of human rights and labour rights. Instruments such as the International Labour Organization's Convention No. 190 and the Convention on the Elimination of All Forms of Discrimination Against Women adopt a broader, preventive, and inclusive approach, emphasising employer responsibility and institutional accountability. Comparative experiences from jurisdictions such as Sweden, South Africa, and the United Kingdom further demonstrate that effective protection requires proactive duties on employers, independent oversight, and inclusive definitions that extend beyond binary gender categories.

Against this background, the present study critically examines India's legal framework governing workplace harassment and discrimination. By situating domestic laws within a comparative and international context, the paper seeks to identify strengths, gaps, and pathways for reform. It argues that achieving gender-equitable workplaces in India requires moving beyond reactive redressal mechanisms towards a preventive, inclusive, and rights-based model that ensures dignity, equality, and safety for all workers.

LITERATURE REVIEW

The issue of workplace harassment and discrimination has been widely examined across disciplines such as law, sociology, gender studies, and labour relations. Scholarly literature broadly agrees that workplace harassment is not an isolated or individualised phenomenon but a structural manifestation of gendered power relations embedded within organisational hierarchies and social norms. Feminist legal scholars have consistently argued that harassment at the workplace must be understood as a form of discrimination that undermines women's dignity, equality, and full participation in public life.

Early feminist jurisprudence conceptualised sexual harassment as a violation of equality and dignity rather than merely an issue of morality or misconduct. Catharine MacKinnon's pioneering work framed sexual harassment as sex-based discrimination rooted in unequal

power relations, influencing judicial reasoning across jurisdictions.² This theoretical foundation strongly informed Indian judicial developments, particularly the Supreme Court's reasoning in *Vishaka v. State of Rajasthan*, which has been extensively analysed in Indian legal scholarship as a transformative moment in constitutional gender justice.

Indian literature on workplace harassment largely focuses on the evolution and implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Scholars acknowledge the POSH Act as a significant legislative milestone that institutionalised preventive and redressal mechanisms through Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs). However, a substantial body of empirical and doctrinal research highlights serious implementation challenges. Studies reveal that ICCs are often improperly constituted, lack independence, or function merely as compliance mechanisms without substantive inquiry. Research also points to limited awareness among employees, particularly in educational institutions, small enterprises, and the informal sector, which severely undermines access to justice.

Another strand of literature examines workplace discrimination more broadly, including wage inequality, occupational segregation, and barriers to leadership. Scholars highlight how harassment intersects with caste, class, disability, and contractual employment, making women from marginalised communities particularly vulnerable. Despite these insights, much of the Indian scholarship remains women-centric in scope, reflecting the gender-specific orientation of the POSH Act, and offers limited engagement with inclusivity beyond cisgender women.³

International scholarship provides a more expansive and preventive perspective. Literature on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasises state obligations to eliminate discrimination in employment and recognises gender-based violence as a form of discrimination. The ILO Convention No. 190 has generated significant academic commentary for its gender-neutral and inclusive approach, extending protection to all workers, including those in the informal economy, and placing affirmative duties on employers.

²MacKinnon, C. A. (1979). *Sexual harassment of working women: A case of sex discrimination*. Yale University Press.

³Bhonsle, S., Soni, U., & Nambiyar, S. (2025). *Women-related discrimination at the workplace in India: A critical analysis*. *International Journal of Environmental Sciences*, 11(19s), 35–44.

Comparative studies on jurisdictions such as Sweden, South Africa, and the United Kingdom highlight best practices including independent oversight bodies, employer liability, mandatory training, and proactive prevention strategies. Scholars argue that these models demonstrate the limitations of complaint-driven frameworks and the need for structural accountability.

A key gap in existing literature lies in the fragmented treatment of constitutional law, labour law, and criminal law. Limited scholarship integrates recent criminal law reforms, such as the Bharatiya Nyaya Sanhita, 2023, with workplace harassment jurisprudence. This study addresses that gap by offering a holistic, comparative, and rights-based analysis of workplace harassment and discrimination in India.

OBJECTIVES OF THE STUDY

The present study seeks to critically examine the legal and institutional framework governing workplace harassment and discrimination in India from a rights-based and comparative perspective. The specific objectives of the study are as follows:

1. To assess how far constitutional guarantees of equality and dignity have translated into effective protection against workplace harassment in practice.
2. To evaluate the functional effectiveness of the POSH Act, 2013, particularly the role and autonomy of Internal and Local Complaints Committees.
3. To examine the contribution and limitations of judicial interventions in advancing workplace gender justice beyond normative recognition.
4. To analyse whether recent criminal law reforms under the Bharatiya Nyaya Sanhita, 2023 meaningfully address workplace-specific power imbalances.
5. To draw comparative lessons from international standards and jurisdictions for shifting India's framework from a reactive to a preventive and inclusive model.

RESEARCH METHODOLOGY

The present study adopts a **doctrinal and comparative legal research methodology** to examine workplace harassment and discrimination in India within a broader rights-based and international framework. Given the normative and institutional nature of the subject, doctrinal research is appropriate to analyse constitutional provisions, statutory laws, judicial precedents, and international legal instruments governing workplace gender justice.

Primary sources include the Constitution of India, particularly Articles 14, 15, 16, and 21; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; relevant labour legislations such as the Code on Wages, 2019; and criminal law provisions under the Bharatiya Nyaya Sanhita, 2023. Judicial decisions of the Supreme Court and High Courts, including landmark cases such as *Vishaka v. State of Rajasthan*, *Apparel Export Promotion Council v. A.K. Chopra*, and *Medha Kotwal Lele v. Union of India*, are analysed to understand the evolution of workplace harassment jurisprudence in India.

Secondary sources comprise academic books, peer-reviewed journal articles, Law Commission reports, government publications, International Labour Organization (ILO) reports, and documents issued by the CEDAW Committee. These sources provide theoretical grounding, empirical insights, and comparative perspectives.

A comparative approach is employed to examine international standards and best practices from selected jurisdictions, including Sweden, South Africa, and the United Kingdom. The analysis focuses on preventive frameworks, employer accountability, institutional oversight, and inclusivity in definitions of harassment and discrimination. Qualitative analysis is used to identify gaps between law and practice, assess institutional effectiveness, and evaluate compliance with international obligations. This methodological framework enables a holistic assessment of India's workplace harassment laws and supports the formulation of informed legal and policy recommendations.

RESEARCH PROBLEM / HYPOTHESIS

Despite the existence of constitutional guarantees and specialised legislation such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, workplace harassment and discrimination continue to persist across sectors in India. This reveals a critical disconnect between legal norms and lived workplace realities. While the law formally recognises harassment as a violation of dignity and equality, its practical impact is often diluted by weak enforcement, limited awareness, cultural stigma, fear of retaliation, and institutional shortcomings such as non-functional or dependent Internal Complaints Committees. Further, the gender-specific orientation of existing legal frameworks excludes men and transgender persons, raising concerns about inclusivity and compliance with international human rights standards.

The central research problem of this study is to examine whether India's current legal and institutional framework effectively addresses workplace harassment and discrimination in a manner that is preventive, inclusive, and aligned with constitutional values and international obligations. The study also seeks to assess whether comparative international models offer more effective mechanisms that India can adapt.

Based on this research problem, the study is guided by the following hypotheses. First, although India has made significant legislative progress, its workplace harassment framework remains largely reactive rather than preventive. Second, institutional weaknesses and socio-cultural barriers substantially undermine the effectiveness of existing laws. Third, alignment with international standards such as ILO Convention No. 190 and comparative best practices would strengthen India's capacity to ensure safe, inclusive, and dignified workplaces.

ANALYSIS AND INTERPRETATION / FINDINGS

The analysis of India's legal and institutional framework on workplace harassment and discrimination reveals a complex picture marked by normative progress on paper and significant shortcomings in practice. While constitutional guarantees, statutory enactments, and judicial interventions have collectively strengthened the recognition of workplace harassment as a violation of fundamental rights, their transformative potential remains constrained by structural, institutional, and socio-cultural barriers. The findings of this study are organised around four key dimensions: the constitutional and statutory framework, institutional mechanisms, criminal law responses, and comparative insights from international jurisdictions.

Constitutional and Statutory Framework: Normative Strengths and Practical Gaps:

India's constitutional framework provides a strong normative foundation for workplace gender justice. Articles 14, 15, 16, and 21 collectively establish equality, non-discrimination, equal opportunity, and dignity as enforceable rights. Judicial interpretation, particularly in *Vishaka v. State of Rajasthan*, expanded the scope of these provisions to explicitly recognise sexual harassment at the workplace as a constitutional violation. The enactment of the POSH Act, 2013 translated these principles into a statutory framework by defining sexual harassment, mandating preventive mechanisms, and creating redressal forums.

However, the findings indicate that the POSH Act operates largely as a compliance-driven mechanism rather than a transformative tool. Many organisations formally constitute Internal Complaints Committees (ICCs) but fail to ensure their independence, training, or effective

functioning. The law's focus on redressal after the occurrence of harassment, rather than on prevention and organisational accountability, limits its deterrent value. Further, the gender-specific nature of the Act, while historically significant for women's protection, excludes men and transgender persons, creating gaps in inclusivity and protection.⁴

Institutional Mechanisms and Enforcement Challenges: A major finding of the study relates to the weak enforcement architecture. ICCs often lack autonomy due to their internal composition and dependence on employers, discouraging complainants from reporting misconduct. Local Complaints Committees (LCCs), intended to protect women in the unorganised sector, remain largely ineffective due to inadequate resources, poor awareness, and minimal monitoring by district authorities. Surveys and reports consistently indicate low levels of legal awareness among employees, particularly in educational institutions, small enterprises, and informal workplaces. Cultural stigma, fear of retaliation, and victim-blaming further suppress reporting, rendering legal protections ineffective for many workers.⁵

Criminal Law Responses and Recent Reforms: Criminal law continues to supplement workplace harassment regulation in India. The Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code, retains and reorganises offences related to sexual harassment, stalking, and voyeurism. While these provisions reflect an effort to modernise criminal law, the analysis reveals that criminalisation alone does not address workplace-specific power dynamics. Criminal law remains punitive and individual-centric, offering limited solutions for institutional reform, prevention, or workplace culture change. Moreover, continued reliance on gender-specific language in criminal provisions raises concerns regarding inclusivity and alignment with international norms.⁶

Comparative and International Perspectives: Lessons for India: Comparative analysis highlights the limitations of India's approach when contrasted with international best practices. ILO Convention No. 190 adopts a preventive, gender-neutral, and inclusive framework, extending protection to all workers across formal and informal sectors. Jurisdictions such as

⁴Wahab, M. I. (2024). *The POSH Act: A critical analysis of its limitations and impact*. *International Journal for Multidisciplinary Research*, 6(6), 1–11.

⁵Roselin, V. N., & Rao, B. (2024). *Laws, challenges, solutions related to workplace sexual harassment in India*. *ShodhKosh: Journal of Visual and Performing Arts*, 5. <https://doi.org/10.29121/shodhkosh.v5.i1.2024.4529>

⁶Gulati, R. (2025). *Bharatiya Nyaya Sanhita 2023: Relevance and challenges*. *Brazilian Journal of Law, Technology and Innovation*, 3, 72–86. <https://doi.org/10.59224/bjlti.v3i2.72-86>

Sweden impose positive duties on employers to prevent harassment, monitored by independent bodies like the Equality Ombudsman. South African courts have consistently held employers liable for failing to prevent harassment, reinforcing accountability.⁷ The United Kingdom's Equality Act, 2010 consolidates protections and places a clear duty of care on employers. The findings suggest that these jurisdictions prioritise prevention, inclusivity, and accountability over complaint-driven redressal. India's framework, by contrast, remains reactive, fragmented, and institutionally weak. Without independent oversight, mandatory training, and enforceable employer duties, legal protections struggle to achieve substantive equality.

Overall Findings: The study finds that while India has made commendable legal progress in recognising workplace harassment as a rights violation, its framework remains limited by weak enforcement, exclusionary scope, and insufficient emphasis on prevention. Meaningful workplace equity requires moving beyond procedural compliance towards structural reform, cultural change, and alignment with international standards.

CONCLUSION

The persistence of workplace harassment and discrimination in India underscores the gap between legal recognition and lived workplace realities. Although the Constitution of India provides a strong foundation for equality, dignity, and non-discrimination, and statutory enactments such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represent important milestones, these measures have not fully translated into safe and equitable working environments. Judicial interventions beginning with *Vishaka v. State of Rajasthan* have played a transformative role in framing workplace harassment as a violation of fundamental rights, yet implementation remains uneven and often symbolic. This study demonstrates that India's approach continues to be largely reactive, focusing on redressal after harm has occurred rather than prevention and systemic accountability. Institutional weaknesses, particularly the lack of independence and effectiveness of Internal and Local Complaints Committees, significantly undermine enforcement. Cultural stigma, fear of retaliation, and limited awareness further restrict access to justice, especially for women in informal and marginalised sectors. Recent criminal law reforms under the Bharatiya Nyaya Sanhita, 2023, while important, remain insufficient to address the structural power imbalances inherent in workplaces.

⁷Media 24 Ltd v Grobler, 2005 (6) SA 328 (SCA) (South Africa).

Comparative and international frameworks offer valuable lessons. Jurisdictions such as Sweden, South Africa, and the United Kingdom, along with international instruments like ILO Convention No. 190 and CEDAW, emphasise preventive duties, employer accountability, inclusivity, and independent oversight. For India, aligning domestic law with these standards is essential. Achieving genuinely gender-equitable workplaces requires not only legal reform but also institutional strengthening, cultural change, and sustained commitment to human dignity and equality at work.

SUGGESTIONS / RECOMMENDATIONS

In light of the findings of this study, a combination of legal, institutional, and cultural reforms is necessary to effectively address workplace harassment and discrimination in India. First, the existing legal framework should move beyond a purely complaint-driven model and adopt a preventive approach. This can be achieved by imposing clear statutory duties on employers to actively prevent harassment through regular training, risk assessments, and the development of inclusive workplace policies. Ratification and domestic implementation of ILO Convention No. 190 would provide a strong normative basis for such reform. Second, the functioning and autonomy of Internal Complaints Committees (ICCs) and Local Complaints Committees (LCCs) must be strengthened. This requires mandatory training of members, greater representation of external experts, periodic audits, and independent monitoring to ensure compliance. Clear penalties for non-constitution or ineffective functioning of committees should be strictly enforced.

Third, legal protections should be made more inclusive by expanding the scope of workplace harassment laws to cover all gender identities, including men and transgender persons, in line with constitutional principles and international human rights standards. Fourth, targeted awareness and sensitisation programmes must be institutionalised across public and private sectors to address cultural stigma, encourage reporting, and promote respectful workplace behaviour. Finally, special attention must be given to extending protections to the informal sector through accessible grievance redressal mechanisms and community-level outreach. Legal reform, when combined with institutional accountability, education, and cultural change, can transform workplaces into spaces of dignity, safety, and equality for all workers.

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