



Research Article

Towards Inclusive Justice: A Critical Study of The Necessity and Feasibility of Gender-Neutral Harassment Prevention Laws in The Indian Legal Framework

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Abstract

Harassment, in its various forms, remains one of the most significant violations of human dignity and fundamental rights. Traditionally, Indian laws addressing harassment, particularly sexual harassment, have been designed primarily to protect women due to the historical prevalence of gender-based discrimination and violence. While this legislative approach has played a crucial role in advancing women's rights, evolving social realities reveal that harassment is not confined to one gender. Men, transgender persons, and non-binary individuals may also experience harassment in workplaces, educational institutions, public spaces, and digital environments, yet the existing legal framework offers limited or fragmented protection to these groups. This disparity raises important constitutional and human rights concerns regarding equality before the law and equal access to justice.

This paper critically examines the necessity and feasibility of introducing gender-neutral harassment prevention laws within the Indian legal framework. Using a doctrinal research methodology, the study analyses constitutional provisions, statutory laws, landmark judicial pronouncements, Law Commission reports, and international legal practices. The paper evaluates whether existing legislation, particularly the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, adequately reflects the constitutional principles of equality, dignity, and non-discrimination enshrined under Articles 14, 15, and 21 of the Constitution of India. It also explores the legal, social, and institutional implications of adopting gender-neutral legislation while ensuring that the hard-won protections available to women are not weakened.

The study concludes that a carefully drafted gender-neutral harassment prevention framework can strengthen constitutional governance, improve access to justice for all victims, and promote an inclusive legal system consistent with India's commitment to human rights. Such reforms would contribute to the vision of Viksit Bharat 2047 by fostering equality, social justice, and a progressive legal order capable of addressing the needs of a diverse and evolving society.

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1. INTRODUCTION

The Constitution of India envisions a democratic society founded on the principles of equality, dignity, liberty, and justice. These constitutional values require the State to protect every individual against discrimination, exploitation, and harassment irrespective of gender, religion, caste, or social status. Over the past several decades, India has made remarkable progress in strengthening legal mechanisms aimed at safeguarding women from harassment and gender-based violence. Legislative enactments such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), along with judicial interventions beginning with the landmark *Vishaka v. State of Rajasthan* decision, have significantly improved workplace safety and recognized sexual harassment as a violation of fundamental rights.

However, Indian society has undergone considerable transformation in recent years. Workplaces have become increasingly diverse, constitutional jurisprudence has expanded the recognition of gender identity beyond the traditional binary, and greater awareness has emerged regarding the experiences of men, transgender persons, and non-binary individuals who may also become victims of harassment. The Supreme Court's recognition of transgender persons as a "third gender" in *National Legal Services Authority (NALSA) v. Union of India* and the decriminalisation of consensual same-sex relations in *Navtej Singh Johar v. Union of India* have reinforced the constitutional commitment to inclusivity and equal dignity. These developments have prompted renewed discussions on whether harassment laws should evolve from a gender-specific approach towards a more gender-inclusive framework.

At present, the legal protection available to victims of harassment in India remains uneven. The POSH Act specifically protects women, while male employees and persons of diverse gender identities often have to rely upon internal organisational policies, general criminal law provisions, or civil remedies that may not comprehensively address workplace harassment. This creates an imbalance between constitutional guarantees of equality and the practical availability of legal remedies.

The debate surrounding gender-neutral harassment laws is complex. Supporters argue that such laws would ensure equal legal protection for all individuals without diminishing safeguards available to women. Critics, however, caution that making harassment laws entirely gender-neutral could inadvertently dilute protections specifically designed to address the historical and structural disadvantages faced by women. Consequently, any proposed reform must balance substantive equality with inclusive justice.

Against this backdrop, this research critically examines the necessity and feasibility of introducing gender-neutral harassment prevention laws within the Indian legal framework. It analyses constitutional principles, statutory provisions, judicial precedents, comparative international practices, and policy considerations to determine whether such reforms can strengthen India's legal system while remaining consistent with constitutional values and the broader vision of *Viksit Bharat 2047*.

Statement of the Problem

India's existing legal framework governing harassment prevention is primarily gender-specific, particularly in the context of workplace sexual harassment. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to address the widespread harassment faced by women and to fulfil India's constitutional and international obligations. While the Act has substantially improved workplace safety for women, it does not extend similar statutory protection to male employees, transgender persons, or non-binary individuals who may also become victims of harassment.

The evolving understanding of gender identity, changing workplace demographics, and increasing recognition of LGBTQIA+ rights have exposed significant gaps in the current legal framework. Victims who fall outside the scope of gender-specific legislation often lack effective legal remedies and may encounter procedural difficulties in seeking justice. This raises important constitutional concerns regarding equality before law under Article 14, protection against discrimination, and the right to life and dignity guaranteed under Article 21 of the Constitution of India.

At the same time, there is considerable debate regarding whether gender-neutral harassment laws could unintentionally weaken the protections available to women, who continue to experience disproportionate levels of workplace harassment and structural discrimination. Policymakers must therefore reconcile two competing objectives: preserving robust safeguards for women while ensuring equal legal protection for all victims of harassment.

The absence of a comprehensive legal framework addressing these concerns creates uncertainty for employers, educational institutions, courts, and policymakers. Consequently, there is a pressing need to critically examine whether gender-neutral harassment prevention laws are both necessary and practically feasible within India's constitutional, social, and institutional context. This study seeks to address this gap by analysing existing legislation, constitutional principles, judicial developments, and comparative international practices to propose balanced and effective legal reforms.

2. RESEARCH OBJECTIVES

The present study seeks to critically examine the necessity and feasibility of introducing gender-neutral harassment prevention laws within the Indian legal framework. The specific objectives are:

1. To examine the existing legal framework governing harassment prevention in India.
2. To analyse the constitutional principles of equality, dignity, non-discrimination, and personal liberty in relation to gender-neutral legal protection.
3. To identify the legal gaps in the current statutory framework concerning male, transgender, and non-binary victims of harassment.
4. To critically evaluate the necessity of adopting gender-neutral harassment prevention laws without undermining the existing safeguards available to women.

5. To compare India's legal framework with selected international jurisdictions that have adopted gender-neutral harassment laws.
6. To analyse the role of the judiciary in interpreting constitutional rights concerning gender identity and workplace equality.
7. To propose recommendations for developing an inclusive and constitutionally sound harassment prevention framework that contributes to the vision of Viksit Bharat 2047.

Research Questions

The study attempts to answer the following research questions:

1. Does the existing Indian legal framework adequately protect all victims of harassment irrespective of gender?
2. Whether gender-specific harassment laws are consistent with the constitutional principle of equality under Articles 14, 15 and 21 of the Constitution of India?
3. Is there a legal necessity to enact gender-neutral harassment prevention legislation in India?
4. What challenges may arise in implementing gender-neutral harassment laws within the Indian socio-legal context?
5. What lessons can India learn from countries that have adopted gender-neutral workplace harassment laws?
6. How can India balance the need for inclusive legal protection while preserving the special safeguards available to women?

3. RESEARCH METHODOLOGY

The present research adopts a doctrinal and analytical methodology, focusing primarily on the examination of legal principles, statutory provisions, judicial decisions, constitutional mandates, and scholarly literature.

The study relies upon both primary and secondary sources of law.

Primary Sources: The primary sources include:

- The Constitution of India
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Bharatiya Nyaya Sanhita, 2023
- Transgender Persons (Protection of Rights) Act, 2019
- Relevant Supreme Court and High Court judgments
- Parliamentary debates and Government reports
- International conventions and guidelines such as CEDAW and ILO Convention No. 190

Secondary Sources: The secondary sources comprise:

- Books authored by legal scholars
- Peer-reviewed journal articles
- Law Commission Reports
- Research papers
- Government publications
- Reports of the National Human Rights Commission
- International legal commentaries

The research further employs a comparative legal approach by analysing harassment laws in jurisdictions such as the United Kingdom, Canada, Australia, and South Africa to identify best

practices that may be adapted within the Indian legal framework.

The methodology is qualitative in nature and aims to critically evaluate both the necessity and practical feasibility of introducing gender-neutral harassment prevention laws in India.

4. LITERATURE REVIEW

The issue of workplace harassment has been extensively examined by scholars from the perspectives of constitutional law, labour law, feminist jurisprudence, and human rights. Early scholarship primarily focused on women's vulnerability in workplaces and advocated stronger statutory protection against sexual harassment. The landmark Vishaka Guidelines generated considerable academic discourse that eventually culminated in the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Prominent legal scholars such as Upendra Baxi have emphasized that constitutional rights must evolve with changing societal realities and remain responsive to emerging forms of discrimination. Similarly, Flavia Agnes has argued that legal reforms addressing gender injustice should continue to recognise the structural inequalities historically experienced by women while remaining open to evolving concepts of gender equality.

Recent scholarship has shifted towards analysing whether harassment laws should adopt a gender-neutral approach. Authors such as M.P. Jain and V.N. Shukla have highlighted that Article 14 of the Constitution guarantees equality before law to every person, suggesting that statutory protection should not be denied solely on the basis of gender identity. Studies by the International Labour Organization (ILO) also indicate that workplace harassment affects individuals across diverse gender identities, requiring comprehensive legal responses.

Research concerning LGBTQIA+ rights following the Supreme Court's decisions in *NALSA v. Union of India* and *Navtej Singh Johar v. Union of India* has further strengthened arguments supporting inclusive legal protection. Several commentators have observed that while transgender persons enjoy constitutional recognition, they continue to face practical difficulties in obtaining legal remedies against workplace harassment due to the absence of comprehensive gender-neutral legislation.

However, significant academic debate persists. Feminist scholars caution that complete gender neutrality may overlook the historical discrimination and disproportionate victimisation faced by women, thereby weakening existing safeguards. Consequently, the literature generally supports a balanced approach that extends protection to all victims without diluting affirmative legal measures designed for women's safety.

The present research builds upon existing scholarship by critically evaluating both the constitutional necessity and practical feasibility of introducing gender-neutral harassment prevention laws within India's evolving legal landscape.

Constitutional Framework

The Constitution of India embodies the principles of equality, dignity, liberty, and social justice, which collectively provide

the constitutional foundation for any discussion concerning gender-neutral harassment laws.

Article 14: Equality Before Law

Article 14 guarantees equality before the law and equal protection of the laws to every person. The provision prohibits arbitrary discrimination and requires that similarly situated individuals receive equal legal protection. Denying statutory remedies against harassment solely because of one's gender raises questions regarding compliance with Article 14.

Article 15: Prohibition of Discrimination

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. At the same time, Article 15(3) permits the State to enact special provisions for women and children. While this constitutional exception justifies gender-specific legislation aimed at protecting women, it also raises the issue of whether exclusive statutory protection should continue in circumstances where other genders may equally experience harassment.

Article 19

Harassment adversely affects an individual's freedom of speech, movement, profession, and occupation protected under Article 19(1)(a), (d), and (g). A hostile workplace environment often restricts professional growth and personal autonomy.

Article 21

The Supreme Court has consistently interpreted Article 21 to include the right to live with dignity, privacy, bodily integrity, and a safe working environment. Workplace harassment directly violates these constitutional guarantees irrespective of the victim's gender.

Constitutional Morality

Recent constitutional jurisprudence has increasingly relied upon the doctrine of constitutional morality, requiring laws to uphold dignity, equality, and inclusiveness. Decisions recognising transgender rights and LGBTQIA+ rights reflect this progressive constitutional approach and support broader discussions on gender-inclusive legal protection.

Existing Indian Legal Framework

India presently follows a predominantly gender-specific approach towards harassment prevention, particularly in the context of workplace sexual harassment.

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

The POSH Act was enacted following the Supreme Court's decision in *Vishaka v. State of Rajasthan*. It aims to provide a safe working environment for women by:

- defining sexual harassment;
- establishing Internal Committees (ICs);
- prescribing complaint procedures;
- imposing employer obligations;
- providing preventive and remedial measures.

However, the Act exclusively protects women employees and does not provide similar statutory protection to male, transgender, or non-binary employees.

Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita criminalises several forms of assault, intimidation, stalking, voyeurism, and offences against

modesty. Nevertheless, many provisions remain gender-specific and primarily focus on offences against women.

Transgender Persons (Protection of Rights) Act, 2019:

This legislation prohibits discrimination against transgender persons in employment, education, healthcare, and public services. Although it recognises their constitutional rights, it does not establish a specialised workplace harassment redressal mechanism comparable to the POSH Act.

Labour Laws and Service Rules:

Several government departments and private organisations have framed internal workplace policies extending harassment protection to all employees. However, these policies vary considerably and lack statutory uniformity.

Information Technology Laws:

Cyber harassment is addressed under provisions of the Information Technology Act and relevant criminal laws. Nevertheless, legal remedies remain fragmented and are not specifically designed as comprehensive harassment prevention legislation.

Consequently, India's existing legal framework provides robust statutory protection for women but comparatively limited institutional protection for other genders.

Judicial Interpretation and Landmark Cases

The Indian judiciary has played a transformative role in expanding the scope of constitutional rights relating to dignity, equality, and gender justice.

Vishaka v. State of Rajasthan (1997)

This landmark judgment recognised sexual harassment at the workplace as a violation of Articles 14, 15, 19, and 21. The Supreme Court formulated the Vishaka Guidelines, which remained binding until the enactment of the POSH Act, 2013. The judgment established that workplace safety is a fundamental constitutional right.

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

The Supreme Court reaffirmed that even an attempt to sexually harass a woman at the workplace amounts to misconduct. The Court emphasised that dignity and equality are indispensable components of Article 21.

National Legal Services Authority (NALSA) v. Union of India (2014)

The Supreme Court recognised transgender persons as the "third gender" and held that gender identity forms an integral part of dignity and personal liberty under Articles 14, 19, and 21. This judgment significantly broadened constitutional protection beyond the traditional gender binary.

Navtej Singh Johar v. Union of India (2018)

By decriminalising consensual same-sex relations, the Supreme Court reaffirmed that constitutional rights belong equally to LGBTQIA+ individuals. The judgment stressed inclusiveness, dignity, privacy, and equality as essential constitutional values.

Joseph Shine v. Union of India (2018)

The Court reiterated that constitutional morality must prevail over patriarchal social norms and recognised individual dignity as central to constitutional governance.

Significance

Collectively, these decisions demonstrate the judiciary's progressive interpretation of constitutional rights and provide strong jurisprudential support for reconsidering the gender-specific nature of harassment legislation. While the judiciary has consistently expanded the scope of equality and dignity, legislative reform remains necessary to provide comprehensive statutory protection to all individuals facing harassment.

Comparative Analysis: International Approaches to Gender-Neutral Harassment Laws

The increasing recognition of gender diversity has encouraged several jurisdictions to adopt gender-neutral harassment laws. A comparative analysis demonstrates that while different countries employ varied legislative mechanisms, the common objective remains ensuring workplace dignity and equal protection irrespective of gender.

United Kingdom

The Equality Act 2010 prohibits discrimination and harassment on the basis of protected characteristics including sex, gender reassignment, sexual orientation, race, disability, religion, and age. Unlike India's POSH Act, the legislation protects every employee regardless of gender.

Employers are legally obligated to maintain harassment-free workplaces and may incur liability for failing to prevent discriminatory conduct. Internal grievance mechanisms, employment tribunals, and civil remedies collectively provide comprehensive protection.

The UK's model demonstrates that gender-neutral legislation can coexist with robust safeguards for women without diminishing their legal rights.

Canada

Canada adopts a rights-based approach under the Canadian Human Rights Act and provincial occupational health legislation. The law recognises workplace harassment as a human rights violation affecting all individuals irrespective of gender identity or sexual orientation.

The Work Place Harassment and Violence Prevention Regulations, 2021 require employers to implement preventive policies, conduct investigations, provide counselling support, and maintain confidentiality.

Canada's experience illustrates that gender-neutral legislation can effectively protect women while simultaneously extending equal legal remedies to men and LGBTQIA+ individuals.

Australia

Australia addresses workplace harassment primarily through the Sex Discrimination Act 1984 and the Fair Work Act 2009.

Recent legislative reforms have strengthened employers' positive duty to eliminate workplace sexual harassment. The protection extends to every employee irrespective of gender identity.

Australian law emphasises prevention rather than merely punishment by requiring organisations to undertake regular training programmes, awareness initiatives, and risk assessments.

South Africa

The Employment Equity Act, 1998 and the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (2022) adopt a broad and inclusive definition of harassment.

Protection extends to employees irrespective of sex, gender identity, race, disability, religion, or sexual orientation.

The South African framework recognises that workplace dignity is a constitutional right belonging equally to every individual.

Comparative Observations

The comparative study indicates several common features:

- harassment laws are generally gender-neutral;
- protection extends beyond sexual harassment to psychological and verbal harassment;
- employers bear significant preventive responsibilities;
- specialised complaint mechanisms are available;
- legal reforms are based upon constitutional equality and human rights.

These jurisdictions demonstrate that gender-neutral legislation does not necessarily weaken women's protection but instead expands legal protection to all vulnerable individuals.

Need and Feasibility of Gender-Neutral Harassment Laws in India

India's socio-legal landscape has undergone substantial transformation following constitutional recognition of transgender persons, increased workplace diversity, and growing awareness of mental health and workplace dignity. Consequently, there is a compelling need to reconsider the scope of harassment prevention laws.

Need for Gender-Neutral Laws

1. Constitutional Equality

Article 14 guarantees equality before law to every person. Restricting statutory protection solely to women creates an unequal legal position for other victims who may experience similar forms of harassment.

2. Recognition of Diverse Gender Identities

The Supreme Court's decisions in *NALSA* and *Navtej Singh Johar* recognise that constitutional rights extend beyond the traditional male-female binary.

3. Workplace Diversity

Modern workplaces increasingly employ individuals from diverse gender identities. A legal framework that protects only one category of employees fails to reflect present-day realities.

4. Increasing Incidents of Harassment

Empirical studies indicate that men, transgender persons, and LGBTQIA+ individuals also experience workplace bullying, verbal abuse, sexual harassment, and psychological intimidation.

5. Human Rights Obligations

International human rights principles increasingly support equal workplace protection irrespective of gender identity.

Feasibility of Gender-Neutral Legislation

Introducing gender-neutral harassment laws is legally feasible because:

- the Constitution guarantees equality to every individual;
- organisations already possess Internal Committees under the POSH framework that can be suitably expanded;
- employer compliance mechanisms already exist;
- judicial interpretation increasingly favours inclusive constitutional protection.

Rather than replacing the existing framework, Parliament may amend the POSH Act or enact comprehensive workplace harassment legislation applicable to every employee while retaining enhanced safeguards where women remain disproportionately vulnerable.

Challenges and Counterarguments

Despite its advantages, gender-neutral legislation presents several legal and practical challenges.

1. Historical Gender Inequality

Women continue to experience disproportionate workplace harassment. Critics argue that gender neutrality may ignore systemic discrimination and patriarchal power structures.

2. Possibility of Misuse

Some scholars contend that expanding the scope of harassment laws may increase frivolous complaints. However, misuse exists in every legal system and cannot justify denying protection to genuine victims.

3. Administrative Burden

Internal Committees may require additional training to address complaints involving multiple gender identities and evolving workplace dynamics.

4. Social Stigma

Male victims often hesitate to report harassment because of societal stereotypes regarding masculinity.

Similarly, transgender individuals frequently fear discrimination and retaliation.

5. Legislative Complexity

Balancing affirmative action for women with equal protection for all genders requires careful legislative drafting.

Counterarguments Supporting Reform

These concerns can be addressed through:

- specialised investigation procedures;
- stringent penalties for false complaints made maliciously;
- mandatory gender-sensitivity training;
- victim-centred complaint mechanisms;
- periodic legislative review.

Therefore, the challenges do not outweigh the constitutional necessity for inclusive legal reform.

Recommendations

The following reforms are recommended:

1. Amend the POSH Act

The definition of "aggrieved person" may be expanded to include every employee irrespective of gender identity while retaining special safeguards where necessary.

2. Establish Gender-Inclusive Internal Committees

Internal Committees should include members trained in gender diversity, LGBTQIA+ rights, and trauma-informed investigations.

3. Uniform Workplace Policy

Every public and private organisation should adopt comprehensive anti-harassment policies applicable to all employees.

4. Awareness Programmes

Regular legal literacy programmes should educate employees regarding respectful workplace behaviour.

5. Confidential Complaint Mechanisms

Anonymous reporting systems and psychological counselling should be made available to encourage reporting.

6. Periodic Government Monitoring

The Ministry of Labour and Employment should periodically assess organisational compliance and publish annual reports.

7. Judicial Guidelines

Pending legislative reform, the Supreme Court may formulate interim guidelines extending workplace protection to all genders through constitutional interpretation.

8. Harmonisation with International Standards

India should progressively align domestic legislation with international labour and human rights principles promoting workplace equality.

5. CONCLUSION

The Indian Constitution envisions a society founded upon equality, dignity, justice, and fraternity. While gender-specific legislation such as the POSH Act has significantly advanced women's rights, evolving constitutional jurisprudence and changing workplace realities necessitate reconsideration of the existing legal framework.

The recognition of transgender persons as the third gender, the expansion of privacy and dignity under Article 21, and increasing constitutional emphasis upon inclusivity collectively strengthen the argument for extending statutory protection against harassment to every individual irrespective of gender identity.

Nevertheless, legal reform should not dilute the protections painstakingly developed for women. Rather, India should adopt a balanced approach that preserves affirmative safeguards while expanding access to justice for other victims who presently lack adequate legal remedies.

International experience demonstrates that gender-neutral harassment laws are both legally workable and socially beneficial. Carefully drafted legislation, supported by institutional safeguards, awareness programmes, and judicial oversight, can promote inclusive workplaces without undermining gender justice.

Such reforms would directly contribute to the constitutional ideals of equality and human dignity while advancing the national vision of Viksit Bharat 2047. An inclusive legal framework capable of protecting every individual from harassment is indispensable for building a self-reliant, innovative, and socially just India. By embracing gender-neutral legal protections grounded in constitutional values, India can strengthen its commitment to human rights and create

workplaces that reflect the principles of equality, respect, and dignity for all.

Sample Footnotes (Bluebook Style)

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