

Critiquing The Posh Act, 2013: Is It Time For A Gender-Neutral Legislative Reform

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ABSTRACT

The Protection of Women from Sexual Harassment at Workplace Act, 2013 (POSH Act), was a big step forward in fighting harassment at work in India, mostly to protect women. However, the Act's gender-specific structure has come under close scrutiny because of the expanding conversation about inclusivity and changing gender identities. This study criticises the POSH Act's binary approach, which doesn't protect males, transgender people, or non-binary people as victims. This limits the reach of justice and reinforces gender stereotypes. It examines judicial interpretations, practical case studies, and international best practices to underscore the necessity for a more inclusive legal framework. The report contends that although the POSH Act has markedly enhanced workplace safety for women, it insufficiently accommodates the complexities of a contemporary, varied workforce. The document ends with suggestions for policies that would make the law gender-neutral and make sure that everyone, regardless of gender, gets equal protection and justice. This is in line with the constitutional values of equality and non-discrimination.

Keywords: POSH Act 2013, Gender-Neutral Legislation, Workplace Sexual Harassment.

INTRODUCTION

The Protection of Women from Sexual Harassment at Workplace Act, 2013 (POSH Act) was passed in response to the Supreme Court's Vishaka Guidelines. It was a big step forward in protecting women from sexual harassment at work. The Act sets up a clear system for stopping, banning, and fixing sexual harassment that women confront at work. It requires the creation of Internal Complaints Committees (ICCs), explains how to file a complaint, and stresses the obligations of employers. This makes workplaces safer and fairer for women in all fields.

As Indian culture changes and more people become aware of the rights and identities of various gender groups, the POSH Act's focus on women presents important challenges. The Act, as it is, does not safeguard men, transgender folks, or non-binary persons who may also experience sexual harassment in the workplace. This omission reinforces gender stereotypes and does not uphold the constitutional values of justice, equality, and non-discrimination.

Also, more and more reports are coming in of men and LGBTQIA+ victims being harassed, but they don't have the same legal protections and support networks that women do under the POSH Act. This imbalance has led to requests for a comprehensive, gender-neutral legislative change that may more effectively handle the changing dynamics of the modern workplace.

This article aims to critically analyse the deficiencies of the POSH Act, evaluate the necessity for an inclusive framework, and investigate potential reforms that would guarantee equal protection for all individuals, irrespective of gender identity.

OBJECTIVES

1. To critically analyze the gender-specific framework of the POSH Act, 2013, and assess its limitations in addressing workplace sexual harassment faced by all gender identities.
2. To explore the need and feasibility of introducing a gender-neutral legislative reform to ensure equal protection and redressal mechanisms for every individual, irrespective of gender.

HYPOTHESES

1. **Null Hypothesis (H₀):** The POSH Act, 2013 adequately addresses workplace sexual harassment for all gender identities.

Alternate Hypothesis (H₁): The POSH Act, 2013 is limited in its scope and does not adequately address workplace sexual harassment for all gender identities.

2. **Null Hypothesis (H₀):** There is no significant need or feasibility for introducing a gender-neutral legislative reform to address workplace sexual harassment.

Alternate Hypothesis (H₁₂): There is a significant need and feasibility for introducing a gender-neutral legislative reform to address workplace sexual harassment.

Statement of the Problem:

The POSH Act, 2013 was passed to stop sexual harassment of women at work, however its focus on women only means that men, transgender people, and non-binary people are not protected by it. This narrow focus doesn't take into account how workplaces are changing and ignores the experiences of people of various gender identities who also deal with harassment. This kind of exclusion creates a legal vacuum that goes against the Indian Constitution's ideas of fairness and equality. The absence of a gender-neutral framework in current legislation underscores the pressing necessity to reevaluate and amend workplace harassment regulations to guarantee comprehensive and fair protection for everyone.

Significance of the Study:

This study is highly pertinent in the contemporary socio-legal landscape as it tackles the substantial deficiency in India's workplace harassment legislation, namely the gender-specific characteristics of the POSH Act, 2013. The research adds to the continuing discussions about fairness, equality, and justice in judicial systems by looking at its flaws and pushing for a gender-neutral approach. The results are meant to let policymakers, legal scholars, and human rights activists know that reforms are needed that respect the rights and experiences of everyone, no matter what their gender identity is. Ultimately, the study aims to facilitate the establishment of a more equal and inclusive workplace in accordance with constitutional principles and international human rights norms.

REVIEW OF LITERATURE

1. Baxi (2014), in *Public Secrets of Law: Rape Trials in India* provides an in-depth sociological and legal analysis of rape trials, highlighting how legal systems can perpetuate patriarchal standards under the pretence of justice. Baxi elucidates the influence of gendered preconceptions on judicial language, victim believability, and procedural biases using anthropological insights and courtroom observations. Her work is crucial for comprehending how legal institutions, despite seeming impartial or protective, may sustain gendered inequities. This critique is particularly pertinent when analysing the POSH Act, 2013, which, despite its objective to protect women, omits alternative gender categories from its scope. Baxi's arguments bolster the demand for comprehensive legal reform by illustrating that gender-sensitive legislation must confront systematic bias and acknowledge the intricate realities of all individuals impacted by harassment.

2. Dhawan (2020), The article "Rethinking Workplace Harassment Laws: Towards a Gender-Neutral Framework" provides a critical assessment of India's current workplace harassment regulations, especially the POSH Act of 2013. The author points out that the Act is inherently biased against men, transgender people, and non-binary people because it only protects women. Dhawan contends, through a legal and policy-oriented examination, that this exclusion contravenes the constitutional tenets of equality and non-discrimination. The report compares international patterns and provides practical strategies for transformation that includes everyone. Dhawan's work is an important addition to the discussion over gender-neutral laws. It shows how important it is for workplace harassment rules to offer more protection. It directly supports the idea that changes to the law must keep up with how we understand gender and how things work in the workplace today.

3. The Government of India's *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* acts as the basic law that protects women from sexual harassment at work. The Act was passed

in reaction to the Supreme Court's Vishaka Guidelines. It lays out rules for things like Internal Complaints Committees, deadlines for resolving complaints, and what employers are responsible for. The Act's language and scope are just about women, which means that other gender identities are not protected by law. This is a big step towards gender justice.

This strategy that is only for one gender has led to further criticism and arguments about how inclusive it is and whether it fits with the Constitution. This law is the main one being looked at, and it is the legal basis for figuring out if a gender-neutral change is needed to make sure that everyone in a variety of workplaces is treated equally.

4. In *Seeing Like a Feminist* (2012), Nivedita Menon offers a thought-provoking examination of feminist theory, contesting conventional perceptions of gender, authority, and legal frameworks. She puts gender-specific protections in a larger historical and social perspective, saying that these laws came about because of the desire to fix deep-seated injustices and systematic sexism. Menon explains the reasons for laws that protect women, such as the POSH Act, by saying that women need extra protection in a society where men have most of the authority. She also says that legislation should be looked at again and again as gender roles change. Her work is essential for comprehending both the necessity and the constraints of gender-specific legal safeguards. Menon backs protective measures for women, but her feminist point of view makes us think critically about whether these kinds of measures may finally lead to more inclusive, gender-neutral changes that aim for greater social fairness.

5. Roy and Das (2021), In their essay *Gender Inclusivity and Legal Reforms in India: A Case for Workplace Harassment Laws*, they look at how the POSH Act, 2013, is not inclusive and only protects women from harassment. They also point out that it does not protect men, transgender people, or non-binary people from harassment. The writers contend that the existing law is inconsistent with the constitutional tenets of equality and justice, employing legal analysis and empirical illustrations. They underline how important it is to recognise changing gender identities at work and how important it is to make harassment rules apply to all victims, no matter what their gender is. The report supports changes to the law by using a rights-based framework and worldwide best practices. Roy and Das's study makes a big contribution to the discussion of gender-neutral legislative reform by making inclusion a key part of the future of workplace harassment regulations in India.

RESEARCH METHODOLOGY

1. Research Design:

This study will adopt a **qualitative and doctrinal legal research design**, supported by **empirical elements** to offer a holistic critique of the POSH Act, 2013. The research will include both **descriptive** and **analytical approaches**.

2. Data Collection Methods:

● Primary Sources:

- Statutory text of the POSH Act, 2013
- Constitution of India
- Judicial pronouncements (e.g., *Vishaka v. State of Rajasthan*)
- Parliamentary debates and Law Commission reports (if any)

● Secondary Sources:

- Scholarly articles, books (e.g., Baxi, Menon), journals
- Reports from NGOs, workplace policy documents
- International legal instruments and comparative laws (e.g., UK, USA, Canada)

● Empirical Inputs (optional but recommended):

- **Interviews** or **open-ended questionnaires** with legal experts, HR professionals, or individuals from the LGBTQIA+ community
- **Case study analysis** of incidents involving non-female victims of harassment

3. Data Analysis:

- **Doctrinal Analysis** to interpret legal provisions and judicial trends
- **Thematic Analysis** for qualitative data from literature and interviews
- **Comparative Legal Analysis** to study international best practices

4. Scope and Delimitation:

- Focused on Indian workplace law, with comparative references
- Limited to analyzing the need for gender neutrality in the POSH Act
- Empirical data (if collected) will be illustrative, not exhaustive

5. Ethical Considerations:

- Ensuring confidentiality and informed consent for any participants interviewed
- Neutral and respectful representation of all gender identities

This mixed-method approach will strengthen the study's academic and practical relevance.

Sample Size:

A sample size of 50 respondents will be selected using purposive sampling, comprising legal professionals, HR managers, and individuals from diverse gender identities. This sample ensures diverse perspectives on workplace harassment and inclusivity, enabling a meaningful analysis of the perceived need for gender-neutral reforms in the POSH Act, 2013.

Variables for the Study:

Independent Variables:

- Gender identity of the respondent (Male, Female, Transgender, Non-binary)
- Professional background (Legal expert, HR personnel, Employee, Activist)
- Awareness of the POSH Act, 2013
- Workplace experience with sexual harassment (self or observed)

2. Dependent Variables:

- Perception of inclusivity in the POSH Act
- Support for gender-neutral reforms
- Satisfaction with existing redressal mechanisms
- Belief in the need for legal protection beyond women

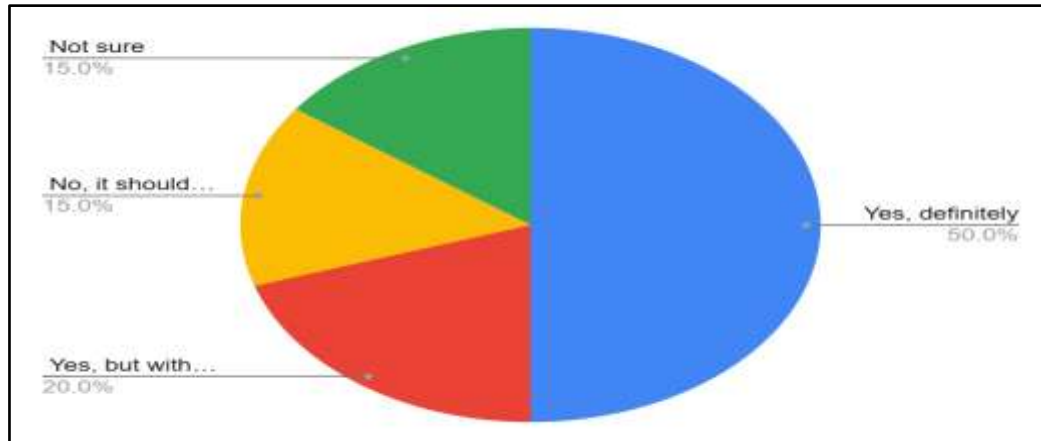
3. Control Variables (if applicable):

- Age group
- Education level
- Urban/rural workplace setting

These variables help assess how different factors influence the perception and acceptance of gender-neutral workplace harassment laws.

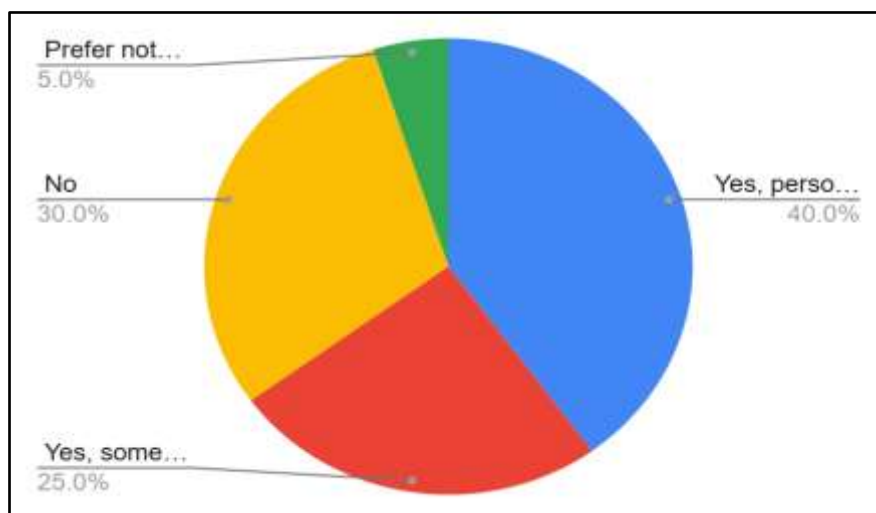
DATA ANALYSIS & INTERPRETATION

| Do you believe the POSH Act, 2013 should be made gender-neutral to include all individuals, regardless of gender identity? | |
|--|----|
| Yes, definitely | 50 |
| Yes, but with certain conditions | 20 |
| No, it should remain women-specific | 15 |
| Not sure | 15 |



Interpretation: The responses indicate strong support for gender-neutral reform, with 50 out of 100 participants (50%) unequivocally endorsing the inclusion of all gender identities under the POSH Act, 2013. An additional 20% agree, though with certain conditions, reflecting cautious optimism. However, 15% prefer retaining the women-specific focus, and another 15% remain uncertain. This suggests a growing awareness and acceptance of inclusive legal protections, while also highlighting the need for further sensitization and dialogue on gender diversity in workplace policies.

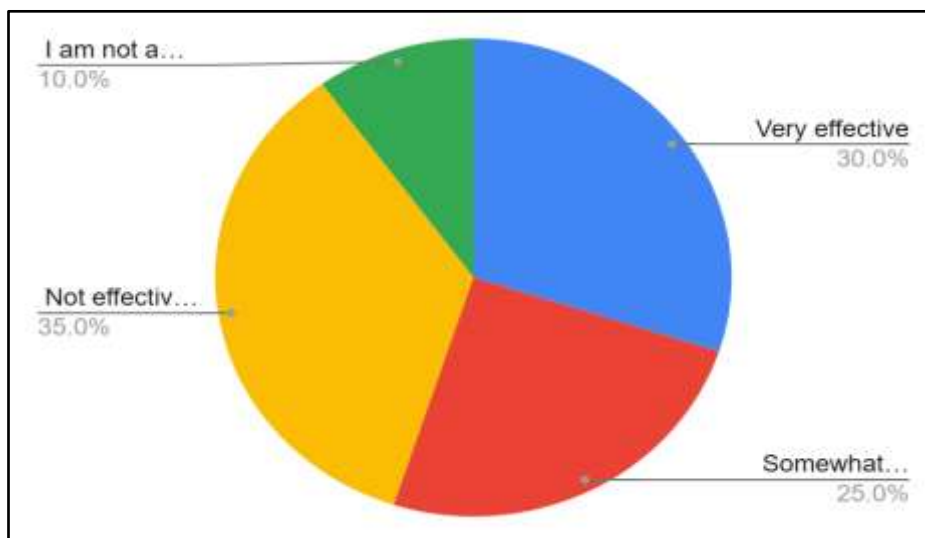
| Have you or someone you know (not identifying as a woman) ever faced sexual harassment at the workplace? | |
|--|----|
| Yes, personally experienced | 40 |
| Yes, someone I know | 25 |
| No | 30 |
| Prefer not to say | 5 |



Interpretation: The data reveals that 40% of respondents have personally experienced workplace sexual harassment despite not identifying as women, and 25% know someone who has faced similar situations. This indicates that 65% have either direct or indirect exposure to such incidents, highlighting a significant

gap in the current women-centric POSH Act. While 30% reported no such experience, and 5% preferred not to respond, the findings strongly support the need for a more inclusive, gender-neutral legal framework for workplace harassment.

| How effective do you think the current redressal mechanism under the POSH Act is for victims of sexual harassment? | |
|--|----|
| Very effective | 30 |
| Somewhat effective | 25 |
| Not effective for non-female victims | 35 |
| I am not aware of the mechanism | 10 |



Interpretation: The responses show that while 30% of participants find the POSH Act's redressal mechanism very effective and 25% find it somewhat effective, a significant 35% believe it is not effective for non-female victims. Additionally, 10% are unaware of the mechanism altogether. This indicates that despite some positive perceptions, there is a notable concern regarding the Act's inclusivity and accessibility for individuals beyond the female gender. The data reinforces the argument for a more gender-neutral and widely understood redressal system.

CHALLENGES OF THE STUDY

1. Limited Legal Precedents:

Since the POSH Act currently applies only to women, there is a scarcity of case law and judgments involving male or non-binary victims. This limits the scope of legal analysis and comparative evaluation of inclusivity in practice.

2. Social Stigma and Underreporting:

Non-female victims of harassment may hesitate to share experiences due to fear of judgment, which affects the accuracy and depth of data collected through surveys or interviews.

3. Lack of Awareness:

Many respondents may not be fully aware of the POSH Act or its limitations, which can influence their responses and create a knowledge gap in understanding the actual need for gender-neutral reforms.

REMEDIES FOR THE CHALLENGES

1. Expand Legal Research through Comparative Jurisprudence:

To overcome the limitation of scarce domestic case law involving non-female victims, researchers can study international legal systems with gender-neutral harassment laws (e.g., UK, Canada). Comparative legal analysis provides valuable insights, case studies, and reform models that can strengthen the argument for

inclusive legislation in India. This broadens the evidence base and compensates for gaps in Indian legal precedents.

2. Ensure Confidential and Anonymous Data Collection:

To address underreporting due to social stigma, researchers should design confidential and anonymous survey tools. Assuring participants of privacy and using online, non-identifiable formats will encourage more honest responses from male, transgender, and non-binary individuals. Building trust and emphasizing the academic and reform-oriented nature of the study can further reduce reluctance and improve data authenticity.

3. Incorporate Awareness Questions and Educational Prompts:

To counteract the lack of awareness among respondents, the questionnaire can include brief informative prompts about the POSH Act before asking opinion-based questions. Including awareness-related questions also helps categorize data more accurately. Conducting awareness drives or pre-survey orientation sessions, especially for laypersons, ensures informed participation and leads to more meaningful and reflective responses, thereby enhancing data quality and validity.

CONCLUSION

The POSH Act, 2013, was a big step forward in the law that was meant to make Indian workplaces safer for women. But when organisations and society's understanding of gender identities change, the Act's gender-specific structure shows a major flaw. This study underscores the increasing necessity for a comprehensive, gender-neutral legislative framework that ensures equal protection for all individuals—irrespective of gender identity—against workplace sexual harassment. The data collected shows that most people who answered the survey support legislative changes, and many of them agree that the current law doesn't protect male, transgender, or non-binary victims.

The results also show that societal stigma, underreporting, and a lack of understanding are problems that make current redressal processes less effective. Nonetheless, these issues can be actively addressed by comparative legal research, anonymous surveys, and approaches focused on awareness.

In conclusion, the POSH Act has done a lot to safeguard women, but it needs to change today to be in line with the Constitution's ideas of equality and non-discrimination. Not only is a gender-neutral legislative reform necessary from a legal standpoint, it is also necessary from a social standpoint to make workplaces safer and more welcoming. The future of workplace safety in India relies on the acceptance of diversity and the guarantee of justice for all individuals, regardless of gender.

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