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POSH Act not being Gender neutral

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POSH ACT this law has been put into effect to protect women at work and ensure a secure working environment for women. Sexual Harassment violates women's fundamental rights of the Right to Equality under Article 14 and Article 15 of the Constitution of India which also violates the Right to life under Article 21 to live with Personal Dignity and it degrades the confidence of the women to trade and to do Occupation which also includes Right to a Sexual Harassment-Free Environment. "POSH Act" was passed by the Ministry of Women and Child Welfare. POSH Provisions apply to Organizations, Companies employing 10 or more employees. But only a woman can file a complaint, the POSH Act is not GENDER NEUTRAL. When we think about Sexual Harassment the first thing that comes to our mind is that it only happens to Women. We don't have much information about that on the internet because the citizens of our country still can't believe that such a thing can happen to Men also. Sometimes a Man or a Boy in fact can be Sexually Assaulted by women but no one believes that a Man can be assaulted by a woman. Is it true that men and boys are as likely to be raped and subjected to sexual harassment as women? remains unanswered as there is not much information gathered to answer anywhere surely. Even though Women are more prone to Sexual Assault than men, the fact that cannot be neglected is that Men and Boys are assaulted. They should also get equal opportunity to report the casual and to get justice because Sexual Assault is a Gender-Neutral crime and no one should face discrimination based on Gender under Article 15(1) of the Constitution of India.

Keywords: *sexual harassment, gender inequality, sexual assault, discrimination, personal dignity.*

INTRODUCTION

Article 14 of the Constitution of India guarantees to all people the same protection of the law and equality before that is enshrined in the Preamble of the Constitution of India “equality of status and opportunity” that has to be given to all the citizens. In a secure workplace, therefore women’s legal rights. Articles 14, 15¹, and 21² contain the Constitutional Doctrine of equality and Personal liberty. These articles guarantee a person's right to life, liberty, and equal protection under the law as well as their freedom from all forms of discrimination. Sexual assault is a kind of this article that guarantees a person's right to life, liberty, and equal protection under the law as well as their freedom from all forms of discrimination. Sexual assault is a kind of horrible mistreatment of women for personal dignity and equality Sexual Harassment has been a major issue in the past few decades amongst working individuals and this practice somewhat happens in all kinds of organizations and not all of them get unnoticed and unmentioned due to various reasons. This issue was brought to attention by the guidelines given by the case before the Supreme Court in *Vishakha v State of Rajasthan*³ after the increasing agitation amongst the women working and other employees.

Sexual violence can be identified as the act of crossing sexual boundaries of a person irrespective of their sex and gender by the means of unwanted touch in private places, assault, coercion or actions involving human trafficking, or actions against people’s sexual consent irrespective of the connection the abuser maintains with the victim. Usually, it is blindly assumed that women or females who fall under the different age groups are the only ones being abused. But as we have moved forward and are living in the twenty-first century, it is high time we rebuild this narrow-minded stereotype of minimizing sexual exploitation to just one gender. Another important aspect that we must think about is the different environments in which victims can be abused and belonging to the urban class we could surely conclude that metropolitan workplaces are no less of a place where a person could be sexually assaulted. To address this issue and to protect the working class from the same the government came up with the POSH

¹ Constitution of India, 1950, art.15

² Constitution of India, 1950, art.21

³ *Vishaka & Ors v State of Rajasthan* (1997) 6 SCC 24

Act, 2013 which is an act to safeguard women against sexual harassment at work working on areas of prevention, prohibition, and redressal and also lays down rules and procedures for complaints and enquiries. The Sexual Harassment of Women the 2013 Act to Prevent, Prohibit, and Address Sexual Harassment at Workplace “POSH Act” came into existence in 2013.

It sets a procedure for handling claims of workplace sexual harassment and is based on the Vishakha Guidelines. But only women can file a complaint under The POSH ACT it is not gender-neutral and here the main question arises that everybody talks about women being harassed and raped but nobody talks about men and even no law talks about the physical and mental abuse faced by men. Again, the main area of concern here was how the act was narrow-minded and reduced its protection to just women and not any other. Sexualities. Rape is a crime that solely views males as the predator and women as the victim, not the other way around, according to section 375⁴ of the Indian Penal Code. There is a naive belief that women cannot commit rape. A rape charge must meet the criteria of penile penetration.

The following reasons are used to support the penile penetration condition:

- 1) Women cannot rape a guy because it is physically and physiologically impossible.
- 2) Forcefully penetrating someone is a more serious offence than forcing someone to penetrate you.
- 3) Rape is a gendered abomination.

Equal rights for men and women are a topic that the Indian court and society frequently discuss and protest. Dismally, these rejections of efforts to make legislation against rape or sexual harassment gender-neutral demonstrate how the right to equality is being violated. When Public Interest Litigations (PIL) were filed Various women’s, organisations opposed making rape a criminal that is not based on gender. In an interview with Indian Times, international human rights attorney and campaigner Vrinda Grover remarked, “*There are no instances of women raping men. I don’t think men are facing serious sexual violation issues from the side of women*”. Contrary to

⁴ Indian Penal Code, 1860, s 375

popular belief, males make up around two out of every five victims of domestic abuse, dispelling the myth that only women experience violence at the hands of their spouses or family.

Over the years, several rules and regulations have been established to combat sexual violence against women in the workplace, including the Sexual Harassment Act at the Workplace and the Vishaka Guidelines. However, there is no established recourse for males who experience sexual harassment at work. However, there is little recourse for males who are sexually harassed at work. This does not imply that sexual harassment is not an issue for guys in the workplace. Laws have been put in place to safeguard women from the pernicious practice of sexual harassment, yet we frequently overlook the fact that males also experience workplace harassment. Male co-workers or female employers are typically the perpetrators of sexual attacks on males in the workplace. Men could be required to objectify themselves, or there might be a trade-off comparable to what working-class women might experience.

INTERNATIONAL BACKGROUND

Here in this article, we would discuss other genders specifically men being exploited and abused in the workplace, covering various aspects of sexual violence including sexually advancing harassment i.e., bad touch, and gender harassment i.e., derogatory comments. In a recent study, it has been encountered stated in the previous year, one-third of working males experienced sexual harassment in the workplace in some way year.⁵ Additionally, the percentage of sexual harassment complaints made by males to the US Equal Employment Opportunities Commission (EEOC) has increased; in 2011, men made up 16.1% of the 7,809 complaints, while in 2013, they made up 17.6% of the 7,256 complaints.

Despite the favourable number of evidence proving the point that sexual harassment against men is negatively affecting the potential outcome of men, Men's sexual harassment is not as well researched as women's is therefore, there is still uncertainty and ambiguity regarding factors

⁵ Heather McLaughlin & Christopher Uggen & Army Blackstone, 'Sexual Harassment, Workplace Authority, and the Paradox of Power' (*Sage Journals*, 2 July 2012)

<<https://journals.sagepub.com/doi/full/10.1177/0003122412451728>> accessed 13 July 2022

that may result in increased risk elements of men being sexually harassed and what factors may mitigate or the harmful effects of this kind of workplace abuse will be made worse. However, there is no reliable way to estimate the number of male survivors in India because rape cannot be perpetrated against males according to the law. Recently India reinstated the anti-sodomy law under Section 377⁶ of IPC but this legislation does not distinguish between consenting and non-consensual sexual acts involving two adult males and does not see sodomy as an actual rape; statistics on convictions are high.

According to a recent study, female activists for women's rights experience higher SAH and GH at work than non-activist women. Feminist activism includes a wide range of actions intended to advance problems on women's rights, including reproductive freedom, the prevention of sexual assault, and women's health. Group members are driven to defend and protect their group, even by demeaning members of other groups, according to the social identity theory, when they perceive a threat to their group. Asserting that male privilege and the current gender hierarchy may both be threatened by feminist activity. Because of their attitudes and deeds, activist women may become the focus of sexual harassment. According to earlier studies, men are more prone to engage in sexual harassment when they feel threatened by women, especially when women act in a feminist manner. Men do take part in the action for feminist causes, despite the pervasive belief that they cannot (or shouldn't) be connected with women's rights or feminist organisations. Identity and feminist problems are two of the best indicators of feminist action. Males who identify as sexual minorities, such as homosexual or bisexual men, frequently face harassment and discrimination in their everyday lives, at work, in housing, and at school. Men's identities, particularly other oppressed identities, may make feminist action easier for them to participate in. For instance, homosexual African American males are more likely to participate in a wider variety of feminist activism activities than their heterosexual counterparts.

GENDER NEUTRALITY IN INDIA: A CRITIQUE

The goal of this dissertation is to debate whether gender neutrality should be incorporated into

⁶ Indian Penal Code, 1860, s 377

India's rape and sexual assault legislation. When it comes to a rape offence, historically speaking, men have been seen as the culprits and women as the victims. This is true of both India and the rest of the world. Instead, rape of a guy has long been a contentious topic, and because patriarchal societies still exist, it is more difficult for society and the criminal justice system to acknowledge it. This is although war crimes involving the sodomization of males by males have been chronicled throughout history from the beginning of time.

The Indian constitution's articles, the IPC's sections, and other particular legislation are all designed to improve the status of women. This legislative structure aided women's advancement. Since the shift in culture toward feminism, which sought to improve all facets of society, this idea has come to be misunderstood as an effort to advance only one gender. Due to a misconception of this feminist idea, legislation was passed without adopting a workable strategy to improve all facets of society. As a result, only laws designed specifically to protect women are created; there is no such law protecting men from sexual crime. Only women are protected by law in India from rape and sexual harassment. The 1973 Code of Criminal Procedure, Section 47⁷: According to this clause, police are given the authority to break into anyone's home or other location when they have a solid reason to believe that the individual they are trying to apprehend has entered or is present there.

However, this clause contains an exemption, which states that the police must give the warning to withdraw from a woman's residence before entering or breaking into it if she does not appear in public according to their norms. Because men do not receive a prior warning as women do, their right to privacy is violated, demonstrating the gender bias of this clause. As stated in the ruling in *K.S. Puttaswamy v Union of India*⁸, every citizen has a basic right to privacy. The right to privacy of men should also be respected, and this clause has to be amended to reflect that. Any individual living in their home is completely free to do anything, save for illegal things, and they are allowed uninterrupted privacy. Any man's right to privacy will be violated if the police detain him only based on a reasonable suspicion without first getting permission to enter

⁷ Code of Criminal Procedure, 1973, s 47

⁸ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

his home. To respect everyone's right to privacy and gender neutrality, the word "person" should be used in this section to refer to everyone, including men, women, and transgender people.

Males are not protected by any laws or legislation against the horrible crime of rape or sexual harassment. In terms of Indian legislation, only Section 377 of The Indian Penal Code, 1860 concerns "SODOMY". The remaining portions are all geared toward women. The most important thing to keep in mind is that, contrary to what is stated in Section 354A⁹, the offender and victim of sexual abuse can be of any gender under Sections 354D and 375¹⁰ of The Indian Penal Code, which specifies that only a male may commit the crime. According to Section 375 of the Indian Penal Code, only men are capable of raping women. There is no space for Adult male victims. According to the US Department of Justice, 99% are men, and 1% are women. India can offer its data so that statistical comparisons can be made.

The US Department of Justice stated that 99% are men, and 1% are women. India can provide their number for statistical comparisons. However, there is no reliable way to estimate the number of male survivors in India because rape cannot be perpetrated against males according to the law. The anti-sodomy statute under Section 377 of the IPC was recently revived in India, however, this law does not treat sodomy as a kind of rape and makes no distinction between consenting and non-consensual sexual actions between two male adults; its conviction numbers tell us very nothing about this. A woman can never lie about such things, therefore if she says so, the guy must have done it, according to societal pressure, which is why internal complaints committees of the corporations were also working on or looking into instances. In such circumstances, there was a clear gender prejudice against males.

According to these scenarios, the PoSH Act's detractors claim that it has increased societal prejudices against males, which can sometimes result in the needless humiliation of innocent men in the event of false allegations and allow women to unfairly benefit from the knowledge that everyone will believe them. Numerous defenceless boys have been humiliated by the name-

⁹ Indian Penal Code, 1860, s 354A

¹⁰ Indian Penal Code, 1860, ss 354D and 375

and-shame culture and societal judgement, which have continued to grow. In the instance of the senior official at Genpact who committed suicide, the vice president of the company said that such situations may occasionally make individuals feel so humiliated that they take extreme measures *Genpact's India Swaroop Raj committed suicide at his Noida residence, his wife lodged an FIR of abetment of suicide with the police, five male workers and two female workers who had levelled the harassment charges, in the FIR blaming the company for his death.*¹¹

An important case scenario that could strengthen the claims of sexual harassment against men can be that of Reynard Sinaga or "Britain's most prolific rapist". He received a 30-year prison term as a punishment. Reynard sexually assaulted males, especially in Manchester, England, which is the fundamental flaw in this particular case law. The Indonesian student would wait outside pubs and clubs for drunk men and then entice them back into his apartment by offering to order a cab or take them out for a drink. As part of the strategy, he would frequently use drugs on his victims so that they would be unconscious and unable to fight back before being attacked.

According to police conducting the inquiry, they have uncovered a staggering quantity of proof that Sinaga targeted at least 190 people. According to the investigative findings, Sinaga has been charged with 159 sexual offences against 48 males, and 70 victims' identities are still unknown. A ten-year-old child was sodomised by a youngster in his Muzaffarnagar area, which is the sole act covered under section 377 that protects males from male-on-male rape. The accused allegedly transported the youngster to a remote location and sexually abused him there, according to the filed complaint. The child made it home safely and told his parents about his ordeal. While the young victim is receiving treatment in the hospital, the accused is fleeing.

Men who engage in feminism are directly challenging the gendered status quo, just like women. Sexual assault frequently helps to disparage people who reject conventional gender roles and uphold the current gender hierarchy. In support of this assertion, according to studies, males

¹¹ Nitisha Kashyap, 'Days After Genpact Executive's Suicide, Wife Files FIR Against Firm, Women Who Levelled Me Too Charges' (*News18*, 21 December 2018) <<https://www.news18.com/news/india/wife-of-genpact-executive-claims-he-was-declared-sexual-offender-without-probe-files-fir-against-firm-and-7-workers-1980067.html>> accessed 13 July 2022

who take time out of work to care for their children—an behaviour that is typically seen as "feminine"—are more likely to have GH at work. Researchers view sexual harassment as a means of upholding established gender norms in the workplace rather than a form of "harmless" flirting or teasing.

According to an experimental study, modest men (vs women) were disliked, which led to fewer favourable employment recommendations. This finding was explained by beliefs that modest men violated the expectations of what it means to be a man, which includes strength, assurance, and ambition. Engagement in feminist activism is considered a rebellious movement against the existing gender hierarchy and those so-called rebels are punished in the form of "gender-based" punishment. The parallels between the two main types of sexual harassment behaviours that make up GH are also demonstrated. For example, crude sexual jokes and disparaging remarks about men may be seen as less serious or even unavoidable in all-male groups, such as male bonding.

CONCLUSION

It is high to think about the implications of organizational policies for this issue. The most important finding is that of the tolerance for harassment. Previously, studies show that one of the most powerful indicators of the likelihood of sexual harassment is company culture (tolerance). These findings indicate that it is the organisation's and work hubs' primary duty to design and implement comprehensive, gender-neutral rules on sexual harassment and exploitation. Additional organisations might implement training that covers the many forms, causes, and effects of sexual harassment. Employees should also learn about GH and how men and both of these forms of abuse are directed at women during training, in addition to SAH (the most common type of sexual harassment). Indian men facing domestic violence at the hands of women is a harsh reality. However, the government is least concerned about the protection of men and has not taken any stand on addressing it. In most countries, there are laws against sexual abuse both for Men and Women whereas in India sexual harassment Since there is no legal protection for a guy who experiences abuse from his wife or any female family member, violence against males is practically lawful. There is a high number of cases where men are being

tortured, harassed, and sexually abused and many times the violence is so brutal that it might to a situation where the person can try to kill himself because of the false accusations by a woman. Sexual violence can happen to anyone, no matter what your age, gender, or sexuality is.

The word "MEN" is gender-bias and denotes masculine behaviour that men are strong, they are not supposed to cry, and are not supposed to discuss their problems with anyone to control their emotions. Although there is no scientific proof, it is usually accepted that males experience fewer emotions than women. It is a widely held assumption and view that men and women express their emotions differently. Men may find it uncomfortable to say they are hurting in a culture where men predominate since it is viewed as "feminine behaviour." In the case of *Gurmail Singh Vs the State of Punjab and Anr*,¹² the petitioner was accused of false rape by a girl and the girl was blackmailing the petitioner. Even though there are many laws in place to protect women and we frequently speak out against the injustices they face, we also neglect to accept the reality that males are also victims of sexual abuse, and does gender equality even exist when we preach about it?

¹² *Gurmail Singh v State of Punjab* (1982) 3 SCC 185