
UNSPOKEN REALITIES: ADDRESSING SAME-GENDER SEXUAL HARASSMENT

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ABSTRACT

This research paper inquires into the often unseen issues of same-gender sexual harassment within the broader framework of gender sensitivity and workplace equality. While the legal protections, particularly under the Prevention of Sexual Harassment at Workplace Act, 2013¹ (PoSH Act), primarily focus on safeguarding women against the male perpetrators, this article stresses the exclusion of male and non-binary victims, as well as the same-gender harassment cases, from adequate legal recognition.

The research focuses on understanding the present realities of sexual harassment, evaluating the limitations of existing legal frameworks, and exploring the need for a more inclusive, gender-neutral approach. The key question is whether harassment should be defined by the perpetrator's gender or by the nature and impact of the conduct, and whether current laws sufficiently address the lived realities of all victims. It concludes by advocating for institutional change and legal reform to ensure that gender sensitivity is all-embracing, thereby promoting equal dignity and respect for all individuals irrespective of their gender.

Keywords: *Sexual Harassment, Same-Gender Sexual Harassment, PoSH Act, 2013, Gender Sensitivity, Workplace Harassment*

¹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013)

I. INTRODUCTION

“Accept no one’s definition of your life; define yourself.”

This powerful quote by Harvey Fierstein captures the essence of authenticity and self-expression. There is nothing more empowering than a person who dares to be their true self. At the heart of gender sensitivity lies this very courage - the courage to be, to live, and to love without shame, without compromise, and without fear of judgment.

In a world that often tries to confine individuals within rigid gender norms, it is vital to embrace humanity over labels. We do not need to support what is conventionally considered right or wrong based on gendered expectations; we simply need to be human, compassionate, understanding, and respectful of everyone’s identity and experience.

Yet, despite growing awareness around gender identity and inclusivity, one critical issue often remains in the shadows: sexual harassment between individuals of the same gender. While mainstream discourse tends to focus on male-on-female harassment, it is equally important to acknowledge that abuse, coercion, and harassment can occur within all gender dynamics - be it male-to-male, female-to-female, or among non-binary individuals. Ignoring these realities only deepens the stigma faced by survivors and perpetuates a culture of silence. If we are to truly uphold gender sensitivity and equality, we must recognise and address all forms of harassment, including those that challenge traditional narratives.

This article aims to shed light on this often-ignored issue. It explores the social silence, legal gaps, and institutional apathy that surround same-gender harassment.

II. UNDERSTANDING SAME-GENDER SEXUAL HARASSMENT

Same-gender or same-sex sexual harassment refers to situations where an individual is subjected to unwelcome conduct of a sexual nature by someone of the same gender. This behaviour may take many forms, including unwanted physical contact, sexually explicit or suggestive comments, verbal abuse, inappropriate jokes, or the creation of a hostile, intimidating, or offensive environment based on sex. Same-gender harassment is a legitimate and serious issue

and is legally recognised under laws that prohibit sexual harassment and sex-based discrimination.

It is crucial to recognise that “*It’s About the Conduct, Not the Gender of the Harasser.*”

When addressing sexual harassment, the primary concern should always be the nature of the conduct, not the gender of the individuals involved. What matters is whether the behaviour is unwelcome, sexual in nature, and whether it creates a hostile work environment or leads to adverse consequences for the victim, regardless of whether the harasser is male or female.

Just like opposite-gender harassment, same-gender harassment can cause significant emotional distress, anxiety, damage to mental health, and can seriously affect the victim’s job performance and career trajectory.

Surprisingly, available studies indicate that same-gender harassment is not uncommon in workplace settings; however, it remains largely under-recognised in Indian legal practice. While the PoSH Act is currently the primary legal framework governing workplace harassment, it is gender-specific, focusing solely on the protection of women. Under its current interpretation, complaints by male or non-binary victims, or those involving same-gender perpetrators, are not maintainable under the Act.

This reflects a larger historical and legal tendency to view sexual harassment as a women’s issue, which, while important, leaves a significant number of victims unprotected. In a society that is increasingly vocal about equality and inclusion, there is now a pressing need to recognise same-gender sexual harassment as a legitimate concern, deserving of equal legal protection and procedural safeguards.

- Supporting this perspective, A significant step toward inclusive interpretation of the law came through the Calcutta High Court’s judgment in *Dr. Malabika Bhattacharjee v. ICC, Vivekananda College & Ors.*² on November 27, 2020. In this case,

“The Court affirmed that a woman can file a complaint of sexual harassment under the PoSH Act against another woman, clarifying that the law does not restrict complaints based on the gender of the respondent. The Court emphasised

²WPA 1198 of 2021

that Section 2(m)³ of the PoSH Act defines the term “respondent” as a “person”, which is inherently gender-neutral. Additionally, Section 9⁴, which deals with the procedure for filing a complaint, contains no language that limits its applicability to opposite-gender scenarios.”

Most importantly, the judgment reinforced the idea that the dignity and modesty of a person can be violated regardless of the harasser’s gender. This judgment serves as a crucial precedent in highlighting the need for inclusive interpretations of existing laws until legislative reforms are undertaken to make the statute explicitly gender-neutral.

III. THE VICTIM’S PERCEPTION AND IMPACT

In cases of sexual harassment, particularly those involving same-gender dynamics, what truly matters is not the intent of the harasser, but the perception and impact on the victim. It is not solely about whether the harasser intended to make someone uncomfortable, but whether the behaviour in question was unwelcome, non-consensual, and caused psychological, emotional, or professional harm.

The absence of explicit objection or silence cannot be mistaken for consent. In sensitive scenarios such as these, consent must be affirmative and voluntary, and the mere discomfort or unease experienced by the victim is enough to warrant concern and action. This diverges from traditional criminal law principles, where both *mens rea* (criminal intent) and *actus reus* (criminal act) are typically required to establish an offence.

However, in cases of sexual harassment, the legal and social lens rightly shifts: the focus is not on the mental state of the perpetrator, but on the lived experience of the victim. The emotional, psychological, and professional consequences faced by the individual subjected to such behaviour form the crux of determining whether harassment has occurred.

³The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013), S. 2(m)

⁴The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013),S. 9

This victim-centric approach is particularly crucial when dealing with same-gender harassment, which is often dismissed or minimised due to societal stereotypes. Acknowledging the victim's perception and the real impact is essential to ensure justice, especially when the current legal framework still falls short of fully recognising such experiences.

IV. AUTHOR'S OPINION: GENDER SENSITIVITY MUST BE TRULY INCLUSIVE

If sexual harassment is determined by the impact it has on the victim, then it stands to reason that any individual - regardless of gender-can be a victim. Why, then, does our legal framework continue to offer protection primarily to women? Can a man not experience emotional, psychological, or mental trauma as a result of harassment? To assume otherwise is both unfair and untrue. There is no concrete evidence to suggest that men do not suffer. In fact, there is a long-standing societal stereotype that "*men suffer in silence*", often discouraged from expressing vulnerability due to expectations of masculinity. But men, too, have the right to speak up, to be heard, and to receive protection when subjected to harassment, just as any woman does.

In today's world, where we strive to promote gender sensitivity and equality, it is important to acknowledge that harassment is not a gendered crime. There are instances where men are harassed by women, and these situations are equally valid and deserving of legal recognition. True gender justice requires us to protect all individuals, not just women, against sexual harassment. Until our laws and policies evolve to reflect this inclusivity, we cannot claim to have achieved true gender sensitivity.

V. CONCLUSION

To conclude, **gender sensitivity is not just a social concept; it is a necessary framework for building respectful and inclusive environments.** It is high time we acknowledge that same-gender sexual harassment is real, harmful, and deserving of legal recognition. Current laws must evolve to reflect the lived realities of all individuals, not just those who fit within traditional gender expectations. Legalising and institutionalising same-gender complaints is not just a legal reform; it is a step toward fairness, equality, and justice for all.

But together we can create a system where no voice goes unheard, and no pain goes unrecognised.