
NEED FOR GENDER-NEUTRAL SEXUAL HARASSMENT LAWS IN INDIA: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

The Sexual harassment is a serious violation of human dignity, equality, and the right to a safe environment. In India, the principal statutory framework governing workplace sexual harassment, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, provides comprehensive protection and institutional mechanisms for women. However, its women-specific framework raises important constitutional and legal questions concerning the recognition and protection of men and persons of other genders who may also experience sexual harassment. This paper examines the need for a more gender-neutral approach to sexual harassment laws in India through constitutional, doctrinal, empirical, and comparative perspectives. It analyses the constitutional implications of Articles 14, 15 and 21 of the Constitution of India and examines the limitations in the existing legal framework relating to workplace and domestic contexts. The study further incorporates empirical evidence obtained through a Right to Information application to the National Crime Records Bureau, which indicates the absence of specific centrally maintained data identifying male victims and gender-neutral categories of sexual harassment. This statistical gap raises concerns regarding the institutional visibility of non-female victims and the formulation of evidence-based legal policy. Comparative reference is also made to the United Kingdom and the United States, where gender-neutral approaches to protection against harassment demonstrate that equality and protective legislation can coexist. The paper ultimately proposes expansion of existing safeguards to include individuals irrespective of gender while preserving necessary protections for women.

Key Words: - Sexual Harassment, Gender Neutrality, POSH Act, Constitutional Equality, Article 14, Article 15, Article 21, RTI, Legal Reform

1. INTRODUCTION

Sexual harassment is a serious violation of human dignity, equality, personal autonomy and the right to a safe environment. Its consequences may extend beyond the immediate incident and can affect an individual's psychological well-being, professional participation, social relationships and access to justice. Indian law has progressively recognized sexual harassment as a matter involving fundamental rights and has developed institutional mechanisms for addressing such conduct, particularly in the workplace. The constitutional foundation of protection against sexual harassment was significantly strengthened through *Vishaka v. State of Rajasthan*¹, in which the Supreme Court recognized workplace sexual harassment as a violation of fundamental rights and laid down guidelines in the absence of specific legislation. These developments ultimately contributed to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The legislation provides an important framework for prevention, prohibition and redressal of workplace sexual harassment, but its statutory protection is specifically centred on women.

The historical justification for women-specific protection cannot be disregarded, particularly in view of the structural vulnerabilities and unequal power relations that women have historically faced. At the same time, evolving social realities raise a broader legal question: should protection against sexual harassment depend upon the gender of the victim, or should the law primarily respond to the nature and circumstances of the prohibited conduct?

This paper therefore examines whether Indian sexual harassment laws should adopt a more gender-neutral framework. It analyses the issue through constitutional, doctrinal, empirical and comparative perspectives, with particular attention to Articles 14, 15 and 21 of the Constitution of India. The paper also examines the availability of legal remedies for non-female victims in workplace and domestic contexts and uses RTI-based evidence concerning the availability of gender-specific data to identify institutional gaps. The objective is not to dilute existing protections for women, but to examine whether comparable legal safeguards can be extended to every individual facing sexual harassment while preserving necessary protective measures.

2. HISTORICAL BACKGROUND

The foundation lies in the landmark judgment of *Vishaka v. State of Rajasthan*¹, where the Supreme Court recognized sexual harassment as a violation of fundamental rights.

These include :

- Article 14
- Article 15
- Article 21

This judgment led to the enactment of the POSH Act².

3. PRESENT LEGAL FRAMEWORK

3.1 Workplace Protection (Women)

The POSH Act² establishes complaint mechanisms and employer duties, and preventive safeguards—but limits victims to women.

3.2 Position of Men and Other Genders

There is no specific gender-neutral statute. Limited, indirect remedies exist under the Bharatiya Nyaya Sanhita, 2023³ (assault, intimidation) and civil / matrimonial remedies.

4. EMPIRICAL ANALYSIS (RTI-BASED EVIDENCE)

An RTI was filed before the National Crime Records Bureau⁴ seeking gender-wise data on sexual harassment.

4.1 RTI Findings

- Gender-wise data maintained ?

The National Crime Records Bureau maintains gender-wise data only in a generalized and aggregated form within its publication “Crime in India”. However, specific disaggregated data on sexual harassment across all genders is not centrally maintained.⁴

¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013).

³ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

⁴ National Crime Records Bureau, Crime in India 2023, Vol. I& III (Ministry of Home Affairs, Government of India, 2023).

- Male victims (Year – wise) ?

Not specifically maintained or provided. The RTI response clarifies that no direct dataset exists identifying male victims of sexual harassment as a separate category.⁴

- Gender-neutral categories?

Not available. Existing classifications are structured around women-centric legislation such as workplace harassment and domestic violence, without a gender-neutral framework.⁴

- Data on false complaints ?

Not available in the requested format. Only general disposal statistics (e.g., final reports) are available, without specific categorization relating to false allegations in harassment cases.⁴

The RTI response from the NCRB confirms that specific gender-neutral data on sexual harassment is not centrally maintained. The availability of only fragmented information within general crime reports highlights a systemic reporting gap, resulting in the legal and statistical invisibility of non-female victims.⁵

4.2 Observation

Absence of such data suggests lack of institutional recognition of non-female victims⁵.

The RTI response under the Right to Information Act, 2005 reveals that while crime data is collected at a macro level, there is no systematic or centralized recognition of male or non-female victims of sexual harassment.⁵

This absence is not merely administrative—it indicates a structural gap in legal and institutional acknowledgment, where certain categories of victims remain statistically invisible. Such invisibility has direct implications for policy formulation, legal reform, and access to justice.⁵

5. SYSTEMIC LACK OF GENDER-NEUTRAL PROTECTION: WORKPLACE AND DOMESTIC CONTEXTS

5.1 Workplace Context

The POSH Act² excludes male and non-female victims. i.e. The POSH Act provides robust mechanisms but recognizes only women as aggrieved persons, excluding men and others.

⁵National Crime Records Bureau, Response to RTI Application No. NCREB/R/E/26/00245 (Apr. 21, 2026), Annexure 1.

5.2 Domestic Context

There is no dedicated statutory framework addressing sexual harassment of husbands by wives. (No specific law exists for male victims in **marital situations**). Relief is indirect via :Bharatiya Nyaya Sanhita, 2023³ and matrimonial law (Cruelty).

5.3 Combined Analysis

The absence of gender-neutral protection extends across both **(Public)** workplace and **(Private)** domestic spheres.

This leads to:

- Lack of recognition
- Fragmented remedies
- Constitutional concerns under Article 14⁶

5.4 Implication

A shift toward a gender-neutral framework would :

- Expand recognition
- Ensure equality
- Reflect modern realities

6. CONSTITUTIONAL ANALYSIS

6.1 Article 14

Exclusion of men may raise concerns of unreasonable classification⁶.

Any such classification must satisfy the requirements of reasonable classification.

Complete exclusion of men may raise concerns regarding constitutional validity.

6.2 Article 15

While protective discrimination is allowed, exclusion raises questions⁷.

While Article 15(3) allows special provisions for women, **does it justify exclusion of others ?**

6.3 Article 21 – Right to Dignity and Personal Liberty

⁶Constitution of India, art. 14.

⁷Constitution of India, art. 15.

Article 21 of the Constitution of India protects life and personal liberty and has been judicially understood to encompass the right to live with dignity⁸. Sexual harassment directly affects an individual's dignity, personal autonomy and ability to participate safely in professional and social environments. The constitutional concern therefore extends beyond the gender of the victim to the nature of the harm suffered.

The recognition of dignity under Article 21 provides an additional constitutional basis for examining whether persons who experience sexual harassment but fall outside the present women-specific statutory framework have adequate legal protection and effective remedies. A gender-neutral approach may therefore be viewed not merely as an expansion of statutory protection, but also as a means of strengthening access to justice and ensuring that the dignity of every individual is meaningfully protected.

At the same time, Article 21 must be considered alongside the protective framework available to women and the constitutional permission for affirmative protection. The objective should consequently be to extend meaningful protection to all victims without weakening safeguards designed to address the particular vulnerabilities of women.

7. COMPARATIVE JURISPRUDENCE

- UK → Equality Act⁹(Gender-neutral protections)
- USA → Title VII¹⁰(Gender - neutral harassment laws)

These show protection and neutrality can coexist.

8. NEED FOR REFORM

- Recognition of male victims
- Inclusion of LGBTQ+ persons
- Legal consistency (Alignment with constitutional equality)

9. COUNTER-ARGUMENTS

Women's vulnerability and misuse concerns exist.

However, gender neutrality **expands protection** without reducing safeguards.

⁸ Constitution of India, art. 21.

⁹Equality Act 2010 (U.K.)

¹⁰Civil Rights Act of 1964, tit. VII (U.S.).

10. SUGGESTIONS

- **Amend POSH Act² and include all genders :**

The existing POSH framework should be expanded to **include all genders while maintaining safeguards for women**, thereby ensuring equality without diluting protection.

- **Introduce gender-neutral law :**

A comprehensive legal framework recognizing victims irrespective of gender would address existing gaps in both workplace and domestic contexts.

- **Improve NCRB data collection⁴:**

Systematic gender-wise data collection is necessary to understand the scope of the issue and formulate evidence-based policy.

11. CONCLUSION

Sexual harassment is fundamentally a question of dignity, equality, personal security and access to justice. The existing legal framework in India has played an important role in protecting women from workplace sexual harassment and in establishing institutional mechanisms for prevention and redressal. The historical and continuing vulnerabilities of women justify the existence of strong protective safeguards. However, the existence of such safeguards should not prevent the legal system from examining whether individuals of other genders who experience comparable conduct are adequately recognized and protected.

The constitutional principles embodied in Articles 14, 15 and 21 provide an important basis for examining this issue. While Article 15(3) permits the State to make special provisions for women and children, the broader constitutional commitment to equality raises questions about the complete absence of comparable statutory protection for other victims of sexual harassment. The RTI-based findings discussed in this paper further indicate an institutional gap in the availability of specific gender-wise data concerning victims, particularly where non-female victims are concerned. Such gaps can affect recognition of the problem, policy formulation and evidence-based legal reform.

A gender-neutral approach need not mean the dilution of protections presently available to women. Instead, the objective should be to create a framework in which protection is available to every individual while retaining appropriate safeguards addressing the particular vulnerabilities of women. The existing POSH framework may therefore be examined for possible expansion, alongside improved data collection and clearer legal remedies in both workplace and domestic

contexts.

Ultimately, equality in the context of sexual harassment should focus on the nature of the harm and the need for effective protection rather than solely on the gender of the victim. A more inclusive framework can strengthen access to justice while preserving the protective purpose of existing legislation.

“Equality must evolve from selective protection to inclusive justice.”

“This paper does not seek to undermine or dilute the protections afforded to women but aims to explore whether similar legal safeguards should be extended to all individuals facing harassment.”

RTI questions and reply by NCRB, Application Number (NCREB/R/E/26/00245) and the Response Date (21.04.2026) – Annexure 1

Applicant Name	G. SHIVAPRAKASH IYER
Date of receipt	04/04/2026
Request Filed With	National Crime Record Bureau
Text of Application	Respected Sir or Madam, Subject : Request for data on gender-wise classification of sexual harassment in workplace and domestic contexts. Information Sought 1. Year-wise data (2015 to at present) of sexual harassment cases. 2. Whether NCRB maintains gender-wise victim data : Male Female Others 3. Whether NCRB maintains data on : Workplace sexual harassment Domestic/marital harassment complaints 4. Number of cases where : Victim is male Accused is female 5. Whether any gender-neutral classification exists. 6. Data on false/malicious complaints. 7. If data not maintained, reasons for non-collection. Purpose : For academic research on gender neutrality in sexual harassment law in India. Thank you
Request document (if any)	document not provided
Status	RTI REQUEST RECEIVED as on 04/04/2026

Reply

आरटीआई मामला
RTI MATTER

न. एसटीटी(200)/आरटीआई/ 293/2022/एनसीआरबी/No.STT(200)/RTI/293/2022/NCRB

भारत सरकार/Government of India

गृह मंत्रालय/Ministry of Home Affairs

राष्ट्रीय अपराध रिकार्ड ब्यूरो/National Crime Records Bureau

राष्ट्रीय राजमार्ग-48, महीपालपुर/National Highway-48, Mahipalpur,

नई दिल्ली-110037/New Delhi – 110 037

दिनांक : 21.04.2026 / Dated : 21.04.2026

To,

Shri G. Shivaprakash Iyer

Sub: Information Sought Under the RTI Act 2005

Sir,

Please refer to your online RTI Application regn. No. NCREB/R/E/26/00245 dated 04.04.2026 addressed to National Crime Records Bureau, New Delhi. Point wise information is given below:-

1. Specific information is not available with the CPIO. However, Information available in the Bureau, State/UT wise cases registered under Sexual Harassment at Work or Office Premises and Domestic Violence Act is available in Chapter – "Summary" of our annual publication "Crime in India" report.
- 2-3&5. Specific information is not available with the CPIO. However, District wise Gender wise is available in Additional Table-"Crimehead - wise Gender-wise details of Victims under IPC and SLL Crimes (including Sexual Harassment at Work or Office Premises and Domestic Violence Act" of our annual publication "Crime in India" report..
- 4&7. Information sought by the applicant is not available with the CPIO.
6. Specific information is not available with the CPIO. However, Information available in the Bureau, Crime head wise Final report (case ended as final report false) under Sexual Harassment at Work or Office Premises and Domestic Violence Act available in Chapter – "Disposal of Cases by Police/Court" of our annual publication "Crime in India" report.
 - The report is available in our website <https://ncrb.gov.in>.
 - Latest published report "Crime in India" pertains to the year 2023.

An appeal, if any, against this reply may be made within 30 days to Shri Sanjay Mathur, Joint Director, National Crime Records Bureau, National Highway-8, Mahipalpur, New Delhi-110037 (Phone - 011-26782252).

Yours faithfully,


(Suresh Chand Bohra)
CPIO/ Joint Assistant Director (Stat.)
Tel: 011-2673 5571