

Workplace Harassment Legislation in India and the U.S. A: Cross-National Comparative Study

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Abstract

Workplace harassment continues to be a widespread issue all over the world, and it has a negative impact on the dignity, safety, and equality of workers. A comprehensive legal study of the workplace intimidation laws in India as well as the United States is being conducted as part of this paper. The purpose of this analysis is to assess the effectiveness, scope, and implementation of the respective legal frameworks. According to Title VII of the Civil Rights Act of 1964, which the Equal Employment Opportunity Commission (EEOC) enforces, is the legislation that governs such matters in the United States, whereas The POSH ACT, also known as the sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 serves as cornerstone legislation in India.

This study investigates the most important legal definitions, institutional mechanisms, and judicial interpretations in both of the jurisdictions under consideration. It brings to light substantial gaps in gender neutrality, enforcement mechanisms, and procedural safeguards. This is compared to the Indian framework, which is relatively new but progressive, particularly in terms of the establishment of Internal Complaints Committees for the purpose of redressal. The United States model demonstrates mature jurisprudence and broader protections under civil rights law. Insufficient reporting, inadequate implementation, and cultural barriers are some of the critical challenges that are identified in this paper. Additionally, the paper suggests that cross-jurisdictional learning could be utilized to strengthen both policy and practice. In conclusion, the study highlights the importance of having legal mechanisms that are robust, inclusive, and enforceable in order to guarantee that workers in both countries are free from harassment in the workplace.

Keywords: POSH Act, Title VII, Employment Law, India, the United States, and Comparative Law: Harassment at work, sexual harassment

1. Introduction

Harassment at workplace against women especially sexual abuse within particular, consists of pervasive and firmly established problem which has a bad impact upon the physical, sentimental, and financial welfare of workers worldwide. It diminishes individual dignity and safety, while also damaging organizational productivity and national economic growth.

The need for robust legal safeguards against harassment has become ever more important as workplaces continue to undergo change and attract a greater number of diverse employees. In order to effectively deal with this issue, a robust legal framework is required. This framework should not only hold offenders accountable for their actions, but it should also empower

victims and prevent similar behaviour through institutional mechanisms.

This study compares the legal systems of India and the United States in addressing workplace harassment. India's POSH Act, 2013, is the primary legislation, addressing the cultural context and legislative evolution of the issue. In dealing of sexual harassment against women at workplaces every nation has their own approaches and rules and regulations. India and USA both are two democrats and they have different legislation. So, in this study we are going to compare legal analysis of India and USA. It was enacted as a result of the Supreme Court's historic ruling in *Vishakha v. State of Rajasthan* (1997), which established guidelines in the absence of statutory law. The Civil Right Act of 1964, Title VII addresses workplace harassment in the US, enforced by the EEOC and influenced by decades of judicial interpretation.

Despite increasing awareness and legal frameworks, workplace harassment remains largely ignored, particularly in developing countries like India. Despite the US's strong civil rights enforcement and litigious culture, challenges persist, including employer non-compliance and burdening victims with proof. In India victim remain silent because of sociocultural stigma, fear, revenge and institutional indifference. Therefore, comparing the legal responses of India and the United States offers a significant opportunity to evaluate the ways in which different legal, cultural, and organizational systems deal with a universal human rights issue.

The goal of this comparative study is to provide an understanding of the degree to which both countries have successfully constructed legal and institutional mechanisms to combat harassment in the workplace, as well as to determine what each country can learn from the other. POSH Act is a statutory compilation of judicial guidelines that was enacted in India with the intention of filling a legal void and empowering women in traditionally patriarchal professional spaces. on the other side, the US legal system, deeply rooted in the civil rights movement, offers protections beyond gender, including against disclination on the grounds of national origin, religion, and race.

2. Research Objectives

This paper focuses on the objectives listed below,

- To look into and investigate the historic evolution of workplace harassment laws in United state as well as India for the current lawful frameworks that govern these laws.
- To examine the remedial measures, enforcement agencies, and procedural mechanisms that are present in both legal systems.
- For the purpose to evaluate the efficacy of these laws and ascertain whether or not they are inclusive, case law, empirical data, and academic commentary will be utilized.
- with the goal of determining the most effective procedures and legal innovations that can be implemented in different jurisdictions.

3. The Methodology

In this study, a doctrinal legal research method is used, and the primary reliance is placed on a qualitative analysis of statutes, case laws, legal commentaries, and comparative legal studies. One more way in which it incorporates a socio-legal perspective is by investigating the ways in which culture, organizational structure, and public awareness all play a role in determining how effective legal norms are. The analysis will be supported by secondary data, which will include reports from the government, studies published in academic journals, and policy briefs.

In further, the study will utilize a few comparative case studies to illustrate the distinction between judicial interpretation and enforcement outcomes.

4. Scope Of Workplace Harassment

Workplace harassment states unwelcome behaviour that create an frighten or offensive work environment for women, targeting employees predicted upon personal factor such as gender, race, religion, caste, disability, or sexual orientation. These behaviours can be physical, verbal, visual, or psychological. Sexual harassment, exchange of favour arrangements, and sexual assault are common forms. Global commitments to eliminate harassment and violence are emphasized by international agreements such as the Convention to End Discrimination Against Women in All its Forms and the International Labor Organization. Other forms of harassment, like psychological, discriminatory, along with third-party intimidation, are gaining legal recognition. It was reported by Riya Tandon that many Indian companies fail to implement Internal Complaints Committees (ICCs), despite the fact that The POSH ACT establishes a framework of laws for such organizations. This failure resulting in a rise in the quality of harassment cases that have not been resolved in industries such as manufacturing, construction, and services.

The state government of Uttar Pradesh has strengthened the digital SHe-Box portal for women's sexual harassment complaints. This includes mandating that both government and private organizations register all incidents of sexual harassment (ICCs) and resolve complaints within a period of ninety days. A survey conducted in 2023 among employees within the federal judiciary in the US state the data that eight percent or more then that had experienced harassment in the workplace. Few employees that is only 42 percent of felt comfortable reporting misconduct, despite the fact that reforms were implemented, which led to calls for improved employee dispute resolution systems.

5. Legal Framework In India

At workplace harassment, India's legal response particularly sexual harassment, has changed substantially in the last several decades. The historic judgement in Vishaka v. State of Rajasthan case stated guidelines for addressing sexual intimidation without a specific statute, marking a turning point in Indian jurisprudence and recognizing it as an infringement on basic rights. After Vaisakha judgement supreme court established a new guideline to describe sexual harassment when there is no formal legislation. Till the date there is no specific law that address the sexual harassment at workplace. According to new guidelines of supreme court, sexual harassment is violation 1 of the constitution of India.

6. The Vishaka Guidelines

The Vishaka judgment, which was handed down in the context of the gang rape that occurred during the course of a social worker's employment, established legally binding guidelines for both employers and institutions. As part of these measures, a complaints committee was established, awareness programs were implemented, and preventative measures were taken. Even though they were mandated by the courts, the guidelines had the same legal weight as regular laws until formal legislation was passed in 2013. The legal response of India to harassment in the workplace, particularly sexual harassment, has changed substantially in the few decades.

¹ Article 14,15, and 21

7. The Posh Act, 2013

After long-standing campaigning and the directives in Vishaka that the Indian Parliament implemented the 2013 Act on the Prevention, Prohibition, and Redress of Workplace Harassment of Women, which is more commonly referred to as the POSH Act. This law creates a through framework in order to prevent and resolution of sexual harassment in both the organized and unorganized sectors of the economy.

The Act establishes a comprehensive and encompassing any unwanted sexual behaviour including but not restricted to physical contact, advances, in terms of sexuality-coloured remarks, displaying pornography, and any other form of communication which harms women dignity that is sexual harassment. It applies to women of all categories, regardless of their employment status and also their age based, and it encompasses workplaces in the public domain and private domain both, and those who is working in the domestic service industries eligible for complaint in "internal complaints committee," and this required to be established in every workplace that has ten or more employees in order to receive and address complaints. Local Complaints Committees, also known as LCCs, are established at the district level for businesses that have fewer than ten employees or for situations in which the employer is the respondent.

A time-bound inquiry is one in which the International Criminal Court (ICC) is required to finish the investigation process within ninety days, and the employer has sixty days to take action regarding the report after that, the law provides safeguards to preserve the complainant's identity and prevents victimization during or after the investigation process. Additionally, the law prohibits retaliation against the complainant. There are penalties that can be imposed on employers who fail to comply with regulations. These penalties can include fines of up to ₹50,000, the cancellation of business licenses, or other legal consequences.

8. Relevant Bns Provisions Corresponding To Posh Act Violations

The Bhartiya Nyaya Sanhita (BNS), 2023, presents revised legal stipulations that correspond with the aims of the POSH Act, 2013, thereby enforcing enhanced criminal liability for workplace sexual harassment. The BNS comprises distinct sections that directly relate to different types of misconduct addressed by the POSH Act. Under the BNS pertains to sexual harassment, encompassing unwelcome physical contact, solicitations for sexual Favors, the display of pornography, and sexually suggestive remarks transgressions that align with the fundamental definitions outlined in the POSH Act.² Bhartiya Nyaya Sanhita addresses stalking³, encompassing both physical and digital forms, frequently occurring in workplace environments and compromising the safety of female employees. Furthermore, Bhartiya Nyaya Sanhita sanctions actions aimed at degrading a woman's modesty,⁴ including offensive gestures or verbal abuse, which corresponds with workplace misconduct prohibited by the POSH Act. The criminal provisions augment the civil framework of the POSH Act, enabling women to pursue institutional remedies via Internal or Local Committees and criminal recourse through law enforcement, thus enhancing workplace protections under the revised legal framework.

² Section 73

³ Section 77

⁴ Section 79

9. Judicial Interpretation And Enforcement

Indian courts have played a vital role in assessing along with expanding application of the POSH Act, with the Supreme Court in⁵⁶ emphasizing strict compliance with Vishaka Guidelines. However, enforcement remains erratic, especially in the unorganized sector, and institutions face criticism for not establishing ICCs or inadequate complaint resolution.

Challenges In Implementation

However, considering the fact that the POSH Act is progressive, there are still several challenges associated with its implementation

- Inadequate awareness on the part of both employees and employers
- Due to insufficient training, members of the ICC
- Women who are afraid of retaliation or social stigma are more likely to report their experiences.
- The Act does not provide any legal protection for members of the LGBTQ community or male employees.

Due to the nature of these challenges, it is imperative that broader legislative reform and cultural shifts be implemented. The law is a significant step toward safer workplaces; however, the effectiveness of the law is largely dependent on awareness, training, and institutional accountability.

Legal Framework In The United States

Harassment at workplace against women with in united state addressing by Civil rights regulation and it constitute the principal foundation of legal framework. Equal opportunity and anti-discrimination initiatives promoted by this framework. A multitude of federal statutes, strengthened by state laws and judicial precedents, collectively create an effective legal regime. While no singular law exclusively focuses on workplace harassment, several federal statutes are in effect. Individuals in the United States are safeguarded not only from gender-based harassment but also from harassment considering factors like age, sexual orientation, disability, national origin, race, and religion, reflecting a gender-neutral and inclusive approach.

The Civil Rights Act Of 1964, Title Vii

National origin, sex, race colour and religion, is the basis of harassment at workplace of the United State law which is prohibited employment discrimination according to The Civil Rights Act of 1964, Title VII. The Civil Rights Act of 1964, Title VII Act recognizes sexual intimidation as a form of discrimination in sex, affecting private and local, state, and federal governments, labour unions, employment agencies, and employers with 15 or more workers.

The Civil Rights Act of 1964, Title VII generally divides harassment at workplace into two categories:

- The term “quid pro quo” refers to situations in which workers must agree to respond to sexual advances in order to receive benefits in jobs such as promotions domains, increment in salary, or continued work.
- A hostile place of employment is characterized by a difficult, intimidating, or offensive atmosphere. This occurs only when unwelcome sexual behaviour is exhibited.

⁵ Medha Kotwal Lele v. Union of India

⁶ 19th October 2012

The EEOC, Equal Employment Opportunity Commission plays an important role. Title VII of civil right Act of 1964 is enforced by the EEOC, Equal Employment Opportunity Commission which is a federal agency of USA is also responsible for the enforcement of this law and provision. The organization conducts investigations into complaints, makes attempts at conciliation, and, in some instances, files lawsuits on behalf of individuals who have been wronged. Detailed rules on harassment at workplace have been issued by the EEOC, which provide employers with guidance on how to prevent and address such behaviour. These guidelines clarify what constitutes unlawful conduct.

Role Of The Equal Employment Opportunity Commission (Eeoc)

The agency continues to examine allegations on discrimination. On behalf of victims, the responsibilities of the EEOC include resolving disputes, acting as a mediator in specific cases, and initiating lawsuits before the court system. The principal objective of this agency is to inform both employees and employers regarding relevant regulations pertaining to reported harassment against women at workplace. The Equal Employment Opportunity Commission (EEOC) requires employers to implement prompt and suitable corrective measures. Noncompliance with this mandate may incur liability for the employer.

Judicial Interpretations And Case Law

The court of united states have been important in the development of the legal understanding and play vital role of harassment in the workplace. Significant decisions taken by the Supreme Court of India include:

- In the case of (1986⁷), it was stated that sexual harassment at workplace against women was a violation of Title VII and create hostile work environment. This case is deals that even if the inappropriate behaviour was not directly related to tangible job benefits.
- Two cases ⁸ and established employer liability criteria, requiring employers to prove reasonable preventive measures were implemented and not misused.⁹ These cases brought to light the significance of preventative policies, internal grievance procedures, and the responsiveness of employers.

Other Relevant Federal Laws

Title VII is the primary federal statute protecting individuals from harassment. It was strengthened by the 1991, Civil Rights Act which included harsh and compensatory damages in harassment situation and jury sessions. The Age Discrimination in Employment Act and the Americans with Disabilities Act provide protection for individuals against harassment based on disability or age, the Act on occupational safety and health mandates that employers provide a workplace free from known hazards, including psychological loss caused by harassment.

State Laws And Broader Protections

The United States of America's individual states, in addition to the federal law, have their own anti-harassment and anti-discrimination laws, many of which provide protections that are more comprehensive than the federal statutes.

⁷ Meritor Savings Bank v. Vinson (1986

⁸ Burlington Industries v. Ellerth

⁹ Faragher v. City of Boca Raton

- Several states, such as California, New York, and Illinois, have broad definitions of what constitutes sexual harassment.
- There are some states that do away with the minimum employee threshold, which encourages accountability among smaller businesses.
- Furthermore, the protections afforded to LGBTQ individuals, interns, and independent contractors are also included in many states.

Restriction And The Current Challenges In The Real World

Even though the laws of the United States are comprehensive, there are still several challenges: The victims have a heavy burden of proof, Fear of retaliation, loss of jobs, or damage to one's reputation underreporting, particularly in sectors that are disadvantaged or pay their lowest wages. The complicated nature of the litigation process may discourage victims from pursuing their claims.

Movements such as #MeToo have been helpful in bringing attention to systemic problems and bolstering efforts to implement reforms. These reforms include mandatory training on harassment, increased transparency in settlement agreements, and improved internal complaint systems.

The U.S. legal framework against workplace harassment is advanced, with detailed legislation, robust enforcement agencies, and extensive judicial guidance. However, its effectiveness relies on enforcement, workplace culture, and institutional support for victims.

Comparative Analysis

India and the United States have different laws regarding workplace harassment. India's POSH Act, 2013, enacted after the Vishaka case, defines harassment as sex-based discrimination within a gender-neutral framework enforced by the Equal Employment Opportunity Commission (EEOC). However, India's approach is primarily focused on women's protection, mandating the Internal Complaints Committees (ICCs) were established in businesses with more than ten employees.

On the other hand, the United State of America relies on the Civil Rights Act of 1964, Title VII which is not inclusive and does not include male or LGBTQ victims. Despite being more inclusive and heavily influenced by case law, the United States lacks a mandated internal redressal system and often involves expensive and complicated litigation. Additionally, while India requires employers to report on compliance and awareness, the United States leaves such policies largely up to the discretion of employers, unless mandated by state laws.

In India, there is a lack of awareness and poor implementation, and in the United States, there is underreporting and legal delays. Both of these systems are facing challenges. Nevertheless, the institutional mechanism of the Indian model and the rights-based inclusivity of the United States offer valuable lessons for strengthening global protections against harassment in the workplace.

Implementation Barriers And Flaws

In spite of the fact that India as well as United State of America have legal frameworks in place to deal with harassment in the workplace, there are still significant challenges and gaps in implementation in both countries. There is still a lack of ground-level implementation in India, even though the POSH Act, 2013 was with us, mandates employer responsibilities and duties and establishes a formal structure through the creation of committees for internal complaints (ICCs) in this act. There are a lot of organizations that either do not properly constitute ICCs or form them for the sole purpose of satisfying legal required formalities.

Women are frequently dissuaded from reporting incidents due to a combination of factors, including a lack of awareness among employees, particularly in businesses that are not organized, fear of retaliation, and social stigma. In addition, because the law is solely focused on women, it does not include men or individuals who identify as LGBTQ within its protective ambit, which results in a significant gap in terms of inclusivity. The Equal Employment Opportunity Commission enforces Title VII of the Civil Rights Act, grants extensive and gender-neutral safeguards in the United States.

Nevertheless, several impediments contribute to underreporting, including protracted legal processes, the onus of proof resting on victims, and apprehension regarding professional repercussions. Moreover, there is no mandatory internal complaints mechanism equivalent to India's ICCs, resulting in many employees lacking access to a formal internal platform for grievance redressal. These laws are not as effective as they could be in both countries because of deeply ingrained cultures in the workplace, limited accountability, and a lack of consistent training. Despite legislative reform, proactive employer actions, heightened awareness, and supportive institutional environments that promote safe and respectful workplaces are essential to address these disparities.

Recommendations

A variety of suggestions have arisen from the comparative analysis of harassment at workplace of India's law and the United States. These suggestions aim to strengthen both legal systems and ensure that workplaces are safer for all individuals.

1) **Increase the breadth of protections obtainable in India**-The POSH Act needs to be revised so that it incorporates language that is gender neutral. This would make it possible to provide protection to men, LGBTQ individuals, and other individuals who might be affected by harassment. As a result, Indian law would be brought into agreement with global human rights norms and the inclusive framework of United States legislation.

2) **Increase the effectiveness of monitoring and enforcement mechanisms**: In India, there must be rigorous government oversight to guarantee that Internal Complaints Committees (ICCs) are formed in the appropriate manner, that they receive adequate training, and that they operate independently. Annual compliance reports ought to be subjected to stringent scrutiny, and penalties ought to be imposed for non-compliance.

3) In spite of the fact that the United States places a significant amount of reliance on judicial enforcement, it would be beneficial for the country to mandate internal complaint mechanisms within organizations, following the model of India's International Criminal Court (ICC) system. Without resorting to legal action, this would provide victims with a more convenient and expedient means of resolving their issues.

4) **Enhance Awareness and Training Programs**: Both nations need to make investments in training programs that are mandatory, inclusive, and conducted on a regular basis for both employees and employers. There should be a culturally sensitive approach to awareness initiatives, and they should be designed to eliminate the stigma associated with reporting harassment.

5) It is essential to advocate for alternative dispute resolution (ADR). It is possible for both nations to incorporate mediation and conciliation mechanisms as part of their workplace redressal processes in order to reduce the stress and delays associated with litigation. Conciliation is already included in the POSH Act in India, and the Equal Employment Opportunity Commission of the United States can encourage similar early resolution strategies.

(6) It is essential to have stronger whistleblower protections, anonymity options, and non-retaliation policies in place in order to encourage reporting. By doing so, victims will be empowered and protected. Legal assistance, counselling, and advocacy for survivors are all examples of support systems that should be developed by both countries.

(7) Uniform Implementation Across Sectors: In India, efforts should be made to bring unorganized sectors, gig workers, and domestic workers under active protection with clear enforcement pathways. Domestic workers should also be included in this protection. Federal policies in the United States should aim to enhance uniformity among states and engage marginalized employment sectors.

(8) Legal Review and Public Transparency on a Periodic Basis Both of the legal systems should be subjected to regular review and reform to account for the alterations that have taken place in society and technology. Increased transparency and public trust can be achieved through the publication of anonymized data on harassment cases and their outcomes.

By putting these recommendations into action, both India and the United States will be able to move toward legal systems that are more robust, inclusive, and survivor-centered. These legal systems will not only punish misconduct, but they will also actively foster workplace environments that are safer and more respectful.

Conclusion

Workplace harassment is still a significant issue in all work environments around the world, necessitating the application of robust legal frameworks and proactive measures. A comparison between United State and the India demonstrates that while both countries have implemented substantial legal frameworks to combat workplace harassment, their methodologies diverge regarding the breadth of protections, inclusivity, and enforcement mechanisms. In 2013, POSH ACT enacted in India, is a legislative measure that is focused, structured, and preventive in nature. The primary aim is to safeguard women in the workplace; however, its gender-specific focus limits its inclusivity.

The United State of America has The Civil Right Act of 1964, which provides a gender-neutral and discrimination-based legal model that includes every worker, irrespective of sexual orientation or gender. However, the United States does not have a centralized internal redressal mechanism like India's ICCs do.

Underreporting, societal stigma, employer non-compliance, and a lack of awareness or support structures for victims are some of the persistent challenges that both countries confront when addressing the practical execution of their legislation. Given these deficiencies, it is evident that legal reforms, institutional accountability, and cultural transformations are necessary. In order to strengthen both systems, it is essential to make recommendations such as expanding the scope of protections, mandating workplace-level redressal systems, improving awareness and training, and ensuring that victims receive support that is not retaliatory.

The efficacy of laws against workplace harassment relies not only on the presence of stringent legislation but also on the extent to which societies empower individuals to report and absolve institutions of accountability for their actions. A hybrid model that combines the structural safeguards of India with the inclusive and rights-based approach of the United States could serve as a global benchmark for the creation of workplaces that are safer and more equitable.

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