

A Study On The Sexual Harassment Of Transgender Persons With Special Reference To Their Mental Wellbeing In Production Industries

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ABSTRACT:

India is marking its success in all spheres with most inclusivity and is marching towards achieving gender neutrality. However, it was only in 2014, when Indian Judiciary in a remarkable judgement recognised transgender as third gender, entrusting them with all fundamental rights at par with cis-gender people. In the current era, India is coming forward strongest then ever when it comes to Economy. Though, to make India largest and strongest economy, participation of people belonging to all genders is very much anticipated. More people belonging to third gender are joining the workforce contributing to the economic success of India. Although, when it comes to sexual harassment at workplace, third gender are considered to be most marginalised community which requires protection of law. The aim of the research paper is to study the scope of 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' with special reference to inclusivity of transgender people in general and trans-women in specific, to promote mental wellbeing for them in the Production Industries like Biofuel, Textile, Recycle Industries etc. The article studies the provisions of the Act and concludes that in absence of specific definition of the term 'women' as enumerated in the POSH Act, it can be inferred that the definition includes both cis-women and trans-women within its purview. The article further advocates for making the POSH Act gender neutral providing protection, both sexually and mentally, to people belonging to all genders.

1. INTRODUCTION:

India has made significant strides, and in the twenty-first century, it asserts that it continues to march toward achieving gender parity and gender neutrality. The constitution of India provides fundamental rights to all its citizens without discrimination based on gender of the citizen. In India, legal recognition of gender is not restricted to two genders male and female but the country has taken a reformative and progressive step by legally recognising transgender as third gender and have provided them with legal fundamental and constitutional rights at par with other two genders. India have historically and mythologically, witnessed existence of transgender community since the age of Ramayana and Mahabharata. Thus, it cannot be said that transgender community is an alien concept to Indian Society. Although, it came extremely late after many movements, more recently the Hon'ble Supreme Court of India in case of National Legal Services Authority vs. Union of India has recognised transgender as third gender and confirmed availability of all fundamental rights to them. However, judiciary and laws in India have fallen short in observing 'gender neutrality' when it comes to the crimes relating to sexual harassment and offences at workplace. Right to equality enumerated in Article 14, right against discrimination provided under Article 15, right to freedom granted under Article 19, and right to life and personal liberty under enumerated Article 21 are the fundamental rights provided under the Constitution of India ensuring that all citizens live their most wholesome life. Although, for people belonging to LGBTQ+ community, living a most wholesome life is still a dream. A study conducted by National Human Rights Commission (NHRC) on 'Human rights of transgender as third gender' has highlighted that the scope of several legal provisions is very limited to and does not cover social protection, healthcare, education, and access to goods and services, making transgender people very vulnerable. Taking a step ahead, the Hon'ble Supreme Court has also finally decriminalised homosexuality in case of Navtej Singh Johar v. Union of India.

In India, plentiful studies have been conducted with regards to violence against transgender community which have revealed that transgender persons are more susceptible to sexual and physical violence. Additionally, there is a relatively low employment rate for transgender people in the organized sector due to social prejudice toward the transgender population. However, the issue of their sexual harassment at the workplace needs to be addressed.

In India, the principal enactment that deals with protection from sexual harassment at workplace is 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as POSH Act). The Government of India enacted the POSH Act with the aim of defining what constitutes sexual harassment in the workplace, to lay down the necessary procedures for filing a complaint and how the subsequent inquiry should be conducted, and what action should be taken against the guilty assaulter. As the name suggests, it protects only women from workplace sexual harassment. However, the POSH Act being one of the major recourse for the protection of women

from workplace sexual harassment, it is highly criticised for not being gender neutral. More ironically, the Act enacted to safeguard the interests of women, has failed in defining the word 'woman'.

The study "Transgender Employees: Workplace Impacts on Health and Well-Being" provides a comprehensive exploration of the challenges faced by transgender individuals in the workplace, emphasizing the barriers to physical and psychological health and well-being that they encounter. From limited access to essential facilities to experiences of discrimination and harassment, transgender employees navigate a complex landscape of obstacles that impact their safety and overall job satisfaction. The study underscores the importance of understanding and addressing these issues, particularly the need for organizations to implement trans-sensitive policies and interventions to support the well-being and inclusivity of their transgender workforce. It also highlights the critical role of Human Resources in providing guidance and support to transgender employees, shedding light on the gaps in current practices. In essence, the research calls for a shift towards creating a more supportive and inclusive work environment that prioritizes the health and dignity of all employees, regardless of their gender identity.

Sexual harassment contributes to gender inequality in the labour market across various production industries, including the energy sector, textile industries, and recycling industries, by influencing sex segregation and pay disparities. Analysing Swedish data, the study finds that harassment risks vary based on workplace gender ratios, affecting women and men differently. The research indicates that harassment discourages individuals from working in gender-minority workplaces and leads those in such situations to switch jobs, perpetuating inequality.

The expansion of first-generation liquid biofuels, such as large-scale biofuel plantations, introduces gender-specific risks that affect food security, resource access, biodiversity, and employment discrimination, often resulting in more severe consequences for women. Gender norms and power imbalances influence the capacity of men and women to adapt to climate risks, including aspects like involvement in decision-making, division of labor, control over resources, and skill levels, increasing vulnerability to change. Shifting production towards biofuels can significantly impact marginalized communities, leading to increased food insecurity, uneven distribution of work based on gender, and changes in agricultural patterns that affect exposure and opportunities for both men and women.

Before enactment of POSH Act, A three-member committee led by Justice J.S. Verma, former Chief Justice of the Supreme Court, who was also one of the Judge delivering the Vishakha Judgment, was established on December 23, 2012. The committee was assigned with the mission of recommending changes to the Criminal Law that would expedite the criminal justice process and strengthen punishment for those found guilty of sexual assault against women. The committee submitted its valuable report on January 23, 2013 and suggested some of the changes in 'The Protection Of Women Against Sexual Harassment At Work Place Bill, 2012' which was then pending in the Lok Sabha. The report for the first attempt made towards recognising susceptibility of transgender person towards Sexual violence. It acknowledged that different persons have various sexual orientations, drew attention to the fact that "sexual orientation" is included in the definition of "sex" in Article 15, and suggested making "sexual offenses" gender-neutral. Although, while enacting the POSH Act, legislature completely ignored above recommendation made by the Justice J.S. Verma Committee.

2. WHO IS A TRANSGENDER PERSON?

On July 19, 2019, the then Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot, to protect the rights of transgender people introduced, 'the Transgender Persons (Protection of Rights) Bill' in the Lok Sabha but it lapsed after dissolution of Lok Sabha owing to general election. The bill was reintroduced and passed by Lok Sabha on August 5, 2019. In Rajya Sabha, the Bill was passed after only three days of debate and discussion without any amendments in the Bill on November 26, 2019.

Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019 provides for the definition of 'transgender person' as under:

'2(k) a person whose gender does not match with the gender assigned to that person at birth and includes transman or transwoman (whether or not such person has undergone sex reassignment surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.'

In simple terms, transgender are people who do not conform to the gender identities they were given at the time of their birth and their sexual orientations vary and are not dependent on their gender identity.

The Act also protects employment rights of transgender persons. Section 3 of the Act provides for Prohibition against discrimination as under:

" 3. No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;"

Notably, in India the right to work is yet not a fundamental right, but a directive principle of state policy, which is not enforceable by court of law and merely a guiding principle for state. Article 41 provides that, the State shall endeavour to secure the right to work for the unemployed'. Further, Article 19(1)(g) grants freedom of profession and occupation to all its citizens. Moreover, India has ratified ILO's Discrimination (Employment and Occupation) Convention, 1958, as early as in 1960. It prohibits discrimination on the ground of 'race, colour, sex, religion, political opinion, national extraction

or social origin'. However, we as community fail to recognise that the transgender people are the most vulnerable section of the society and lacks security and protection.

3. HARASSMENT OF TRANSGENDER PEOPLE AT WORKPLACE:

Transgender people fall easy prey for sexual harassment and many times being discriminated because of their gender identification and the risk of being victim of sexual harassment acts as a deterrent factor for them to participate in the workforce. There are less than 6% of transgender people working in the formal sector and they are almost negligible in the government sector. For their daily sustenance, transgender persons are compelled to beg on the streets and participate in repressive systems. In 2019 The Guardian conducted a study concluding that 70% of lesbian, gay, bisexual, and transgender (LGBT) people are sexually harassed at work. Further, the World Bank published the report in 2014 with title, "The Economic Cost of Homophobia and the Exclusion of LGBT People: A Case Study of India", which revealed that India has lost 01-1.7% of its GDP because of the homophobia and exclusion of LGBT from the workplace and 56% of the LGBT people reported discrimination in white-collar jobs. A study by NHRC on the rights of transgender reveals that around 92% of transgender persons are denied the right to participate in any form of economic activity and even qualified ones are denied jobs and around 18% of them are physically abused.

The POSH Act in India is not only preventing sexual harassment but also indirectly promoting overall mental well-being by creating a secure work environment. By emphasizing the importance of Internal Complaints Committees (ICCs) and the structured grievance redressal process provided by the Act, it underscores the support it offers to employees facing harassment, thereby addressing issues like anxiety and depression. The article also underscores how the Act aligns with constitutional mandates of gender equality and fundamental rights protection, ultimately advocating for a supportive work culture through awareness programs and sensitization sessions. Through these efforts, the Act contributes to fostering a healthier, more resilient workforce.

A Trans woman is particularly positioned at the crossroads of minority identities when she enters the workforce, making her open to harassment from many of her colleagues. Some peers view them as men disguised as women, others as people with mental disability. They have to persistently deal with homophobic comments and cheeky remarks. In addition to creation of obstacles for them to be employed, it severely affects their mental health leaving behind deep rooted wounds. Even after landing a job, they frequently confronted with procedural difficulties that create serious obstacles to their full inclusion in the workplace. Examples of these hindrances can be requiring transgender persons to disclose their "official" gender on paperwork, not having access to bathrooms that they can use comfortably, etc. They constantly have to face and overcome discrimination from their colleagues and supervisors. Combining all these, it leaves major psychological and social effects on the transgender persons. In addition to this, the exclusion of the remedies available under the POSH for instances of sexual harassment is another fatal blow to a community which already finds institutional and societal barriers to find employment. It is thus submitted that there is a need to interpret POSH in a way that includes Trans women as victims.

4. TRANS WOMEN AS AGGRIEVED WOMEN:

The POSH Act under Section 2 (a) provides for the definition of aggrieved women as under:

"2. (a) "aggrieved woman" means— (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;"

In simple terms any women irrespective of her age and employment status, being harassed by respondent is an aggrieved women.

The definition of 'Cisgender' as provided by LGBTQIA Resource Centre states,

"Cisgender: A gender identity, or performance in a gender role, that society deems to match the person's assigned sex at birth".

Thus, in simple terms, cisgender are people who do conform to the gender identities they were given at the time of their birth and their sexual orientations does not vary and are dependent on their gender identity.

Conventionally women as provided under the definition of POSH Act only covered cis-women, but it would appear from certain judicial pronouncements that that cis-women or trans-women both are covered under the definition of 'women'.

In 2018, hon'ble Delhi High Court observed in case of Anamika vs. Union of India that a cognizable offence under the provision of section 354A IPC, in particular sub-clause (i), (ii) and (iv) is made out on the complaint by a trans woman, the same shall be registered, in accordance with law, in terms of the decision of the Hon'ble Supreme Court in the case of NALSA. The Court had ordered the police to file a charge sheet against the harassers of a transgender woman on the grounds that if a transgender person identifies herself as a woman, they will be given the same rights as that to a woman and hence can file a criminal complaint. This judgment clearly indicates that the intent of the judiciary is to include transgender persons under the protection of law and to not exclude them from feeling safe in society.

Here, it can be interpreted that if the police have to consider a transgender woman as a woman and confer the same rights as guaranteed to a woman under IPC, the IC should confer Trans women same rights as cis-women and if a transgender woman files a complaint with the IC, they should follow the same process as prescribed under the POSH Act.

In another case in 2019, the Hon'ble Madras High Court was called upon to interpret the meaning of "bride" in the Hindu Marriage Act, 1955 in case of Arunkumar vs. Inspector General of Registration. The registration officer had rejected the marriage application of the couple stating that the plaintiff, a trans-woman, was not a "bride" under the Act. The Court rejected this reasoning, stating that meaning of the word was not static and would include all women, cis or trans. Justice G.R. Swaminathan significantly noted that the marginalisation of trans and intersex people has gone on for far too long. He said, "*the Constitution of India is an enabling document. It is inviting them to join the mainstream. Therefore, it would be absurd to deny the transgender the benefit of the social institutions already in place in the mainstream.*"

Thus, here it can be interpreted that similar to above interpretation, POSH Act can also be read to include trans women within the ambit of "aggrieved women", because they are indeed women, and at the same time entitled to the same rights as cis-women.

In one of the article it has been explored that the environmental and socio-economic risks associated with large-scale biofuel plantations, along with the potential risks to food security arising from higher food prices due to increased use of agricultural crops for biofuels. It is essential to grasp the gender-specific implications of liquid biofuels production in developing nations, considering diverse socio-economic and policy contexts, to thoroughly assess the effects on individuals' economic and social welfare.

The expansion of first-generation liquid biofuels, such as large-scale biofuel plantations, brings about gender-specific risks that affect food security, access to resources, biodiversity, and discrimination in employment, often resulting in more adverse consequences for women as well as transgender people. Gender norms and power imbalances impact the capacity of men, women and transgenders to adjust to climate risks, encompassing elements like involvement in decision-making, division of labour, control over resources, and skill levels, heightening susceptibility to change. Shifting production towards biofuels can lead to significant impacts on marginalized communities, including heightened food insecurity, uneven distribution of work based on gender, changes in agricultural patterns influencing varying levels of exposure and opportunities for people belonging to all genders.

5. NEED OF IDENTITY CERTIFICATE TO FILE COMPLAINT UNDER POSH ACT:

The trans women to be considered legally as trans women and to enjoy the same rights of cis-women, need to make an application before the District magistrate to procure an Identity Certificate, which may be issued as per the provisions of section 6. A trans woman only then can file a complaint before IC under the POSH Act.

6. TRANSGENDER PERSON AS RESPONDENT UNDER THE POSH ACT:

In our society many people wrongfully see transgender women as 'men in disguise' and 'men in dresses'. Many also conceptualise the POSH Act to be a statute that protects female victims against only male perpetrators. But in reality the POSH Act specifically defines who can be respondent.

As defined by POSH Act 'respondent' means a person against whom the aggrieved woman has made a complaint under section 9'. Thus, it is evident from the definition that even if the complainant under POSH Act can only be a woman, the respondent can be any person, irrespective of gender of the person.

Recently in 2020, the hon'ble Calcutta High Court in case of Dr. Malabika Bhattacharjee vs. Internal Complaint Committee, Vivekananda College has held that under POSH Act complaints can be filed against women as well by the aggrieved women. The Court noted that although sexual harassment might affect someone's modesty or dignity as defined by the 2013 Act, it does not imply that another person of the same gender cannot do the same. Sexual harassment refers to a person's dignity, which is related to her/his gender and sexuality. Regardless of the sexual orientation and gender of the perpetrator of the act, a person of any gender may feel threatened and subjected to sexual harassment if any of the acts described in Section 2(n) outrage their modesty or dignity as a member of the said gender.

Thus, trans women, trans men, men, women, person belonging to any gender can be a respondent under the POSH Act.

7. CONCLUSION:

International Labour Organisation (ILO) in 2019 has come up with the Violence and Harassment Convention. It defines gender-based violence and harassment as "violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment". Thus, the latest ILO Convention is gender-neutral in nature. Although India has not yet ratified the Convention, it can always be considered to be a guiding principle in framing policies against harassment at workplaces.

The POSH Act is a significant piece of legislation that protects the right of women only. Therefore, the POSH should be amended to revise the definition of "aggrieved" from "woman" to "person" in order to comply with the mandate of the Constitution. Further, it is need of the hour that transgender persons are provided protection under the POSH Act to abide by the Indian Constitution and International Conventions. The amendment of the POSH Act will be a good place to start in achieving a greater objective of gender neutrality for protection against sexual offences at workplace.

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