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BEYOND THE BINARY: ANALYZING INTERSECTIONAL BARRIERS TO JUSTICE AND THE IMPLEMENTATION CRISIS OF ANTI-HARASSMENT LAWS FOR MARGINALIZED IDENTITIES IN INDIA

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I. ABSTRACT

This paper examines how India's anti-harassment legal regime, while formally grounded in equality and dignity, often fails to deliver effective remedies for persons whose lived identities do not align with dominant, binary and majoritarian assumptions embedded in institutional practice. Using an intersectional lens, it argues that harassment is not merely an individual wrong but a structural harm produced through overlapping hierarchies of gender, caste, class, disability, sexuality, religion, migration status, and workplace precarity. The study maps how these intersecting locations shape exposure to harassment, the capacity to report, and the credibility afforded to complainants during internal and external processes. It highlights the "implementation crisis" as a composite failure: procedural formalism without survivor-centric safeguards, weak internal committee independence, confidentiality lapses and retaliatory practices, under-reporting driven by stigma and livelihood insecurity, and uneven access to legal literacy and representation. Particular attention is paid to the erasures faced by transgender, gender non-conforming, queer, and other marginalized identities within complaint pathways that were designed around a narrow archetype of the complainant and the workplace. The paper further critiques how institutions translate statutory compliance into checkbox governance, prioritizing risk management over substantive justice, thereby reproducing exclusion even when mechanisms exist on paper. Finally, it proposes a shift from minimalist compliance to an inclusive, intersectional framework that strengthens accountability, ensures accessibility and reasonable accommodation, improves

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evidentiary sensitivity to power asymmetries, and aligns anti-harassment governance with constitutional commitments to equality and non-discrimination.

II. KEYWORDS

Intersectionality, Workplace Sexual Harassment, Marginalized Identities, Anti-Harassment Law in India.

III. INTRODUCTION

A. Background and context of anti harassment law in India

Sexual harassment law in India grows out of a long history of gendered violence, everyday sexism, and structural inequality that cuts across workplaces, homes, streets, and digital spaces. Crimes against women continue to rise despite reforms; the National Crime Records Bureau (NCRB) recorded 4,45,256 cases of crimes against women in 2022, a 4 percent increase from 2021, with assault “with intent to outrage modesty” and related offences remaining a large share of reported incidents.³ These numbers reveal that harassment is not episodic misconduct but a systemic pattern embedded in social and institutional power relations.

Indian criminal law originally addressed harassment only indirectly, through provisions on outraging modesty or using insulting words or gestures against women. These offences, now substantially retained and reorganised in Chapter V of the Bharatiya Nyaya Sanhita, 2023, including sections on assault or criminal force to woman with intent to outrage modesty and sexual harassment, still reflect a morality focused on “modesty” rather than autonomy and equality.⁴ The recodification signals continuity of protection

³ Tanvi Saxena, Crimes Against Women in India: Trends, Challenges, and Policy Responses (Oct. 13, 2025), Strategic Policy & Research Found., <https://sprf.in/crimes-against-women-in-india-trends-challenges-and-policy-responses/> (last visited Feb. 15, 2026).

⁴ Bureau of Police Research & Dev., Comparison Summary: Bharatiya Nyaya Sanhita (BNS) to Indian Penal Code (IPC) 3–4 (July 1, 2024), <https://bprd.nic.in/uploads/pdf/COMPARISON%20SUMMARY%20BNS%20to%20IPC%20.pdf> (last visited Feb. 15, 2026).

but also shows that the penal approach remains centred on individual culpability, while structural and intersectional harms stay less visible.

A decisive shift came when the Supreme Court in *Vishaka v. State of Rajasthan* treated sexual harassment as a violation of Articles 14, 15, 19(1)(g) and 21, and read binding duties into constitutional guarantees by relying on international standards such as the Convention on the Elimination of All Forms of Discrimination against Women and the idea that “gender-based violence is a form of discrimination.”⁵ *Vishaka* and later *Medha Kotwal Lele v. Union of India* converted diffuse experiences of harassment into a justiciable equality claim, imposed positive obligations on employers and the State, and framed harassment as an institutional governance failure rather than a purely private wrong.⁶ Together these judgments build the constitutional and international-law foundation on which later legislation rests.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 translates this constitutional jurisprudence into a statutory regime by expressly linking sexual harassment to violations of equality and dignity and by mandating preventive, prohibitory and remedial measures in both organised and unorganised sectors.⁷ The Act’s long title and preamble emphasise protection, prevention and redressal, while government notifications and guidelines stress internal committees, local committees, and safe working environments across public, private and informal workplaces. Yet implementation remains uneven, many establishments either do not constitute compliant bodies or treat them as mere formalities, and the framework continues to centre “women” in a way that often leaves non-binary, transgender and other marginalised identities at the periphery of legal protection.

⁵ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

⁶ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297 (India).

⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE.

B. Research questions

1. How does the existing anti-harassment law architecture in India conceptualize harassment, discrimination and structural power, and to what extent does it recognize identities beyond the gender binary and other marginalized locations?
2. In what ways do intersecting axes of gender, caste, class, sexuality, disability, religion, migration status and employment precarity shape the reporting, investigation and adjudication of harassment claims under Indian anti-harassment laws?
3. What institutional, procedural and evidentiary gaps contribute to the “implementation crisis” of anti-harassment laws in India, particularly across key sites of harassment such as workplaces, educational institutions and digital spaces?
4. What normative, institutional and governance reforms are necessary to develop an intersectional and inclusive anti-harassment framework that is consistent with India’s constitutional guarantees of equality, dignity and non-discrimination?

C. Research Objectives

1. To critically examine the constitutional, statutory and institutional framework governing anti-harassment regulation in India, with particular reference to how equality, dignity and non-discrimination guarantees are translated into protections for persons whose identities fall beyond the dominant gender binary and other majoritarian norms.
2. To analyse how intersecting axes of gender identity, caste, class, sexuality, disability, religion, migration status and employment precarity shape vulnerability to harassment, access to complaint mechanisms and the treatment of complainants within internal and external redressal processes.

3. To evaluate the functioning of anti-harassment institutions and procedures in practice, including internal committees and other grievance redressal bodies, with regard to accessibility, independence, confidentiality, evidentiary sensitivity and protection against retaliation, especially for marginalized and non-normative identities.
4. To identify and unpack the key components of the implementation crisis of anti-harassment laws in India, including doctrinal gaps, institutional design flaws, procedural formalism, socio cultural stigma and structural power asymmetries that inhibit effective reporting, investigation and adjudication.

D. Research Methodology

The present study adopts a doctrinal research methodology grounded in a detailed and critical analysis of primary and secondary legal materials relevant to anti-harassment law and intersectional equality in India. It systematically examines constitutional provisions on equality, dignity and nondiscrimination, particularly Articles 14, 15, 19 and 21, as well as statutory frameworks such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, allied service and labour regulations, and relevant provisions of the new criminal law codes and evidence law, in order to understand how they construct and regulate harassment in normative and institutional terms.

Authoritative and persuasive judicial decisions of the Supreme Court and various High Courts are analysed to map the evolution of jurisprudence on sexual harassment, hostile environments, intersectional discrimination and institutional accountability. These primary materials are read alongside secondary sources, including academic commentary, law commission reports, governmental and quasi governmental committee reports, policy documents, and empirical studies produced by civil society and international organisations, to contextualise doctrinal developments within broader social and institutional realities.

IV. CONCEPTUAL AND THEORETICAL FRAMEWORK

A. Harassment, discrimination and structural power in legal discourse

Harassment in legal discourse does not stay as a set of isolated acts. It operates as a technique of power that disciplines bodies and behaviour, and that maintains hierarchies of gender, caste, class and sexuality inside institutions and public spaces.⁸ Critical and feminist scholars show how everyday humiliation, sexual comments, exclusion from networks, and hostile environments work together to signal who belongs and who remains expendable in workplaces and universities.⁹ Law often treats these acts as discrete incidents, but social theory reads them as “micro practices” that stabilise macro structures of patriarchy, caste domination and heteronormativity.¹⁰

Discrimination analysis in Indian constitutional law historically focused on formal classifications and comparators under Articles 14 and 15, yet critical equality jurisprudence now moves toward a more substantive approach that foregrounds power relations.¹¹ Substantive equality theory argues that the State and institutions must dismantle patterns of disadvantage, not merely remove express distinctions on the face of the law.¹² This move aligns with intersectionality, which insists that caste, gender, religion, disability, class and sexuality do not act as separate layers but as interlocking axes of subordination that shape how harassment is produced and experienced.¹³

Structural power appears most clearly when law frames harassment as an individual deviance or “bad behaviour” of a perpetrator, while it leaves untouched the organisational cultures that normalise sexist jokes, caste slurs or transphobic ridicule.¹⁴

⁸ Nivedita Menon, *Seeing Like a Feminist* 20–27 (2012).

⁹ Shilpa Phadke et al., *Why Loiter? Women and Risk on Mumbai Streets* 45–52 (2011).

¹⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison* 26–27 (Alan Sheridan trans., 1995).

¹¹ Sandra Fredman, *Substantive Equality Revisited*, 14 *Int’l J. Const. L.* 712, 716–20 (2016), <https://doi.org/10.1093/icon/mow043> (last visited Feb. 15, 2026).

¹² Catharine A. MacKinnon, *Sex Equality* 1050–55 (3d ed. 2016).

¹³ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 *U. Chi. Legal F.* 139, 149–57.

¹⁴ Lauren B. Edelman et al., *When Organizations Rule: Judicial Deference to Institutionalized Employment Structures*, 117 *Am. J. Soc.* 888, 892–97 (2011), <https://www.jstor.org/stable/10.1086/661984> (last visited Feb. 15, 2026).

Intersectional work on Dalit women, queer and trans persons, and religious minorities in India shows that complainants often face retaliation, ostracism and disbelief because they challenge entrenched power and not just interpersonal misconduct.¹⁵ This reality exposes the limits of a purely fault based model and pushes legal discourse toward a recognition of institutional and systemic discrimination, including duties to prevent, monitor and transform environments.

International and comparative human rights bodies increasingly conceptualise sexual harassment as a form of discrimination and violence that flows from unequal power, not only from sexual desire or individual animus.¹⁶ They stress that power can be economic, organisational, caste based, age based or linked to immigration status, and that effective remedies require institutional accountability and structural change. Indian courts, especially in *Vishaka* and later equality cases, draw on these ideas when they treat harassment as a violation of dignity, privacy and equal citizenship rather than as a mere offence against modesty or decorum.¹⁷ This convergence between theory and jurisprudence lays the groundwork for reading anti-harassment law as a site where structural power can be either reproduced or seriously contested.

B. From sex to gender and beyond the binary of identity

Early legal discourse often treats “sex” as a fixed biological fact, grounded in anatomy and chromosomes, and uses that category to assign rights and obligations. Feminist and queer theorists, however, show that what law calls “sex” already carries social meaning and expectations, so it cannot be neutral or purely biological.¹⁸ Judith Butler’s account of gender as performative argues that gender emerges through repeated acts, norms and sanctions, rather than from an inner essence.¹⁹ This move from sex to gender shifts the

¹⁵ Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* 271–79 (2009).

¹⁶ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, U.N. Doc. CEDAW/C/GC/35 (2017), <https://digitallibrary.un.org/record/1305057> (last visited Feb. 15, 2026).

¹⁷ Upendra Baxi, *The “Just, Fair and Reasonable” Standard in Indian Constitutional Jurisprudence*, 3 *Cardozo L. Rev.* 781, 794–800 (1982).

¹⁸ Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* 3–10 (2000).

¹⁹ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* 9–11 (1990).

focus from bodies to power, because it asks who defines the “normal” woman or man, and who pays the price when they fail to conform.²⁰

Global human rights discourse then begins to name “gender identity” and “gender expression” as distinct dimensions of personhood. The Yogyakarta Principles describe gender identity as each person’s deeply felt internal and individual experience of gender, which may or may not correspond with sex assigned at birth, and they insist that human rights protections cannot stop at a male–female binary.²¹ This framework recognises that people who are transgender, non-binary, gender non conforming or intersex face specific forms of violence and harassment that law rooted only in sex difference struggles to see.²²

Indian constitutional jurisprudence gradually reflects this conceptual shift. In *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, the Supreme Court holds that “sex” in Articles 15 and 16 includes gender identity and that the Constitution protects the right to live and express one’s self identified gender, including as “third gender,” with dignity and autonomy.²³ The Court explicitly breaks from a purely biological understanding, and it recognises that denial of recognition to hijra, kinnar and other communities amounts to discrimination on grounds of gender identity.²⁴ Later, in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the Court reads “sex” in Article 15 as including sexual orientation and again stresses that constitutional morality rejects rigid binaries and heteronormative assumptions about bodies and desire.²⁵

²⁰ Raewyn Connell, *Gender and Power: Society, the Person and Sexual Politics* 18–25 (1987).

²¹ The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity 6 (Mar. 2007), https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf (last visited Feb. 15, 2026).

²² Sonia Corrêa et al., *SexPolitics: Reports from the Front Lines* 21–30 (Sexuality Policy Watch 2008), <https://sxpolitics.org/sexpolitics-reports-from-the-front-lines/456> (last visited Feb. 15, 2026).

²³ *Nat’l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

²⁴ Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* 141–48 (2004).

²⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

C. Intersectionality as a legal and analytical tool

Early legal discourse often treats “sex” as a fixed biological fact, grounded in anatomy and chromosomes, and uses that category to assign rights and obligations. Feminist and queer theorists, however, show that what law calls “sex” already carries social meaning and expectations, so it cannot be neutral or purely biological.²⁶ Judith Butler’s account of gender as performative argues that gender emerges through repeated acts, norms and sanctions, rather than from an inner essence.²⁷ This move from sex to gender shifts the focus from bodies to power, because it asks who defines the “normal” woman or man, and who pays the price when they fail to conform.²⁸

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²⁶ Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* 3–10 (2000).

²⁷ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* 9–11 (1990).

²⁸ Raewyn Connell, *Gender and Power: Society, the Person and Sexual Politics* 18–25 (1987).

²⁹ The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity 6 (Mar. 2007), https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf (last visited Feb. 15, 2026).

³⁰ Sonia Corrêa et al., *SexPolitics: Reports from the Front Lines* 21–30 (Sexuality Policy Watch 2008), <https://sexpolitics.org/sexpolitics-reports-from-the-front-lines/456> (last visited Feb. 15, 2026).

³¹ *Nat’l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

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D. Mapping marginalized identities in the Indian socio legal context

Marginalisation in India does not sit on a single axis. It clusters around caste, tribe, religion, gender identity, sexuality, class, disability, language, migration status and region, and these categories overlap in everyday institutional life. Socio legal research on intersectionality in South India shows how caste location amplifies the risk of harassment for women, trans and gender non conforming persons, and persons with disabilities in schools, workplaces and public offices.³⁴ The same act of humiliation or harassment carries very different consequences when directed at a dominant caste employee and at a Dalit, Adivasi, Muslim, queer or disabled worker.

Caste and gender together produce a specific vulnerability for Dalit and Adivasi women and girls who face sexual violence, public humiliation, and routine harassment both in workplaces and in accessing basic resources like land, water and sanitation. Recent analysis of NCRB data and field documentation by Dalit women’s groups notes a sharp increase in cases registered for assault to outrage modesty, sexual harassment, rape and kidnapping of Dalit women, and links this pattern to weak implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 despite

³² Arvind Narrain, *Queer: Despised Sexuality*, Law and Social Change 141–48 (2004).

³³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

³⁴ Jayna Kothari et al., *Intersectionality: A Report on Discrimination Based on Caste with the Intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala* 5–15 (Centre for Law & Policy Research 2019), <https://clpr.org.in/wp-content/uploads/2019/08/Intersectionality-A-Report-on-Discrimination-based-on-Caste-with-the-intersections-of-Sex-Gender-Identity-and-Disability-in-Karnataka-Andhra-Pradesh-Tamil-Nadu-and-Kerala.pdf> (last visited Feb. 15, 2026).

its design as a special law against caste atrocities.³⁵ Harassment here functions as a tool to enforce caste hierarchies and punish assertion, not just as individual misconduct.

Economic location also matters. A very large share of women, Dalits, Adivasis, migrants and religious minorities in India work in the informal economy, with no written contracts, no unions, and almost no functional internal complaints committees.³⁶ International Labour Organization data show that informal work dominates female employment in South Asia and is marked by low pay, absence of social security and weak legal enforcement. In such settings harassment by supervisors, contractors or patrons often decides continued access to work, so the threat of job loss silences complaints even where anti harassment norms exist on paper.

E. Sites of harassment

Harassment in Indian law stretches across many spaces that law defines as “workplace” and many that it still treats as private or residual. The POSH framework and allied government guidelines already read workplace to include offices, factories, field locations, employer provided transport, and even dwelling places when work extends into the home, especially in the unorganised sector. This wide definition shows that law recognises how power and dependency travel with the worker, yet enforcement on the ground still focuses much more on formal offices than on homes, farms, streets or platforms where informal and gig work takes place.³⁷

Formal workplaces, including corporations, courts, law firms, hospitals and offices, remain central sites of harassment because they concentrate economic power, evaluation

³⁵ All India Dalit Mahila Adhikar Manch (AIDMAM)-NCDHR, Caste-based Gender Violence Against Dalit Women and Girls in India: Factsheet 2024 3-6 (2024), <https://idsn.org/wp-content/uploads/2025/03/AIDMAM-Factsheet-2024-Violence-again-women-Factsheet.pdf> (last visited Feb. 15, 2026).

³⁶ Int’l Labour Office, Women and Men in the Informal Economy: A Statistical Picture 21-27 (3d ed. 2018), https://www.ilo.org/sites/default/files/2024-04/Women_men_informal_economy_statistical_picture.pdf (last visited Feb. 15, 2026).

³⁷ Dep’t of Expenditure, Ministry of Fin., Gov’t of India, Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 5-7 (2015), https://doe.gov.in/files/inline-documents/DoE_Prevention_sexual_harassment.pdf (last visited Feb. 15, 2026).

processes and hierarchies. Empirical work on implementation of the POSH Act notes that many institutions either do not constitute Internal Committees, or treat them as perfunctory bodies with limited independence, and that complaint statistics are often absent from annual reports despite statutory requirements.³⁸ The research also records fear of retaliation, client loss and reputational harm as key reasons for under reporting, which means that even where law formally covers the site, access to remedy stays fragile and uneven.

Educational institutions create another distinct site of harassment where power flows through grades, recommendations, hostel rules and discipline. The UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 mandate Internal Complaints Committees, awareness programmes and periodic reporting, yet studies of universities and colleges reveal low knowledge of procedures among students and staff, poor resourcing of committees, and delays that stretch over semesters. These institutional patterns allow professors, supervisors and senior students to use harassment as a tool of control over academic progression, hostel access and participation in campus life.³⁹

Public spaces such as streets, markets, parks, local transport and urban voids form a third dense site of harassment. Ethnographic work on women's presence in Mumbai shows how staring, commentary, touching and moral policing combine to push women, queer and trans persons into a logic of compulsory purpose they must always appear to be "on the way" to work, home or study and rarely allowed to simply occupy space.⁴⁰ The threat of harassment becomes a disciplining device that restricts mobility and leisure, and that

³⁸ Upal Basu, Strengthening the Implementation of the POSH Act: The Critical Role of Data, 8(4-6) NUJS J. Reg. Stud. 1, 4-9 (2023), <https://www.nujs.edu/wp-content/uploads/2024/01/vol-8-iss-4-6.pdf> (last visited Feb. 15, 2026).

³⁹ Nandini Manjrekar & Renuka Kad, Evaluating the Effectiveness of UGC's Policy to Prevent Sexual Harassment at Higher Educational Institutions, 19 Artha J. Soc. Sci. 21, 27-35 (2020), <https://journals.christuniversity.in/index.php/arthartha/article/download/2855/2189/7348> (last visited Feb. 15, 2026).

⁴⁰ Shilpa Phadke, Why Loiter? Radical Possibilities for Gendered Dissent in the Urban, in *Dissent and Resistance in Asia's Cities* 167, 170-76 (2017), https://blogs.ubc.ca/fafa/files/2020/01/Phadke_Why-Loiter_Dissent-and-Resistance-in-Asian-Cities.pdf (last visited Feb. 15, 2026).

justifies curfews, segregation and surveillance in the name of safety, especially for those already marked by caste, religion or class.

V. ANTI HARASSMENT LAW ARCHITECTURE IN INDIA

The contemporary anti-harassment framework in India rests on a layered architecture of constitutional guarantees, civil regulatory schemes and criminal law. Articles 14, 15, 19(1)(g) and 21 set the normative core by linking safe working and living conditions to equality, dignity, livelihood and personal liberty, and government guidance under the POSH regime explicitly frames workplace sexual harassment as a violation of these fundamental rights and of international commitments such as CEDAW.⁴¹ This architecture formally moves harassment out of the private sphere and recasts it as a public law concern engaging State and institutional duties.

At the centre of this framework stands the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which operationalizes three interlocking duties prohibition, prevention and redressal. It defines “aggrieved woman” and “workplace” in broad terms, covers both organised and unorganised sectors, and mandates Internal and Local Committees with quasi judicial powers to inquire and recommend relief, compensation and disciplinary action.⁴² Employers must adopt written policies, display information, conduct awareness programmes and file periodic reports, although actual compliance still varies sharply across sectors and across States.

Criminal law under the Bharatiya Nyaya Sanhita, 2023, provides a second track of protection through offences such as sexual harassment, assault or criminal force to woman with intent to outrage her modesty, stalking and voyeurism, which may apply inside or outside workplaces. These offences recognise unwelcome physical contact,

⁴¹ Ministry of Women & Child Dev., Gov't of India, Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 15–19 (Nov. 2015), <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf> (last visited Feb. 15, 2026).

⁴² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE.

sexual demands, sexually coloured remarks, nonconsensual image circulation and intrusive surveillance as punishable conduct.⁴³ However, the doctrinal language of modesty and the gendered focus on “a man” as offender and “a woman” as victim reveal how the penal track still encodes binary assumptions and often fails to fully capture harassment faced by transgender, non binary and gender non conforming persons.

Group specific equality statutes add further layers to the anti harassment architecture by addressing power relations rooted in caste and tribe. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, treats many forms of verbal abuse, social boycott, sexual violence and public humiliation against members of Scheduled Castes and Scheduled Tribes as distinct atrocities, mandates special courts and prescribes enhanced penalties and victim centred measures of relief and rehabilitation.⁴⁴ In practice, this law often becomes the primary vehicle to address harassment that targets Dalit and Adivasi persons at work, in education and in public spaces, although its intersection with gender and sexuality is still under developed in jurisprudence.

VI. INTERSECTIONAL BARRIERS TO JUSTICE IN ANTI HARASSMENT LAW

Intersectional barriers arise because anti harassment law in India largely imagines a generic victim, often an upper caste, able bodied, cisgender woman in formal employment, and then builds procedures around her situation. Survivors who sit at the intersection of caste, tribe, class, religion, disability, gender identity or sexual orientation frequently find that their specific risks, dependencies and forms of harm do not fit this template. They must translate complex, layered violence into narrow legal narratives that focus on individual acts and ignore systemic degradation, which already weakens their claim at the threshold.⁴⁵

⁴³ The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE.

⁴⁴ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE.

⁴⁵ Shreya Atrey, *Intersectional Discrimination* 81–95 (2019).

Dalit and Adivasi women who complain of harassment in workplaces or educational institutions confront a double bind. On one side, the POSH framework and institutional regulations tend to treat harassment as a gender but caste neutral problem. On the other side, implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 remains uneven, and many officials discourage registration of atrocities cases, citing reputational concerns for institutions or “overuse” of the statute. Empirical work documents frequent pressure on Dalit women to drop complaints, accept informal compromises, or reframe caste-based harassment as a mere interpersonal dispute, which strips away the structural dimension of caste power.⁴⁶

Transgender, non-binary and gender nonconforming persons face another set of intersectional barriers because the core anti-harassment statute still centres “women” and many Internal Committees operate on the implicit assumption of a cisgender female complainant and a male respondent. While constitutional decisions like *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India* recognise gender identity and sexual orientation under Articles 14, 15 and 21, institutional policies, complaint forms and inquiry practices often fail to reflect this shift.⁴⁷ Trans persons report misgendering, curiosity, ridicule and outright refusal to entertain complaints when their appearance or documents do not match binary expectations, so the very forum supposed to offer redress becomes another site of harm.

Class, informality and migration status further block access to justice. Studies on the implementation of the POSH Act and labour laws show that domestic workers, sanitation workers, construction labourers and platform-based gig workers rarely have functioning

⁴⁶ National Dalit Movement for Justice (NDMJ)–NCDHR, Criminal Justice in the Shadow of Caste: A Study on the Implementation of the SCs & STs (PoA) Act, 1989 22–30 (2022), <https://idsn.org/wp-content/uploads/2022/07/Criminal-Justice-in-the-Shadow-of-Caste-NDMJ-Report.pdf> (last visited Feb. 15, 2026).

⁴⁷ Oishik Sircar, Reading NALSA: Gender Identity, Rights, and the Law, 49(2) Econ. & Pol. Wkly. 77, 79–83 (2014), <https://www.epw.in/journal/2014/48/commentary/reading-nalsa.html> (last visited Feb. 15, 2026).

complaint mechanisms, written contracts or knowledge of legal rights.⁴⁸ Many are migrants or members of stigmatised communities who depend on contractors, landlords and local intermediaries for housing and work. Threats of eviction, non payment of wages and cancellation of shifts act as powerful deterrents against pursuing formal remedies, even where statutes appear to cover the workplace.

VII. IMPLEMENTATION CRISIS OF ANTI HARASSMENT LAWS

Courts now describe anti-harassment law in India as strong on paper but fragile in practice. The Supreme Court in *Aureliano Fernandes v. State of Goa* characterised the enforcement of the POSH Act as marked by “serious lapses”, noting missing or improperly constituted Internal Committees and Local Committees and widespread confusion among survivors about where to complain and how the process works.⁴⁹ The Court’s need to issue fresh, detailed directions a decade after *Vishaka* itself signals a deep implementation deficit, not merely isolated non-compliance.

VIII. TOWARDS AN INTERSECTIONAL AND INCLUSIVE ANTI HARASSMENT FRAMEWORK

An intersectional anti-harassment framework in India must first rework legal definitions so that “sex” and “woman” are not the sole entry points for protection, but sit alongside expressly protected grounds such as caste, tribe, disability, sexual orientation, gender identity, migration status and class.⁵⁰ Drafting that follows a grounds-plus model, as suggested in contemporary equality theory, would allow complaints bodies and courts to recognise compound discrimination, and to treat harassment that targets, for example, a Dalit trans woman domestic worker as qualitatively different from harassment grounded in gender alone.

⁴⁸ Martha Farrell Found. & Int’l Labour Org., *Fostering Safe and Inclusive Workplaces for Informal Women Workers in India* 9–17 (2021), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_821402.pdf (last visited Feb. 15, 2026).

⁴⁹ *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 621 (India).

⁵⁰ Shreya Atrey, *Intersectional Discrimination* 163–76 (2019).

Such a framework also needs robust institutional design. Internal and Local Committees should include members trained in intersectionality, disability access and queer and trans concerns, and not only in basic POSH procedure.⁵¹ Mandatory, periodic training for committee members and presiding officers, coupled with clear appointment criteria and rotation rules, can reduce capture by management and social elites and can make fact-finding more sensitive to power imbalances rooted in caste, class and identity. Committees must have express authority to recommend structural remedies policy change, climate surveys, restructuring of workspaces and not only individual sanctions. Accessible procedures are central to inclusion. Rules of process should allow complaints in multiple languages, oral testimonies documented with assistance, flexible limitation periods where survivors faced threats or economic dependency, and reasonable accommodation for disabled complainants and witnesses.⁵² Inquiry proceedings need to adopt trauma-informed and survivor-centred practices, limit intrusive questioning on prior sexual history or gender expression, and safeguard confidentiality without silencing collective mobilisation. Coordination with legal services authorities and disability commissioners can help survivors from marginalised communities to navigate parallel POSH, SC/ST (Prevention of Atrocities) and criminal processes.

IX. FINDINGS AND CONCLUSION

The doctrinal analysis shows that Indian anti harassment law has moved from seeing sexual misconduct as a private or moral issue to recognising it as a violation of equality, dignity and substantive citizenship under Articles 14, 15 and 21, yet this shift remains uneven and incomplete in both statutory text and institutional practice.⁵³ The POSH Act,

⁵¹ Purna Sen, Addressing Sexual Harassment in the United Nations: Lessons from Organisational Practice, in Sexual Harassment, Law and Human Rights in Africa 51, 60–63 (Ebenezer Durojaye & Gladys Mirugi-Mukundi eds., 2020), <https://repository.uwc.ac.za/server/api/core/bitstreams/b0b1a4c7-2f6e-4bdf-bf2f-2f6a658d3d73/content> (last visited Feb. 15, 2026).

⁵² U.N. Women, Handbook on Violence Against Women with Disabilities 32–39 (2012), https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/en/VAW_Disabilities_handbook.pdf (last visited Feb. 15, 2026).

⁵³ Catharine A. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination 173–80 (1979).

the Bharatiya Nyaya Sanhita, the SCs and STs (Prevention of Atrocities) Act, the Transgender Persons (Protection of Rights) Act and the Digital Personal Data Protection Act together form a dense legal architecture, but they still tend to segment harms into gender, caste, tribe, disability, or digital privacy silos rather than treat them as intersecting structures of power.⁵⁴

The research further finds that the dominant legal subject of anti harassment law continues to be imagined as a cisgender, upper caste, able bodied, formally employed woman. Intersectional survivors Dalit and Adivasi women, queer and trans persons, disabled persons, migrants and informal workers must compress layered experiences into narrow categories that fit available procedures.⁵⁵ Doctrinal tools rarely allow them to describe how caste humiliation, sexual intimidation, economic dependency and digital abuse work together in a single pattern of harassment. Equality jurisprudence has begun to speak the language of intersectionality, but complaint mechanisms and evidentiary practices largely remain trapped in single axis thinking.⁵⁶

The empirical material reviewed in this study indicates a deep implementation crisis. Internal and Local Committees are frequently absent, improperly constituted or captured by management; district authorities often fail to operationalise Local Committees for informal sector workers; and there is no comprehensive, disaggregated public data on complaints, outcomes and follow up steps.⁵⁷ Courts, including in *Aureliano Fernandes v. State of Goa*, have had to repeatedly remind employers and public authorities of basic statutory duties, which suggests that non compliance is systemic rather than

⁵⁴ Shreya Atrey, Intersectional Discrimination 81–95 (2019).

⁵⁵ Jayna Kothari et al., Intersectionality: A Report on Discrimination Based on Caste with the Intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala 5–15 (Centre for Law & Policy Research 2019), <https://clpr.org.in/wp-content/uploads/2019/08/Intersectionality-A-Report-on-Discrimination-based-on-Caste-with-the-intersections-of-Sex-Gender-Identity-and-Disability-in-Karnataka-Andhra-Pradesh-Tamil-Nadu-and-Kerala.pdf> (last visited Feb. 15, 2026).

⁵⁶ Sandra Fredman, Substantive Equality Revisited, 14 Int'l J. Const. L. 712, 716–20 (2016), <https://doi.org/10.1093/icon/mow043> (last visited Feb. 15, 2026).

⁵⁷ Akshi Chawla, Strengthening the Implementation of the POSH Act – The Critical Role of Data, ISAAC CTR. FOR PUB. POL'Y, ASHOKA UNIV. (Aug. 22, 2024), <https://icpp.ashoka.edu.in/strengthening-the-implementation-of-the-posh-act-the-critical-role-of-data/> (last visited Feb. 15, 2026).

exceptional.⁵⁸ For marginalised identities, this institutional fragility combines with fear of retaliation, social stigma, and distrust of police and bureaucracy, producing a steep attrition of complaints before they even reach formal forums.⁵⁹

The paper therefore concludes that the promise of anti harassment law in India will remain only partially realised unless the framework becomes explicitly intersectional in design, interpretation and enforcement. Legal definitions need to move beyond sex and modesty to cover gender identity, sexual orientation, caste, tribe, disability, class and digital harms in an integrated way; institutions must embed diverse representation, trauma informed and accessible procedures; and regulatory bodies must demand transparent, disaggregated reporting and structural remedies, not just case by case sanctions.⁶⁰ An inclusive future for anti harassment law will depend on whether constitutional courts, legislatures, regulators and workplaces are willing to centre the voices and experiences of those at the sharpest edges of harassment, rather than treat them as peripheral exceptions to a supposedly neutral norm.

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⁵⁸ Aureliano Fernandes v. State of Goa, 2023 SCC OnLine SC 621 (India).

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