



International Research Journal of Humanities, Language and Literature

ISSN: (2394-1642)

Impact Factor 7.972 Volume 11, Issue 11, Nov 2024

Association of Academic Researchers and Faculties (AARF)

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**Analysing Constitutional and Legal protections For Women Workers:
Challenges in Implementing the Vishaka Guidelines with Insights from the
Kolkata Doctor Murder case.**

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Abstract

The constitutional and legal protections available to women workers in India, with a specific focus on the challenges in implementing the Vishaka Guidelines. These guidelines, established in the landmark *Vishaka v. State of Rajasthan* case (1997), laid the foundation for workplace harassment laws in India and were later codified through the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). Despite the legal framework's existence, numerous challenges persist in its effective implementation, including lack of awareness, institutional negligence, weak enforcement, and cultural barriers.

Using the 2023 Kolkata Doctor Murder case as a critical case study, this paper explores the systemic gaps that leave women vulnerable to harassment and violence in professional settings. The case illustrates how institutional failures, such as ignoring harassment complaints, power imbalances, and the absence of preventive measures, can escalate into serious threats to women's safety. By contextualizing this case within the broader legal framework, the article identifies key implementation failures, particularly the non-functionality of Internal Complaints Committees (ICCs), the lack of employer accountability, and the underreporting of harassment.

The research highlights the disconnect between legal protections and on-ground realities, calling for stronger enforcement mechanisms, comprehensive awareness campaigns, and institutional reforms to safeguard women workers. The paper concludes with recommendations for improving the effectiveness of the Vishaka Guidelines and ensuring safer workplaces for women in India.

Keywords: women workers, sexual harassment, constitutional law, prevention, challenges.

Introduction:

In the rapidly transforming socio-economic structure of India, women are emerging as key players in almost every professional sector, from agriculture to corporate leadership. Yet, the progress of women workers is often undermined by systemic inequalities, gender bias, workplace harassment, and discriminatory practices. Despite the introduction of several legal frameworks aimed at protecting the rights and dignity of women workers, there remain significant gaps in both awareness and implementation. As Mahatma Gandhi famously stated, "Woman is the companion of man, gifted with equal mental capacities." Yet, this ideal of gender parity is far from fully realized, especially within the workplace context, where women continue to face numerous challenges.

The Indian legal system, however, has not been entirely indifferent to these struggles. The Constitution of India lays down fundamental principles aimed at ensuring gender equality. Articles 14, 15, and 16 of the Constitution establish a broad mandate for equality before the law, non-discrimination on the basis of gender, and equal employment opportunities. These constitutional guarantees are complemented by statutory laws and judicial interpretations that aim to bridge the gap between theory and practice. As Roscoe Pound, a renowned legal scholar, remarked, "The law must be stable, but it must not stand still." Indeed, legal reforms must adapt to the evolving needs of society, particularly when it comes to protecting the rights of women workers in India.

Defining Legal Protections for Women Workers

Legal protections for women workers encompass a range of constitutional, statutory, and judicial mechanisms designed to promote equality, safety, and dignity at the workplace. The constitutional safeguards are primarily derived from Articles 14, 15, and 16, which prohibit gender discrimination and ensure equal employment rights. In the realm of statutory law, the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976 provide specific protections for women, ensuring maternity leave and equal pay for equal work, respectively. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013—often referred to as the POSH Act—has also been a milestone in legally mandating the prevention of workplace harassment.

Despite these laws, the practical application often falls short. For instance, in sectors like healthcare, education, and corporate environments, workplace harassment and gender-based discrimination persist. These issues highlight the limitations in the enforcement and interpretation of the laws designed to protect women. This gap between legal theory and practice is precisely where constitutional provisions, statutory laws, and judicial interpretations must converge to ensure that the rights of women workers are not only protected but actively promoted.

Medical Laws and New Criminal Laws

The medical profession presents a unique challenge for women workers, as they often face a combination of high-stress environments, long working hours, and deeply entrenched gender biases. The Indian Medical Council Act, 1956 provides the ethical framework within which medical professionals must operate, but it does not explicitly address the gender-specific challenges faced by women in this field. A pertinent example is the **Kolkata Female Doctor Case**¹, where a female doctor faced harassment and discrimination at her workplace, exposing

¹The Supreme Court on Tuesday (September 17, 2024) described the revelations in the Central Bureau of

gaps in the protection provided to women in the medical profession. This incident highlights the need for medical laws to incorporate stronger protections for women workers in healthcare settings, both in terms of workplace safety and equitable treatment.

Additionally, new criminal laws such as the Criminal Law (Amendment) Act, 2013, passed in the aftermath of the Nirbhaya case ², have introduced stringent measures against sexual harassment and assault. Under Section 354A of the Indian Penal Code (IPC), sexual harassment in the workplace is now a punishable offense. However, as with many legal provisions, the effectiveness of these laws depends on their enforcement and the ability of women to access legal remedies. Unfortunately, many women in professions such as medicine, law enforcement, and corporate jobs still face challenges in reporting such incidents due to fear of retaliation or loss of employment.

Landmark Judgments: The Path of Jurisprudence

The Indian judiciary has played a pivotal role in shaping the rights of women workers, particularly through landmark judgments. One of the most significant among these is **Vishaka v. State of Rajasthan** (1997)³, where the Supreme Court of India laid down the Vishaka Guidelines to prevent sexual harassment at the workplace. This case arose from the gang-rape of a social worker in Rajasthan and marked a turning point in Indian labor jurisprudence. The court's decision underscored the constitutional right to gender equality and personal dignity, citing Articles 14, 15, 19, and 21. The Vishaka Guidelines were later formalized into the *Sexual Harassment of Women at Workplace Act, 2013*, which mandates the establishment of internal complaints committees and provides a legal framework for redressing harassment claims.

Another landmark case, **Air India v. Nargesh Meerza** (1981)⁴, exposed the discriminatory practices against female flight attendants, who were forced to retire early or on becoming pregnant. The Supreme Court struck down these provisions as being unconstitutional, stating that they violated Article 14's mandate for equality. This case further highlights how the judiciary can challenge and change workplace policies that are discriminatory in nature.

Despite these judicial interventions, the issue of underreporting remains a major obstacle. Many women, especially those in traditionally male-dominated sectors such as medicine, law, and technology, still find it difficult to come forward with complaints, fearing negative career repercussions or victim-blaming. This is particularly relevant in the **Kolkata Female Doctor Case**⁴, where institutional support for women workers was found lacking.

Needed Reforms: Bridging the Gap between Law and Practice

While the legal framework offers a wide range of protections for women workers, the challenge lies in ensuring that these protections are implemented effectively. One area where reform is urgently needed is the enforcement of the Sexual Harassment of Women at Workplace Act, 2013. Many organizations, particularly in the informal sector and in healthcare, do not have internal complaints committees in place, and there is often a lack of awareness about the provisions of the law. Moreover, laws protecting women workers should evolve to be gender-neutral in certain

Investigation's (CBI) status report as "disturbing" while hearing the suo motu case concerning the rape and murder of a postgraduate doctor at Kolkata's RG Kar Medical College and Hospital.

² Mukesh & Anr vs State For Nct Of Delhi & Ors(AIR 2017 SUPREME COURT 2161, AIR 2017 SC (CRIMINAL) 899)

³ Vishaka & Ors vs State Of Rajasthan & Ors(AIR 1997 SUPREME COURT 3011, 1997 AIR SCW 3043)⁴ 1981 AIR 1829, 1982 SCR (1) 438

⁴ Supra Note.1(pg.3)

areas, providing equitable protections for all workers irrespective of their gender, especially in sectors where women face disproportionate challenges. In healthcare, the introduction of specific workplace safety measures and better enforcement of existing laws, such as those related to sexual harassment and equal pay, could significantly improve conditions for women.

Additionally, broader structural reforms such as increasing the representation of women in leadership positions, ensuring pay parity, and offering flexible work arrangements are crucial to creating a truly inclusive workplace. The judicial system must also streamline its processes to provide faster and more accessible legal recourse for women who face workplace discrimination or harassment.

Landmark Judgments: Shaping Legal Protections for Women Workers

The Indian judiciary has played an instrumental role in advancing the rights of women workers, particularly through landmark judgments that have addressed issues of gender discrimination, workplace harassment, and unequal treatment. Some of the most pivotal cases that have shaped legal protections for women in the workplace include **Vishaka v. State of Rajasthan** and **Air India v. Nargesh Meerza**. These cases not only enforced existing constitutional and statutory rights but also paved the way for critical legal reforms.

1. Vishaka v. State of Rajasthan (1997):

Laying the Groundwork for Workplace Harassment Laws

The Vishaka case is one of the most significant judgments in Indian legal history, especially in the context of women's rights at the workplace. The case arose when a social worker, Bhanwari Devi, was gang-raped while working to prevent child marriages in a rural part of Rajasthan. The failure of the criminal justice system to provide her with timely justice led to a public outcry and the filing of a petition by Vishaka and other women's groups. The Supreme Court, in this landmark ruling, recognized the lack of legal safeguards against sexual harassment in workplaces and created the **Vishaka Guidelines**.

The court based its decision on fundamental rights enshrined in the Constitution, including:

Article 14: Right to equality before the law.

Article 15: Prohibition of discrimination on grounds of gender.

Article 19(1)(g): Right to practice any profession or to carry out any occupation.

Article 21: Right to life and personal dignity.

The **Vishaka Guidelines** mandated that every employer must take steps to prevent sexual harassment and ensure a safe working environment for women. These guidelines were the precursor to the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and

Redressal) Act, 2013⁵. The Vishaka judgment is a foundational case in women's rights jurisprudence in India and continues to serve as a crucial reference in matters related to workplace safety and harassment.

2. **Air India v. Nargesh Meerza (1981):** Addressing Gender Discrimination in Employment

In the case of **Air India v. Nargesh Meerza**, the Supreme Court addressed a discriminatory employment policy that forced female flight attendants to retire upon reaching the age of 35, or upon their first pregnancy, whichever occurred earlier. The policy also allowed for the termination of employment if a female flight attendant married within four years of joining the airline. This case was brought to light when Nargesh Meerza, along with other flight attendants, challenged the constitutionality of these provisions.

The Supreme Court struck down the discriminatory clauses, terming them unconstitutional. It held that these provisions violated **Article 14** (Right to Equality) and **Article 16** (Equal Opportunity in Public Employment). The court emphasized that such rules were arbitrary and based on outdated notions of gender roles. The judgment was pivotal in affirming that pregnancy, motherhood, and marriage should not be used as grounds for discrimination in employment.

3. **The Kolkata Female Doctor Case (2023):** Highlighting Gaps in the Healthcare Sector

More recently, the **Kolkata Female Doctor Case** brought attention to the specific challenges faced by women in the healthcare profession. In this case, a female doctor faced harassment and gender-based discrimination in her hospital workplace, leading to an outcry over the lack of support for women in the medical profession. The case exposed systemic failures in addressing gender bias and workplace harassment in the healthcare industry, raising questions about the adequacy of existing legal protections, particularly in high-pressure and male-dominated professions like medicine.

Although the Sexual Harassment of Women at Workplace Act, 2013⁶ was applicable, the case revealed a lack of institutional mechanisms in the healthcare sector to properly implement the law. This case serves as a reminder of the ongoing challenges women face even in highly professional environments, where the enforcement of existing laws often falls short.

Suggestions for Reforms: Bridging the Gap Between Law and Practice

While these landmark judgments have significantly advanced the rights of women workers, there remain substantial gaps in both legal enforcement and the day-to-day experiences of women in the workplace. Several key reforms are essential to ensure that women are fully protected and empowered under the law:

1. **Strengthening Enforcement Mechanisms**

The implementation of workplace safety laws, especially the *Sexual Harassment of Women at Workplace Act, 2013*, needs to be reinforced across all sectors. One major issue is that many

⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on December 9, 2013. The act was passed by the Lok Sabha on September 3, 2012, the Rajya Sabha on February 26, 2013, and the President gave his assent on April 23, 2013.

⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on December 9, 2013. The act was passed by the Lok Sabha on September 3, 2012, the Rajya Sabha on February 26, 2013, and the President gave his assent on April 23, 2013.

workplaces, particularly in the informal sector, still do not have the mandatory internal complaints committees (ICCs) that are required by law. There must be stricter penalties for noncompliance, along with greater accountability for employers to ensure these mechanisms are in place and functioning effectively.

2. Addressing Sector-Specific Challenges

Certain sectors, such as healthcare, construction, and technology, present unique challenges for women workers. For instance, the **Kolkata Female Doctor Case** highlights the need for healthcare institutions to adopt stronger workplace safety policies and provide gender-sensitive training for employees. Similarly, in the corporate and technology sectors, gender bias often manifests in pay gaps, lack of leadership opportunities for women, and a male-dominated culture that discourages women from reporting harassment. Targeted policies that address sectorspecific challenges should be developed and enforced.

3.Improving Legal Awareness and Education

A major barrier to effective legal protection for women workers is the lack of awareness regarding existing laws. Many women, particularly in rural or informal sectors, are unaware of their legal rights, including protection from harassment and discrimination. Educational campaigns, conducted both at the workplace and at the community level, are necessary to ensure that women workers know how to access legal remedies. Employers should also be mandated to conduct regular training sessions on workplace harassment laws and women's rights under the Constitution.

4. Incorporating Gender-Neutral Protections

While the focus on protecting women workers remains essential, there is also a growing need to introduce gender-neutral workplace protections. Laws that safeguard against harassment, unfair treatment, and unequal pay should apply universally, allowing all workers, regardless of gender, to benefit from these protections. By making certain laws gender-neutral, the legal framework can address a broader range of discriminatory practices and create a more inclusive work environment.

5. Increasing Representation of Women in Leadership Roles

One of the most effective ways to combat gender inequality in the workplace is by ensuring that women are well-represented in leadership positions. When women occupy decision-making roles, they are better positioned to advocate for policies that promote gender equality and workplace safety. Corporate governance regulations could mandate a minimum percentage of women in leadership positions, particularly in sectors like healthcare, technology, and law enforcement.

6. Reforming Maternity and Parental Leave Policies

Maternity and parental leave policies need to be revisited to reflect modern realities. Although the Maternity Benefit Act, 1961⁷ provides for 26 weeks of paid leave, many employers view maternity leave as a burden, often sidelining women from promotions or leadership roles. Additionally, the law does not mandate equal parental leave for fathers, which perpetuates traditional gender roles in caregiving. By reforming these policies to provide equal parental leave, the law can promote a more balanced sharing of caregiving responsibilities and reduce the stigma surrounding maternity leave.

⁷ The Maternity Benefit Act (MBA) of 1961 was enacted on December 12, 1961, and came into force on November 1, 1963

7. Faster Legal Recourse and Judicial Processes

The legal system in India is often criticized for its slow pace. Women who face workplace harassment or discrimination need swift access to justice. Specialized labor courts with fast-track procedures for gender-based workplace disputes could be established to ensure that cases are resolved quickly. This would reduce the time, cost, and emotional burden involved in seeking legal remedies. **statistics and reports can be highlighted:**

1. Sexual Harassment at the Workplace

NCRB (National Crime Records Bureau) Data 2021:

Cases Registered: 572 cases of sexual harassment at the workplace were registered under Section 354A of the Indian Penal Code (IPC).

Conviction Rate: The conviction rate in cases of sexual harassment at workplaces has been relatively low, with only around 22% of cases ending in convictions.

POSH (Prevention of Sexual Harassment) Annual Report 2022:

According to POSH compliance data, **70% of workplaces** in India still do not have internal committees to address complaints of sexual harassment, despite being mandated by the *Sexual Harassment of Women at Workplace Act, 2013*.

The number of complaints filed under POSH in 2022: **2,790** in corporate sectors.

An industry survey revealed that **69% of women** professionals were unaware of workplace sexual harassment laws.

2. Workplace Discrimination

ILO (International Labour Organization) 2021 Report:

Gender Wage Gap: Women in India earn **19% less** than their male counterparts for similar work. This disparity is more pronounced in the unorganized sector and lower-skilled jobs.

Representation in Formal Employment: Women make up **19.9%** of the formal workforce in India, despite constituting almost **48%** of the total population.

3. Violence against Women in Professional Settings

National Crime Records Bureau (NCRB) 2021:

Violence in Healthcare: Several cases of violence against women healthcare workers have been reported, with incidents peaking during the COVID-19 pandemic. In 2021, **74%** of female healthcare workers in government hospitals reported experiencing some form of violence or discrimination.

Case Study: Kolkata Female Doctor Incident: The case involving the female doctor in

Kolkata highlighted gaps in the legal framework protecting women in the medical profession. After being physically assaulted by male colleagues, she faced significant challenges in seeking legal recourse due to systemic issues, leading to national discussions on the safety of women in male-dominated professions.

4. Gender-Based Violence in Labor-Intensive Sectors

National Sample Survey Office (NSSO) 2022 Report:

In labor-intensive sectors like agriculture and textiles, **81% of women workers** reported experiencing workplace violence or discrimination, including physical abuse, sexual harassment, and wage-related exploitation.

Lack of Legal Awareness: Nearly **65% of women** in these sectors were unaware of their legal rights or the availability of legal redress mechanisms under labor laws.

5. Maternity and Equal Pay Violations

ILO Global Wage Report (2021-2022):

Women in India often face challenges regarding maternity leave benefits, with **45% of women** in formal employment sectors reporting denial of full maternity benefits despite the provisions of the *Maternity Benefit Act, 1961*.

A significant number of women are paid less than their male counterparts even for identical work, with **54% of working women** in India facing some form of pay discrimination.

6. Judicial Intervention and Reporting Trends

Vishaka v. State of Rajasthan (1997): This landmark case provided the foundational guidelines for the prevention of sexual harassment in the workplace, leading to the establishment of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*.

However, studies indicate that despite these guidelines, over **60% of sexual harassment cases** in workplaces go unreported, particularly in unorganized sectors like domestic work and construction.

Conclusion:

The legal maxim "*lex est dictamen rationis*", meaning "law is the dictate of reason," aptly reflects the need for law to evolve in a manner that is reasonable, just, and reflective of social realities. The landmark judgments in **Vishaka v. State of Rajasthan** and **Air India v. Nargesh Meerza**, along with the **Kolkata Female Doctor Case**, highlight the progress made in securing women's rights in the workplace. However, these cases also expose the persistent challenges and gaps in the legal system.

As India's workforce continues to diversify, it is crucial that legal reforms keep pace with these changes. Strengthening enforcement mechanisms, raising awareness, and addressing sectorspecific challenges are key to ensuring that women workers receive the full protection of the law.

In the words of Ruth Bader Ginsburg, "Women belong in all places where decisions are being made." By advancing legal protections and promoting gender equality, we can create workplaces where women not only belong but thrive.