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# Contemporary Study of The Obstetrical Women Encounter at Work

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## ABSTRACT

*India is a democratic and stable nation. Men and women, however, are treated fairly and have equal opportunities in the workplace. In this regard, the Indian constitution guarantees several fundamental rights to the safety of women at work, and the Indian parliament has the authority to enact specific laws for women as needed. Although the directive principle of state policy states that "equal employment rights, equal pay for equal work". India is a unique nation where people practise all major religions. In India, people worshipped the goddess while harassing and abusing women at work in a sexual manner. No exclusive rights for working in any sector have been affecting women in the past 19th-century era. In that era, women were not permitted to do any work.*

*This paper discusses the security of women in the workplace and the rights related to women's labour law. The main objective of the research paper is to have a critical analysis of the impact on women's freedom in the workplace in organizations and industries. This paper examines the necessity for existing laws related to women's safety in the workplace. The present paper endeavours that sexual harassment of women, gender discrimination, and pay scale discrimination at workplaces. We also analyse various judgments and take of the Indian judiciary towards women's safety in the workplace.*

## I. INTRODUCTION

"Once and for all, women's rights are human rights and human rights are women's rights" Mrs Hillary Clinton

India is a unique country where all major religions are practised. Those who believe and worship the goddess while sexually assaulting and mistreating women at work. Despite the fact that women are currently stronger than men, many still believe that women lack the strength to perform tasks as well as men. Due to inconsistent job safety, the majority of women do not work. Racial discrimination, gender reassignment, caste, the gender wage gap, pregnancy and motherhood, marriage and civil partnerships, all provide grounds for discrimination against women. Yet due to a lack of work-life balance, women are reluctant to take on new positions.

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Workplace:

“A workplace is a place of employment where someone works for their employer or for themselves. Such a location might be a factory, a huge office building, a residence, or an office.”

Workplace and women safety-

Safety at work involves more than just maintaining a sanitary atmosphere. Moreover, it concerns providing women with workplace safety. Women's safety needs strategy and policies for having a safe environment for women at work are included in it, along with giving an awareness camp to all employers working in the origination about the crimes or problems faced by women at jobs like sexual and mental harassment, violence, body shaming, gender pay gap, etc. There is also a special department for all these activities, such as the safety and security of women department, which keeps track of all the safeguards that are followed.

## **II. HISTORICAL CONTEXT**

Pre-independence periods:- In the previous 19th century. Women don't have any special privileges when it comes to employment in any field. Women were not allowed to work at that time period. The bar association, for instance, is a workplace where women shouldn't be involved. In fact, it would be offensive and impolite to watch women engage in argument and discourse outside of what is appropriate for the more equitable sex. We need not discuss the possibility that the sentencing won't be taken seriously if the attorney's gown is seen. dressed in such unusual and bizarre attire, which is frequently placed on women by fashion, or which prevents her from caring for and executing other chores more suited to women, especially those that fall within her family duty. just those female employees from poorer socioeconomic backgrounds. They earn relatively little money and have no additional perks while working in dangerous sectors. Women often labour extra unpaid, have extremely subpar job assignments and are not offered maternity or pregnancy leave. Women were subjected to violence and sexual harassment at work throughout that time period, and no legislation protecting women's safety at work was enacted. Throughout this time, women were exploited. Just those female employees from poorer socioeconomic backgrounds. They earn relatively little money and have no additional perks while working in dangerous sectors. Women often labour extra unpaid, have extremely inadequate job assignments and are not offered maternity or pregnancy leave. Women were subjected to violence and sexual harassment at work throughout that time period, and no legislation protecting women's safety at work was enacted. Throughout this time, women were exploited.

Post-independence period:- Throughout the 20th and 21st centuries. The government passed

several pieces of legislation to ensure the safety of women at work, including the 1956 Immoral Traffic (Prevention) Act, maternity regulations, and equal pay for equal labour. While the government has introduced these rules, not everyone is aware of them. And organisations do not show any interest in these criminal aspects that affect women's employment. And most women nowadays are aware of their rights and stick up for them. "swaraj is my birthright and I shall have it" - Bal Gangadhar Tilak

### **III. CONSTITUTIONAL AUTHENTICITY**

The Indian parliament has the power to adopt particular legislation for women if necessary, and the Indian constitution protects numerous essential rights regarding the protection of women at work. Despite the fact that the guiding concept of state policy is "equal employment rights, same compensation for equal effort," The Indian constitution not only guarantees gender equality but also has provisions that may be used to create laws that are safe for women.

The rights of women are covered under articles 12 through 35 of the Indian constitution.

“Fundamental and the abolition of gender-based discrimination”

According to Article 14 of the Indian Constitution, men and women are entitled to the same political and social rights.

Article 15 of the Indian Constitution, clause 3, stipulates that the parliament and state legislatures may enact special laws or regulations in support of women.

All Indian citizens are guaranteed equal opportunity under Article 16 of the constitution, which also forbids discrimination against women.

India's constitution, in Article 23, forbids the trafficking of forced labour.

“Provision related to women in the directive principle of state policy”.

“According to Article 39(A) of the Indian Constitution, the government must establish a strategy to safeguard women's rights to a living”.

“According to Article 39(D) of the Indian Constitution, the state must guarantee equal remuneration for equal work for both men and women”.

“Article 39 (E) of the constitution of India, states that the state shall not abuse the health and strength of women workers”.

“According to Article 42 of the Indian Constitution, the government must establish policies to ensure fair and compassionate working conditions and maternity leave”.

“According to Article 51 A(e) of the Indian Constitution, activities that are insulting to women's

dignity must be abandoned”.

#### **IV. LAWS PERTAINING TO WOMEN'S SAFETY AT WORK**

##### **(A) The national commission for women Act, 1990.**

This act's relevance and goal are to advocate women's rights and raise awareness of women's issues via the creation of policy. According to section 10 of these acts, the commission's duties include looking into and examining the laws or safeguards provided by the constitution, reporting on whether all the safeguards were observed, and recommending to the house of parliament that laws be passed to promote the safety of women.

“Sexual harassment of women in the workplace (prevention, prohibition, redressal) act, 2013”

The purpose of this law is to protect women from sexual harassment at work and to prevent and address complaints of sexual harassment.

Section 2 (n) of this act defines.

“Sexual harassment consists of”: -

- i) “Any physical contact and advances or”
- ii) “A demand or request for sexual favours or”
- iii) “Making sexually coloured remarks”
- iv) “Showing pornography”
- v) “Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature”

Grounds of “sexual harassment” complaints: whether an employer or employee assaults women physically or psychologically.

Remedies: According to section 26 of this act, if an employer engages in sexual harassment and fails to file an internal complaint, the offender will pay a fine of Rs. 50,000; if the offender commits the same offence again, the fine will be doubled, and the entity may also be deregistered or have its statutory licence revoked.

For the benefit of women who are sexually harassed at work, rules were established in the landmark case of *Vishaka and others v. state of Rajasthan*<sup>3</sup>. In accordance with the Guidelines, it is the Employer's duty to make sure that women may feel secure and respected at work.

The supreme court guideline in this case:-

To guarantee the protection of women against harassment while they are working.

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<sup>3</sup> 1997) 6 SCC 241

The employer has a responsibility to establish a committee for the protection of women, take remedial action, and offer a process for the resolution and settlement of sexual harassment cases.

**(B) “Immoral traffic (prevention) act,1956”**

In *Raj Bahaduar v. legal remembrance*<sup>4</sup>

According to the court, "traffic human beings" refers to the buying and selling of women and girls as if they were making purchases of products.

**(C) “The indecent representation of women (prohibition) act, 1986”**

This law forbids the obscene portrayal of women in literature, pamphlets, slide films, pictures, advertisements, and other forms of publication.

Women feel uncomfortable using restrooms and changing areas at work due to the obscene depiction of women in movies that are posted on inappropriate websites or spread among groups of people.

**(D) “Maternity benefit act 1961”**

In 1919, the International Labour Organization established a treaty. The primary goal of this conference, known as the "Maternity Protection Convention of 1919,"

The purpose of this law is to offer pregnant employees advantages both before and after childbirth.

Grounds of offence: If a company fails to provide maternity benefits to female employees, they are in violation of the law.

Penalties

If the employer is found guilty of violating this act, they might face a 3-month prison sentence that could be increased to a year and a fine of up to 5000 rupees, or both.

**(E) “The Equal Remuneration Act, of 1976”**

The goal of this law is to pay men and women equally for equally hard labour. Moreover, it forbids sex-based discrimination in hiring practices and working conditions for women.

Grounds of offence: if the employer discriminated against one gender over another in terms of hiring, promotion, working conditions, pay, and benefits.

Penalties

If an employer is found to be in violation of this statute, they might face a minimum sentence

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<sup>4</sup> AIR 1953 Cal 522

of three months in prison and a maximum fine of 20,000 rupees.

**(F) “Mines act,1952 and Factories act, 1948”**

This act safeguards the safety and well-being of women and forbids their work in mines and industries “between the hours of 7 p.m. and 6 a.m.”

**Penalties**

If an occupier or employer is found responsible under this law, they might face up to a two-year prison sentence and a \$2,000 fine. If he is found guilty of the same offence again, he would be fined Rs. 10,000 each day.

**V. OBSTACLES WOMEN ENCOUNTER AT WORK**

**a. Gender pay gap**

The organisation discriminates against men and women in the current situation. Even women are contributing equally to the workforce and working just as hard as men. even if they are exerting all of their labour and not receiving equal compensation.

The country's economic production is reduced as a result of this issue, which makes women more dependent on males.

India's gender pay gap status In India, males earn 82% of all labour income, while women only make up 18% of it.

The Equal Remuneration Act of 1976 addresses the gender wage discrepancy.

While all safety precautions and guidelines are included in this legislation, together with the associated fines,

**b. Unemployment penalty**

If a woman takes maternity leave throughout her pregnancy, she will have a difficult time returning to work once her baby is born. If a company grants maternity leaves to women, the pay that would have been due to that employee under the Maternity Benefit Act of 1961 is either not paid to her or requires a lot of paperwork or is difficult to get. They then have a huge workload or burden on them once the departs.

**c. “Marriage and civil partnership”**

When an employer treats an employee unfairly because of their marital or civil partnership status, this is referred to as marriage and civil partnership discrimination at work. Many nations, notably the United States and the United Kingdom, forbid this kind of discrimination.

Instances of prejudice against people in marriage and civil partnerships at work include:

- i. Denying employment to someone only because they are wed or in a civil partnership.
- ii. Denying promotions or pay hikes to an employee or otherwise treating them differently because they are married or in a civil partnership.
- iii. Dismissing or demoting a worker because they wed or formed a civil partnership.

Using offensive language or making jokes about a coworker's spouse or civil partner to harass them because of their marital status.

Employers are required by law to create a work environment free from prejudice based on a person's marital status or position in a civil partnership. If a worker encounters discrimination, they have the option of reporting it to their employer or a governmental body like the Equality and Human Rights Commission in the UK or the Equal Employment Opportunity Commission in the US.

Employers must establish rules that forbid discrimination based on a person's marital status or position in a civil union, and they must educate their staff about the value of valuing diversity in the workplace. Employers can foster a climate of respect and inclusiveness.

**d. Workplace condition**

Organizations and sectors do not provide women employees with a clean and secure work environment. Yet due to poor care or safety measures in dangerous sectors or labs, women suffer from a wide range of ailments.

## **VI. CRIMES AT WORK**

**a. Sexual harassment**

Women are subjected to sexual harassment while applying for jobs, getting promoted, and working. All bosses make women feel uneasy while they work by eye-teasing them, and if women ask for assistance, the employer will demand sexual favours in exchange for their labour.

When someone makes an unwanted demand or request for sexual favours from another person, either directly or implicitly; when someone shows another person any sexually explicit visual material, such as pornographic images, cartoons, pin-up calendars, screensavers, offensive written material, pornographic emails; or when someone engages in any unwanted physical intimacy with another person, such as grabbing, brushing, touching, pinching, or even teasing.

Dr Punita K Sodhi v. union of India and others<sup>5</sup>

“The petitioner claims that on January 1, 2001, she began working as a Pool Officer for the Council for Scientific and Industrial Research (CSIR) at the Safdarjung Hospital after earning her MBBS and MS. According to her, she was abruptly transferred to Unit-I under Dr. K.P.S. Malik in November 2001”.

The petitioner claims that Dr. Malik was aware of her husband's out-of-town employment. She claims that Dr. Malik began planning how to trap her by calling her repeatedly under various pretexts. The petitioner claims that Dr. Malik used to ask her to help him during operations even when it wasn't often necessary, stay near to her, and make attempts to touch her.

“The Supreme Court relying on its decisions in Vishaka and AEPC, partially modified the order directing the institution of a three-member sexual harassment enquiry committee and imposed costs of Rs. 50,000/- on the alleged harasser”.

#### **b. Mental Harassment**

Due to heavy workloads, uneven opportunities, remarks about an employee's age or marital status, stalking, disparaging senior teachers in front of juniors, and a lack of appreciation for their work, women experience mental harassment.

Depression, anxiety, difficulties focusing at work, and demotivation are effects of mental harassment.

#### **c. Workplace violence**

Women experience a lot of abuse at work. Employers frequently treat female employees abusively. Jealousy, among other things, is the major cause of abuse against women. Women experience unfavourable remarks or hear aggressive language when their gender is changed. And women employees, for instance, frequently experience physical abuse. A male employee who is so envious of a female employee's job engages in physiological violence through their words and physical violence through actions like gripping their hands tightly, etc.

## **VII. COMPARATIVE ANALYSIS OF INDIAN AND US LAW**

In India, we adopted these statutes and laws, which include:

According to Article 14 of the Indian Constitution, men and women are entitled to the same political and social rights.

Article 15 of the Indian Constitution, clause 3, stipulates that the parliament and state

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<sup>5</sup> (2010) 172 DLT 409

legislatures may enact special laws or regulations in support of women.

All Indian citizens are guaranteed equal opportunity under Article 16 of the constitution, which also forbids discrimination against women.

India's constitution, in Article 23, forbids the trade in forced labour.

According to Article 39(A) of “the Indian Constitution, the government must establish a plan to protect women's rights to a living.

the Indian Constitution's Article 39(D),”

The statutes and legislation adopted by the US include:

a. The United States Constitution's 19th Amendment

Women's suffrage, or the 1920 amendment that gave them permanent voting rights, is known as this. The states were forbidden by this amendment from denying someone the right to vote based only on their sex. Since it equalises women and men when it comes to voting for the government, this is one of the most crucial laws for women in a democracy.

b. Fair Pay Act

It was now against the law for an employer to pay a woman less than a male for a comparable or an equivalent position thanks to this Act. The decision was made that the compensation must be.

c. Act on Civil Rights

In 1964, this Legislation was first proposed. It forbids discrimination of any kind in all spheres, particularly in voter education and the use of public spaces based on considerations of race or sex. A commission for equal employment opportunity was also established under this law, which could help with its implementation.

Case: *Corning Glass Works v. Brennan*<sup>6</sup>

The Corning Glassworks company's female workers filed a complaint alleging gender discrimination in salary distribution. The Business stated that the disparity in pay was caused by the men's involvement in night shifts, whereas the company's women were not permitted to work overnight. The Firm claims that as a result, there was a change in the working environment and an increase in pay.

The U.S. Supreme Court ruled that employers cannot use ambiguous justifications to underpay

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<sup>6</sup> 417 U.S 188 1974

women, and as a result, the circumstances of night shifts are often very similar to those of ordinary shifts.

### **VIII. RECOMMENDATIONS**

If women are given precedence, fast-track courts quickly resolve their cases. In the interest of women's safety at work, the government and court should impose a heavy sentence on the individual found to be responsible under the law. Organize awareness campaigns to educate men and women about the safety and rights of women. In order for women to play an autonomous part in society, they also need to be empowered. Organizations should create their own codes of behaviour for women's protection.

According to the Kerala High Court ruling, a sexual harassment claim would not be supported by the evidence if the victim was dressed inappropriately. But it does not imply that men have the right to sexually harass a woman if she is wearing unsuitable clothing. In this case, a how the ladies are dressed because harassing behaviour often targets people wearing suits or sarongs.<sup>7</sup>

### **IX. CONCLUSION**

All stakeholders, including the government, employers, and employees, need to pay immediate attention to the issue of women's workplace safety in India. More has to be done to guarantee that workplaces are secure and free from harassment and violence against women, even if there have been some initiatives to improve workplace safety for women, including the establishment of various laws and regulations. Increased gender sensitivity, workplace safety, and awareness of women's rights are necessary to accomplish this. Also, businesses must be held liable for creating secure workplaces for all workers, particularly female employees. We can make the workplace in India a safer and more welcoming environment for women if we work together.

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<sup>7</sup> State of Kerala v. Civic Chandran, 2022 SCC OnLine Ker 5248