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Gender Discrimination at the Workplace in India

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ABSTRACT

Social injustice encompasses a diversity of issues and examining one area where women are marginalized and oppressed is in terms of discrimination which is direct or indirect at the workplace. In India there is discrimination against women and lower opportunities are provided to females than males in the workplace as females lie under numerous evils such as discrimination, oppression, violence within the family, at the workplace and in the society.² There is issue with previous policies enacted specifically, Article 15 of the Indian constitution which states there shall be no discrimination on grounds of religion, race, caste, sex or place of birth which although it lays down principle of discrimination but due to a lack of clarity in stating gender discrimination it fails to justify its purpose.³ There is a need and demand to enact a fully specific related to the purpose of gender discrimination at the workplace to be enacted. Any policy when enacted stated in regard to discrimination if does not encompass a specific gendered dimension on discrimination, but there is a divergence from specific domain of gender discrimination by focussing on other aspects of race and caste hence making the policy effect futile.

I. SEXUAL DIVISION OF LABOUR WITHIN MALES AND FEMALES CREATING INEQUALITY WITHIN THE WORKPLACE

There is gender-based discrimination towards women due to perceived notions of work within the household that women must do domestic household work.⁴ This sexual division of labor extends to the “public” arena of workplace as certain kinds of work are considered to be “women’s work” and work that women do they gets lower wages and is less valued. Despite working at the household and workplace domain and managing this work-life balance, gender specific problems relating to women are not addressed and they remain largely unorganized,

¹ Author is a student at McGill University, Montreal, Quebec, Canada.

² Anju Beniwal, “Gender Discrimination and empowerment of women in India”, 27

³ P Andiappan “Public Policy and Sex Discrimination in Employment in India”, 396

⁴ Kamala Sankaran Roopa Madhav, January 2011, “Gender Equality and Social Dialogue in India”, Retrieved from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_150428.pdf, 2

unheard, underpaid and under-represented at the workplace.⁵ The society-based conception perceives men being the breadwinners and women to be the household workers which places them unequal in the workplace to men since they are burdened with family responsibilities more than men.⁶ Males have been offered till date better incentives in terms of promotion and salaries than their female counterparts which places women at a marginalized position resulting in inequality and discrimination at the workplace.⁷ Sexual abuse towards female employees is discriminatory for women and harassment towards the female employee constitutes inequality at workplace. There is a gender gap in the workplace as females have faced discrimination since history till present in terms of inequality at the workplace and due to some cultural norms married women work for making their family survive but are given no chances for an increment in the workplace. In the urban areas women are engaged in a variety of occupations in the unorganized informal sector where earnings are extremely low, hours of work long, no paid leave, no medical insurance or pension or any other social security benefits comprising of vegetable sellers, flower sellers, construction workers require less skill and education. Despite working at the household and workplace domains and managing this work-life balance gender specific problems relating to women are not addressed and they remain largely unorganized, unheard, underpaid and under-represented at the workplace. There is a preconceived notion of women at the workplace to be soft feminine as authoritative women receive disapproval from the society and the workplace. The society-based conception perceives men being the breadwinners and women to be the household workers which places them at a disadvantage in the workplace making them unequal to men since they are burdened with family responsibilities more than men. Males have been offered till date better incentives in terms of promotion and salaries than their female counterparts which places women at a marginalized position resulting in inequality and discrimination at the workplace. Women are disadvantaged as they are considered to be less productive than their male counterpart at the workplace as she is the last to be considered and first to be fired at the workplace. Sexual abuse towards female employees is discriminatory for women and harassment towards the female employee by giving irrelevant work constitutes inequity in the workplace as women are forced to change their jobs account of Sexual Harassment. Although reforms and a diverse set of policies are implemented in India in this specific domain by the Supreme Court which is the highest judicial authority in India and does frame laws that protect women bringing hope to several women if

⁵ Anju Beniwal, "Gender Discrimination and empowerment of women in India", 29

⁶ OLSEN, WENDY KAY. "Women at Work in India.", 173

⁷ Rawat, Preeti S., and Prema Basergekar. "Managing Workplace Diversity: Performance of Minority Employees, 493

justice is provided to one woman since they have been sidelined for a long time due to the cultural norms which undermine their right to equality and their dignity.

II. GENDER DISCRIMINATION AND ITS FORMS AT THE WORKPLACE AND STEREOTYPICAL PREJUDICES AND CULTURAL NORMS TOWARDS WOMEN

Reforms and a diverse set of policies are implemented in India in this specific domain by the Govt. of India and the Supreme Court who have framed laws that protect women bringing hope as women face cultural stereotypes which undermine their right to equality. Various types of discrimination have been carried out against women in the form of men being favored in terms of job position than women, victimization, pregnancy related discrimination, violence against women, sexual harassment by words or actions (physical contact, molestation, touch, eve-teasing, unwelcome remarks), unequal pay which makes women financially vulnerable and harsh treatment of one sex in comparison to the other sex at the workplace.⁸ The Committee on Elimination of Discrimination Against Women has ratified that gender discrimination as a category retained the existence of sexual harassment at workplace as equality in employment is impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace. Working is an important need for women as a path towards self-esteem and development but their social status in the workplace and family has led to gender discrimination against them as despite policies made, they still stand subordinate to men. Patriarchy as a dominant force deprives women of equal access to education, training, and skills leading to their presence in lower paying jobs since they lack employable skills.⁹

Women face a glass ceiling that creates invisible barriers for women from accessing higher positions, thus preventing career advancement for them at the workplace. Sex discrimination includes unfair, unequal treatment based on sex at workplace in term of special considerations provided on the basis of a gender of person in male dominated jobs in terms of appointment and gender gap pay which further intensifies the discrimination between the two genders.

III. LANDMARK CASES IN REGARD TO GENDER DISCRIMINATION AT WORKPLACE

In landmark case *Vishaka Vs State of Rajasthan* it was upheld by the Supreme Court that there was a need to provide a safe environment for women free from sexual harassment at the workplace and sexual harassment of women at the workplace.¹⁰ The Sexual Harassment of

⁸ Anju Beniwal, "Gender Discrimination and empowerment of women in India", 29

⁹ Rahul Sodhi, September 3, 2020, Gender Discrimination at Workplace and Law Behind <https://www.lawctopus.com/academike/gender-discrimination-at-workplace-and-law-behind-it/>

¹⁰ Verma (n.d.), *Vishaka & Ors vs State Of Rajasthan & Ors* on 13 August, 1997, Retrieved from <https://indiankanoon.org/doc/1031794/>

Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was introduced keeping the interest of working women and that employers to provide a mechanism for redressal of grievances of employees and it was required of an employer to deter such crimes and take appropriate steps to curb the incidences of sexual harassment against women.¹¹

Sex based discrimination does not only limit itself to sexual harassment but included a whole range of commissions not restricted to acts expressing unacceptable sexual acts. In the case of ***Punita K. Sodhi v. Union of India*** as there were numerous instances of undesirable physical contact which was classified as continued harassment hostile discrimination.¹² The Sex Discrimination Act of 1975 aimed to end discrimination on the grounds of sex and allows women of any age to bring claims of direct or indirect discrimination on grounds of sex or marital status, or on the basis of victimization and harassment.¹³

Despite such judgements and the guidelines laid in ***Vishakha vs State of Rajasthan*** seeking prevention of sexual harassment, women were still subjected to sexual harassment at the workplace due to ineffective implementation of the prevention of sexual harassment.

In the case Apparel Export Promotion Council Vs A.K. Chopra, a female employee who was a typist was molested by the respondent due to which she filed a complaint with the chairman and the respondent was under suspension. The Disciplinary Authority of the company started an enquiry which held the respondent guilty and being terminated. The respondent tried to file a writ against this judgement which held that he only tried to molest the female employee and actually didn't do anything and the High court held that he was terminated by the company without back wages but this was altered by the Supreme court as it held that trying to touch a female employee despite protest and sitting close were all constituted as sexual harassment to uphold the decision of disciplinary authority.

In ***C.B. Muthamma vs. Union of India***¹⁴ the petitioner was a member of the Indian Foreign Service and held that there were discriminatory practices towards women as they were prohibited from promotion and if married then they were terminated from service.¹⁵

Discrimination that women adhere at the workplace, was set-aside in the case of ***Air India vs. Nargesh Mirza***,¹⁶ where rules declared by a State-owned Aviation Company namely Air India

¹¹ S.C. Srivastava, "Sexual Harassment of women at workplace: Law and Policy", 366

¹² S.Muralidhar, Dr. Punita K. Sodhi vs Union Of India & Ors. on September 9, 2010, Retrieved from <https://indiankanoon.org/doc/87321004/>

¹³ Anju Beniwal, "Gender Discrimination and empowerment of women in India", 28

¹⁴ http://www.legalserviceindia.com/articles/gen_j.htm

¹⁵ V Krishnaiyer, C. B. Muthamma vs Union Of India & Ors , September, 1979, Retrieved from <https://indiankanoon.org/doc/1339558/>

¹⁶ http://www.legalserviceindia.com/articles/gen_j.htm

stated that a women would be terminated from service at her first pregnancy or on attaining the age of 35 and was discriminatory in nature as employment cannot be denied to any person on the grounds of sex.¹⁷

Situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace are to be constituted as a part of sexual harassment which was held in *Nisha Priya Bhatia vs. Union of India*,¹⁸ pertaining to the incident, the petitioner complaints against her colleagues within the Department and had faced exceedingly undignified circumstances due to improper handling of her complaint of sexual harassment which violated the fundamental rights including the right to life and liberty.

Women at the workplace experience issues of equal pay as males are provided higher wages due to the cultural attitudes and norms related to prejudices towards women. In the *The Secretary, Ministry of Defence v Babita Puniya & Ors*¹⁹. (2020) case the supreme court accounted for equal benefits for females as on par with male counterparts in promotions, rank and pensions and that all women army officers are eligible for permanent commissions, allowing them to be in commanding roles and the army being committed to providing equal opportunities to all personnel including women officers equally capable as males of commanding appointments to serve the country which went against the sex stereotypes based on assumptions about socially ascribed roles of gender and their domestic obligations which discriminate against women.

In the case of *Uttarakhand Mahila Kalyan Parishad v. State of UP ,1995*²⁰ there were complaints of female teachers being discriminated against by being paid less than male teachers for the same work and were given inferior promotions which went against the principle of equality at the workplace. The prevailing stereotypes of women being discriminated against at the workplace in terms of being claimed that the respondent was paid less as a stenographer than male stenographers performing the work of a similar nature was reflected in the case of *Mackinnon Mackenzie & Co. Ltd vs Audrey D'Costa & Anr*²¹ which held the female employee charged her employer with discrimination under the Equal Remuneration Act, that women cannot be denied as an employer from achieving the same benefits as their male

¹⁷ Vijay Pal Singh(n.d.), Gender Justice in India, Retrieved from:http://www.legalserviceindia.com/articles/gen_j.htm

¹⁸ India, I., 2021. Gender justice in India. [online] Legalserviceindia.com. Available at: <http://www.legalserviceindia.com/articles/gen_j.htm> [Accessed 3 August 2021].

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

counterparts and The management is liable to pay the same remuneration to all the Stenographers on the same basis irrespective of their sex.

Lack of action taken by the management authorities sometimes leads to injustice for the victim as in the case of *D.S. Grewal Vs Vimi Joshi* in which the accused person was a chairman of the school management committee and the respondent was the principal of the school. The accused used to send sexually coloured love letters to the respondent and had made sexual advances towards her which was neglected by the chairman of the school as despite filling a complaint no action was taken and the respondent was instead terminated from the services. She filed a Writ before the High court which held it was a matter of disgrace on a lack of disciplinary enquiry being taken up by the company in this case of sexual harassment and Supreme court stated that the management of the school was guilty as it didn't initiate a complaint committee which resulted in a lack of redressal mechanism to the victim.

There should be Rules of Government and Public Sector bodies prohibiting sexual harassment. Laws specifically related to the discrimination of women should be initiated like Anti-Discrimination legislation to achieve equality for women and should be implemented to safeguard equality for women. Various laws have been introduced and implemented to address the vulnerability of women at the workplace like the Maternity Benefits Act, 1961, The Minimum Wages Act, 1948 with an objective to prevent exploitation of the workers. The Employees' State Insurance Act to ensuring women workers get sickness benefit, disability benefit, medical benefit along with men workers. Equal Remuneration Act, 1976 dealing with equal pay for women and men without any discrimination for same work on the premise of gender²². There should be work life balance policies to make employees more productive and efficient. It is crucial for employees to bring change, openly discuss about discrimination. A national commission for women has been set up aimed to safeguard women rights 1990 and provided reservation for one third of seats for women in state or governing bodies or at the local level. There should be appropriate work conditions in respect of work, health and hygiene to ensure that there is no hostile environment towards women at workplaces and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment and there should be expressed prohibition of sexual harassment at the workplace in terms of being notified, published and circulated in appropriate ways.

Women should be assisted and encouraged when taking such actions to file a complaint under the Indian penal code or any law. There should be timely monitoring of such reports of

²² P Andiappan "Public Policy and Sex Discrimination in Employment in India", 406

misconduct at the workplace by the committee and action should be sought by the aggrieved person in such cases of misconduct. Gender discrimination towards women at the workplace is an infringement of fundamental right to equality under article 14 and 15 of the constitution and her right to life under article 21 of the constitution and a right to practice any profession or carry any trade/business which includes a right to safe environment free from sexual harassment.

IV. POLICY RECOMMENDATIONS FOR PREVENTING GENDER DISCRIMINATION AT THE WORKPLACE

There should be strict policies in the company to prevent sexual harassment and organizations must create a sexual harassment oversight committee by initiating disciplinary action against offenders, and victims must be protected and offered support.²³ There is a proposed Equal Employment Opportunities Commission, within the government which would be important for dealing with discrimination not just in employment.²⁴ There is emphasis to form an Inquiry Committee to investigate the matter of complaint received by the complainant and to deliver justice to the aggrieved. There should be better representation of women in decision making bodies in the workplace to strengthen their ability for better working conditions. Legal systems should be strengthened that allow women to raise their voices ending discrimination against women. There should be an end to discriminatory societal attitudes and community practices and strengthening partnerships with civil society, women's statutory organizations like Central and State Women Commissions.²⁵ It is crucial to bring about an awareness of consciousness among women for their rights and seek retribution for the crime committed.

There should be an end to discrimination towards women by valuing and assessing their contributions and not providing them with low skilled jobs but to have equal participation as their male counterparts. It is necessary to change our mindset and remove the society-based power structure cultural dominance and prejudices disadvantaging women to address sex-based discrimination. It is important to promote equal opportunities for male and female workers. It is necessary to attract and retain gender sensitive staff who would help equip them in gender sensitive responses to crises. It is necessary to have a Gender Policy as part of organizational policies and would involve building a culture that respects gender related concern²⁶. It is crucial to conduct gender trainings for both men and women and to increase awareness on issues of

²³ S.C. Srivastava, "Sexual Harassment of women at workplace: Law and Policy", 374

²⁴ P Andiappan "Public Policy and Sex Discrimination in Employment in India", 409

²⁵ Anju Beniwal, "Gender Discrimination and empowerment of women in India", 36

²⁶ Jyoti Sangappa and Laxman Kavle, GENDER DISCRIMINATION: Women's Work and Autonomy

sexual harassment at the workplace. There should be a secure workplace for women staff with a Gender Complaints Committee to prevent harassment and for investigating into cases of sexual harassment/discrimination when they are reported.²⁷ Gender justice in the spirit of social justice involves establishing strategies for corrective action toward transforming the workplace by making it more just in which women and men can be treated as fully human.

²⁷ Jyoti Sangappa and Laxman Kavle, GENDER DISCRIMINATION: Women's Work and Autonomy, 427

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