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DISCRIMINATION ON THE BASIS OF GENDER WITHIN A WORKPLACE SETTING- A CRITICAL REVIEW OF THE LAW AND SUGGESTIONS FOR CHANGES

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Abstract

Workplace gender discrimination is a persistent problem that violates fundamental human rights and impedes economic growth. In spite of considerable advancement through legislation, women and other marginalized gender groups still suffer from wage gaps, workplace bullying, and advancement barriers. This article studies the Indian legal system’s approach toward gender discrimination, including its constitutional, labor, and judicial components. It assesses the gap between the Indian legal system and international expectations as well. The paper ends with recommendations for laws and policies that create equitable access to workplaces.

Keywords: discriminatory behavior, equal opportunity, employment abuse, glass ceiling, integrated legal system, prevention of sexual harassment Act, Equal Remuneration Act, case law, CEDAW, ILO policy reforms.

1. Introduction

As with most aspects of socio-economic and political life, discrimination tends to occur in the workplace irrespective of the level of development of a society. Discrimination based on gender is a whole other form of bias that involves one or more person’s being treated differently by a colleague or superior solely because of their gender. This is a multifaceted issue that goes beyond law and order²³.

1.2 Research Objectives

1.To analyze India’s legal framework addressing workplace gender discrimination.

2.To examine landmark judicial precedents shaping gender rights in employment.

3.To compare India’s laws with international conventions on gender equality.

4.To suggest reforms for strengthening workplace gender laws.

2. Legal Framework Governing Workplace Gender Discrimination

2.1 Constitutional Provisions

India’s Constitution provides a strong foundation for workplace gender equality:

1.Article 14 – Guarantees equal protection of laws to all individuals.²⁴

²³ World Economic Forum, Global Gender Gap Report 2022, <https://www.weforum.org/reports/global-gender-gap-report-2022>.

²⁴ INDIA CONST., art. 14.

2. Article 15(1) – Prohibits discrimination based on gender.²⁵

3. Article 16 – Ensures equal employment opportunities in public sector jobs²⁶

4. Article 39(d) – Mandates equal pay for equal work for men and women.²⁷

2.2 Statutory Laws Addressing Workplace Gender Discrimination

A. Equal Remuneration Act, 1976

1. Mandates equal pay for men and women performing similar work.²⁸

2. Prohibits discrimination in recruitment and promotions.

3. Judicial Enforcement: *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 SCC 469 – Affirmed equal pay for equal work as a constitutional right.²⁹

B. Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

Codifies the Vishaka Guidelines laid down by the Supreme Court.³⁰

Requires Internal Complaints Committees (ICC) in all workplaces with 10+ employees.

Landmark Case: *Vishaka & Ors. v. State of Rajasthan*, (1997) 6 SCC 241 – Recognized sexual harassment as a violation of fundamental rights.³¹

C. Maternity Benefit Act, 1961 (Amended 2017)

1. Provides 26 weeks of paid maternity leave (earlier 12 weeks).³²

2. Protects women from termination or discrimination due to pregnancy.

D. Companies Act, 2013

1. Mandates at least one woman director in specified companies.³³

3. Judicial Precedents on Workplace Gender Discrimination

3.1 Vishaka & Ors. v. State of Rajasthan (1997)

Issue: Lack of workplace policies on sexual harassment.

Judgment: Introduced Vishaka Guidelines, later codified in the POSH Act, 2013.³⁴

3.2 Air India v. Nargesh Meerza (1981)

Issue: Discriminatory service conditions for female flight attendants.

Judgment: Struck down arbitrary termination rules as unconstitutional.^[13]

3.3 Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa (1987)

Issue: Unequal pay for women stenographers.

Judgment: Affirmed equal pay for equal work as a legal right.³⁵

3.4 Lt. Col. Nitisha v. Union of India (2021)

Issue: Gender-biased selection criteria for Permanent Commission in the Army.

Judgment: Ensured equal career opportunities in defense services.³⁶

4. International Legal Framework on Workplace Gender Discrimination

4.1 International Labour Organization (ILO) Conventions

1. ILO Convention No. 100 (Equal Remuneration Convention, 1951) mandates equal pay for equal work.³⁷

2. ILO Convention No. 111 (Discrimination (Employment and Occupation) Convention, 1958) prohibits gender discrimination in employment.³⁸

²⁵ Id., art. 15(1).

²⁶ Id., art. 16.

²⁷ Id., art. 39(d).

²⁸ Equal Remuneration Act, No. 25 of 1976, India Code (1976).

²⁹ *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 SCC 469 (India).

³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, No. 14 of 2013, India Code (2013).

³¹ *Vishaka & Ors. v. State of Rajasthan*, (1997) 6 SCC 241 (India).

³² Maternity Benefit (Amendment) Act, No. 6 of 2017, India Code (2017).

³³ Companies Act, No. 18 of 2013, India Code (2013).

³⁴ *Vishaka*, supra note 9.

³⁵ *Air India v. Nargesh Meerza*, (1981) 4 SCC 335 (India).

³⁶ *Mackinnon Mackenzie*, supra note 7.

³⁷ *Lt. Col. Nitisha v. Union of India*, (2021) 9 SCC 490 (India).

³⁸ Equal Remuneration Convention (ILO No. 100), 1951.

3. India has ratified Convention No. 111 but not Convention No. 100, leading to wage disparities.

4.2 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

1. Adopted by the United Nations (UN) in 1979, ratified by India in 1993.³⁹

2. Article 11 mandates equal employment rights, maternity protection, and workplace safety for women.

3. Judicial Reference: In *Vishaka v. State of Rajasthan*, the Supreme Court used CEDAW as an interpretative tool to frame workplace sexual harassment guidelines.⁴⁰

5. Challenges in Implementation

5.1 Weak Enforcement of Laws

1. Despite POSH Act, 2013, only 16% of companies fully comply with mandatory Internal Complaints Committees (ICC).⁴¹

2. Many workplaces discourage reporting due to fear of retaliation.

5.2 Gender Pay Gap and Glass Ceiling

Women in India earn 24% less than men on average, despite laws ensuring equal pay.⁴²

Only 4.7% of CEOs in India's top 500 companies are women.⁴³

6. Recommendations and Policy Reforms

6.1 Strengthening Enforcement of Existing Laws

1. Strict monitoring of ICCs under the POSH Act, 2013, with annual compliance reports.

2. Heavier penalties for companies violating the Equal Remuneration Act, 1976.

6.2 Encouraging Women's Leadership

Mandatory gender diversity quotas in senior management, as implemented in European Union laws.⁴⁴

6.3 Wage Transparency Measures

Enforcing public salary disclosures to identify and eliminate pay gaps.

Successful model: UK's 2017 Gender Pay Gap Reporting Law, which reduced disparities by 14%.⁴⁵

Conclusion

Gender discrimination in the workplace persists as a complex social problem despite existing legal, constitutional, and international measures. The Equal Remuneration Act, the POSH Act, and the Maternity Benefit Act outline key workplace rights, however, these laws' scope is undermined by poor implementation. The cases of *Vishaka v. State of Rajasthan* and *Lt. Col. Nitisha v. Union of India* have enhanced the law's potency for anti-discrimination, but gaps remain in enforcement.

The continuous wage gaps, the glass ceiling, and inadequate enforcement of the anti-harassment policies reflect on weak policies and legal schemes. For gender equality at workplaces in policies, there must be accountability and monitoring of compliance to anti-harassment, policy measures, legislation on payment and gender quotas, and measures on gendered corporate social responsibility. More progressive legal reforms in India can benefit from international best practices such as UK gender pay gap reporting and EU member states gender diversity quotas.

It is equally a legal and economic prerogative to work towards a gender sensitive work environment. Reduction of discrimination at work will enhance productivity, foster innovation, promote economic growth and protect rights and freedoms. Legal changes

³⁹ Discrimination (Employment and Occupation) Convention (ILO No. 111), 1958.

⁴⁰ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, UN Doc. A/RES/34/180.

⁴¹ *Vishaka*, supra note 1.

⁴² India Workplace Sexual Harassment Report 2021, Economic Times, <https://economictimes.indiatimes.com>.

⁴³ World Economic Forum, Global Gender Gap Report 2023, <https://www.weforum.org/reports/global-gender-gap-report-2023>.

⁴⁴ McKinsey & Co., *Women in Leadership in India: Progress and Challenges*, 2023.

⁴⁵ European Parliament, *Directive on Gender Balance on Corporate Boards*, 2022.

should be geared towards the anti-discrimination laws more enforcing and less framing to achieve an ideal working environment in India.

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