

THE CHALLENGES OF SEXUAL HARASSMENT OF WOMEN AND GENDER DISCRIMINATION IN INDIA- A CRITICAL ANALYSIS

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ABSTRACT

In developing countries like India, changing economic and social condition necessitated working of women irrespective of their religion, class or social status. But at the same time, it raised number of related issues like managing for family adjustment, working environment, etc. The purpose of this paper is to study gender issues like gender stereotype, gender discrimination and sexual harassment in the context of Indian environment. Gender issues of gender stereotype, gender discrimination and sexual harassment on a pan India basis covering various sectors and contribute to the subject from Indian perspective.¹

Keywords: Sexual harassment, Gender discrimination, Gender stereotype

INTRODUCTION

Sexual harassment at the workplace has seen a steady rise in India. Though this has undoubtedly been the case for a while now, it is being reported more openly and bravely as opposed to a few years ago. This radical shift can primarily be attributed to the enactment of the recent law in India – Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013. From a global standpoint, most countries have adopted some form of legislation at the national level that covers the issue of sexual harassment but a growing number of countries like India have adopted a specific legislation for the same. The International Labour Organization (ILO) also has standards and guidelines on prevention of sexual harassment at the workplace.² So what exactly is Sexual Harassment. Sexual harassment is a manifestation of gender discrimination and is defined by the law as:

- Unwelcome acts or behavior (whether directly or by implication) such as physical contact or advances,
- Requests for sexual favours and
- Any other verbal or physical conduct that is of a sexual nature.

¹ Neeraj Kaushik (National Institute of Technology, Kurukshetra, India) Emerald Group Publishing Limited

² <https://www.insightssuccess.in/gender-sensitivity-and-sexual-harassment-of-women-at-the-workplace/>

The law mandates that every company that has 10 or employees is required to formulate a Prevention of Sexual Harassment policy in accordance with the Act, constitute an Internal Complaints Committee to handle sexual harassment issues, sensitize its entire workforce on prevention, prohibition and redressal of sexual harassment of women in the workplace and handle any incidents of sexual harassment as per the inquiry procedure laid down by the law. Failure to do any of the above is a serious non-compliance and constitutes a violation of the law. There are serious penalties for the organization including cancellation of their business license apart from fines.

India Inc. is now in its third year of compliance with the Act. While there are a large number of companies that have implemented this law, there is still a long way to go before we can achieve total compliance. Larger corporations, both Indian and multi-national, are more pro-active and compliant than the small and medium sized organizations. Smaller companies have a tendency to think that the law does not apply to them and hence an alarmingly large number of such companies are non-compliant.

The international community has made numerous commitments to promote gender equality and reduce discrimination against women. The Beijing Declaration and Platform for Action (1995) considered inequality in decision-making as one of the critical areas of concern for the empowerment of women's. It states, "Women's equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account. Without the active participation of women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved". This was reaffirmed through the Millennium Declaration (2000), the World Summit (2005) and the subsequent recommendation of the Commission on Status of Women and various General Assembly Resolutions in the United.



Sexual Harassment: Undermining Fundamental Rights and Basic Human Dignity of Indian Citizens

The very notion of Sexual Harassment in the workplace intrinsically violates certain basic fundamental rights guaranteed to the citizens of India, enshrined in and protected by the Indian Constitution. Thus, any act or conduct amounting to sexual harassment is against the very basic structure of The Constitution of India that seeks to ensure and safeguard the dignity of its citizens. Such provisions are:

1. **Article 14:** Equality before the law or the equal protection of the law.
2. **Article 15:** Prohibition of discrimination on the grounds of sex.

3. **Article 19:** Right to practice any profession or to carry out any occupation, trade or business which right includes within its ambit “a right to a safe environment free from sexual harassment.”³
4. **Article 21:** Right to life and personal liberty which includes right to life with dignity.

Solution for Gender Discrimination

Various movements, programmes are being carried out by the Government, voluntary organizations and by lot of social activities for women’s development and against the gender discrimination. To solve the gender discrimination problem the **E⁴SD** factor would be very useful. They **E⁴SD** factors are

Education

Education develops the skills, imparts knowledge, changes the attitude and improves the self confidence. It provides employment opportunity and increases income. Hence educating women is the prime factor to combat gender discriminate and for the upliftment of women. Not only the female, the society must be educated to give equal right for female.

Employment

Employment gives the income and improves the economic position of the women. Employed women are given importance by the family members. Employment gives the economic independence for the women.

Economic Independence

In India, mostly, women in the young age – depends her father, in the middle age- she depends on her husband and in the older age – depends on her son. Woman always depends on somebody for her livelihoods hence, independent in economical aspects are imperative for women’s development.

Economic independence will free the women from the slavery position and boost the self confidence. Economic independence of women also helps in the national economic development.

Empowerment

Empowering women with the help of laws, education and employment will make the society to accept the women as an equal gender like male. Female also has all the potential and empowering women will help to use her full capability and mitigate the economic dependency of women.

³ Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384.

Self-confidence

Due to prolonged suppression, Indian women, an especially uneducated and unemployed woman hasn't had the self-confidence. Women need self confidence to fight against all the atrocities against her and to live self esteemed life. Hence, boosting the morale and self confidence of the women, is the key to eliminate the inferior complex of her.

Decision Making

Even in the family as well as in the society the decision making power of women is denied. Mostly males make the importance decision in the family and in the society. This makes women as voice less and destroys herself confidence and she feels less important in the family as well as in the society. So, to end gender discrimination women must empower with decision making power.

REVIEW OF LITERATURE

Sonalde Desai (1994)⁴ observed that parents reluctance to educate daughters has its roots in the situation of women. Parents have several incentives for not educating their daughters. Foremost is the view that education of girls brings no returns to parents and that their future roles, being mainly reproductive and perhaps including agricultural labor, require no formal education.

Kalyani Menon Sen and A.K.Shivakumar (2001)⁵ found that girls in India are discriminated against in several ways – fewer months of breastfeeding less of nurturing and play, less care or medical treatment if they fall ill, less of “special” food, less of parental attention. As a result, girls are far more susceptible than boys to disease and infections, leading to poor health and a shorter lifespan. It is this life-long discrimination in nurturing and care that is the real killer of girls – less visible and dramatic, but as unequivocally lethal as female foeticide and infanticide.

Berta Esteve – Volart (2004)⁶ described that gender discrimination against women in the market place reduces the available talent in an economy, which has negative economic consequences. Gender discrimination takes many forms. Many social practices seen as normal from a religious or cultural point of view (which may have deep historical roots) have women out of the economic mainstream. These social practices may have profound economic consequences because they do not allow society to take advantage of the talent inherent in women.

⁴ Desai, Sonalde, 1994, “Gender Inequalities and Demographic Behaviours : India”, New York, The Population Council, Inc.

⁵ Julie Mullin, 2008, “Gender Discrimination – Why is it still so bad and what can you do about it?”, Accessed from www.childerninneed.org on 15.08.2008.

⁶ Berta – Esteve – Volast, 2004, “Gender discrimination and Growth: Theory and Evidence from India,” London, London School of Economics and Political Sciences.

Anna-Maria Lind (2006)⁷ stated that India's population still leads traditional lives in rural areas. Religious laws and traditions still determine the lives of many people, particularly women. Even if women are formerly entitled to own land and resources social and religious factors make many women refrain from this right in order not to cause distortions within the family. The preference for having sons permeates all social classes in India, which sets the standard for girls throughout their entire lives.

GOI Planning Commission (2008)⁸ indicated that discrimination against women and girls impinges upon their right to health and manifests itself in the form of worsening health and nutrition indices. Thus, India continues to grapple with unacceptably high MMR, IMR, and increasing rates of anemia, malnutrition, HIV/AIDS among women.

Julie Mullin (2008) indicated that the developing world is full of poverty stricken families who see their daughters as an economic predicament. That attitude has resulted in the widespread neglect to baby girls in Africa, Asia and South America. In many communities, it's a regular practice to breastfeed girls for a shorter time than boys so that women can try to get pregnant again with a boy as soon as possible. As a result, girls miss out on life-giving nutrition during a crucial window of their development, which stunts their growth and weakens their resistance to disease.

The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013--Analysis

The act extends to the whole of India and seeks to achieve three major objectives:

- I. Protection of women against sexual harassment in workplaces
- II. Prevention of conduct amounting to sexual harassment in workplaces
- III. Establish mechanism for redressal of complaints pertaining to sexual harassment

Section 2: Definitions

Section 2(n) of the Act defines the term Sexual Harassment as⁹: Sexual Harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication

⁷ Anna – Maria Lind, 2006, “Struggle and Development: Approaching gender bias in Practical International Development Work”, Orebro, Orebro University.

⁸ Government of India, 2008, “Eleventh Five Year Plan (2007-2012), Vol. II, New Delhi, Planning Commission.

⁹ Section 2(n), The Sexual Harassment Of Women in the Workplace (Prevention, Prohibition And Redressal) Act, 2013.

meaning):

1. Physical Contact or advances
2. A demand or request for sexual favors
3. Making sexually colored remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or non verbal conduct of sexual nature

Section 2(o) of the Act defined the term “workplace” as¹⁰ “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.”

The Act defines the Unorganized Sector as: any enterprise owned by an individual or a group of self-employed workers engaged in the production or sale of goods or providing services of any kind; any enterprise which employs less than 10 workers.

As per this definition, a workplace covers both the organized and un-organized sectors. It also includes all workplaces whether owned by Indian or foreign companies having a place of work in India. It includes Government organizations cooperatives and societies; Hospitals and Nursing Homes; Sports Facilities or any other dwelling places.

Discriminations

From web to death females are facing lots of discrimination against them. Some of them are Abortion of female gravida with the help of scanning.

- ❖ Feoticide (By giving liquid extract from cactus / opuntia, giving raw paddy to new born female baby, by pressing the face by pillow or by breaking the female baby’s neck)
- ❖ Not giving enough and nutritious food
- ❖ Not allowing to go to school (Denial of education)
- ❖ Not giving needy health care while in ill health
- ❖ Early marriage
- ❖ Eve teasing, Rape and Sexual harassment
- ❖ Dowry

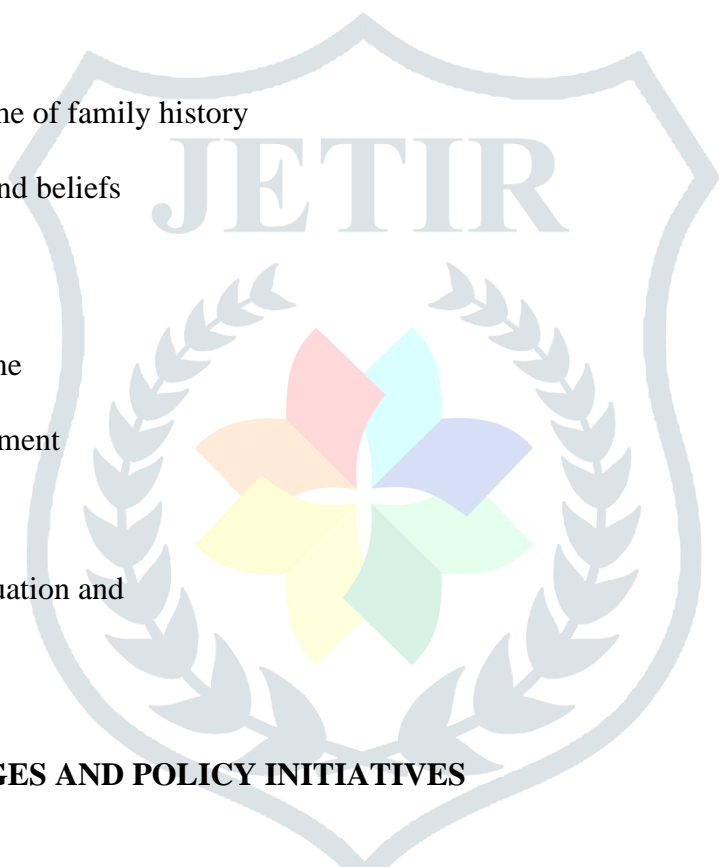
¹⁰ Section 2(o), The Sexual Harassment Of Women in the Workplace (Prevention, Prohibition And Redressal) Act, 2013.

- ❖ Divorce, Destitution even for silly or without any reason.

Causes of Gender Discrimination

The causes of gender discrimination are

- ❖ Educational backwardness
- ❖ Caste
- ❖ Religious beliefs
- ❖ Culture
- ❖ On the name of family history
- ❖ Customs and beliefs
- ❖ Races
- ❖ Low income
- ❖ Unemployment
- ❖ Society
- ❖ Family situation and
- ❖ Attitudes



LEGISLATIVE CHANGES AND POLICY INITIATIVES

Recently, two laws have been enacted that support the promotion of gender equality within the workplace in India:

- (1) The Companies Act, 2013: This Act stipulates that every publicly listed company has to appoint a women director on its Board. Spencer Stuart India Board Index 2014 found that women accounted for only 8 percent of directors on the Bombay Stock Exchange (BSE) 100 companies in 2012’.
- (2) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Since December 2013, the Sexual Harassment Act is aimed to “provided protection against sexual harassment and for the prevention and redressal of complaints of sexual harassment”*. This Act superseded the

Vishakha Guidelines for the prevention of sexual harassment that was laid down by the Supreme Court of India. The Act also expanded the definition of the workplace to cover different kinds of work. In spite of progressive laws, organizations find it challenging to address gender equality in the workplace. For instance, the Sexual Harassment Act requires organizations to define their sexual harassment policies, prevention systems, procedures and service establish internal rules; complaints and hold sensitization and awareness activities. Lack of committees; regular gender compliance can result in the cancellation of an organization's license to operate. To date, however, it appears that most organizations have not defined their sexual harassment policies; others have not communicated their policies adequately to their employees and the culture of most organizations remains gender unequal. There is very little data publicly available on gender and diversity issues within companies and other formal organizations, although there appears to be an increasing demand for more information on implementation issues and on how to address workplace inclusion and gender equality. At the same time, there are only a few national level support organizations in this field.

There is also growing evidence to suggest that organizations which promote gender equality and diversity perform better than organizations that don't (Norton and Fox, 1997). Companies with a higher number of women on their boards have better corporate governance and ethical behaviour. Moreover, data suggest that investing in women leaders improves a country's GDP and the welfare of future generations.

KEY CHALLENGES

Despite India's admirable record of economic growth in the past two decades since liberalization, gender inequalities in the workplace persist. Gender inequality in the workplace manifests itself in multiple forms:

Gender Gap in Employment: The total female formal labour force participation in India is only 29 percent (World Bank 2010)'. Contrary to expectations, there has been a 23 percent decline in the female labour force participation in India in the last 25 years (Lahoti and Swaminathan, 2013)'. As a result, women have not been able to contribute to or benefit from the opportunities provided by India's economic growth.

Gender Gap in Management and Leadership: There is a dearth of women in senior leadership positions in India — be it on boards of civil society organizations, corporate boards or in parliaments. Women hold only 9.5 percent of board seats in stock indexed companies (Catalyst, 2014°).

While these are in the emphasized that even when women are steps right direction, Harpreet present on boards, gender equality is yet to translate into organizational policies. Women continue to be stereotyped and

slotted into certain jobs, they face biases in performance appraisal, promotions and salary, and are met with challenging work-life balance choices. Because of these entrenched gender biases, women find themselves stuck in the lower rungs of the corporate ladder. Harpreet highlighted the various kinds of discrimination that women face in both the organised and unorganized sectors, particularly in terms of the nature of work, access to facilities, occupational health and safety. The absence of arrangements for breast-feeding a child in the workplace, for example, is extremely challenging.

Within the private sector, the dearth of talent in senior management positions is evident by the fact that a few women corporate leaders end up acting as directors on multiple boards. This is true of women's positions in civil society organizations as well. In addition, we know that leadership development programs are key retention measures for women. However, very few organizations provide such programs. Organizations are not allocating their budgets, resources and targets to support the mandate on gender inclusion (Sharma and Sharma 2012)'. addressing informal rules that perpetuate More importantly, they are not gender-based discrimination in the workplace.

Gender Pay-Gap: Reiko highlighted that women earned 25 percent less than men in the formal sector in India in 2013 and 45 percent less before 2007. As a result, the indicators suggest that there is a systemic devaluation of jobs dominated by women (nursing, for example) and clear occupational segregation (where women are found to be in greater numbers in lower positions). She also stated that there is a wage penalty that is levied on women because they are concentrated in certain occupations due to domestic responsibilities. There is some evidence to suggest that even among civil society organizations, women earn lower wages than men for the same work they do (Guidestar 2007, Mitra 2013). Similarly, the 2014 World.

CONCLUSION

A nation or society, without the participation of women cannot achieve development. If we eliminate gender discrimination, women will deliver all the potentials, skills, knowledge to develop the family, the nation and the whole world. The Apex Court in its decision equated a safe and healthy working condition as a requisite for human dignity under the Right to Life clause of the Indian Constitution. By laying down strict guidelines to prevent and redress sexual harassment in the workplace, the court ensured that the offence was accorded the gravity which was due. "Sexual harassment" has come to be viewed as a violation of the fundamental right to equality.

The Act provides a comprehensive legislative framework to protect and safeguard the interest of women in the workplaces. It seeks to establish favorable working conditions conducive to the growth and development of women. The Committees established under this Act have been clothed in quasi-judicial authority giving

them enormous powers to redress grievances and award punishment for any misconduct provided for by the Act.

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