

INDIAN WOMEN IN THE WORKING SECTOR: CHALLENGES AND THE LEGAL MECHANISM

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ABSTRACT

A large percentage of women in India work these days due to compulsions to sustain themselves and their family or for self- evolution and growth. In urban India women have impressive number in the workforce. But 90% of working women in India are involved in the informal sector. The informal sector includes jobs such as domestic servant, small trader, artisan or field labourer on a family farm. Most of these jobs are unskilled and low paying and do not provide benefits to the worker. In addition to that, the working woman in India continues to face stiff challenges and social resistance even in the 21st century. The most important challenge is the sexual harassment at work place. This paper makes a humble attempt to highlight their problems especially the problem of the sexual harassment at the workplace. Lastly, this paper will delve deeply into the legal protection available to working women in India from constitutional provisions to the legislative framework available to women for their protection.

INDEX TERMS: SEXUAL HARASSMENT, WORKPLACE, INFORMAL SECTOR, PROTECTION, PREVENTION

1. INTRODUCTION

“My greatest hope is women
They want a helping hand to lift them out of the well”

Mahatma Gandhi¹

It takes centuries for women’s roles to unfold in different forms, shapes and sizes and to move in new directions. Historically, women took up income generating activities out of compulsions to sustain themselves and their family. But with the passage of time, this scenario has changed. These days, a large number of women in urban India work for self- evolution and growth.

Contrary to the common perception, a large percentage of women in India work. In urban India women have impressive number in the workforce. As an example, statistics reveal that almost 40% of business school graduates are women, 25% of doctors and lawyers are females, 43% of all students in any medical or law school are females and last but not the least, in software industry 30% of the workforce is female. One of the most famous female business success stories is the Shri Mahila Griha Udyog Lijjat Papad. In 2006, Kiran Mazumdar-Shaw, who started Biocon-one of India’s first biotech companies, was rated India’s richest woman.² She is ranked 68th most powerful women in the world by Forbes this year i.e 2019. Another famous success story is of Roshni Nadar Malhotra who is the chairperson of HCL Technologies and the first woman to lead a listed IT Company in India.

But on the other side, 90% of working women in India are involved in the informal sector. The informal sector includes jobs such as domestic servant, small trader, artisan or field labourer on a family farm. Most of these jobs are unskilled and low paying and do not provide benefits to the worker. In addition to that, the working woman in India continues to face stiff challenges and social resistance even in the 21st century. The most important challenge is the sexual harassment at work place. Sexual harassment and a safe and secure working environment for women continue to remain a challenge in most parts of the country. Another challenge to working women is the denial of their right to equal pay. Lastly, the burden of household chores add to their problems. Therefore, this paper makes a humble attempt to highlight their problem especially the problem of the sexual harassment at the workplace and the legal mechanism to resolve these problems.

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2. RIGHTS OF THE WOMEN

Women's Rights as a term, typically refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illegitimately suppressed by law, custom, and behaviour in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and because activism surrounding this issue claims an inherent historical and traditional bias against the exercise of rights by women.³

Issues commonly associated with notions of women's rights include, though are not limited to, the right to bodily integrity and autonomy, to vote, to hold public office, to work, to fair wages or equal pay, to own property, to education etc. These are some of the rights of the modern woman. But women have not always been allowed to do these things, similar to the experiences of the majority of men throughout history. Women and their supporters have waged and in some places continue to wage long campaigns to win the same rights as modern men and be viewed as equals in society.

3. CHALLENGES FACED BY WOMEN AT WORKPLACE

According to a report of the United Nations published in 1980- "Women constitute half of the world population, perform nearly two thirds of work hours, receive one tenth of the world income and own less than one hundred percent of the world property."⁴ The Supreme Court in **Madhu Krishnan v. State of Bihar** ⁵

"Women form half of the Indian population. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all kinds of inequities, indignities, incongruities and discrimination ."

The working women in India continues to face stiff challenges and social resistance even in the 21st century. India is the first among countries to give women equal franchise and has a highly credible record with regard to the enactment of laws to protect and promote the interests of women, but women continue to be denied economic, social and legal rights and privileges. Though they are considered to be equal partners in progress, yet they remain subject to repression, marginalization and exploitation. The prominent challenges faced by working women are:

3.1 Sexual Harassment at Work Places

The most prominent challenge is the sexual harassment at work place. Sexual harassment and a safe and secure working environment for women continue to remain a challenge in most parts of the country. Most of women are prone to sexual harassment irrespective of their status, personal characteristics and the types of their employment. They face sexual harassment on way, on transports, at working places, educational institutions, hospitals and even in police stations.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behaviour or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk.⁶

Though Supreme Court has laid down detailed guidelines in its landmark judgement of *Vishakha v. State of Rajasthan*⁷ for protection of women from sexual harassment at work place, their position has not changed much. The Court directed the Government to enact these guidelines into a binding legislation which lead to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive

growth. Sexual harassment of a female at the place of work is incompatible with her dignity and needs to be eliminated. Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.⁸

3.2 Problems of Women in the Informal Sector

The jobs in India for women have gone up and new career development programs are being initiated by organizations which serves as boost to job positions for women. Women have made their foray into retail jobs, finance, executive jobs and even top managerial jobs. But still informal sector is particularly important for women. It is estimated that over 90 percent of working women are involved in the informal sector. The informal sector includes jobs such as domestic servant, small traders, artisans or a field labourer on a family farm. Most of these jobs are unskilled and low paying and do not provide benefits to the workers.⁹

Women working in the informal sector of India's economy are also susceptible to critical financial risks. If they become ill, they loose their job or are unable to continue working, they and their families fall into debt as millions of poor depend on the income generated by one or more women in their household. Women in informal sector do not have regular salaried employment with welfare benefits like workers in the organized sector of the labour market. These is no provision for maternity leave also.

3.3 Denial of the Right to Equal Pay

A majority of working women continue to be denied their right to equal pay and are underpaid in comparison to their male colleagues even after the enactment of the Equal Remuneration Act 1976. This is usually in case of factories and labour oriented industries. Researches have estimated that female agricultural labourers are usually paid 40 to 60 percent of the male wage.¹⁰

3.4 Burden of Household Chores

Working women in India are faced with lot more challenges than their counterparts in the other parts of the world. In India men do not share on most of the household chores, its is women who have to handle the burden of household chores in addition to their employment. They are expected to do multi tasking. They have to take care of family and household even if they are working.

Above all, women in most cases are not allowed to control their finances which are handed over to their husband or in laws. It is because of the fact that man in patriarchal society has always wielded economic independence and power to take decision even with regard to women's finances.

Thus, working women still suffers from certain limitations and face stiff challenges even after being given legal rights and protection.

4. LEGAL PROTECTION TO THE RIGHTS OF THE WORKING WOMEN

A number of measures have been adopted internationally and nationally to protect the rights of the working women. But here we will mainly focus on the measures taken at the national level to protect the women:

4.1 Important Constitutional and Legal Provisions for Working Women in India

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at aimed women's advancement in different spheres.

4.1.1 Constitutional Provisions

The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic education and political disadvantages faced by them. Article 14 says that the government shall not deny to any person equality before law or the equal protection of the laws. Article 15 declares that government shall not discriminate against any citizen on the ground of sex. Article 15(3) makes a special provision enabling the state to make affirmative discrimination in favour of women. Moreover, the government can pass special laws in favour of women. Article 16 guarantees that no citizen shall be discriminated against in matters of public employment on the grounds of sex. Article 42 directs the state to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the constitution imposes a fundamental duty on every citizen through. Article 15(A)(e) to renounce the practice derogatory to the dignity of women. Article 243D(3) and Article 243D(4) reserves the seats for women in Panchayat whereas Article 243T(3) reserves the seats for women in Municipality.

4.1.2 Legislative Provisions Protecting the Rights of Women at Workplace

With the passage of time numerous laws have been implemented in favour of working women. Some of them are:

- (1) **Equal Remuneration Act:** This law is applicable to all employees including those in all the private and government sectors. It states that employees of both genders doing the same or similar work of the same value be paid equal remuneration in cash and kind.
- (2) **Maternity Benefits Act:** According to this Act, a woman is entitled to payment during her maternity leave at the rate at which she was working prior to the leave period.
- (3) **Provisions in the Indian Penal Code:** In addition, the Indian Penal Code (in short, IPC) also deems sexual harassment as a cognizable offense under Section 354A, which means that the accused may be arrested without a warrant and will be punished with imprisonment for a maximum of 3 years and/or a fine.
- (4) **The Companies Act, 2013:** As per the second Proviso to Section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, every listed company having paid-up share capital of Rs. 100 crore or more, and every public company having a minimum turnover of Rs. 300 crore or more, is required to make provision for appointment of at least one woman director.

The Factory Act of 1948, Mines Act of 1952, Plantation Labour Act of 1951 in India were passed to protect and regulate the wages of women from time to time without any discrimination.

(5) **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act defines sexual harassment as unwelcome acts or behavior (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature.¹¹ Any act of unwelcome and sexual nature shall be considered as sexual harassment.

The Act also provides the circumstances under which an act may amount to sexual harassment. These are:¹²

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or

- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

According to Section 3 of the Act, no woman shall be subjected to sexual harassment at any workplace. The important feature of the Act is that it envisages the setting up of Internal Complaints Committee at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment.¹³ At the district level, the government is required to set up a 'local committee' to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the IC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.¹⁴

The LC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The committee while inquiring into such complaint shall have the same power as vested in a civil court. An aggrieved woman can file a written complaint to ICC/LCC within three months from the date of the incident and in case of series of such incidents within three months from the last such incident. However, any delay in filing the complaint can be condoned by the committee upto further three months.¹⁵ In case of physical or mental incapability of the aggrieved woman, her legal heirs or such other person as described in Rule 6 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("the Rules") may make a complaint.

On receiving the complaint the committee, before initiating an inquiry, may take steps to settle the matter between her and the respondent through conciliation and when a settlement is arrived no further inquiry is conducted. However this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. If the conciliation fails or any term of the settlement arrived at has not been complied with by the respondent, the committee shall proceed further with the inquiry.

Where both the parties are employees, the principle of natural justice is followed and both the parties are heard and opportunity is given to make representations against the findings of the committee. For the purpose of making an inquiry, the committee shall have the same powers as are vested in a civil court.¹⁶ The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days. The committee can give certain interim reliefs to the aggrieved woman during the pendency of the inquiry. The Act envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:¹⁷

- (i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- (ii) the loss in career opportunity due to the incident of sexual harassment;
- (iii) medical expenses incurred by the victim for physical/ psychiatric treatment;
- (iv) the income and status of the alleged perpetrator; and
- (v) feasibility of such payment in lump sum or in instalments.

In the event that the respondent fails to pay the aforesaid sum, IC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The committee within 10 days after completion of the inquiry shall provide the report of its findings to the employer/District Officer and the concerned parties. When the allegation against the respondent has been proved the committee shall recommend the employer/District Officer to take action for sexual harassment as misconduct in accordance with provisions of service rules or where no such rules have been made, as prescribed in Rule 9 of the Rules and to pay such sum to the aggrieved woman as it consider appropriate, in accordance with the provisions of section 15, from the salary of the respondent. The employer/District Officer shall act upon the recommendations within 60 days.

In case of filing of false or malicious complaint or false evidence the committee may recommend to the employer or District Officer to take action in accordance with the provisions of service rules or where no such service rules exist, in such manner as prescribed in Rule 10 of the Rules. An appeal can be filed against the recommendations made by the committee before the court or tribunal, within 90 days from the recommendations, in accordance with service rules and in absence of service rules, to the Appellate Authority under Section 2 of the Industrial Employment (Standing Orders) Act, 1946. There is a prohibition on publication of identity of the aggrieved woman, respondent, witnesses, contents of the complaint, inquiry proceedings or recommendations of the committee, except information regarding the justice secured to any victim of sexual harassment. In contravention of Section 16 of the Act, such person shall be liable for penalty in accordance with service rules and in absence of service rules, in accordance with Rule 12.

The Act lays down certain duties of the employer and District Officer under Section 19 and 20 respectively such as creating awareness on sexual harassment at workplace, sensitize the employees, assist the complaints committee in conducting the inquiry, act upon recommendations of the committee, monitor timely submissions of reports of the committee etc. Where employer fails to constitute internal committee or contravenes provisions of this act or any rules made shall be punishable with fine which may extend to fifty thousand rupees. An employer will be liable to a fine of Rs 50,000 in case of violation of his duties under the Act and in case of subsequent violations the amount of fine will be double together with penalty in the form of cancelation of his licence, withdrawal or non-withdrawal of the registration required for carrying out his activity.

5. CONCLUSION AND SUGGESTIONS

Women are experienced in managing one of the most complex organization i.e. the household, with its many interfaces and interplay between the sexes, different age groups and different stakeholders. Women have learnt over the centuries the art of negotiation and reconciliation and qualities of patience and understanding, along with an inherent quality of emotional intelligence. All these transferable skills can be brought to bear upon the workplace, making it richer from these valuable experiences. But, they are facing a lot of hurdles in their professional lives as enumerated above.

Independence brought promise of equality of opportunity in all sphere to the Indian women and laws guaranteeing for their equal rights of participation in political process and equal opportunities and rights in education and employment were enacted. But unfortunately, the government sponsored development activities have benefited only a small section of women. The large majority of them are still unaffected by change and development activities. The problems of women workers in India are multifarious and multidimensions. These problems can be solved through changes in the attitude of family, society and nation towards the women.

Here are some steps to be taken at various levels to protect the interest of working women and elevate their status:

5.1 Individual Level

The key to transforming the social status of a working woman lies in their own hands primarily. Women need to be more assertive and aware of their own rights at home as well as at work. There are many social self-help women's groups and other women's organizations that are ready to assist women in upgrading their skills, connecting them with job and entrepreneurial opportunities, and addressing their grievances, whether at the workplace or at home. Women's cooperative movements such as Amul Dairy Cooperative in Gujarat and Shri Mahila Griha Udyog "Lijjat Papad" in Maharashtra are two legendary examples of self-help women groups transforming the lives of women in India. Unless woman decides to resist against her exploitation, whether at economic, social or sexual level, the goal of women's empowerment cannot be achieved.

5.2 Employer's Level

The business organizations must develop a clear policy of gender inclusiveness and become equal opportunity employers. Implementation of the policy must be monitored closely, and the data of the women's participation in the

organization must be reviewed regularly. This will ensure that the top management remains informed about any gender disparities within the organization, and works consistently to close the gaps. There should be strict implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The employers must follow best practices in terms of providing maternity leave and benefits to working mothers. Re-training of women employees and other such measures must be taken to ensure that they remain at par with the male workforce within the organization. Tata Consultancy Services (TCS) is a classic case in this regard. TCS in recent years has launched a “Diversity and Women’s Network” (DAWN) initiative that encourages women employees to stick to their jobs despite pressure from marriage, family, and maternity demands, and attain sustainable careers for the long term.¹⁸

5.3 Governmental Level

The government in India has its task cut out clearly in terms of policy initiatives as well as implementation of the women’s employment, entrepreneurship and financial empowerment programs at the grassroots level. For instance, the government of India has taken an enterprising step to enhance the safety of working women. It has reserved one compartment exclusively for women in the Delhi Metro Service. This action of the government creates safer conditions for women’s employment, and encourages women to work outside their homes. It is a step in the right direction, and symbolizes the government’s increased consciousness about improving women’s participation in the economy. Moreover, affordable child care facilities should be provided at work places to increase their ability to participate in the labour force.

5.4 Societal Level

The society and the family are two crucial influences that can raise the status of the working women in India. The husband and other family members need to be supportive of the woman’s work outside the home. They need to share the household responsibilities in order for woman to be able to utilize her skills outside the home. India is a traditionally patriarchal and male-dominated society. Therefore, without the positive and liberal mindset of the average Indian male to encourage the working women, a real elevation of the working women’s status in the society is going to remain a distant dream.

Overall, a conducive and safe social environment and a proactive support from the family, corporate, government and other social networks can help to transform the Indian Working Women’s status for the better. But above all, the assertiveness and initiative of the working women themselves for their own rights can do more for their empowerment than all other forces combined.

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- ⁷ AIR 1997 SC 3014. It has been laid down in this case by the Supreme Court that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the Commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

⁸ “ Handbook on Sexual Harassment of the women at the workplace” available on <https://wcd.nic.in/act/handbook-sexual-harassment-women-workplace>, last visited on 12 May 2019.

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¹² Section 3 of the the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹³ Section 4 of the the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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