

Gender discriminations in workplace and the legal protection: The case of corporate sector employment in India

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Abstract

Indian society, being traditionally patriarchal, in nature has extended this nature to the work place as well. Traditional patriarchal norms have relegated women to secondary status within the household and workplace. The prejudices have taken place due the patriarchal society in the country. It leads to the development of such social culture that wanted to suppress the opposite gender. Later on specifically in working conditions it lead to several activities of gender biasness and harassment. It made working unequal on parts of opportunities and compensations. The present paper explores the existing forms of work place discrimination in the Indian corporate sector. It tries to map out the existing legal framework to check the discrimination of female employees and the challenges for its implementation in the Indian corporate sector.

Keywords: India, gender, workplace discrimination, corporate sector, legal frame work

1. Introduction

Gender discrimination continues to be an enormous problem within Indian society. The essence of gender discrimination is unequal treatment on the basis of sex. The treatment must not simply be different, but also unequal, and therefore unfair. Traditional patriarchal norms have relegated women to secondary status within the household and workplace. The prejudices have taken place due the patriarchal society in the country, later on prevailing due to the desire of being superior to the opposite gender. It leads to the development of such social culture that wanted to suppress the opposite gender. Later on specifically in working conditions it lead to several activities of gender biasness and harassment. It made working unequal on parts of opportunities and compensations. Women experience discrimination in the work force in terms of pay, hiring and promotions. Their earnings are consistently lower than that of a man's in almost every occupation, regardless of the overall gender domination of that sector of work. They are more susceptible to sexual harassment, with 1 in 4 women claiming that they have experienced some form of unwanted advancement. Strides have certainly been made to improve the work place for women, but their potential still goes largely untapped. The present paper explores the existing forms of work place discrimination in the Indian corporate sector. It tries to map out the existing legal framework to check the discrimination of female employees and the challenges for its implementation in the Indian corporate sector.

2. Workplace Discriminations in the Indian Corporate sector

India's corporate sector has grown steadily over the past two decades in terms of number of registered companies and amount of paid up capital (Topalova, 2004) ^[1]. The Indian corporate sector has two main components, namely, the government owned and privately owned companies. The size of both the components, in terms of both numbers and capital,

has grown fast, particularly since beginning of the 'seventies (Goyal, 1988) ^[2]. Government companies are mainly in the basic, heavy and capital intensive industries whereas the private sector is predominantly in industries which cater to the consumer markets directly. Although the private corporate sector in India has been accorded an important role in the industrialisation of the country, until 1990s it functions complementary to the public sector. The growth of the private corporate sector therefore had to take place within the limits laid down by the government regulations. The Industries (Development and Regulation) Act, the Monopolies and Restrictive Trade Practices Act (MRTPA) the Capital Issues (control) Act and other regulatory measures imposed limits on the expansion of existing firms and the entry of new firms to the defined areas. Thus the private corporate sector in India had to grow within an institutionally set macro framework. The economic reforms, of July 1991 included not only a deregulation of private industry, but withdrawal of state support to public enterprises, opening up of sectors hitherto reserved for the public sector to private enterprise, withdrawals of the restrictions imposed by the MRTPA, and the Foreign Exchange Regulation Act (FERA), etc, thereby facilitating, the growth of private investment within the country and the flow of foreign direct investment (Shanta, N. 1999) ^[3]. As a result large scale growth of employment created riding the waves of growth of private sector.

India's services sector, largely in private sector, has the largest share in the GDP, accounting for 57% in 2012, up from 15% in 1950. It is the 7th largest in the world by nominal GDP, and third largest when purchasing power is taken into account. The services sector provides employment to 27% of the work force. Information technology and business process outsourcing are among the fastest-growing sectors, having a cumulative growth rate of revenue 33.6% between 1997 and 1998 and 2002–03 and contributing to 25% of the country's total exports in 2007–08 (Datt, Rudder & Sundharam, 2009 p. 976) ^[4]. But the

growth is not reflected in terms of female participation (ILO, 2013)^[5]. Despite these declining rates, it was estimated in 2010 that approximately 5.5 million Indian women were entering the formal workforce each year at that period in time, (Hewlett, S. A *et al.*, 2010)^[6]. Though the aforementioned statistics likely indicate that a larger proportion of men are entering the formal workforce each year than women, this is a significant amount of employees, many of whom will be facing a unique set of challenges in the workplace simply because of their gender. In fact, research done by the Centre for Talent Innovation has found that 55% of female Indian employees routinely encounter such severe bias in the workplace that they disengage from their work or consider dropping out altogether (Hewlett, S. A. 2012)^[7].

The status of women in the organised sector can be assessed by examining three important aspects the numbers of women employed in the organised sector, the compensation paid to women and the drop out ratio. India has the lowest percentage of women employees (23%), super seeded by countries such as Japan (24%), Turkey (26%) and Austria (29%), according to the Corporate Gender Gap report brought out by the World Economic Forum. As per the UNESCO Report on Gender Equality in Education in India, there is a large difference even in the salary structure of men and women in corporate India. The average annual income of a woman is less than one-third of a mans employed in Indian companies. According to Gender Diversity Benchmark for Asia 2011 study, Indian women dropout ratio at 48% is significantly higher in the junior to middle category as compared to its regional counterparts.

Against this backdrop, it is encouraging to note that 30% of the workforce in the IT/ITeS sector comprises of women and it is heartening to note that there is no inequality in terms of compensation levels although there are other challenges women faces in terms of their upward mobility.

Common forms of discrimination exist such as equal remuneration, sexual harassment, discrimination due to pregnancy and disability. Other types of discrimination in workplace like based on ethnicity, caste or religion. It is a general perception that discrimination starts from the very first stage which is recruitment for working women. Most of the Indian men are not ready to accept that women are capable enough to work side by side with men in all the sectors, other than in a few limited ones like teaching, nursing and in clerical sectors. Their capabilities are generally underestimated as a result of which Indian women have a tendency to opt for less demanding jobs even if they are highly qualified. Women have the responsibilities to effectively manage their multiple roles in domestic as well as professional lives. Men generally do not offer any help in the households work. This makes the life of working women extremely stressful.

The Universal Declaration of Human Rights, adopted in 1948, enshrines “the equal rights of men and women” and addressed both the equality and equity issues. In 1979 the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) for legal implementation of the Declaration on the Elimination of Discrimination against Women. Described as an international bill of rights for women, it came into force on 3 September 1981.

3. Existing Legal Framework for working women in the organised sector

The Indian Constitution guarantees equality as ‘Fundamental Rights’ in Articles 14, 15 and 16 under Part III. Article 14 guarantees equality before law and the equal protection of laws. Article 15 prohibits discrimination ‘only’ on the basis of religion, race, caste, sex, place of birth, or any of them. Article 15 also allows for special provisions to be made for women, children, socially and educationally backward classes of citizens as well as the Schedule Castes and the Scheduled Tribes (SCs and STs) – such special provisions shall not be considered discriminatory. Article 16 provides for equality of opportunity in matters of public employment. Discrimination on this ground is prohibited by Article 15 of the Constitution which says no citizen shall on the grounds of sex, caste, place of birth be ineligible for, or discriminated against in respect of, any employment or office under the State. However, the State can make laws which might be discriminative towards male but which might be beneficial for the women on the grounds of affirmative action. Sexual harassment is considered as a violation of a woman’s fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women’s participation in work and adversely affecting their social and economic growth.² The Constitution also provides every citizen the ‘right to practice or carry out any occupation, trade or business’³, which includes the right to a safe environment, free from all forms of harassment. In 1997, the Supreme Court of India took it upon itself to lay down the Guidelines against Sexual Harassment at the Workplace (the ‘Guidelines’) in Vishaka and Others v State of Rajasthan and Others.⁹ The Guidelines categorically lay down what constituted ‘sexual harassment’ and vest an obligation upon the employer (or other responsible persons) to provide for measures and procedures that will prevent and deter acts of sexual harassment done not only by persons within the establishments but third parties as well. The employer is also obligated to devise dispute resolution mechanisms and means to prosecute offensive acts.

Equal Remuneration Act, 1976

As per the Section 5 of the Act prohibits the employer from formulating a hiring process putting women on disadvantage on account of their gender which is in reference to the work that is same or similar to that which is offered to men and even in respects of transfers and promotions. It is the duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.

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

The Prevention of Workplace Sexual Harassment Act has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and for the effective redressal of complaints of sexual harassment. The statute seeks to fill the legislative void on the subject and provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment.

Maternity Benefit Act, 1961 (Amended in 2017)

When a woman absents herself from work in accordance with the provisions of this Act it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to vary to her disadvantage any of the conditions of her service. Under the provisions of the Act no deduction shall be made from the normal and usual daily wages of a woman entitled to maternity benefit and no woman shall work in any establishment during the six weeks immediately following the day of her delivery. The Maternity Benefit (Amendment) Bill, 2016 was passed by the Lok Sabha on 9 February, 2017. Women working in the organised sector will now be entitled to paid maternity leave of 26 weeks, up from 12 weeks. It also makes it mandatory for every establishment with more than 50 employees to provide creche facilities within a prescribed distance. The Bill has a provision under which an employer can permit a woman to work from home, if the nature of work assigned permits her to do so.

Provisions under the Indian Penal Code (IPC)

- **Section 209:** Obscene acts and songs, to the annoyance of others.
- **Section 354:** Assault or use of criminal force on a woman with intent to outrage her modesty.
- **Section 376:** Rape
- **Section 509:** Uttering any word or making any gesture intended to insult the modesty of a woman. Penalties range from one to three years imprisonment and/or a fine.

The sexual harassment being a crime, employers are obligated to report offences. However, criminal law covers only severe forms of sexual harassment involving rape or physical assault, and requires a high degree of proof. Courts consider several factors to determine whether an environment is hostile.

These include:-

- Whether the conduct was verbal, physical, or both.
- How frequently it was repeated.
- Whether the conduct was hostile or patently offensive.
- Whether the alleged harasser was a co-worker or supervisor.
- Whether others joined in perpetrating the harassment.
- Whether the harassment was directed at more than one individual.

4. Challenges in Implementation in corporate sector

The law to protect the discrimination has given legal security to the women employees in India. The constitutional provisions and legal framework has touched almost all aspect of gender discrimination in work place. Despite all these, gender discrimination is pervasive in every sectors of employment. Organized public sector employment is the only exception with strict conformity to the time to time rules. But unfortunately, the Indian private sector is rather turned a blind eye to the existing laws against discrimination. To put it in other way, discrimination on the basis of sex is not easy to be implemented in the private sector. For example, "The Prevention of Workplace Sexual Harassment Act, 2013" requires an employer to set up an 'internal complaints committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. Considering the insecure nature of corporate sector with the principle of "Hire and Fire" policy and tough competition to find an alternative

job, it is natural that only a few would muster the courage to come up and lodge a formal complaint against the harasser.

The provisions of the Maternity Benefit Act made it clear that it will be strictly applicable to its provisions to the private sector. All establishments, including in private sector, will have to provide 26-week maternity leave to their women employees under a new Act. Creche facilities within a prescribed distance and provision for woman to work from home are the other important features of this act. Restricting the option of working from home to only women also reinforces gender-based roles within the family. Provisions like these will inevitably cause employers to view these measures as an undue burden. The Acts provide for protection of rights of working women through robust and proper mechanism including inspections by the field officers. The Acts provide for stringent penalties, including imprisonment, for violations of its provisions to ensure proper implementation. This will result in employers opting for either unmarried girls or fire them after their marriage.

The unique nature of work and work culture in the corporate sector is taking a toll on the career growth and family of the female employees in the corporate jobs. Many multi-national organizations today don't have a 9 to 5 work culture anymore especially so in the IT/ITeS services industries. 'Work' doesn't really come up time limits and this gets even more challenging as you move up the ladder. In a dual career family then, managing the day-to-day logistics and travel schedules takes a lot of effort and causes a lot of stress to the women. The new generation jobs also demanding lots of travel. It's a fact of life in many international companies that anyone hoping for a successful executive career will be expected to spend time working abroad. Nobody finds it easy being thrown into a new culture. But for women, international assignments can be particularly challenging as a result of cultural, social and gender barriers that their male colleagues simply don't face. Social and networking events are by definition "nice-to-haves" but the unwritten rule is that they are must-haves. For an employee, it is a wonderful opportunity to connect with people outside of work and build your personal brand. But these events are almost always over weekends or late in the evenings and as wives and mothers, that's usually the busiest and craziest time of the day for them. Further from organisational initiatives perspective, there is a glaring mismatch between the programmes corporate are proposing and what the women employees are looking forward for. While organisations perceived initiatives like flexi time, leadership training, sexual harassment policies etc to be a game changer, majority of women employee felt these policies required greater boost. For flexitime employees felt it needs to be increased from the current 27% to 47%.

A decade ago, a woman's role in the corporate sector was assumed to be merely secretarial in nature. But even today, the change is barely marginal. The new economy sectors such as Information Technology that supposedly encourage a greater role for women in high-paying jobs, are in fact hiring women primarily for back-office functions such as HR and BPO, while the purely technical, engineering or marketing and management jobs still largely go to the men. According to the findings of a new study by Grant Thornton (2016), the position of women in senior positions in the Indian work force fell from 19% in 2013 to 14% in 2014. What is even more alarming the report notes, is that despite the increasing impetus to improve

female participation in the work force and address the lack of women at the top, half of all Indian business have no program to support or mentor women nor do they plan one in the near future. The 2009 WEF survey also supports this argument when it says that even among the best employers in India, women employees hold barely 10% of all senior management positions – in two-thirds of the companies covered under the survey. Nearly 40% of the surveyed companies had a women workforce of less than 10%. At the same time, there is practically no culture among the Indian companies to monitor gender-based wage gaps, with only 4% of the surveyed companies having some sort of a mechanism for it.

The survey findings rank India among the bottom 10 countries in the world in terms of women's participation in the economy. The WEF report reveals a shocking disparity between the wage structure of men and women in corporate India. The average annual income of a woman in India is US\$ 1,185, compared to US\$ 3,698 for the men employed in the India's corporate sector. This translates to an average woman's pay of less than one-third of the average man's pay in India. Flexi-work, work from home options, maternity, security, etc. It's also very rare to find organizations in India that have some strong and serious mentoring systems and support networks for women. Many that have it just pay lip-service.

Not only the wage disparity, "body" and "perceptions on beauty" also plays a big role in gender discrimination. Indian airline industry is notorious for judging performance of female based on their appearance. For instance, in Air India, while women had to be a certain weight for a certain age, the same rule did not apply to the male employees. Why? Women, regardless of the years of service they put in, could not be promoted beyond a certain point. Men could. Why? Women had to retire at a certain age or take up ground jobs while men could continue to serve in the cabins up to the age of 58. Why? These are some of the questions that were at the heart of many of the battles fought within Air India. Other sectors are not an exception. In 2009, the State Bank of India has stunned the nation by delaying appointment and promotion of successful women candidates if they are pregnant or likely to be so in near future (Gouridasan Nair, 2009)^[10]. Although globalization has touched every corner of this world till it is an issue which needs immediate attention and stringent laws to protect gender equality. Without improvement in this issue day by day it is worsening.

5. Conclusion

Indian society, being traditionally patriarchal, in nature has extended this nature to the work place as well. In the context of higher and professional education, skills are embedded in their learning and such education enables them to find employment opportunities in the organised sector. Despite the presence of these individual central legislations that cover specific aspects of equality or the lack of it, it cannot be denied that India nevertheless needs an all-encompassing anti-discrimination law that would extensively address the varied dimensions of inequality especially faced by women. employers may consider stipulating policies in terms of ensuring equal employment opportunities for women and to prohibit harassment and discrimination at the workplace. Care should be taken to ensure that there is adequate guidance available to the employees to enable them to resort to the internal grievance redressal procedures. The employer should

also ensure that the complaint is investigated on an immediate basis and the entire proceeding is treated as confidential, as it would give more confidence to the employees to approach the management in related matters concerning discrimination and harassment. These support networks are some fantastic means to overcome some of these obstacles and constraints women face at the workplace and it would be great to have companies focused on building these, especially for women. A critical piece of the puzzle is also enabling build an infrastructure outside of work to enable care for children, elders, etc. considering that this continues to primarily be a woman's responsibility. Not everyone is privileged enough to be able to afford high-end day cares and nannies. Industry organizations and MNCs also should see how these can be strengthened to enable greater number of women join the workforce and stay in it.

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