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GENDER DISCRIMINATION AND SEXUAL HARASSMENT IN INDIA'S UNORGANISED SECTOR

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1. ABSTRACT

This paper aims to examine and analyze the issue of gender discrimination and sexual harassment endured by women in the unorganized sector in India. A large majority of the country's workforce are employed in the informal sectors. This paper aims to understand how structural dynamics and the power dynamic adversely affects female workers. It aims to analyze the various ways through which gender discrimination and sexual harassment can be manifested. The paper also aims to analyze if and how the labour legislations are implemented. The paper also focuses on the need to empower the women of the informal sector to attain growth in India

Keywords: unorganized sector, gender discrimination, sexual harassment, middlemen, wage gap, informal female worker, POSH Act 2013.

2. INTRODUCTION

In India, around 90% of the working women¹ population are actively engaged in the unorganized sector. The common misconception is that majority population of the women are employed in office jobs or the organized sector, but in reality, they are not. Women are employed in a wide range of unorganized sector jobs like domestic help, carrying bricks on construction sites, working on agricultural fields, making handicrafts that are sold on piece rate or selling vegetables in the streets to name a few. Though our economic policy boasts about the rise in the female labour force and women's empowerment, the sad reality is these women are often employees in low paying and highly strenuous and insecure jobs out of necessity and financial survival. Being employed in the unorganized sector has a lot of disadvantages, there is no employment contracts, no offer letters, no fixed hours, no paid leave or maternity leave, no social security and basically no job security at all. So, the women employed here are faced with a heavy burden of economic exploitation and vulnerability.

¹ Periodic Labour Force Survey (PLFS), Ministry of Statistics and Programme Implementation, Govt. of India, Annual Report 2022-23 (2023).

Gender discrimination is deep rooted in the economy, women have always been paid less than men for the exact same position and work done. They are often pushed into low tier jobs which have no growth possibility while men are made to learn skilled jobs. In the unorganized sector, if a woman gets pregnant, she had no maternity leave and ends up losing her source of income.

The unorganized sector is highly unstructured and unguarded. Sexual harassment is also a common risk and threat for women workers. These women must endure crude comments, unwanted touching and also extortion where the contractor or employer often demands sexual favors in exchange of giving work or paying wages. There are no safeguards or protection for these migrant women workers who travel far for employment.

Very often, caste class and poverty are also a reason for discrimination in the workplace. A big portion of the informal sector is made up of women from marginalized communities who lead a hand to mouth existence. Employers and contractors often exploit their inability to protest or speak up against the injustices done to them. Even if they speak up they are at a risk of being fired or blacklisted in the local area. Harassment has become a normal occurrence and has just become another cost of doing business.

Though there are laws like POSH Prevention Of women from Sexual Harassment Act and criminal provisions under the Bhartiya Nyaya Sanhita, these laws mostly protect only the women employees in organized sectors, but they are supposed to protect all the women of the country. Most of the women employed in the informal sector are not even aware that there are such committees to help them and even if they know of such committees the process is too slow and complicated which is not affordable by daily wage workers.

Essentially the women employed in the informal and unorganized sectors of the nation are subject to high amounts of financial and economic insecurity and instability and sexual vulnerability.

3. THE STRUCTURAL DYNAMICS OF THE UNORGANISED SECTOR

The formal and corporate sector, the workplace is clearly defined and is it exactly restricted to the office building or a factory. But in the case of unorganized sectors, the workplace is not clearly defined. The workplace is very vague and can overlap between public and private spaces. For a woman who is a domestic worker, her workplace is someone else's home, and it

is essentially hidden from the public and hence it is shielded from any kind of formal intervention, which would make it very easy for the employer to exploit the female worker. Even in the cases of construction sites or agricultural lands, the workplace is the physical location and doesn't provide its workers with from basic infrastructure like boundary walls, secure rooms, proper toilets or changing rooms. It is the similar situation for street vendors too, as their workplace is the street, and they are exposed to constant traffic and passersby's. Since the boundaries of work are so poorly and vaguely defined, it becomes very difficult and almost impossible to use regulations and surveillance methods used in the formal sectors to maintain accountability and safety.

This kind of a loose structure allows employers and contractors to exploit their powers to the workers disadvantage. In the informal sectors, there are no written contracts or employment letters or any kind of documents which show the proof of work. The wages are irregular and unpredictable, and employers and middlemen often withhold a portion of the wages that are to be paid fairly to the workers. Since informal workers have no kind of social security protections like insurance, sick leaves or provident funds they can't miss even a single day of work. If they miss even a single day of work or get a sudden medical issue, they will be forced to take a handloan from a local moneylender with no regulations on the rates of interest.

This lack of structure in the workplace forces laborers to become heavily dependent on their subcontractors, landowners, agents or middlemen, as they control their daily work conditions like daily wage rates and work to be done. In such a case, when a woman refuses to do extra work or questions the exploitation of power by the subcontractor or demands for her withheld wages or protests against unwanted sexual advances and abuse from the contractor, the contractor doesn't just criticize or scold her, he would just stop assessing her work. This would directly affect the worker as without the subcontractor to assess her work and pay her daily wages, she has no other way to earn for her work. And because of the heavy dependence on these subcontractors, any black mark given to the worker by a subcontractor would result in the immediate loss of livelihood for the worker and blocklisting from employment in nearby local labour.

4. GENDER DISCRIMINATION IN THE UNORGANISED SECTORS

The gender discrimination in the unorganized sector is not just an isolated event. It forms the core of the foundation that drives the labour market. The formal sector often aims to adopt a

view of board level equality and equal pay policies whereas the informal sector operates on a strict and rigid gender based hierarchy, where a worker's gender directly influences and dictates what work she is allowed to do, how much she is paid for the work she does and how easily she can be removed from work if she can't meet the requirements of strenuous manual labour. This deeprooted gender discrimination gives rise to three evil and damaging results like wage disparities, occupational segregation and maternity penalties.

4.1. WAGE AND PAY GAP

The gender based pay gap is very widespread and completely normalized in india. Even though there are multiple statutory measures like the Code on Wages, 2019 which make it mandatory for workers to get paid equally for similar work², these laws are not implemented in ground level in places like construction sites, farms or brick kilns etc. In the case of daily wage agricultural labour, the daily rates of wages are purposefully divided on the basis of gender³. The male laborers receive higher daily wages because of the incorrect assumption that male manual labour is more intensive and valuable. Even in the case of construction sites, the men aka mazdoors earn much higher than the daily rate earned by a female worker for doing the exact same manual carrying work in the exact same site. This gender based discriminations in pay becomes even more pronounced when the wages are given on piece rate. The middlemen set extremely low piece rates for homebased workers. Since these women work from their home, the middlemen further isolates them from other workers and makes it unable for the suppressed workers to negotiate collectively. Employers and contractors justify this wage gap and claim that the income earned by women is just a supplement to the household earnings by the man of the house. But in reality a large number of women in the informal sector are the primary providers or the co breadwinner on whose incomes the family depends on. And because there are no pay slips or wage registers, any kind of systematic wage cuts go unchallenged.

4.2. OCCUPATIONAL SEGREGATION

The unorganized sector depends heavily on the occupational segregation for keeping women workers confined and restricted to specific low value roles and reserving high paying and supervisory positions to the male workers.

² Code on Wages, No. 29 of 2019, India Code (2019); Randhir Singh v. Union of India, A.I.R. 1982 S.C. 879 (India).

³ International Labour Organization [ILO], Global Wage Report 2020–21 (2020).

- Horizontal segregation

Women in the unorganized sectors are assigned tasks which are usually labelled as female work like physically exhausting and labour intensive tasks. In agriculture, the male workers are usually assigned to drive tractors, manage the irrigation and handle sales in the markets whereas the women workers are restricted to jobs like hand weeding, transplanting paddy seedlings and harvesting. Jobs like these require the women to bend down and work in wet fields for long hours for very minimal pay. Even in construction, male workers are assigned skilled work like masonry, carpentry, plumbing and electrical work while the women are given physically demanding tasks like carrying pans of mortar, gravel and bricks up and down the construction site.

- Vertical segregation

The opportunity for women in the informal sector to rise in ranks upwards is basically impossible and non-existent. For instance, a female worker working in construction for a significant amount of time carrying load across the site is almost never promoted to a job that requires skill or a job that gives her supervisory powers. The supervisory roles which are given a higher pay and have authority over how the work is distributed is almost only given to male workers. This lack of opportunity for women to move upwards creates an unfair power dynamic and restricts women to stay in the bottom of the ladder and forces them to just take order and accept arbitrary wage rates set by male contractors and supervisors.

4.3. MATERNITY PENALTIES

The most hurtful and unfair form of gender discrimination in the informal sector is the penalty that is imposed on women. In the formal sector, women employees are protected under the Maternity Benefit Act⁴ which mandates paid leave, job security and health support given by the employer and the organization during pregnancy and childbirth. However, in the unorganized sectors, pregnancy is not treated like a natural life event that needs support. But it is instead seen as a financial burden and an excuse and reason for termination. Since there are no kinds of written contracts or leave policies, a pregnant worker from the informal sector receives no paid leave when she requires it for any kind of prenatal care or recovery from pregnancy. From when she stops attending her work which consists mainly of heavy manual

⁴ The Maternity Benefit Act, No. 53 of 1961, India Code (1961); Maternity Benefit (Amendment) Act, No. 6 of 2017, India Code (2017); Municipal Corporation of Delhi v. Female Workers (Muster Roll), A.I.R. 2000 S.C. 1274 (India).

labour, her income stops completely. In jobs like construction and agriculture, women are always forced to perform manual labour like heavy lifting and bending and working for long hours during the sensitive times of pregnancy like the third trimester just to ensure livelihood. The woman worker continues to face challenges even after she gives. She can't bring her infant child to the workplace which is usually unsafe and as there are no facilities to take care of the child like creches, nursing breaks or other facilities. Hence she is forced to leave her child at home unattended. Even after they return, the contractors treat them as though they are new and untrained workers and reset their previous work conditions and demote them to beginner level jobs which forces them to accept lower wages or less frequent work.

5. SEXUAL HARASSMENT

In the unorganized sector, sexual harassment has become an everyday mechanism to control labour. Due to the absence of Human resource departments or written contracts or any kind of formal complaining processes, sexual harassment takes place in multiple forms and exploits the extreme economic and financial situation of women workers.

In the corporate sphere, quid pro quo harassment would involve compensations or bonus. But in the informal economy, there is no such concept. Contractors and middlemen use sexual favors to extort women⁵ who get hired for daily labour to get her wages paid or retained for the next season. A daily wage worker may be told that she will get paid her wages or get work for the next week only if she submits to sexual favors. Most workers are forced to submit as their living depends on the daily wage, and the contractor determines her wages. In the informal sector, the environment is very hostile. Women are often bombarded with provocative jokes and lewd comments and are exposed to a very dangerous environment. There are no toilet facilities which force women stay dehydrated to avoid using the restroom. If we were to look at a sector specific analysis of sexual harassment in the informal sector, we understand that harassment takes on different forms. In the case of domestic workers, the place of work is a private household which is not open for the public view. Domestic workers face risks of verbal, physical and sexual abuse by male employers or other family members. And because they operate alone, the chance of proving abuse is not possible and reporting such abuse often leads to firing or blacklisting. In the case of construction workers, in the construction sites, women

⁵ The Protection of Women from Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 2(o), India Code (2013).

are under the control of the subcontractors. There is a total absence of toilets which force women to use secluded spots to relieve themselves which exposes them to assault. Migrant workers are more disadvantaged as they live onsite and the women are left vulnerable even after working hours. In the agricultural sector, sexual harassment is propagated in the form of feudal power of the landowners and caste dominance. Upper caste landowners regularly sexually harass lower caste female farm workers as they don't speak out. In the case of street vendors, on one side they face bribe extortion from state actors like police officers and municipal inspector who threaten to confiscate their goods or evict them from their vending spot. On the other hand, they have to put up with the constant harassment from market middlemen and male buyers. Women workers face a lot of psychological and financial turmoil because of these kinds of harassment. Most women experience chronic anxiety, depression and PTSD and have no access to mental health support. To avoid an abusive contractor if women may choose to skip work or take unexpected leaves, they lose income. This also normalizes abuse which is completely unacceptable.

6. LEGISLATIVE FRAMEWORK

The legal framework for protecting women workers in India are designed to ensure equality and dignity of women. Article 14⁶ guarantees equal treatment before the law, Article 15⁷ prohibits gender discrimination, and Article 19(1)(g)⁸ protects the right to earn a living which is a right that often gets stripped away whenever unsafe work conditions or pay bias force women out of their jobs. Article 21⁹ guarantees the right to life with dignity, which the Supreme Court made clear in *Vishaka v. State of Rajasthan*¹⁰ includes working in a safe environment free from sexual harassment. However, it has been nearly impossible to bring these guidelines to be properly implicated in the unorganised sectors.

To address workplace abuse across all sectors, the Protection of Women from Sexual Harassment (POSH) Act of 2013 expanded the traditional definition of a workplace under Section 2(o)¹¹ to include private homes, farms, construction grounds, and street sites. Because

⁶ The Constitution of India, art. 14

⁷ The Constitution of India, art. 15

⁸ The Constitution of India, art. 19, cl. 1(g)

⁹ The Constitution of India, art. 21

¹⁰ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

¹¹ The Protection of Women from Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 2(o), India Code (2013)

informal setups don't have corporate HR departments, Section 6¹² of the Act mandates district-level Local Committees to handle complaints from workplaces with under ten workers or cases where the direct employer is the accused.

When informal women workers face severe assault or harassment, criminal law under the Bharatiya Nyaya Sanhita provides primary legal remedies. Section 74 of the BNS penalizes physical force used to outrage a woman's modesty, Section 75 directly criminalizes sexual harassment like unwanted touching or demands for sexual favors, and Section 78 targets stalking. While the procedural rules under the Bharatiya Nagarik Suraksha Sanhita allow women to file a Zero-FIR at any police station regardless of location, informal female workers still face heavy obstacles on the ground. Lacking written contracts, pay slips, or social standing, they often run into hostile or indifferent police officers who push them to stay silent or compromise with powerful contractors.

Though there are multiple legislations and recent consolidations of previous labour laws, there still exists a gap between what is mandated to happen and what actually happens. The Code on Wages (2019) mandates equal pay regardless of gender, but offers no real way to stop illegal wage cuts in cash-based daily work. The Occupational Safety, Health and Working Conditions Code of 2020 leaves out small, unregistered setups by only inspecting workplaces that meet specific worker thresholds. Though the Social Security Code of 2020 lets informal workers register on platforms like e-Shram, it doesn't force casual contractors or employers to pay into social security funds. This leaves informal female workers completely exposed to sudden wage loss or firing whenever they try to speak up against abuse.

7. CONCLUSION

The gender discrimination and sexual harassment that takes place in the informal sector in India has become disturbingly normalized and has become deeply rooted in how the informal sector controls and operates their labour force. Many women who enter the unorganized sector to sustain their families end up getting trapped in vicious cycles that exploit them physically when they are left financially and socially insecure. And due to a lack of written contracts and registration, the workers lose their ability to demand for equal pay or a safe environment.

¹² The Protection of Women from Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, § 6, India Code (2013)

Though India has a very strong legal framework designed to address these issues, these legislations often fail to protect the women workers who need it the most. These codes are more well suited to the formal framework which makes it almost impossible for a daily wage woman worker to seek legal remedies. The district level local committees are still very inaccessible and are very insensitive to disputes. If a woman worker was to go and complain to the police, she would be putting herself in a lot of social and financial risk and there is no proper documentation of proof of work which would leave the woman worker with no basic proof and documents to substantiate her claims. Women will not be truly empowered unless all women, including women in the informal sectors are protected and secured from social and financial dangers. Protecting the physical safety, economic rights and safety of informal female workers is not just for labour reform. It is absolutely required to achieving a state of absolute gender justice and equality and ensuring inclusive growth in India.

