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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **WORKPLACE DISCRIMINATION IN INDIA**

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## **INTRODUCTION**

Discrimination is defined under ILO Convention No. 111 as any “qualification, prohibition or inclination made on the premise of race, colour, political opinion, religion, sex, social inception or national extraction, etc, which has the effect of nullifying or impairing equal) of opportunity and treatment in employment or occupation.”

Discrimination at the workplace is carried on in India in various forms and it has been a long problem in India which has also resulted in less efficiency of our work culture . Though our Constitution has taken several steps to eradicate this problem for society and there are various legislations present but still the discrimination among workmen at workplaces still exists and a proper implementation of this legislation needs to be done to eradicate this problem from the society.

In terms of pay and job opportunities, it's essential that everyone is treated justly. More than just securing employment, the Right to Work represents a crucial step towards a country's growth and improved quality of life for all. Safeguarding a healthy and secure life is also part of this right.

## **REVIEW OF LITERATURE**

### **ARTICLES:**

#### **1. ALL YOU NEED TO KNOW ABOUT WORKPLACE DISCRIMINATION**

**LAWS IN INDIA: Ritika Das (2021)**

- This article discusses about the workplace discrimination and it covers various aspects of workplace discrimination.



## **2. TYPES OF DISCRIMINATION IN WORKPLACE AND THEIR LEGAL PROTECTION IN INDIA: IPLEADERS (2014)**

- This article discusses about the types of workplace discrimination which occurs in mainly India and it covers various aspects of each type of discrimination occurring at workplace.

## **3. LEGAL HR: WORKPLACE DISCRIMINATION - LAWS AND RECOURSE FOR EMPLOYEES: ANSHUL PRAKASH**

- This article discusses about the constitutional provisions and legal framework regarding the workplace discrimination in India. There are various acts and legislations enacted to curb workplace discrimination and this article discusses about all these framework.

## **4. WORKPLACE DISCRIMINATION: WHAT IS IT? HOW CAN IT BE PREVENTED? : INDIA LAW OFFICES LLP (2022)**

- This article contains information regarding the constitutional provisions related to workplace discrimination and how it can be prevented . It discusses about the various ways through which this problem can be eradicated

## **5. THE EFFECTS OF WORKPLACE DISCRIMINATION : PRECIOUS PENNY(2020)**

- This article discusses about the effects of workplace discrimination and the negative aspects of this issue . It discusses about the consequences in a simplified form and what are the problems faced by workmen .

## **6. HOW TO PREVENT DISCRIMINATION IN THE WORKPLACE: THE BEST TIPS FOR A SAFE WORK ENVIRONMENT: EASYLLAMA**

- This article discusses about the ways and mechanisms through which the problem of workplace discrimination can be solved and what are the measures which the employer should take to curb the effect of this problem.

### **BOOKS:**

#### **1. LABOUR LAWS: TAXMANN EDITORIAL BOARD (2023)**

- This book contains provisions related to various labour laws in India . This project has



referred to labour legislation related to workplace discrimination. This project referred to this book for knowledge of some provisions of the acts and legislation passed for eradicating workplace discrimination.

## **STATEMENT OF PROBLEM**

- Workplace discrimination continues to be a persistent and distressing issue within the Indian employment landscape. Despite the existence of legal frameworks and regulations aimed at curbing discrimination, incidents of bias, harassment, and unequal treatment persist across various dimensions such as gender, caste, ethnicity, disability, religion, and age.

## **AIMS AND OBJECTIVE**

- To examine the types of workplace discrimination.
- To examine the legal framework and constitutional provisions related to workplace discrimination
- To examine the effects of workplace discrimination.
- To examine the ways through which the problem of workplace discrimination can be resolved.

## **RESEARCH QUESTIONS**

- What are the key legal provisions in India's anti-discrimination framework, and how do they address different forms of workplace discrimination?
- What are the effects of workplace discrimination and the ways to solve this problem?

## **HYPOTHESIS**

- Workplace discrimination negatively impacts employee well-being, job satisfaction, and organizational performance in India.

## **RESEARCH METHODOLOGY**

- The researcher will be relying on Doctrinal Method of research to complete the project. These include various secondary sources of literature and insights.

## **SCOPE AND LIMITATION**

- **SCOPE:**
  - The scope of this project is broad and covers various aspects of workplace discrimination. The geographical scope of this project is limited to India and it addresses the workplace discrimination in India.
- **LIMITATION:**
  - This project faced Limited funding, manpower, and infrastructure constraints which might affect the extent and speed of project implementation. There was a time limitation due to which extensive data collection on the issue on workplace discrimination problem in India was not possible.

## **CHAPTER 1: DIMENSIONS OF WORKPLACE DISCRIMINATION**

Workplace Discrimination is carried on in India through various forms and it is so deeply rooted in the working culture of India that there is discrimination among workmen on various grounds.<sup>1</sup> So, there are different dimensions of these workplace discrimination in India making it a critical and complex issue which needs to be eradicated from society by a multifaceted approach and for this we first need to identify what are the different grounds on which this discrimination is carried on in India. Though there can be various other grounds of discrimination, In this chapter

I Have discussed such grounds of workplace discrimination. They are as followed: -

### **1. Gender Based Discrimination**

- Though our constitution has made several efforts to eradicate the gender based

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<sup>1</sup> Das, R. (2017) ALL YOU NEED TO KNOW ABOUT WORKPLACE DISCRIMINATION LAWS IN INDIA, iPleaders. Available at: <https://blog.ipleaders.in/need-know-workplace-discrimination-laws-india/> (Accessed: 19 September 2023).

discrimination in our country, still there exists gender based discrimination in India and this discrimination has expanded its roots to our workplace also. Women are discriminated in India on the basis of gender in our workplaces and this was intensely done few years back but now with constant government awareness programs and spread of education, women are now more aware about their rights and which has led to curtailment of this discrimination, but the problem has not yet been solved and this issue needs to be addressed.

- This gender based discrimination was done by the **Gender Pay Gap**, where women were paid less for the similar work as compared to men. They received lower wages only on the basis of their gender.
- Another form in which gender based discrimination exists in workplace is by not allowing or discouraging or limiting women representation in the leadership position and which acts as a barrier to their career development.
- Vishaka v. State of Rajasthan (1997): This landmark case resulted in the formulation of guidelines known as the "Vishaka Guidelines" to address sexual harassment at the workplace. It laid the foundation for preventing and addressing sexual harassment at work and established the need for a safe and harassment-free work environment for women.<sup>2</sup>

## 2. Caste based Discrimination

- Caste has been a very old ground for discrimination especially in India and it is very deeply rooted in our Indian society. Caste based discrimination can also be seen in the workplace in India and workers are discriminated on the basis of their caste.
- People who belong to the Dalit community and SC/ST's are often discriminated in the workplace and they are not given fair opportunities for promotion and neither they are treated fairly and properly in the workplace.
- The discrimination also has a bad effect on the people's mental health because often caste based derogatory remarks are passed on these workmen to whom they can't protest because if they will they would be terminated from the work.

## 3. Religion based discrimination

- Religion based discrimination is also performed in Indian workplaces. It can be performed in various ways.

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<sup>2</sup> Vishaka & Ors. v State of Rajasthan & Ors. ((1997) 6 SCC 241

- There can be discrimination while hiring when workmen of one religion is preferred over another workmen belonging to different religion and skills and talent of workmen are ignored while hiring . Minority religion sometimes faces barriers in the way to their career advancement. Unequal payment can also be done on the basis of religion.
- Denial of housing facilities is also practised at workplaces to a specific religion and religion based segregation is also practised within the workplace .

#### 4. Ethnic and region based discrimination

- In workplace there is a discrimination based on language also and when any worker mostly the migrant worker who migrates to work at another state and he/she doesn't speaks the dominant language then he/she is discriminate on the basis of the language spoken by them and they are often made fun of and harassed .
- In India there exist a north south divide , east west divide which leads to region based discrimination . For eg. In case of Bihari they are often discriminated , made fun of and are treated as illiterate and they are discriminated at their workplace on the basis of the place they came from .

#### 5. Disability discrimination

- In India in many workplaces there are not proper arrangements for the disabled people and the workplaces are not easily accessible to them hence they are not able to work there and are forced to leave the work indirectly .
- Many a times the employer also doesn't provide adequate accommodation to this disabled people like specific washrooms for them , proper stairs arrangement etc.

#### 6. Age based discrimination

- There exist age based discrimination at workplace where the employer while hiring employees prefer younger employees as they feel they are more energetic and productive at work. Young employees are assigned meaningful and important work for this reason only.
- Employers didn't make proper arrangements for this old aged employees at workplace and they are often paid less even though they work same and with same productivity because of the presumption that they are less productive and energetic at work.



These are the prominent grounds of discrimination at workplace in India. but apart from these there still exists different grounds such as discrimination based on **skin colour**, on **marital status**, discrimination based on **socio economic condition**, **pregnancy based discrimination** and many more.<sup>3</sup>

**Nepotism** is a such form of discrimination at workplace which has existed in society for a long time and it has been in news nowadays. In preference is given to the family members or close relatives, friends over others even though the family member is less talented, has less skill for the work but just because he/she has a close ties with the employer, he will be preferred in hiring, promotion, career advancement opportunities and many stages of work. This nepotism is present at many types of workplaces but it came into news because of the presence of it in the **film industry** of India where many struggling actors and talented actors who doesn't have close ties with big names of film industry and with production houses often don't get work and on the other hand the sons and daughters of big actors, producers, directors etc gets work easily.

## **CHAPTER 2: LEGAL FRAMEWORK AND CONSTITUTIONAL PROVISIONS**

In India there are several legislations and constitutional provisions which aims to eradicate the problem of workplace discrimination. The constitution makers were aware of the problem of discrimination practised in India and to solve this problem they had made several constitutional provisions which targets at discrimination practised in India.<sup>4</sup>

### **CONSTITUTIONAL PROVISIONS**

#### **1. ARTICLE 14<sup>5</sup>**

- This article of our constitution talks about two aspects one is equality before law and equal protection of law. It promotes equality among persons in India and prohibits every form of discrimination. According to this article everyone is equal in the eyes of law and

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<sup>3</sup> Bag, A. (2019) Types of discrimination in workplace and their legal protection in India, iPleaders. Available at: <https://blog.iplayers.in/types-of-discrimination-in-workplace-and-their-legal-protection-in-india/> (Accessed: 19 September 2023).

<sup>4</sup> Anshul Prakash, Legal HR: Workplace Discrimination - Laws and Recourse for Employees People Matters (2019), <https://www.peoplematters.in/article/legal-and-compliance-outsourcing/legal-hr-workplacediscrimination-laws-and-recourse-for-employees-17201> (last visited Sep 19, 2023).

<sup>5</sup> CONSTITUTION OF INDIA, ART.14

no one should be discriminated on any grounds. This article also ensures equality at workplaces and prohibits discrimination at workplace.

**2. ARTICLE 15<sup>6</sup>**

- This article of our constitution specifically prohibits discrimination on the basis of religion , caste , sex , race and place of birth and nobody should be discriminated on the following grounds at any sphere of life .

**3. ARTICLE 16<sup>7</sup>**

- This article empowers state to make legislation and reservation for socially and economically backward class of society and to such class of society which are backward in view of government and thus it helps to uplift that section of society which faces discrimination .

**4. ARTICLE 39<sup>8</sup>**

- This article demands from state to ensure adequate and equal means of livelihood, shelter, work, education etc for both men and women. and no discrimination should be conducted between them on gender basis in providing this basic facilities.

## **LEGSLATIONS**

**1. EQUAL REMUNERATION ACT, 1976<sup>9</sup>**

- This act aims at promoting gender equality in workplaces and eradicating the problem of gender based wage disparity which exist in workplaces in India. It promotes equal pay for equal work regardless of the gender identity of employees.
- This act is applicable to both public and private establishment where men and women are engaged in employment and they are doing similar sort of work.
- This act also has penalty provisions which includes both fines and imprisonment and it depends on the nature and severity of offence done.

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<sup>6</sup> CONSTITUTION OF INDIA, ART.15

<sup>7</sup> CONSTITUTION OF INDIA, ART.16

<sup>8</sup> CONSTITUTION OF INDIA, ART.17

<sup>9</sup> EQUAL REMUNERATION ACT , 1976

- This act is not applicable where there is wage disparity on the basis of seniority system, merit system , or on the basis of productivity of employee and on any other reasonable ground.

## 2. MATERNITY BENEFIT ACT, 1961<sup>10</sup>

- This act also promotes gender based equality at workplace and aims to reduce gender and pregnancy based workplace discrimination and helps to provide pregnant women with necessary support at work. It provides maternity benefits to women.
- The Act applies to every factory, mine, plantation, shop or establishment in which ten or more persons are employed, or were employed on any day of the preceding twelve months. It is applicable to women employees, including those working on a regular, temporary, or contract basis.
- Maternity leave is provided to women for 26 weeks for first two children and 12 weeks for third children and more. No deductions are made during this maternity leave and if there is any sort of illness or miscarriage then additional one month leave with full pay is provided to women. Proper workplace facilities and non involvement of women in hazardous work is provided by this act.
- This act also provides for penalties in case of non compliance of this act under Section 21 of this act.

## 3. THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016<sup>11</sup>

- This act aims at securing, protecting and promoting rights of person with disabilities. This act provides for full participation and inclusion of such person in every sphere of life.
- This act has a wider scope and it recognises various sorts of disability including physical, mental, intellectual disabilities. It prohibits discrimination against such individual in education , employment , and other public services.
- There are provisions for reservations for such persons in educational institutions, employment etc. accessibility to public facilities are provided to them. Special courts have been instituted for handling their cases and providing them barrier free development in employment . Penalties are also present for non compliance of this act .

<sup>10</sup> MATERNITY BENEFIT ACT , 1961

<sup>11</sup> THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016

4. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989<sup>12</sup>

- This act protects atrocities against ST/SC's and prohibits any sort of discrimination practised against them. It protects the rights and dignity of the marginalised community .
- This act also has a wide scope and it includes various sorts of atrocities ranging from physical to humiliation, sexual abuse etc. This act also provides for stricter punishment for non compliance of this act.
- There is a presumption of offense in this act which makes it easier for the victims to prove guilt and special courts have been instituted for trial of such cases.
- Vigilance committee is also instituted in this act to look upon such cases and ensure proper implementation of this act and state government has to send annual report to the president of India.

5. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013<sup>13</sup>

- This act aims at addressing and preventing sexual harassment at workplaces against women and it ensures that women work with due respect and dignity without any fear of harassment and a safe and supportive work environment is created through this act.
- The definition of sexual harassment includes any act of harassment of sexual nature, derogatory comments , unwelcomed act and conduct of verbal , physical or non verbal.
- It is applicable to both public and private establishment and to both formal and informal work setting. Internal and local complaint committee is set up through this act in such establishment so that any complain of sexual harassment occurred in workplace can be reported.
- Privacy of women is taken care of and their identity is hidden so that don't fear about the loss of reputation and also there is no such time limit to file a complaint. Various sorts of punitive measures is taken against the offender and duty is instituted upon the employer to create a safe and secure working environment for women.

So these are some of the legislations which sort to prevent workplace discrimination in India.

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<sup>12</sup> Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

<sup>13</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013



## **Chapter 3: EFFECTS OF WORKPLACE DISCRIMINATION**

Workplace discrimination is a very serious and complex issue and it has a very long term impact both on work culture of the country and society. various effects of workplace discrimination has been discussed below:

### **1. PSYCHOLOGICAL EFFECT**

- Workplace discrimination can have negative impact on the mental wellness of the employees and it can damage them emotionally . There will be a constant presence of stress and anxiety among employees that they are treated badly and discriminated among other employees
- It can become a reason of depression among employees and because they will feel isolated , lonely and they would not love their work environment and thus it will lead them to depression.
- It can create a self doubt in employees and they might have a feeling of low self esteem that they are not capable enough to be treated fairly
- This psychological impact can lead to various sorts of disease which can cause sleeplessness and anxiety and cardiovascular disease which will reduce their efficiency in work.<sup>14</sup>

### **2. BAD WORK PERFORMANCE**

- When there will be workplace discrimination the the focus of the workers will be on the ill treatment they are receiving from employees and at workplace which will snatch away their focus from work and thus it will lead to poor work performance.
- When there will be so much of psychological impact on this employees they will ask for more sick leaves and it will increase the absenteeism in work and thus efficiency of production will reduce.
- Discrimination at work place also leads to dissatisfaction from work and which will make the employees demotivated and they will not love the work they are doing and thus the efficiency at work will reduce.

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<sup>14</sup> precious penny, The Effects Of Workplace Discrimination Working Now and Then (2023), <https://www.workingnowandthen.com/blog/the-effects-of-workplace-discrimination/> (last visited Sep 19, 2023).

### **3. DEGRADATION OF WORKPLACE RELATIONSHIP**

- When there will be discrimination among employees and they will not be treated fairly then it will create a toxic work culture and sense of hatred will develop among the employees and it will lead to absence of team work and no healthy relationship can be established among them.
- This will lead to large number of employees leaving the job because of toxic work culture and which will be harmful for the establishment because a lot of money is invested in the training of employees.

### **4. LEGAL AND REPUTATIONAL DAMAGE**

- The organisations in which there is a practise of workplace discrimination then that organisation can face various sorts of legal consequences because in current scenario there are various legislations which are there to prevent this discrimination and even workers are now aware of their rights and thus it will lead to law suits and legal trouble against such organisations .
- There is also a damage of reputation of the organisation in eye of customers and other stakeholders thus it will badly effect the profitability of the organisation because no one would like to associate his name with an organisation having a bad reputation.

### **HARM TO INNOVATIVE CAPACITY**

- In any organisation there should be a diverse workforce available having different backgrounds , different thoughts so that there exist a variety and diversity of thoughts and perspective in an organisation which will help in innovation but if there will be a workplace discrimination in an organisation then employees from different places will fear to join the organisation and thus it will reduce the diversity and innovation in an organisation and will hamper its growth.

## **CHAPTER 4: SOLUTIONS FOR WORKPLACE**

### **DISCRIMINATION**

Discrimination at work is a serious problem in India, as it is in many other countries. It takes a multifaceted strategy to combat discrimination in the workplace, including company activities, government measures, and individual acts.<sup>15</sup> The following are some ways to stop employment discrimination in India:

**Policies and legislation:** Strengthen and implement current anti-discrimination legislation including the Equal Remuneration Act of 1976 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989.

- Strict Anti-Discrimination legislation. A comprehensive anti-discrimination law that addresses every aspect of employment should also be considered.
- Mandatory Diversity and Inclusion Policies: Require businesses larger than a particular size to adopt diversity and inclusion guidelines that support equal opportunity and fair treatment for all staff members.
- Whistleblower Protection c. Encourage employees to disclose discrimination without worrying about reprisal by enacting robust whistleblower protection legislation.

Knowledge and Instruction:

- Sensitivity Training: Hold frequent training sessions to educate managers and staff members on the many types of prejudice, their effects, and effective strategies to combat them.
- subconscious Bias Training: Educate staff members and decision-makers on how to identify and correct unconscious biases that could affect the hiring, promotion, and performance review procedures.

### **3. Equal Opportunity Employment**

- Encourage businesses to deliberately hire people from a variety of backgrounds, including gender, caste, religion, and race.

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<sup>15</sup> Workplace Discrimination: What Is It? How Can it be Prevented?, Workplace Discrimination – What is it? How can it be prevented? (2022), <https://www.indialawoffices.com/legal-articles/workplace-discrimination-how-to-prevent-it> (last visited Sep 19, 2023).

- Promote merit-based hiring and promotions to make sure that applicants are chosen based on their credentials and abilities rather than on other factors such as personality traits.<sup>16</sup>

#### 4. Reporting Procedures

- Establishing grievance cells will enable employees to report instances of prejudice, harassment, or discrimination in a private setting, assuring quick and equitable resolution.
- Employees who worry about internal reprisal should be given the option to report discrimination to third-party groups while remaining anonymous.

#### Encouragement of an inclusive culture:

- Leadership Commitment: Ensure that senior leadership actively promotes and supports an inclusive and diverse culture.
- Employee resource groups (ERGs) should be created to give members of underrepresented groups a forum for networking, sharing stories, and suggesting changes.

#### Legal Support and Aid

- Legal aid: To make it simpler for victims of employment discrimination to pursue justice, offer them free or significantly reduced legal aid.

## **CHAPTER 5 : CONCLUSION AND SUGGESTIONS**

In India, workplace discrimination is a widespread and embedded problem with far-reaching effects on people, companies, and society at large. In order to provide insight on the complex interaction of variables causing this issue, this study has examined a number of kinds of discrimination, including gender-based, caste-based, religious, and disability-related prejudice.

Workplace discrimination in India is a complex problem that calls for coordinated action from all facets of society. We can work toward a future in which every person in India has equal opportunity

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<sup>16</sup> How To Prevent Discrimination In The Workplace: The Best Tips For A Safe Work Environment, Sexual Harassment Compliance Training (2023), <https://www.easylama.com/blog/prevent-discrimination-in-the-workplace/> (last visited Sep 19, 2023).



and fair treatment in the workplace by addressing the core causes, supporting inclusive practices, and bolstering legal safeguards. Although the road to a workplace free from discrimination is difficult, it is a trip worth pursuing for the sake of our society and economy.

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### **1. LABOUR LAWS – TAXMANN 2023 EDITION**

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