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GENDER DISCRIMINATION IN THE WORKPLACE: A LEGAL PERSPECTIVE IN INDIA

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ABSTRACT

This research paper critically reviews the issue of Gender Discrimination in the Workplace: A Legal Perspective in India and provides the background of the same in the context of the Constitution of India, the various Statutory legislations in India, the interpretation of the same by the various courts of India and the India's commitment under International Laws and Conventions. The study starts by examining the conceptual underpinning of the workplace gender discrimination concept, categorizing it into the three types of discrimination: direct, indirect and structural. It then examines the constitutional implications of equality, especially Article 14, 15 and 16 of the Constitution as well as the constitution of the Directives of State Policy namely Article 39, 42 and 43 that provide formal and substantive equality. The statutory framework is analysed on the basis of various legislations such as Equal Remuneration Act (now incorporated into Code on Wages, 2019), the Maternity Benefit Act, the Sexual Harassment of women at workplace Act (POSH Act, 2013) and the Transgender Persons (Protection of Rights) Act, 2019. The laws are designed to implement constitutional obligations, but may be difficult to implement, specifically in informal sectors. The evolution of the judiciary from a protective paternalistic regime to substantive equality is studied by citing a few landmark cases like Vishaka vs. State of Rajasthan, Air India vs. Nargesh Meerza and Charu Khurana vs. Union of India. The paper also fits India's obligations in the international legal framework, looking at obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the conventions of the International Labour Organization (ILO) on equal pay and non-discrimination. It is now possible to draw some conclusions on enforcement mechanisms, pay transparency and rules of burden shifting from comparative perspectives in the United States (Title VII of the Civil Rights Act, 1964), the United Kingdom (Equality Act, 2010) and the European Union (Directive 2006/54/EC and the successive reforms). These models highlight the lessons for India which include the inclusion of independent equality bodies, the need for more effective remedies, the need for

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harmonization of personal laws, and the need for intersectional protections.

Keywords: Gender discrimination, workplace equality, constitutional law, POSH Act, Equal Remuneration, CEDAW, ILO conventions, Title VII, Equality Act, EU directives, India.

INTRODUCTION

The issue of gender discrimination in workplace is still one of the most entrenched in the socio-legal and constitutional landscape of India. While there is a strong body of constitutional protections, laws, and judicial decisions, the real world for women and gender minorities remains a landscape of deep-rooted hierarchies, unequal wages, occupational segregation and systemic exclusion. Work is not only a means of livelihood, but also a right that enables people to express themselves, have dignity and take part in society. Discrimination is a violation of the individuals' rights and of the constitutional vision of justice, liberty, equality and fraternity at the same time it deprives individuals from enjoying the same opportunities.²

Constitutional Foundations

The Indian Constitution provides a strong normative basis for gender equality. All these articles, Articles 14, 15(1) and (3) and 16, along with Directives such as Articles 39(a), 39(d), 42 provide both formal equality and substantive equality and permit positive discrimination to counter negative discrimination.³ India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, further reinforcing them in their international commitments to counter workplace discrimination.⁴

Statutory Framework

There are a number of statutes that implement constitutional requirements. The provisions of the Equal Remuneration Act, 1976, which are now included in the Code, specifically ban differences in remuneration based upon gender, including transgender persons.⁵ Women's employment in private sector is also protected by the Maternity Benefit Act, 1961, as amended in 2017 to pay them for 26 weeks after childbirth, and concerns are also raised about this in terms of discouraging women from taking up employment in the private

² INDIA CONST. pmbl.

³ INDIA CONST. art. 14, 15(1), 15(3), 16, 39(a), 39(d), 42.

⁴ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁵ Equal Remuneration Act, No. 25 of 1976 (India); Code on Wages, No. 29 of 2019 (India).

sector.⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) provides a comprehensive procedure to address sexual harassment, which also extends to women beyond binary genders; and the Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination against transgender persons in relation to employment.⁷

Judicial Developments

Indian courts have been instrumental in creating a transformative environment in the workplace. In *C.B. Muthamma v. Union of India*, the Supreme Court struck down discriminatory service rules requiring women diplomats to resign upon marriage.⁸ In *Air India v. Nargesh Meerza*, the Court invalidated rules terminating air hostesses upon pregnancy, recognizing such provisions as arbitrary and violative of dignity.⁹ In *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, the Court upheld the principle of equal pay for equal work, rejecting artificial job classifications used to justify wage disparities.¹⁰ The landmark *Vishaka v. State of Rajasthan* case laid down binding guidelines against sexual harassment, later codified in the POSH Act.¹¹ More recent cases, such as *Charu Khurana v. Union of India*, struck down discriminatory union practices in the film industry,¹² while *Aureliano Fernandes v. State of Goa* reinforced employer liability under the POSH Act.¹³ These judgments illustrate the judiciary's evolving approach from protective paternalism to substantive equality.

Contemporary Challenges

Although there are constitutional and statutory protections for gender discrimination in the workplace, it still exists. The Global Gender Gap Index (2023) puts India at 127th position out of the 146 countries, highlighting economic participation and opportunity gaps of 20-30% on average between women and men doing similar work.¹⁴ Women are stereotyped and are generally underrepresented in lower-paid, less secure occupations, and leadership roles are still male-dominated. Fear of retaliation, stigma and institutional lack of compliance with the POSH

⁶ Maternity Benefit Act, No. 53 of 1961 (India).

⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India). Transgender Persons (Protection of Rights) Act, No. 40 of 2019 (India).

⁸ *C.B. Muthamma v. Union of India*, (1979) 4 S.C.C. 260 (India).

⁹ *Air India v. Nargesh Meerza*, (1981) 4 S.C.C. 335 (India).

¹⁰ *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 S.C.C. 469 (India).

¹¹ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

¹² *Charu Khurana v. Union of India*, (2015) 1 S.C.C. 192 (India).

¹³ *Aureliano Fernandes v. State of Goa*, (2023) 2 S.C.C. 1 (India).

¹⁴ World Economic Forum, Global Gender Gap Report 2023.

Act still creates underreporting of sexual harassment. Transgender people are even more marginalized, and more than 90% are doing informal or marginalized work. Vulnerabilities are exacerbated by intersectional discrimination at the intersection of caste, class and gender.

Meaning of Workplace Gender Discrimination

Gender discrimination in the workplace refers to any difference, exclusion or preference that disadvantages, disadvantages or advantage women and girls in the same ways as men and boys, in an employment context and has an impact on equality of opportunity or treatment. Discrimination in India is seen as inequitable pay, lack of promotion, sexual harassment, occupational segregation and lack of representation for a leader.¹⁵

The definition of “workplace” is very wide, covering, amongst others, offices, homes, digital areas, and transport provided by the employer, meaning that there is also protection in the unorganized sector.¹⁶

Constitutional Scope

Gender equality forms the core of the Indian Constitution, which has incorporated it in various provisions as follows:

- Article 14: Equality before law.
- Article 15(1): No discrimination on the basis of sex.
- Article 15(3): Affirmative action for women. (allowed)
- Article 16: Equality of opportunity in public employment.
- Directive Principles (Articles 39(a, 39(d) and 42): Equal livelihood, equal pay, maternity relief.

These provisions are based on two principles: formal equality, or equal treatment, and substantive equality, or corrective measures to redress system disadvantages.

Statutory Framework

Equal Remuneration Act, 1976 / Code on Wages, 2019: Provides for equal pay for equal work. Childcare and Domestic Workers (Amendment) Act, 1998: Covers requirements for childcare and employment of domestic workers during pregnancy. The POSH Act, 2013, aims to prevent and redress sexual harassment, including Internal Complaints Committees.

¹⁵ ILO Convention No. 111, Discrimination (Employment and Occupation), June 25, 1958.

¹⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India).

Transgender Persons (Protection of Rights) Act, 2019: bars discrimination against transgender persons in employment.

Constitutional Foundations of Workplace Equality in India

Indian Constitution is the foundation of equality at the workplace, containing both normative and enabling provisions for the eradication of discrimination. It has been based on the Article 14, 15 and 16 and further strengthened by the following Directive Principles of the Constitution: Article 39, Article 42 and Article 43 and through judicial interpretation. These provisions create two conceptions of equality: formal equality, requiring equal treatment by law, and substantive equality, allowing for positive action to compensate for disadvantage. This constitutional structure has deeply influenced debates on gender equality in the world of work, making equality a constitutional requirement instead of a mere wish.

Equality Before the Law (article 14)

Article 14 is a declaration that “the State shall not deny” a person “equality before the law or the equal protection of laws in the territory of India.” This has two aspects, one negative and one positive: equality before the law, which is a negative concept, meaning that the State must not grant any special privileges to anyone; and equal protection of laws, which is a positive concept, meaning that the State must treat all persons similarly situated in the same manner. The Supreme Court has always read Article 14 as a provision that is dynamic. In the employment scenario, Article 14 has been utilized to hit arbitrary service rules and discriminatory practices and widen the scope of equality to guarantee that it is not a hollow promise but a substantive guarantee.¹⁷

Article 15: Discrimination prohibited

The last provision of Article 15(3) gives the State the authority to make special provisions for women and children, which is very relevant in the context of workplace equality, where the extension of equality to women workers is manifested through measures of affirmative action. Article 15 has been read as broadly as by the judiciary.¹⁸ The Supreme Court's rulings in *State of Madras v. Champakam Dorairajan* and recent amendments to Article 15 in the 103rd Amendment to the Constitution, including Article 15(6) for EWS, highlight the

¹⁷ E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India).

¹⁸ State of Madras v. Champakam Dorairajan, A.I.R. 1951 S.C. 226 (India).

dynamic nature of Article 15 and its focus on non-discrimination while also recognizing the need for affirmative action. In the employment field, Article 15 has played an important role in establishing and legitimizing protective legislation for women, including maternity benefits and safety at work.

Article 16: Equality of Opportunity in Public Employment

Equality of opportunity in public employment is guaranteed by Article 16(1) and (2) bars discrimination on the grounds of religion, race, caste or sex, descent, place of birth or residence. Clauses (4), (4A) and (4B) provide for reservations for backward classes and SC/STs, including in promotions. The 103rd Amendment introduces Clause (6) for EWS reservation 10%. Judicial interpretation has played a key role in the development of Article 16. Article 16 has been instrumental in eliminating gender discriminatory practices in public employment in situations like those in *Indra Sawhney v. Union of India*, which upheld OBC reservations while limiting the overall quota of reservations at 50%¹⁹ and in *C.B. Muthamma v. Union of India*, which declared the service rules barring women diplomats from holding posts once they marry to be discriminatory on the ground of equality²⁰ and in *Air India v. Nargesh Meerza*, which invalidated service rules for termination of employment for air hostesses on the grounds of pregnancy, which are inconsistent with dignity and equality.²¹

Directive Principles: Articles 39, 42, 43

The non-justiciable provisions of the Directive Principles of State Policy (DPSPs) offer important guidelines for workplace equality. The judiciary has repeatedly interpreted these to be enforceable rights, such as in Article 39(a) for the right to equal livelihood for men and women, and Article 42, which requires just and humane conditions of work, and maternity relief, and Article 43, which requires the State to secure living wages and decent working conditions. These interpretations reflect how, although DPSPs are non-statutory, they have been interpreted by the judiciary as substantive guarantees, thereby furthering the principle of equality in the workplace.

International Legal Perspective on Workplace Gender Equality

The fight against gender discrimination in the workplace is not limited to the borders

¹⁹ *Indra Sawhney v. Union of India*, (1992) Supp. (3) S.C.C. 217 (India).

²⁰ *C.B. Muthamma v. Union of India*, (1979) 4 S.C.C. 260 (India).

²¹ *Air India v. Nargesh Meerza*, (1981) 4 S.C.C. 335 (India).

of any single country – it's a worldwide problem that is tackled with international conventions, treaties and comparative laws. International instruments like Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Labour Organization (ILO) conventions need to be considered in the context of the constitutional and statutory provisions in India. A comparative study of the jurisdictions such as the United States, the United Kingdom and the European Union also provides further light on best practices and enforcement mechanisms which can be adopted in India. The international experiences offer a comprehensive view of equality at work and offer lessons for India's ongoing labour law system.

CEDAW Obligations

CEDAW (adopted in 1979 by the UN General Assembly)²² is referred to as the 'international bill of rights for women' which defines discrimination in the broadest terms, including both direct and indirect discrimination.²³ Article 2 requires that states take law and policy measures to prevent discrimination, and Article 11 requires that states take steps to eradicate discrimination in the workplace with respect to equal pay, maternity protection, workplace safety and elimination of sexual harassment.²⁴

Indian courts have used CEDAW to expand constitutional guarantees. In *Vishaka v. State of Rajasthan*,²⁵ the Supreme Court used CEDAW in developing binding guidelines against workplace sexual harassment while in *Apparel Export Promotion Council v. A.K. Chopra*, the Court referred to CEDAW obligations to uphold workplace equality.²⁶

However, there are still some issues to address. That the vision of CEDAW is not fully realised due to enforcement gaps, cultural resistance and intersectional discrimination (based on caste, class and disability). Furthermore, there is tension between the personal laws and the obligation to international equality towards which India has gone to the extent of reserving Article 16, which highlights the necessity of harmonization.

The two ILO Conventions are on Equal Pay and Non-Discrimination. There are two ILO Conventions; one on Equal Pay, one on Non-Discrimination.

The International Labour Organization (ILO) is a key body involved in developing

²² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²³ Ministry of External Affairs, Government of India, India's Ratification of CEDAW (1993).

²⁴ CEDAW art. 11.

²⁵ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

²⁶ *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 S.C.C. 759 (India).

equality in work. The following conventions are especially pertinent: Convention on the Equal Remuneration for Work of Equal Value, 1951 (No. 100);²⁷ Convention on Discrimination (Employment and Occupation), 1958 (No. 111). India has ratified Convention No. 100 and Convention No. 111 and has thus undertaken to remove wage discrimination and discrimination in employment and occupation.²⁸

However, there are still wage disparities. It has been found that Indian women are paid 20–30% less than men for the same work and this gap is higher in the unorganized sectors.²⁹ There is weak enforcement of equal pay in sectors with unorganized labour. ILO's focus on equal pay for equal value of work also underscores the importance of shifting the discourse from formal equality to structural equality and addressing issues of occupational segregation and undervaluation of women's work in India.

The Civil Rights Act, 1964 (Title VII) of the United States.

The United States has a well-established framework in Title VII of the Civil Rights Act of 1964 which bars workplace discrimination for employees on the basis of race, color, religion, sex, and national origin, both through disparate treatment (intentional discrimination) and disparate impact (neutral policies with discriminatory effects).³⁰ The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing by investigating complaints, litigating cases and remedies, including damages, reinstatement and policy changes.³¹

Title VII has been expanded through judicial interpretation. The U.S. Supreme Court's decisions in *Meritor Savings Bank v. Vinson* (1989) and *Bostock v. Clayton County* (2020) demonstrate how the laws prohibiting workplace discrimination have evolved to reflect new conceptions of gender and equality, especially regarding sex discrimination in the context of sexual orientation and gender identity.³²

The main takeaway from Title VII for India is that robust institutional enforcement is imperative. In contrast, EEOC in the USA has a function of investigating and litigating cases, which is missing to a great extent in the Indian labour law. Whereas EEOC in USA has a function to investigate and litigate cases, which is missing to a great extent in the Indian labour law. Independent enforcement agencies would be a substantial boost towards workplace

²⁷ International Labour Organization, Equal Remuneration Convention, No. 100, June 29, 1951.

²⁸ International Labour Organization, Discrimination (Employment and Occupation) Convention, No. 111, June 25, 1958.

²⁹ World Economic Forum, Global Gender Gap Report 2023.

³⁰ Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e.

³¹ Equal Employment Opportunity Commission, Title VII Enforcement Guidelines.

³² *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

equality in India.

UK Equality Act, 2010

The United Kingdom has an all-inclusive anti-discrimination law, the Equality Act, 2010, which includes all forms of discrimination against sex, pregnancy, maternity and gender reassignment in relation to recruitment, pay, promotion, dismissal and harassment, as well as direct discrimination, indirect discrimination, harassment and victimisation.³³

One of the cards the Act played is its remedies. The Act also sets duties on public authorities to promote equality, meaning that courts are able to award unlimited compensation for cases of discrimination, thus giving employers a strong incentive to comply with the law.³⁴ The Act also places duties on public authorities to promote equality, which also means that equality aspects are integrated into the policymaking of public authorities.

Two lessons for India are clear from the Equality Act, first to bring together many laws in one Act, and second to provide more robust remedies. The present framework in India is fragmented among various statutes which causes inconsistencies and issues in implementation. Consolidation, coupled with robust remedies, could enhance effectiveness.

EU Directives on Gender Equality

EU gender equality law is comprised in a complex package of directives, including Directive 2006/54/EC, which unifies EU gender equality law, and Directive (EU) 2024/1500, which enhances equality bodies.³⁵ These directives prohibit direct and indirect discrimination in employment, pay, and occupational social security, and require equality of pay for equal work or work of equal value.

The burden-shifting mechanism is a unique element of EU law. This is based on the principle that it is the responsibility of the employer to prove that there was no discrimination once a prima facie case has been established, which gives employees the freedom and holds them accountable.³⁶ The EU also has legislation that places a high priority on pay transparency, and mandates that employers be transparent about pay structures to ensure there are no hidden pay differences.

Similar mechanisms can be adopted in India. The issue of burden shifting would work to rectify the difficulties that employees encounter in establishing a case of discrimination; the

³³ Bostock v. Clayton County, 590 U.S. ____ (2020).

³⁴ Equality Act 2010, c. 15 (U.K.).

³⁵ Directive 2006/54/EC of the European Parliament and of the Council, July 5, 2006.

³⁶ Directive (EU) 2024/1500, Strengthening Equality Bodies, Apr. 2024.

issue of pay transparency would highlight wage differences and force remedial steps.

Lessons for India

India's constitutional and legislative framework is in line with international standards, although it is not always adhered to. India needs to reconcile personal laws with the equality provisions under CEDAW. India should enhance its capacity to enforce ILO conventions in non-formal sectors and tackle the structural obstacles. India has to have independent enforcement agencies with investigative and litigative powers under Title VII. The Indian government should streamline its existing laws, which are fragmented, and implement more effective penalties on the basis of the UK Equality Act. India needs to adopt pay transparency and burden-shifting from EU directives.

All of these lessons point to the importance of substantive equality and the need of India to go beyond formal equality. Gender discrimination is not only a legal matter, but also a socio-cultural problem that needs a holistic solution. International tools offer a map for India to work towards a truly equal workplace, both in terms of rights-holding and action.

CONCLUSION

Analyzing the issue of gender discrimination in the workplace in India through the lens of the law is a complex endeavor that involves considering the various laws, their interpretation by courts of law, and the obligations placed on India under the various international conventions and instruments that address this issue. Equality is the most fundamental principle of the Indian Constitution and the normativity of equality is stated in the constitutional articles of 14, 15 and 16. The provisions along with the Directive Principles of Article 39, 42 and 43 which emphasise substantive equality, with protective provisions for women workers, are a vision of substantive equality. However, in practice constitutional aspirations are not always realised due to a lack of enforcement powers, socio-cultural constraints and structural inequalities.

The enactment of the statutory provisions such as the Equal Remuneration Act (now incorporated into the Code on Wages), the Maternity Benefit Act and the POSH Act, are indicative of the legislative action to implement constitutional principles. These laws include those on wage parity, workplace safety and maternity protection, and the Transgender Persons (Protection of Rights) Act extends beyond gender binary. The effectiveness of these is however reduced because of the fragmentation in enforcement, weak institutional mechanisms and a low

level of awareness. Judicial interventions have played a crucial role in filling these gaps; *Vishaka v State of Rajasthan*, *Air India v Nargesh Meerza* and *Charu Khurana v Union of India* were some of the notable cases that have broadened the definition of equality in the workplace. The judiciary has repeatedly stated that the right to equality is more than a formal right, it is a substantive right, where corrective action must be taken against any discrimination.

The international discourse is enriched by international frameworks. India's ratification of the CEDAW and the ILO conventions places its own obligations in the global context and places clear demands on it in terms of equal pay, maternity protection and non-discrimination. Analysis of U.S. Title VII, the UK Equality Act and EU directives show the significance of a robust enforcement regime, broader legislation, pay transparency and burden-shifting strategies. These models illustrate the need for both normative commitments and institutional capacity and effective remedies for equality in the workplace. The lessons for India are clear: harmonize the implementation of personal laws with equality, increase enforcement of equality in informal sectors, create independent equality bodies and implement measures of transparency to reveal wage gaps.

This is because the gender discrimination in the workplace is ongoing, highlighting the need for a holistic approach. It takes more than laws to break down deep-rooted hierarchies: cultural change, awareness-raising and corporate accountability are all important. The intersectionality of the various forms of discrimination should be acknowledged, and discrimination can occur as a combination of caste, class, disability and sexual orientation. Substantive equality requires that changes to the status quo are aimed at these overlapping vulnerabilities and extends to all marginalized groups.

Finally, the concept of equality at work in India is a constitutional commitment and moral obligation. It is an integral part of the achievement of dignity, autonomy and justice in a democratic society. Equality can only be accomplished if there is continued legislative creativity, judicial creativity, and a commitment of the people. The constitutional vision of India, coupled with international commitments and comparative experiences, has a solid framework. The challenge is to put this in practice in the real world, ensuring the same opportunities, equal treatment and dignity at work for all individuals, regardless of gender.

The conclusion confirms that workplace gender discrimination is not only a matter of law, but of society as a whole and hence requires a more holistic approach to reform. There is a need to increase enforcement, ensure legal harmonisation, adopt intersectionality and shift cultural attitudes. Workplaces must be places of dignity, fairness and justice spaces for all and India can only realize this if it is equal.