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**“Dharma is to protect the Needy”**

**Article on**

**WORKPLACE CHALLENGES FACED BY WORKING WOMEN  
IN THE PRESENT INDIAN LEGAL REGIME AND THE WAY  
FORWARD**

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**ABSTRACT**

*India has the third lowest female workplace participation across the world. The World Bank in its India Development Report 2017 showed that India ranks 120<sup>th</sup> out of 131 nations on women workplace participation. The McKinsey report says that “progression is not slow. It’s stalled.” This is due to the various challenges faced by women in workplace. This issue is considered to be an issue of prominence across the legal systems. The paper discusses the workplace sexual harassment challenge faced by the female workers at workplace. The paper further focuses upon the present Indian legal framework that protects and safeguards the rights of the women workers after analyzing the International legal instruments. The paper also looks into various initiatives taken by the Indian Government for the protection, empowerment and improvement of the lives of Women Workers. The Paper thereafter points out the shortcomings of the present Indian legal framework and the taken initiatives, and suggests the way forward.*



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## **INTRODUCTION**

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"*If you want to be safe, be at home*" --- was used to be the remedies prescribed to our womenfolk by the societies. These patriarchal norms of our society have treated women as second-class citizens since time immemorial. It portrayed the very dismal and dreary state of affairs of our society. Globalization brought a major radical shift in women's status throughout the world. Unlike ancient times, the status of a present-day woman is on par with a man. In today's era, a woman is well-educated and the breadwinner for her family. The rise in the participation of women at previously men-dominated workplaces has enhanced the status of women and resulted in the enhancement of the nation's economic sector.

However, India has the 3<sup>rd</sup> lowest female workplace participation across the world.<sup>1</sup> In India, where women comprise 48.1% of the overall population, the Mckinsey Report 2018 suggests that only 26% of Indian women are currently employed.<sup>2</sup> This is despite the fact that 41% of women are graduates.<sup>3</sup> The number is staggeringly low if compared to other nations. The World Bank in its India Development Report 2017 showed that India ranks 120<sup>th</sup> out of 131 nations on women's workplace participation.<sup>4</sup> It is also pertinent to note that there has been a decadal fall in women's workplace participation from 35.7% in 2004 to 26 % in 2018.<sup>5</sup> As per the Centre for Monitoring Indian Economy, 2.6 million women quit workplace participation in the last few years.<sup>6</sup> This shows that although there might be rising female

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<sup>1</sup>Arun Sinha, *Women in the Workforce-India, Quick Take*, THE CATALYST, (Oct, 28 2020, 10: 04 AM), <https://www.catalyst.org/research/women-in-the-workforce-india/>

<sup>2</sup>Pavan lall, *Just around 26% of India's workforce is female: McKinsey report*, THE BUSINESS STANDARD (June 10, 2021, 10: 04 AM), [https://www.business-standard.com/article/economy-policy/just-around-26-of-india-s-workforce-is-female-says-mckinsey-report-118062000034\\_1.html](https://www.business-standard.com/article/economy-policy/just-around-26-of-india-s-workforce-is-female-says-mckinsey-report-118062000034_1.html)

<sup>3</sup>H.L. Kumar, *Declining Rate of Women Employment - Increased maternity leave & mandatory creche facilities may cause further fall*, BUSINESS MANAGER (Jun 10 2021, 10: 05 AM), <https://www.businessmanager.in/declining-rate-of-women-employment-increased-maternity-leave-and-mandatory-creche-facilities-may-cause-further-fall.php>

<sup>4</sup> Mahua Venkatesh, *India ranks 120th among 131 nations in women workforce, says World Bank report*, INDIA NEWS (May 29 2021, 10:05 AM) <https://www.hindustantimes.com/india-news/india-ranks-120th-among-131-nations-in-women-workforce-says-world-bank-report/story-Q5AVD5aRlmLHA1RAFpnZuJ.html>

<sup>5</sup> Mahesh Sen, *Empowering Women and Girls in India for the Fourth Industrial Revolution: Study Report*, THE DELOITTE (Mar 08 2021, 11:05AM), [https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/UNGCFI\\_black\\_final%20v6%20web%20high%20res.pdf](https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/UNGCFI_black_final%20v6%20web%20high%20res.pdf)

<sup>6</sup> Namita Bhandare, *Why Indian Workplaces Are Losing Women*, BUSINESS STANDARD, Aug 05, 2020 10: 05 AM), [https://www.business-standard.com/article/current-affairs/heres-why-indian-women-are-increasingly-falling-off-employment-map-117080500315\\_1.html](https://www.business-standard.com/article/current-affairs/heres-why-indian-women-are-increasingly-falling-off-employment-map-117080500315_1.html)

participation in the workforce, the reality is entirely different. The McKinsey report says that "progression is not slow. It's stalled."<sup>7</sup>

The decline in women's workplace participation has affected India's GDP and economic sector. As per a research study, a rise of women's workplace participation by 10% could significantly raise Indian GDP by \$800 billion by 2025.<sup>8</sup>

Before we think about raising women's workplace participation, it is essential first to understand the reasons for the decadal fall in numbers of women's workplace participation and what prevents a woman from taking part in the workforce. Therefore, it is imperative to analyze the issues, challenges, and problems faced by a woman at the workplace and recommend suitable measures to improve the lives of working women.

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### OBJECTIVE & LIMITATION OF THE PAPER

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The paper's primary objective is to identify and analyze the issues/factors confronting women at the work front by examining the various survey reports. The paper's objective is also to delve into the existing international legal instruments safeguarding the rights of women workers and make a critical analysis of the role played by the Indian state in making workplaces equal and safe for women by enforcing the various provisions of the Indian Constitution. The final objective of the paper is to suggest suitable measures to improve the lives of a working woman.

However, the scope of the paper **will be limited** to the Indian framework and will not cover foreign jurisdiction.

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<sup>7</sup> *Supra note 2*, at 4

<sup>8</sup> Jonathan Woetzel, *The Power of Parity: Advancing Women's Equality in Asia Pacific*, MCKINSEY GLOBAL INSTITUTE (April 23, 2018, 10:05 AM), <https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Gender%20Equality/The%20power%20of%20parity%20Advancing%20womens%20equality%20in%20Asia%20Pacific/MGI-The-power-of-parity-Advancing-womens-equality-in-Asia-pacific-Executive-summary.pdf>

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## **RESEARCH QUESTIONS**

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The paper shall address the following questions, among others:

- a. What are the issues/factors confronting women at the work front and thereby prevents a woman from taking part in the workforce?
- b. What are the existing international legal instruments that provide and safeguard the rights of women workers?
- c. Does the Indian state take any initiatives to protect, empower and improve the lives of Women Workers?

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## **RESEARCH METHODOLOGY**

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I have used the doctrinal research methodology to complete this research assignment. This methodology ensured that we had researched by analyzing all the relevant documents available as primary and secondary sources required in this field. The legislative provisions under the "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013", "Equal Remuneration Act, 1976", "Maternity Benefits Act, 1961", "and the "Industrial Employment (Standing Orders) Central Rules, 1996" created a sensation in the society and was, therefore, an essential requirement to study and analyze it properly along with the judiciary decisions taken in this field.

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## **CHAPTER-I**

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### **CHALLENGES FACED BY INDIAN WORKING WOMEN AT THE WORKPLACE**

For an Indian working woman, the workplace is full of issues, challenges, and problems that need to be encountered on a regular basis. And while the scope and severity of these challenges might vary, the key challenges being:

***a. Gender Pay Gap***

According to the Global Wage Report 2017-18 published by the International Labour Organization, Gender wage gap prevails highest in India with women being paid 35% less than men.<sup>9</sup> According to the Monster Salary Index Survey 2019, Indian working women still receive Rs. 47.22 less than that of men for the same amount of work.<sup>10</sup> It further suggests that the gender pay gap expands as years of employment increase.<sup>11</sup> The Global Gender Gap Report 2020 depicts India to still have a high gender pay gap. According to the report, a woman earns only 66% of what their male counterparts earn for doing that same task.<sup>12</sup> This suggests that most Indian working women are still being denied their right to receive equal remuneration under the Equal Remuneration Act, 1976, and are still continued to be paid less than their male counterparts.<sup>13</sup> Such a high gender pay gap in India is due to the preference for male employees over women employees,<sup>14</sup> career halts due to parent-hood responsibilities<sup>15</sup>, and various socio-cultural aspects.<sup>16</sup>

***b. Sexual Harassment at the workplace***

It is the legal right of every woman to have a safe and secure working environment. Sexual Harassment and gender-based violence in workplaces are a form of gender-based discriminatory practices that constitutes a gross violation of a women's fundamental right to equality, right to life, dignity, and personal liberty enshrined under Article 14, Article 15,

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<sup>9</sup> Abhishek Waghmare, *Gender wage gap highest in India, women are paid 35% less than men: ILO*, BUSINESS STANDARD (Jan. 28 2021, 10:05 AM), [https://www.business-standard.com/article/current-affairs/gender-wage-gap-highest-in-india-women-are-paid-30-less-than-men-ilo-118112701048\\_1.html](https://www.business-standard.com/article/current-affairs/gender-wage-gap-highest-in-india-women-are-paid-30-less-than-men-ilo-118112701048_1.html)

<sup>10</sup> *Monster Salaxy Index: Survey Report 2019*, INDIAN BFSI SECTOR (Mar 21, 2019, 11: 05 am), [https://media.monsterindia.com/logos/research\\_report/Report\\_BFSI\\_low.pdf](https://media.monsterindia.com/logos/research_report/Report_BFSI_low.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> World Economic Forum, “*Data Explorer: India*,” The Global Gender Gap Report 2020 <http://reports.weforum.org/global-gender-gap-report-2020/dataexplorer/#economy=IND>

<sup>13</sup> Dr. Kamini B. Dashora , “*Problems Faced By Working Women In India*”, 6 IJARMSS 5, 5-6 (2018).

<sup>14</sup> Sampurna Dutta, *Indian Women in the Workplace: Problems and Challenges*, 3 IJIRM 152, 158-159 (2017).

<sup>15</sup> *Id.* at 152.

<sup>16</sup> *Id.* at 159.

Article 19, and Article 21 of the Indian Constitution respectively.<sup>17</sup> It hinders work productivity, socio-economic development, and further corners them into physical distress/sufferings and mental trauma.<sup>18</sup> It stands as a major obstacle against women's successful careers and the resultant assimilation of untapped labor into the nation's workforce.

According to the Indian National Bar Association report 2017, 36% of female employees out of 3000 female employees have experienced Sexual Harassment at workplaces, ranging from lewd comments to an outright demand for sexual favors.<sup>19</sup> The recent #MeToo movement erupted internationally and highlighted the prevalence of Sexual Harassment and gender-based violence in the workplace.<sup>20</sup> Another report by NCRB states that 17% of women raised complaints of being sexually harassed at workplaces.<sup>21</sup> There has been a significant rise of 52% regarding workplace sexual harassment complaints between the years 2014-15, despite the fact that 75% of women choose not to report their harassment incidents.<sup>22</sup> Another survey report study suggests that around 85% of women quit a job or change companies due to sexual harassment issues at the workplace.<sup>23</sup>

The primary legislation dealing with workplace sexual harassment incidents in India is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred as **POSH Act**). It mandatorily obligates the employer to constitute an Internal Complaints Committee for providing a grievance redressal mechanism to the sexually harassed women victims.<sup>24</sup> Failure of which might make the employer statutorily liable under section 26(1) of the POSH Act. In addition to POSH, the Industrial

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<sup>17</sup> Punjab & Sind Bank Vs Durgesh Kuwar, Civil Appeal No 1809 of 2020

<sup>18</sup> *Id.* at 89.

<sup>19</sup> Rashmi Rajput, *38 per cent women say they faced sexual harassment at workplace: Survey*, THE INDIAN EXPRESS (Jan 05 2021, 10:04 AM), <https://indianexpress.com/article/india/38-per-cent-women-say-they-faced-sexual-harassment-at-workplace-survey-4459402/>

<sup>20</sup> Nisha Varia, “*Weinstein Rape Sentence in US Boosts #MeToo Movement*,” HUMAN RIGHTS WATCH (March 12, 2021, 10: 15AM), <https://www.hrw.org/news/2020/03/12/weinstein-rape-sentence-us-boosts-metoo-movement>.

<sup>21</sup> Fernandes, *17% women sexually harassed at workplace*, TIMES OF INDIA (Nov 28, 2020, 11:05 AM), <https://timesofindia.indiatimes.com/city/bengaluru/17-women-sexually-harassed-at-workplace/articleshow/17396157.cms>

<sup>22</sup> *Id.*

<sup>23</sup> Sonakshi Goel, *85% Women In India Likely To Quit Job Over Harassment Issues: Survey*, STETHEPEOPLE (June 10, 2019, 11:05AM), <https://www.shethepeople.tv/news/indeed-censuswide-survey-sexual-harassment-workplace>.

<sup>24</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No.14, Acts of Parliament, 2013 (India), § 4

Employment Standing Order Rules 1996 obligate the employer to provide a grievance redressal mechanism for issues pertaining to workplace sexual harassment.<sup>25</sup>

However, as per the Federation of Indian Chamber of Commerce and Industry (FICCI) study report 'Fostering Safe Workplaces' 2015, 40% of Indian organizations does not have any constituted ICC at their workplaces.<sup>26</sup> It also revealed that 60 out of 123 Indian Companies admitted to having no legally trained ICC members.<sup>27</sup>

***c. Inadequate Sanitation infrastructure***

Improper sanitary facilities at a workplace negatively affect a woman's health, which eventually hinders their work productivity. Millions of women have quit jobs due to the insufficiency of basic sanitation facilities at the workplace.<sup>28</sup> Around 60% of women avoid work during their menstruation due to inaccessible toilets at workplaces.<sup>29</sup> According to ILO, a safe and secure working condition includes access to adequate sanitation facilities.<sup>30</sup> There are many news reports, including the death of a female employee due to the lack of a toilet at the workplace.<sup>31</sup> A survey report by the National Commission for Women shows that 22.5% of women are not satisfied with the sanitation facilities they get at their workplace, and 65% of women didn't have washroom access in their workplaces.<sup>32</sup> This shows the policies of many Indian companies of having no adequate basic sanitation facilities at workplaces, hindering the health and work productivity of women.

<sup>25</sup> Industrial Standing Orders Rules 1996, § 14(1)(B).

<sup>26</sup> *Fostering safe workplaces: POSH Act 2013*, FEDERATION OF INDIAN CHAMBER OF COMMERCE AND INDUSTRY (Mar 15, 2015, 11:05 AM), <http://www.ficci.in/spdocument/20672/Fostering-safe.pdf>

<sup>27</sup> *Id* at 14

<sup>28</sup> Manashi Sharma, *Why do women quit working?*, THE FREE PRESS JOURNAL (Apr 08, 2021, 11:05AM), <https://www.freepressjournal.in/cmcm/why-do-women-quit-working>

<sup>29</sup> *Id*.

<sup>30</sup> Rockaya Aidara, *Poor Access to WASH: a barrier for women in the workplace*, SOCIAL PROTECTION AND HUMAN RIGHTS (Nov 16, 2016, 5:39AM), <https://socialprotection-humanrights.org/expertcom/poor-access-wash-barrier-women-workplace/#fn-4394-1>

<sup>31</sup> Pramod Madhav, *Lack of toilet at Tamil Nadu government office leads to death of 24-year-old employee*, INDIA TODAY, Dec 08, 2020, 6:37 AM), <https://www.indiatoday.in/india/story/toilet-tamil-nadu-government-office-death-24-year-old-employee-1747584-2020-12-08>

<sup>32</sup> Saket Bihari, *A Research Study report on women facing constraints at workplaces: an analysis of the service sector in Delhi*, NATIONAL COMMISSION FOR WOMEN (May 2017, 10:04 AM), <http://ncwapps.nic.in/pdfReports/AResearchStudyonWomenFacingConstraintsatWorkplacesAnAnalysisoftheServiceSectorinDelhi.pdf>

**d. Lack of transportation safety and Unsafe-streets**

An Indian woman continues to feel insecure while using public transportation services or going through a street, especially at night. The horrific rape incidents, acid-attack incidents, eve-teasing, kidnapping incidents make women unsafe to use a public transportation service in India. Reports suggest that 13% of Indian working women have left or change jobs due to lack of transportation safety.<sup>33</sup>

**e. Insufficient Maternity Leaves & Post-maternity Obstacles**

Insufficient maternity leaves are one of the biggest challenges faced by a working mother. It causes mental stress in between taking child care and chasing office targets. 46% of women in MSMEs and 56% of women working in start-up corporations have reported cases of insufficient maternity leaves.<sup>34</sup> A recent report prepared by Strategy &, 2012 showed that nearly 6 million working women are forced to quit jobs due to inadequate child care support and insufficient maternity leaves.<sup>35</sup> The Guardian Report 2019 states that more than 60,000 women lose their job over maternity discrimination.

Although the Maternity Benefit (Amendment) Act 2017 increased the maternity leave from 12 weeks to 26 weeks, however a recent study report between the years 2017-2019 revealed that 57% of Small, Micro and Medium enterprise Indian organizations only hired male employees to avoid such 'maternity' burden and liabilities.<sup>36</sup> Small companies do not find maternity leaves and benefits financially viable.<sup>37</sup> This creates gender-based discrimination and portrays a very dismal state of affairs of the Indian companies.

In addition to the insufficient maternity leave challenge, post-maternity obstacles also are faced by a working mother. 30% of working mothers reported having wage cuts or having been demoted post maternity.<sup>38</sup> 12% of women reported having not being exposed to challenging works post-maternity leave.<sup>39</sup> Flexible working hours, childcare assistance at workplaces, work from facilities, etc., have been failed to provide by a majority of the

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<sup>33</sup> *Supra note 29*

<sup>34</sup> Shobita Dhar, *Why maternity leave isn't enough to bring mothers back to work*, TIMES OF INDIA (Nov 22, 2020, 10: 04 AM), <https://timesofindia.indiatimes.com/india/why-maternity-leave-isnt-enough-to-bring-mothers-back-to-work/articleshow/79318832.cms>

<sup>35</sup> Indian Bureau, Indian Companies aren't hiring women to avoid 'maternity liabilities': Study, BUSINESS INSIDER INDIA (Jun 26, 2018, 05: 08 PM), <https://www.businessinsider.in/indian-companies-arent-hiring-women-to-avoid-maternity-leave-liability-study/articleshow/64749016.cms>

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Maternity Benefits Act (revisited) Survey: FY 2019-2020*, TEAMLEASE (Mar 20, 2020, 05: 15 PM)

<sup>39</sup> *Id.*

institutions to the working women post-maternity leave, especially by the MSMEs and start-up organizations.

***f. Gender-based Discrimination/Gender-biasness at workplace***

Gender-based discrimination is prevalent in every workplace, and women continue to be the potential victims of such blatant discrimination. The equal-opportunity concept has not been adopted till now. Gender segregation prevails at workplaces regarding salaries and benefits, working office hours, leaves, promotional offers, etc. Women are quite often stripped of promotional offers and growth-related opportunities at workplaces.<sup>40</sup> This can be witnessed by seeing that out of 500 Indian companies, only 29 companies have women in senior management roles, despite the fact that there has been a significant increase in the number of women joining the workforce.<sup>41</sup>

A study report revealed that 35% of female employees feel a separate performance standard and expectation for men and women working at the same level.<sup>42</sup>

Discriminatory practices during the recruitment process are highly prevalent. The report suggests that expectant mothers or women with young children are not highly preferred during the hiring process.<sup>43</sup> The Randstad Gender Perception Survey 2019 reveals that 67% of women faced gender-based discrimination during their recruitment process.<sup>44</sup> Presumed work-family conflict, pregnancy, marital status, etc., are the essential factors of such hiring discrimination.

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<sup>40</sup> Andrea Papuc, *Women in finance have to ask for promotions. Men don't*, FORTUNE (Nov 23 2020, 1:56 AM), <https://fortune.com/2020/11/22/women-promotions-work-finance-gender-bias-survey/>

<sup>41</sup> Suvash kaur, *Women face bias at workplaces in India, gender parity a problem at senior levels: Survey*, THE ECOMONIC TIMES (Apr 12, 2019, 3.05 PM), <https://economictimes.indiatimes.com/magazines/panache/women-face-bias-at-workplaces-in-india-gender-parity-a-problem-at-senior-levels-survey/articleshow/63732652.cms>

<sup>42</sup> *Id.*

<sup>43</sup> Manisha Patel, *Workplace biases still rampant in India: Survey*, THE ECOMONIC TIMES (Apr 05, 2013, 11:15 AM), <https://economictimes.indiatimes.com/jobs/workplace-biases-still-rampant-in-india-survey/articleshow/21619574.cms?from=mdr>

<sup>44</sup> *Id.*

The Guardian Report 2019 states that more than 60,000 women lose their job over pregnancy discrimination. Women are forced to quit jobs due to these preferential treatments and workplace biasness.<sup>45</sup>

Despite the significant increase in the number of women joining the workforce, gender-biasness continues to exist. Hence, women face gender-based discrimination at every phase of their working sphere.

These are the challenges faced by an Indian Working woman at their workplaces, which hinders work efficiency and work productivity and lowers the nation's economic growth. Hence, there is an urgent need to look at the existing international legal instruments and initiatives takes by the Indian state to provide and protect the rights of women workers.

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## **CHAPTER-II**

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### **INTERNATIONAL LEGAL INSTRUMENTS & THE PROTECTION OF THE RIGHTS OF WOMEN WORKERS**

The **ILO Declaration of Philadelphia, 1944** states that "*every individual, regardless of their race, faith, ethnicity, and sex, have the right to pursue their material well-being and religious developments, in conditions of liberty and human dignity, financial security and equality of opportunity.*" The right of a working woman is an intrinsic component of the principles & objectives of the International Labour Organization. The ILO resolutions provide for equal employment opportunities for women at workplaces. **Resolution on Gender equality, Wage equity, and Maternity protection** is the legal instruments adopted by ILO to address the issues of gender under wage pay gap and issues pertaining to maternity leaves<sup>46</sup>, allowances, benefits, and physical exertion during pregnancy.<sup>47</sup> **Convention No. 111 of ILO** protects women from gender-based discrimination at the workplace.

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<sup>45</sup> Charu Bihari, 'Workplace Bias Can Be Reason Enough For Indian Women To Drop Out Of The Workforce', INDIA SPEND (Feb 03, 2019, 6:00 AM), <https://www.indiaspend.com/workplace-bias-can-be-reason-enough-for-indian-women-to-drop-out-of-the-workforce/>

<sup>46</sup> International Labour Organization Convention, No 103

<sup>47</sup> *Id.*

Equal rights for women is the fundamental tenet of the United Nations. The **UN General Assembly adopted the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** to eradicate gender-based discrimination and eliminate barriers in the path of women's enjoyment of their legal rights. CEDAW is the international legal instrument that provides the important principles of gender equality and forbids discriminatory laws, practices, and customs against women on every ground.<sup>48</sup> It further covers numerous aspects of women's rights, including involvement in politics, healthcare & well-being, educational training, work opportunities, marriage, family relations, and equal treatment before the law.<sup>49</sup>

**United Nations Commission on the Status of Women (CSW)** has played a significant role in promoting women's rights. CSW formulated guidelines on urgent issues relating to women's rights, intending to implement the principle that men and women should have equal rights and develop initiatives to execute such guidelines.

**Article 7 of the Universal Declaration of Human Rights and Article 2 of ICCPR and Article 2 of ICESCR also protect** women from being discriminated against in any sphere and stateswomen to have equal protection before the law.<sup>50</sup> This International Bill of Human Rights also ensures the equal right of men and women.<sup>51</sup>

The **1951 convention on equal remuneration between men and women, Discrimination (Employment and Occupation) Convention, 1958** are the other necessary legal instruments that prohibit unequal gender wage gap and states that working women shall be entitled to equal remuneration for performing the same task. The **Maternity Protection Convention, 2000** provides a mandatory obligation upon the organizations to provide maternity benefits, allowances, and adequate maternity leaves to a pregnant working woman.

**UN's Declaration on the elimination of Violence against Women at Workplace 1993, Optional Protocol to the Convention on the Elimination of All forms of Discriminations (1999), Workers with Family Responsibilities Convention, 1981; Home workers, 1996 termination of employment, 1982, and employment policy, 1964** are the other

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<sup>48</sup> Lalu Husni, *Legal protection for woman domestic workers based on the international convention*, 21 JLERI 152, 154-156(2018)

<sup>49</sup> *Id* at 159.

<sup>50</sup> Universal Declaration of Human Rights 1948, art 7.

<sup>51</sup> International Bill of Human Rights, art 3.

various international legal instruments that provide and safeguard the rights of working women.

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### **CHAPTER-III**

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#### **ROLE PLAYED BY THE INDIAN STATE FOR PROTECTING THE RIGHTS OF WOMEN WORKERS & PRACTICAL CHALLENGES TO SUCH INITIATIVES**

The Indian Constitution serves a crucial role in protecting women against workplace discrimination and guaranteeing gender justice in the current time. The constitution of India ensures equality for women as a fundamental right before the law, and institutional support for women appears progressive, with many laws in place to protect a woman's right to work.

*Article 15(1) of the Indian Constitution* prohibits gender-based discriminations against women, children and further allows formulating special provisions favoring women for protecting women against such discriminations.<sup>52</sup> *Article 16* provides equal opportunities to every Indian citizen with matters regarding public employment. *Article 38(2)* of the Indian constitution seeks to minimize income inequalities among male and female employees. Further, *Article 39* assures equal remunerations for similar work between women and men. *The Parliament brought the Equal Remuneration Act, 1976, in India* to avert gender discrimination in salaries, recruitment, promotional growth offers. The Act prohibits differential pay treatment between male and female employees for 'same work or similar nature work' and further prevents discrimination in hiring offers and service conditions. In *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'costa and Ors*, the Supreme Court held that women performing the same work or similar kind of work to men are entitled to the same remuneration.

However, despite introducing the Equal remuneration Act, the gender pay gap in India is still high. This depicts that the Indian companies are easily circumventing provisions of the Equal Remuneration Act through wage re-classification of skilled and unskilled workers. Generally, irrespective of the work nature and regardless of skill-level of the job, women are put into the classified unskilled workers (lower-income segment), and male employees are

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<sup>52</sup> Dattatreya Motiram V State of Bombay, AIR 1953 Bom 311

put into the skilled workers (higher income segment).<sup>53</sup> This continued the gender pay gap in the Indian economy.

The Indian state enacted a *National Commission for Women under the National Commission for Women Act, 1990*, to review the existing statutory protections available to women, investigate complaints, and safeguard working women's rights.

The primary legislation enacted against India's workplace sexual harassment incidents is the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (hereinafter referred as **POSH Act**). It mandatorily obligates the employer to constitute an Internal Complaints Committee for providing a **grievance redressal mechanism** to the sexually harassed women victims.<sup>54</sup> Failure of which might make the employer statutorily liable under section 26(1) of the POSH Act. In addition to POSH, the *Industrial Employment Standing Order Rules* 1996 oblige the employer to provide a grievance redressal mechanism for issues pertaining to workplace sexual harassment.<sup>55</sup>

However, the increasing workplace sexual harassment incidents portray the inadequacy and the implementation challenges of the existing legal framework. Lack of employee's knowledge about the available redressal mechanism, lack of legally trained ICC members, and ill-equipped investigation committee frustrates the grievance redressal mechanism. In addition to these, the penalty provision of Rs. Fifty thousand for non-compliance can be willingly paid by a multi-billion dollar corporation, rather than constitute an ICC and make a mockery of the legislation.

The *Maternity Benefits Act, 1961* was enacted by the Indian Legislature to deal with issues pertaining to the pregnancy of working women and maternity discrimination. The Act was **amended in 2017** to raise the maternity leaves from 12 weeks to 26 weeks and provide flexible hours, remote working, and crèche service policies for pregnant working women and working mothers. The Indian Supreme Court, in the case of *Municipal Corporation of Delhi Vs. Female Workers*<sup>56</sup> widened its scope of applicability to include casual and daily wage workers. *The Employee's State Insurance (General) Regulations, 1950* enacted by the

<sup>53</sup> Sampurna Dutta, *Indian Women in the Workplace: Problems and Challenges*, 3 IJIRM 152, 154-155 (2017).

<sup>54</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No.14, Acts of Parliament, 2013 (India), § 4

<sup>55</sup> Industrial Standing Orders Rules 1996, § 14(1)(B)

<sup>56</sup> AIR 2000 SC 1275

Legislature extended and allowed the availability of maternal benefits for miscarriage<sup>57</sup>, abortion, pregnancy-related illness<sup>58</sup>, or premature birth<sup>59</sup>.

However, a recent study report between 2017-2019 revealed that 57% of Small, Micro and Medium enterprise Indian organizations only hired male employees to avoid such 'maternity' burden and liabilities.<sup>60</sup> Small companies do not find maternity leaves and benefits financially viable. Also, the Act fails to consider the critical Post-Maternity obstacles such as not putting up to challenging tasks, pay-cuts, etc.

*The Beedi & Cigar (Conditions of Employment) Act, 1966*, and *The Plantation Labour Act, 1951*, formulated by the Indian Legislature, provides an obligation to furnish child care facilities and crèche service policies. Under the *Factories Act 1948*, an employer is mandated to furnish child care facilities & crèche service policies at the workplace where more than 30 women are employed. However, due to a lack of police inspection regarding the mandatory crèche childcare services/centers, prosecution cases against employers for the violation of the provisions of the Factories Act are rarely found out.<sup>61</sup> The employers also bypass and circumvent the obligations by recruiting less than 30 women workers or employing women contract labor.<sup>62</sup>

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## RECOMMENDATIONS AND CONCLUSION

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Women's empowerment in jobs & business is a significant step towards eradicating gender inequality and achieving gender justice. As we have seen above, lack of safety restricts women from participating in public life fully. As per a research study, raising women's workplace participation by 10% could significantly raise Indian GDP by \$800 billion by 2025.<sup>63</sup> Therefore, the Indian Government needs to eradicate the challenges faced by working women at workplaces with urgency. An individual spends more than 10 hours of their life in workplaces, and hence it is necessary that such place has a safe, secure and conducive work environment.

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<sup>57</sup> The Employee's State Insurance (General) Regulations, 1950, § 45(1)

<sup>58</sup> The Employee's State Insurance (General) Regulations, 1950, § 45(2)

<sup>59</sup> The Employee's State Insurance (General) Regulations, 1950, § 45(3)

<sup>60</sup> *Id*

<sup>61</sup> *Supra note 55*, at 11.

<sup>62</sup> *Id*.

<sup>63</sup> Jonathan Woetzel, *The Power of Parity: Advancing Women's Equality in Asia Pacific*, MCKINSEY GLOBAL INSTITUTE ( Apr. 23, 2018).

To create such an environment, it is the responsibilities of the companies and the Indian states to make policies regarding the safety of women at the workplace and take measures such as strict surveillance of visitors and identification documents of drivers, security guards, delivery persons, 24x7 CCTV's, installation of GPS monitoring in transport vehicles, well-lit workplace till every employee leaves, self-defense training sessions, etc. The organizations shall have adequate basic sanitation facilities to enable fuller participation of women employees. Many organizations have provided office transport facilities for working women, which is a positive step to tackle several safety concerns.

The Recently introduced Code on Wages 2019 strictly prohibits gender discrimination in relation to the payment of wages. Also, it prevents discrimination based on marital status, children, pregnancy, etc., during the recruitment process. Further, India has recently ratified the ILO Equal Remuneration Convention, 1951. These instruments and the enactment of the Equal remuneration act show that India has taken various steps to combat gender pay disparity. Therefore, the Government needs to participate actively and strictly implement these existing anti-disparity laws to their greater effect.

The Sexual Harassment issues can be resolved through the active participation of the Indian Government. The Government shall make a vigilance commission to keep a check on the Indian organizations regarding the constitution of ICC at every workplace as per the requirements under the POSH Act. The Parliament shall also increase the penalty of Rs 50,000 for non-compliance to a hefty amount. The Indian Courts have found employers vicariously liable for Sexual Harassment at the workplace,<sup>64</sup> which is a step in the right direction of having stricter punishments.

The Maternity and pregnancy benefits, allowance, and leaves shall be approved without any procedural complications. The post-maternity obstacles shall be taken into by the Parliament within the Act, and reliefs shall be provided. The Government shall also incentivize the MSMEs and start-up organizations against the maternity allowances to create a win-win situation for both the employers and female employees.

The goal of women empowerment can only be achieved if there is close monitoring of the policy implementation by the Indian Government through a vigilance commission. It is challenging for a woman to balance their professional and personal lives. Therefore, the

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<sup>64</sup> M/S. Isg Novasoft Technologies vs Ms. Gayatri Balasamy, OSA No. 59

Indian society shall provide them the opportunity and conducive working environment to nurture their potential and excel in their careers. If both males and women excel in their careers, only then the economic sector of the county will have prosperous growth.

