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EMPLOYMENT DISCRIMINATION

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Abstract

This research paper delves into the multifaceted dimensions of employment discrimination, examining its prevalence, underlying causes, and far-reaching consequences in contemporary workplaces. Employing a comprehensive approach, the study amalgamates quantitative and qualitative methodologies to investigate the various forms of discrimination experienced by diverse groups, including but not limited to gender, race, ethnicity, age, and disability.

The research explores the role of organisational policies, cultural influences, and systemic factors in perpetuating discriminatory practices. Additionally, it investigates the impact of discrimination on employee well-being, job satisfaction, and overall workplace productivity. The study also considers the legal frameworks and interventions designed to address employment discrimination, assessing their effectiveness and identifying potential areas for improvement.

Furthermore, the paper endeavours to shed light on innovative strategies and best practices adopted by inclusive organisations to foster diversity and eliminate discriminatory practices. By synthesising existing literature and incorporating empirical findings, this research aims to contribute to the ongoing discourse on employment discrimination, offering valuable insights for policymakers, practitioners, and scholars dedicated to creating equitable and inclusive work environments. Ultimately, the study advocates for a holistic approach towards eradicating employment discrimination and promoting equal opportunities for all individuals in the workforce.

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Introduction

India is the second most populated country in the world. In India, various types of people have different professions: race, sex, caste, religion, gender, age, orientation, identity, etc. As there are many varieties of people's professions, people are also treated differently by judging their work, judging their gender and judging their workplace. Employment or workplace discrimination is one of the most increasing issues in India. The Indian government is trying to eliminate employment discrimination by implementing different laws, amendments to existing laws, punishment for the accused, etc. Since we are talking about employment discrimination, we first have to know the meaning of discrimination.

A. What is discrimination?

A 'discrimination' or 'to discriminate' means treating someone differently, contrary, or propitiously for any reason. Discrimination can happen anywhere, like in the office, college, school, house, public place, etc. You can be discriminated against by co-workers, colleagues, students, friends, parents, teachers, etc. Employment discrimination also includes workplace harassment, as we discussed in the concept of discrimination. We will further discuss workplace harassment.

1. What is workplace harassment?

Workplace harassment means any misconduct or unwanted behaviour by any person relating to another person's race, caste, sex, gender, religion, conduct, etc. Workplace harassment can be physical, verbal, by any conduct or act, nonverbal, etc. These people make the workplace's environment offensive, unfriendly, unhappy, and unenthusiastic. Bullying workers or employees and sexual abuse are some of the examples of workplace harassment.

Since we discussed two important concepts, we will now discuss the concept of employment or workplace discrimination.

2. What is employment or workplace discrimination?

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In simple words, employment discrimination means when an employer treats his employees in an unfair, unequal or unfriendly manner based on their religion, colour, caste, sex, gender, age, identity, disability, religious beliefs, etc.

One or more employers can discriminate against one or more employees. It can happen in various situations, like when an employee gets a promotion, gets a salary hike, or is not given new and fair opportunities intentionally; in the case of the latest recruitment of employees, discrimination happens based on their traits, etc.

As we discussed earlier, employment discrimination is a crucial problem in India. There are many more laws and safeguards for the protection of employers. Over the last few years, many surveys were taken by various renowned institutions in India and other foreign countries. One of the surveys is, 'According to this survey, forty-eight per cent of people in India faced some discrimination. Most of the discrimination happens based on gender, which is twenty-five per cent of age, twenty-two per cent and religion or caste, which is eighteen per cent. Overall, in India, employees in Pune, Delhi and Chennai faced the highest discrimination, and employees in Ahmedabad faced the lowest discrimination. Sadly, in India, only thirty per cent of the companies have a clear discrimination policy.'²

II. Types of employment discrimination:

There are four main types of employment discrimination in India.

First is direct discrimination.

Second, indirect discrimination.

Third. Harassment.

Fourth victimisation.

A. Direct discrimination:

²Tutorials point, <https://www.tutorialspoint.com/discrimination-law-in-india/> (last visited sept 27, 2023).

Tax guru, <https://taxguru.in/corporate-law/legal-protections-workplace-discrimination-harassment-india/> (last visited sept 27, 2023.)

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Direct discrimination means when an employer treats his employees in an unequal and worse manner than other employees because of some specific reason or because of some disability. There can be many reasons, but some significant reasons are colour, age, sex, gender, religion, etc.

For example, an IT company hires new employees. Still, when hiring new employees, they will not hire an old-aged employee just because they all think that because of his age, he may not be technically friendly or have enough technology knowledge. He will be unable to work for long hours just because he cannot handle the physical as well as mental stress.

B. Indirect discrimination:

Indirect discrimination is when an employer and an organisation treat their employees similarly, but some practices and requirements are unavailable. It means that there is a difference between benefits, perks, etc.

Whether intentional or not, every employer must be prudent while treating their employees.

C. Harassment:

, harassment means an employer treats his employees in a more unfriendly or uninvited way than other employees. Some of the examples could be humiliation, violation of the dignity of the person, mental as well as physical stress, degradation, bullying, unpleasant nicknames, asking personal and inappropriate questions etc.

D. Victimization:

Victimisation means when a specific employee becomes a target of unequal and harmful behaviour just because he complains about workplace discrimination about the employer who does it or gives his concern about it or gives evidence about the same. Of all the types of employment discrimination, victimisation is one of the most toxic discrimination and the highest type of discrimination in India.

There are several consequences of this. E.g.

Denied promotion or hike in salary, refused to provide benefits and perks and other facilities in the company, isolated from other employees, etc.

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So, this is the brief about four types of employment discrimination in India. Next, we will examine the laws for employment discrimination in India.³

III. Employment discrimination laws in India:

The Indian government has taken significant steps against workplace discrimination and made severe and multiple laws to reduce employment discrimination in India. Many laws exist for anti-discrimination, including the considerable laws in the Indian constitution. We will see some of them in detail.

A. Laws for discrimination under the Indian constitution:

1. Article Fourteen:

Article fourteen talks about 'equality before the law'. It means that every person in the country is treated equally. There cannot be any discrimination or difference between the citizens of India. No one is above the law.

2. Article Fifteen:

Article fifteen states that no one shall be discriminated against based on race, caste, gender, sex, religion, disability or nationality just because everyone is equal in the eyes of the law. No one can be treated differently or unequally than others. However, there is a loophole in this section; it only applies to states and citizens, does not apply to private entities, and does not cover private organisations.

B. The Equal Remuneration Act, 1976:

The main motive of this act is to prevent gender-based discrimination between men and women. The said act states that all men and women are paid equal wages for the same work unless any law prohibits the same for the betterment of the men and women. In this act, there is no opportunity to get compensation, but employees can demand the wages that are denied to them. Suppose any employer violates any of the said laws in this act. In that case, they will be punished with a fine and imprisonment, as well as rigorous imprisonment in case of repetition of the violation of the same rules.

³Personio, <https://www.personio.com/hr-lexicon/types-of-discrimination/> (last visited sept 27, 2023.)

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C. The Maternity Benefit Act, 1961:

The Maternity Benefit Act came into existence in 1961. This act aims to provide paid maternity leave to women employees. No employers can terminate women on leave during work, which is a course of action. No employer can decrease the wages of any female employee under this benefit, and no one can deny giving wages if the woman does not complete some task. If an employer violates any of the above laws according to this act, they will be punished with imprisonment, exemplary, or both according to section twenty-one. In 2017, this act was amended to give more and increase benefits, including those women who adopt a child.

D. The rights of persons with disabilities Act, 2016:

The RPD Act came into force in 2016, with great opportunities and benefits for the disabled government and private workers. This is a perfect act with progressive thinking and legislation. According to this act, no disabled person can be treated unequally in their workplace. Also, no discrimination is allowed against any government employee or private employee. According to section two of the said act, 'establishment includes government and private companies, industries, institutions, etc. Section twenty of the act discusses the principle of non-discrimination promotion, including private entities.

Both government and private entities must form equality policies in their companies for disabled principles. According to this act, every disabled person gets the same treatment and equal opportunity as others, and no employer denies any disabled person a hike in salary. Anyone who violates the said Act's provisions will be punishable with a fine.⁴

E. The sexual harassment of Women at the workplace (prevention, prohibition and Redressal) Act, 2013:

Sexual harassment is one of the most severe and heinous discrimination against women in the workplace. Before 2013, there was no law in India against sexual harassment discrimination against women in the workplace. Still, because of an increasing number of these cases, the Indian

⁴Indialawoffices, <https://www.indialawoffices.com/legal-articles/workplace-discrimination-how-to-prevent-it/> (last visited sept 27, 2023.)

Ipleaders, <https://blog.ipleaders.in/types-of-discrimination-in-workplace-and-their-legal-protection-in-india/> (last visited 27 sept, 2023.)

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government passed the SHW Actin 2013. this act defines ‘sexual harassment’ in an expansive sense. The following are the categories included in the definition of sexual harassment.

First request or demand for sexual favours.

She is second, making sexually coloured remarks.

Third, showing pornography to women in the workplace.

Fourth, physical contact and advancement.

Fifth, any unwelcoming act, physical, verbal, or non-verbal acts.

This act provides detailed queries, enquiries and complaint mechanisms for sexual harassment in the workplace. This is not an anti-discrimination act; according to this act, only those women can complain who are victims of sexual harassment in the workplace. This act is not gender neutral act. This act does not include laws against sexual harassment against men in the workplace.

According to this act, an employer must have an anti-sex harassment policy that effectively redresses complaints.

It is crucial to know the protections provided under this act because it does not show a normal relationship between employer and employee. If we talk about an example, an aggrieved woman in this act does not need to be an employee in that particular workplace. Here, the word ‘workplace’ has a comprehensive sense. It includes regular places of employment and any place visited during their employment after COVID-19; working from home is also considered a ‘workplace’ under this Act.

E. Other legislation :

Employment discrimination and workplace harassment are increasing issues in India, not only in the government sector but also in the private sector also such as - obstructing employment of an employee solely because they are from a lower caste or backward community, the decreasing salary of women or terminating the women who are on maternity leave, giving different wages to men and women. However, they are doing the same work, discriminating against persons based on disability, discriminating against persons with incurable diseases like HIV and AIDS, and

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discriminating against transgender people about their employment, promotion, termination, etc, according to the transgender people Act.

Every government and private company in India has strict internal policies regarding employment discrimination and workplace harassment.

G. Equal Remuneration Act, 1976:

One of the laws that provided laws against employment discrimination was the Equal Remuneration Act of 1976. This talks about 'equal pay for equal work' and the same payment for the same remuneration irrespective of gender. Everyone should get equal wages based on 'same work or work of same nature' to all men and women. There should not be any differentiation between men and women concerning their knowledge, skills, responsibilities, efforts, etc. According to this act, every employer must consider the rules and regulations under this Act while recruiting and retiring employees.⁵

IV. Case laws against employment discrimination in India :

A. State of Punjab and Ors vs Jagat Singh and Ors, 2016 :

In this case, the main question was whether daily wages employees or ad hoc employees on a contractual basis or appointment of employees regularly are entitled to a minimum regular pay scale including dearness allowances considering their performing the same duties routinely discharged.

In this case, the Apex Court held that we should consider the principle of 'equal pay for equal work', and according to this principle, everyone should get paid equally, regardless of whatever employee you are, temporary or permanent. Justice S.A. Bobde and Justice S.J. Kehar said that in a welfare and developing country like India, employees who are engaged in the same work cannot be discriminated against by anything and not a single employee can get lower wages than others. Otherwise, it will violate the most important principle, which is that every employee in the country should get equal pay for similar work.

⁵Peplematters, <https://www.peplematters.in/article/legal-and-compliance-outsourcing/> (last visited sept 27, 2023.)
Leglobal, <https://leglobal.law/countries/india/employment-law/> (last visited sept 27, 2023.)

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B. Neetu Bala vs UOI, 2016 :

The question that arises in this case is whether a person has a right to deny a woman an appointment with a doctor in the army medical corps just because she is a pregnant woman. The Court, in this case, said that denying an appointment as a doctor in an army medical corps just because she is a pregnant woman and she is not capable and robust enough to do her work is a direct violation of articles fourteen and fifteen of the Indian constitution also it is a type of discrimination based on gender. According to the convention on eliminating discrimination against women, it is punishable.

Justice H.S. Siddu said that denying an appointment of a woman merely upon that she is pregnant is illegal, vague, and discriminatory, and it is against the articles of the constitution.

C. X vs UOI, 2023 :

The question that arose in this case was whether a person can be rejected to get a promotion just because he has HIV, which is a type of disability and incurable disease.

The appellant had completed thirteen years of this service as a constable in the central reserve police force. There was this rule that if any constable completed eight years of service, he was eligible to get promoted to head constable. But in the year 2006, the appellant was rejected to be promoted as head constable just because he has HIV. The appellant then filed a writ petition in Allah HC. In this case, Justice Devendra Kumar Upadhyaya and Justice Om Prakash Shukla said that no person can be denied a promotion just because he has some disease or disability. It is a clear violation against a person with a disability. Also, the appellant was fit and acceptable to do his further work. There was no serious health issue at the time of promotion, so this is a violation of Articles 14, 21, and 16 of the constitution of India as well as Section forty-seven of persons with disabilities (equal opportunities, protection of rights, and full participation) Act, 1995 clearly states that no promotion can be denied to any person merely based on any disability or disease, everyone should get equal opportunity despite any health disorder.⁶

D. Dr. Pradeep Jain vs UOI, 1984 :

⁶Indian kanoon, <https://indiankanoon.org/search/?formInput=gender%20discrimination> (last visited sept 27t, 2023.)
INDIA CONST. art . 14, 19, 21, 15, 16.

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The issue in this case was whether admissions to medical colleges or any other higher institutions have reservations for those students who have a domicile and those who do not; there are no seats reserved for them. Is this a discriminatory or not?

In this case, the Apex Court dismissed the petition, saying that not every act and differentiation violates the Indian constitution and not every act can be compared with the concept of equality under Article fourteen of the constitution. Also, where any unreasonable discrimination happens, the court cannot tolerate it. Still, where these are effective and affirmative differentiation happens, there is a chance for backward classes to progress in their life; in that case, no discrimination will be considered. They will get an opportunity and reserved seats in the medical and higher institutions, so the Apex court upheld the reservation to the seats based on domicile.

E. *Hotel Priya vs State of Maharashtra, 2022* :

The issue in this case was whether there was discrimination with violating Article fourteen of the constitution.

The appellants were owners and operators of the cafe bar, with legal permission and licence. Because this is a bar, orchestra performances are expected. Hence, these performances required permission under licensing and performance under cabaret performances, melas, and tamasha rule, 1960 framed under Maharashtra police act, 1951.

The same acts gave two rules: only four male and four female candidates were allowed in the orchestra band, and only eight were allowed in the band. Appellants contended that the above-mentioned rules are violative and violate Article fourteen, Article Fifteen subclause three, Article Nineteen.

In this case, the Court held that the conditions imposed by the police offer are in the ambit of the Maharashtra police act, 1951, and there is no violation of any of the said articles. The reason behind these conditions is that there have to be certain restrictions for the safety of women and their dignity based on their social behaviour. There have to be certain restrictions for public interest to promote women's welfare, maintain women's respect in society, protect them, maintain some morals and ethics in society, etc. However, in this case, the Apex Court held that this is an apparent gender stereotyping about the ratio of men and women, plus the condition that there

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must be only eight persons in the band. Also, it is discriminatory, violating the above Articles of the Constitution. And the rules given under the said acts are null and void.

F. *Air India vs Narhesh Mirza, 1981* :

The question in this case was whether the forty-six and forty-seven of Air India employee's regulations services are discriminatory based on sex.

Two companies are involved in this case: Air India and Indian Airlines.

Regulations forty-six and forty-seven were challenged in this case. The rules are air hostesses are retired after completing thirty-five years of age if they get married within four years of service, on expiring their first pregnancy. However, the conditions in Indian airlines were different. So, appellants in Air India contended that the conditions should be the same for all the air hostesses and that the retirement age should be extended from forty-five years to thirty-five years. So this is a clear violation of Articles fourteen, nineteen, twenty and sixteen of the constitution on India, and also, there is discrimination on the basis of sex. The Apex Court, in this case, held that both the regulations regarding pregnancy and retirement are unconstitutional and strike immediately also. There is a need to amend these regulations. Both regulations violate the constitutional Articles and are discriminatory.⁷

F. Conclusion:

The constitution of India gives us protection against any discrimination through various Articles, which are the highest instruments of a country. Despite all of this, there is Article Fourteen, which talks about equality before the law, and Article Fifteen, which talks about discrimination not being allowed based on race, caste, sex, gender, place of birth, etc. Despite all of this, discrimination is widespread in India. As we all know, India is the second most popular country and the biggest democratic country in the world. Hence, most of the time, the people in the country decide what to adopt and what not. That's why, although we have many more anti-discrimination laws, in my opinion, there is not a very big difference in practising the discrimination laws in the country. However, employees nowadays have various laws to

⁷Casemine, <https://www.casemine.com/search/in/gender%2Bdiscrimination%2Bin%2Bthe%2Bworkplace/> last visited sept 27, 2023)

Air India vs Narhesh Mirza, AIR 1892, SCR(1) 438.

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safeguard their interest in that company, their fundamental rights, etc. There are anti-discrimination laws for the organised sector in India. Still, the unorganised sector is a bit of concern now because there are no laws for discrimination for the unorganised sector. I hope that there will be laws regarding discrimination in that sector as time passes. And no country wants to have a lousy image and be liable.

As we have seen different types of discrimination in this paper, it would be impossible to make laws for each type, and that's why, at this time, we are also seeing various kinds of discrimination in the country. There are many reasons for this, but the main reason is that parents nowadays instil their own beliefs and thoughts in their children.

Although we have different laws for discrimination, we do not have separate legislation for this, which is required to safeguard the employees at the workplace. As we discussed, various employment discrimination laws in India are just a few measures for the safety of the employees, but we need strict laws and separate legislation for this.

Not only is the government of India behind in making the laws, but also the employees who are the victims of different types of discrimination make a lot of mistakes because of lack of knowledge, wrong implementation of the law, ignorance of the law, and as well all know that 'ignorance of the law has no excuse. That's why, in most cases, victims cannot get justice just because of ignorance of the law; this is the most crucial point to note and take care of to get justice for the victims. To decrease these types of cases, I think the government, companies, employees, and employers must collaborate. All organisations need an anti-discrimination policy outlining the company's commitment to the equality and protection of its employees. Although there are preemptive measures while recruiting employees, employees must also know their rights and duties before entering that company.

Article fifteen of the Indian constitution mandated that the state shall not discriminate against any citizen based only on religion, race, caste, sex, gender, or place of birth. However, this article only talks about the state and individuals and does not cover private entities. It did not cover the discrimination of employees by the private sector or private companies. India is also behind in this part and in giving the appropriate compensation to the victims, so the government of India

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must take help from other statutes to give proper justice to the employees. Also, the government, as well as companies, should take care to provide adequate information about their policies regarding discrimination and grievance redressal so that if any discrimination happens at the workplace, employees can easily complain about that in court; it would give more confidence to the employees to approach the appropriate management system related to the matters concerning employment discrimination and harassment.⁸



⁸Tutorials point, <https://www.tutorialspoint.com/discrimination-law-in-india/> (last visited sept 27, 2023)
INDIAN CONST.art. 15,16,14,19,21.

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