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Women in Blazer and the Legal Eye

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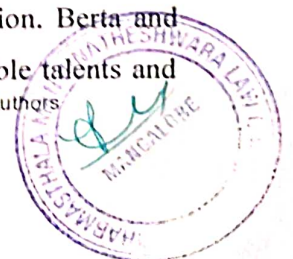
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Introduction

Globalisation has widened the scope of employment, especially to women, where they can show their efficiency, earn livelihood and be independent to lead the nation rationally. The heterogeneous workforce needs to be considered in an equitable manner at workplace, where no member, male or female, has any advantages or disadvantages. But the most deep-rooted gender inequality is built in the traditional Indian society itself. Women were looked down socially, economically and politically. The Government of India has taken several measures in bringing up the status of women, to promote the equality between men and women. Still, women continue to suffer from many disadvantages at workplace. There need a change in mindset, attitude and behaviour in both men and women in all dimensions.

Review of Literature

The study by Gberevbie et al. (2014), observed that Indian cultural belief considers girl child as inferior to male of the family. Women were denied higher leadership position and also higher education to stop them from gaining more job related skills (Hora, 2014). Shastri (2014) stated that women's role is to look after the household and its root is in the uneducated society. The study of Barahmand and Nafs (2013) showed that both working and non-working women showed poor adjustments with their husbands. The involvement of women in workforce will make it difficult for them to balance between work and family responsibilities (Rehman&Azam, 2012). A study by Tesfaye (2011) observed that, on job satisfaction and job performance there is an influence of gender discrimination. Berta and Volart (2004) explained that gender discrimination at work blocks the available talents and



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there by leading to negative economic effects. The root of the situation of gender discrimination is the reluctance to educate the girl child of the family (Sonalde Desai, 1994).

Statement of the Problem

The study assesses the perception of gender discrimination at workplace, its causes and the measures to improve the conditions of women at workplace by legislature and judiciary and the reality of implementation of the law at the root level.

Objectives of the Study

- To assess the gender discrimination in any form at work place.
- To know the causes and its effects leading to gender discrimination at work.
- To analyse the existing legislation to improve the conditions of women in employment.
- To highlight the views of judiciary on gender discrimination at job.
- To suggest the practical measures to improve the conditions of women at workplace.

Scope and Limitation

The scope of the study is theoretical as major study is highlighting the legislation and judiciary on gender discrimination. The limitation is the study is not done by primary sources of data and concepts are taken from only available books and journals.

Research Methodology

The study is descriptive in nature and conducted from socio-legal dimension. The study is based on secondary sources of data such as books, periodicals, reports, previous research studies and websites to understand the relevant concepts, legislations, judgements on the issue.

Meaning – Gender Discrimination

Article 15 of Indian Constitution -Discrimination on the basis of sex - No citizen shall on the grounds of sex, caste, place of birth be ineligible for, or discriminated against in respect of, any employment or office under the State.

Sex or gender discrimination is treating individuals differently in their employment specifically because an individual is a woman or a man. If a person has been rejected for employment, fired, not considered for promotion, not given equal pay or other benefits, otherwise harmed in employment because of his/her sex or gender, then he/she may have suffered sex or gender discrimination.



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Analysis

Causes of Gender Discrimination

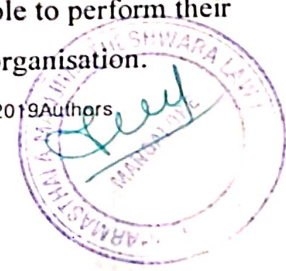
Causes of gender discrimination in general are lack of education, beliefs based on religion, customs, culture, poverty, unemployment, mind-set of the society etc. These causes discriminate a girl child from a male child.

Causes of gender discrimination at workplace for a female are her having high qualification than the male colleagues, good skills and efficiency for given work, disability in any form, pregnancy, national origin, colour of the skin, religion, bias by higher authorities, most of the leading role is occupied by males, ineffective policy making, women are under-represented in male dominated workplace. Many of these causes exist escaping the eye of law or exist indirectly where authorities cannot apply any legislation, due to the loophole in the legislation or lack of provisions in the enactment or no enactment at all on the issue.

Effects of Gender Discrimination

Some of the effects of gender discrimination at workplace are:

- Interview questions for females are based on family and other responsibilities.
- Women employees are paid less for the same work than men.
- Sexual harassment or assault in the workplace.
- Giving fewer responsibilities to women considering them weak or inefficient.
- Women are not promoted when they perform well or women are not considered for the top leadership positions in the workplace.
- Not assigning good projects having more exposure and growth or the opportunity to visit abroad.
- Lesser job benefits.
- No privacy in restroom facilities where male employees are more in number.
- Women do not develop the confidence in asking pay, promotion or other benefits when they deserve it.
- As female employees not valued by their superiors, they get less motivated to give their best to the task, and it reduces their productivity.
- As discrimination de-motivates female employees they may not be able to perform their part of the duties in team work. It will affect the overall work of the organisation.



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- Terminating female employees based on their health or family responsibilities.
- It causes high level of anxiety and to depression. It may lead to alcohol or drugs consumption to reduce the stress and will affect the job responsibilities.

Legal Provisions

Constitution of India

- The Constitution of India gives certain Fundamental Rights to its citizen:
 - ✓ Article 14 guarantees Equality before Law.
 - ✓ Article 15 prohibits state from discrimination on the grounds of religion, race, caste, sex and place of birth.
 - ✓ Article 16 guarantees Equality of opportunity in matters of public employment.

But the reality is the protection can be claimed only when the discrimination is done by Governmental bodies.
- The Constitution of India gives certain Fundamental Duties and the Government has to implement these duties.
 - ✓ Article 39 in part IV of the constitution urges state to ensure that citizens, men and women equally have the right to an adequate means of livelihood, right to shelter, food, education and work.
 - ✓ In Article 39(a) emphasis that the citizens men and women equally, have the right to an adequate means of livelihood, in Article 39(d) it says that the state should secure equal pay for equal work for both men and women and in Article 34 it provides that the state shall make provision for securing just and humane conditions for work and for maternity relief.

Again these are the duties, cannot be challenged before a court of law.

- The 73rd and 74th Amendments of Indian Constitution in 1993 are the milestone in the history of India, which provides lot of powers for the local bodies. It paves the way for decentralisation, empowers the poor people as well as women.

Legislations

Few of the enactments affecting the women at workplace and cause discrimination are:

- Section 3 of The Rights of Persons with Disabilities Act, 2016, directs the government to protect the person with disabilities with dignity.



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- According to The Equal Remuneration Act, 1976, no discrimination to be made in recruiting male and female workers
- Maternity Benefit Act, 1961
- No employer can discharge or dismiss a woman during her pregnancy, if she absents herself from work.
- Employer cannot deduct any amount from her normal daily wages when she is entitled to maternity benefit.
- Any woman is not allowed to work in any organisation during the first six weeks of her delivery.
- The Protection of Civil Rights Act, 1955, if a person molests, injures, insults etc. toward a person of Scheduled Caste, the person may be punished.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 gives the definition of sexual harassment.

Judiciary on Gender Discrimination at Workplace

The most reported cases on gender discrimination at workplace are based on sexual harassment than any other forms.

In *Vishaka v. State of Rajasthan*, the Supreme Court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein."

In another case the employer was held responsible under Indian Penal Code for being disrespectful and for having mischievous attitude towards female employees.

In the case of *V. Barani V. Commissioner of Labour* the petitioner was facing sexual harassment at the hands of Inspector of labour. Supreme Court directed for enquiry against the employer even though counter charges were against the petitioner about assault. Supreme Court directed this enquiry and made it binding under Article 141 of the Constitution.

In *Kirti N Borkar V. Employees State Insurance Court* mentioned that Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provided her right to inquiry and reports, but the woman who complained against the sexual harassment was denied these two statutory rights.



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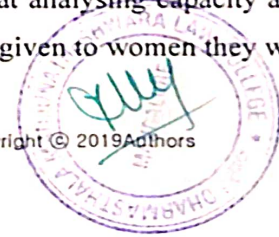
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The allegation was on the petitioner in *Thippeswamy V. Mangalore University* by 2 scholars for behaving indecently and causing mental and sexual harassment at work. The Court held, the sexual harassment of women at workplace is incompatible with the dignity and honour of a female and needs to be eliminated and also court recognised sexual harassment of women at the workplace is form of gender discrimination against women.

Few Solutions for Gender Discrimination at Workplace

- The Companies Act 2013 stipulates that every publicly listed company has to appoint a woman director on its Board.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, superseded Visaka’s Case guidelines by adding even prevention of sexual harassment at workplace and extended the definition of workplace to cover different kinds of work.
- Reduce the Social Inequalities: Men are dominating and women are discriminated on health, education and social justice in Indian Society. By treating women in all the fields equally this inequalities can be reduced.
- Education: Education enhances skills and knowledge. It will lead to change in the attitude of the person. The need is not only to educate girls to make them understand their rights but also to educated men and thereby the whole society to make them aware of the need to protect the girls with dignity as a human being.
- Leading Positions: The leadership positions at work will make women understand the inequalities and their probable causes. So that they can work on them. It increases their confidence. This makes them assert their rights without any fear of the family or society.
- Empowerment: Mere education and economic independence is not enough. Empowering the women in all the aspects to be totally independent and strong is the need of the day.
- Decision-making: The male dominated society has denied the decision-making power to women in the family as well as at work. Women have great analysing capacity and they can take good decisions. Once decision-making power is given to women they will develop good confidence in life.



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Is it a feminist Issue?

In Indian society men and women are treated differently. Earlier, in Vedic era, women were treated with respect. Now the society has transformed into male dominated society due to various reasons like protection from invaders, private ownership of property rights, customs and traditions etc. to name a few. There were equal status jobs for men and women. Lately increasing demand posed men in leading position, which lead to treating women inferior at workplace.

The feminist's ideologies started at this time where equal status is denied to women. Women forced the government to have policies to provide equal status in all the aspects including jobs. Feminists tried to have policies for equal pay, part-time work facilities for women, work from home, maternity benefits, labour laws supporting better work conditions, reservations in politics to represent women etc.

Therefore, gender equality refers to equal status to all irrespective of the gender considerations and feminism refers to reducing male domination to develop equality in the society. Feminism is to give women a choice. It's related to freedom. It's talking about liberation. It's about equality and it is not about claiming superior to men or dominating and suppressing men.

Conclusion

Gender inequality is based on nature's justice of men and women are not equal based on biology, psychology and culture. Gender discrimination is created by the society based on some logic-less norms. Unfortunately both men and women are part of this. Though gender discrimination is disappearing to a great level in the society, still its existence is felt often. If there is a need for making laws in the society to manage the issue of gender discrimination means that there is injustice to one side and legislation and judiciary are trying to balance it by the provisions and guidelines. When both women and men are recognised and respected as human beings by keeping in mind the basic biological differences, then there is no need for any law to interfere in the matter of the society to see that injustice is not done to female gender.

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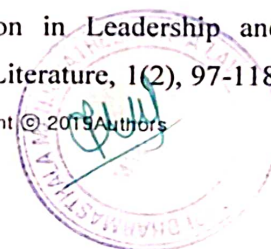
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3. Article 141 of the Constitution provides that the law declared by Supreme Court shall be binding on all Courts within the territory of India. It provides that in order to do complete justice, Supreme Court will have power to pass any judgement, decree or order as is necessary.
4. Article 15 in The Constitution of India 1949 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: (1)The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
5. Article 16 in The Constitution of India 1949 - Equality of opportunity in matters of public employment: (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.
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17. Section 12 - The Maternity Benefit Act, 1961 - Dismissal during absence of pregnancy – (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.
18. Section 13 - The Maternity Benefit Act, 1961 - No deduction of wages in certain cases.- No deduction from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act.
19. Section 13 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - On the completion of an inquiry under this Act, the Internal Committee or the local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of



- ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
20. Section 2(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:- (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
 21. Section 4 - The Maternity Benefit Act, 1961 - Employment of or work by, women prohibited during certain periods: (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
 22. Section 5 of The Equal Remuneration Act, 1976 - No discrimination to be made while recruiting men and women workers.—On and from the commencement of this Act, no employer shall while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.
 23. Section 7 of The Protection of Civil Rights Act, 1955 – (b) if a person molests, injures, annoys, boycott, obstructs, or insults or attempt to do such act toward a person of Scheduled Caste, that person may be punished with imprisonment of term not less than one month and may extend up to six months and with fine not less than one hundred rupees and not more than five hundred rupees.
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