

# **Discrimination and Differentiation inherent in the Real-Time Practice of Labor Legislations and Law**

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## **Abstract**

In the course of this paper, I attempt to comprehend and chart the facets of discrimination when it comes to the implications of labour laws in place in our country.

And when we talk of discrimination, I would begin by providing a brief insight at first, into the myriads of discriminations faced on a professional front; from racial to casteist and gender-based differentiation and unjustness. The problem at hand is a universally faced one, and given the wide scope of the matter, I would narrow down the focal research of this paper to an Indian perspective.

Thereupon, I would strive to further narrow down on the available ambit of research and engagement to women's rights jurisprudence, wherein what would be addressed, would be practical real-time difficulties faced on a procedural versus substantive basis, in the sense that we could compare real-time implementation and logistical fallacies against the laws (both constitutional provisions as well as labour regulations). The perspectives come manifold, ranging from a Trade Union to an Industrial dispute's context and more, with a legal breakdown as well, wherein the forums of discrimination disseminated ranges from moral connotations through the linguistic nuances. A degree of pragmatism is essential when it comes to implementing the ever-relevant but rigid structures of constitutional and legal provisions into the ever-dynamic social circumstances and professional flexibilities.

Well-substantiated with case laws and examples, the research could then have the central theme of discrimination be brought back to its societal root- the legal flaw being that there is no constitutional definition of what is a minority; gender-based or otherwise, which inevitably leads to the lack of a solid interpretation in turn resulting in basic human rights violations, which eventually just means that all of the constitutional and legal guarantees that are made available to redress these grievances are futile in its very essence.

The consequences and aftermath in terms of communal riots (at an individual behest as well as an institutional one, like a Trade Union-sanctioned protest, etc.) would lead to the conclusion as to how we could bridge the gap between what is procedural and substantive in the sense that the path ahead could be proposed. The difference between the on-paper provisions of laws to prevent the exact reality that ends up as an inevitability and hence tends to go down without as much as a fight even, and other such difficulties in the achievement of a semblance of equality in labour laws shall be the central plot and heart of this research.

## **Introduction:**

Man has been known to be the one specie across the myriads of living creatures residing on this planet, to

be evolving exponentially with time. We have come from being seemingly disoriented cavemen to figuring our way through available resources and establishing ourselves to be as supremely technologically and culturally advanced as we are in the 21<sup>st</sup> century currently. With prominently transformative eras like the age of Industrialization, and its effective aftermath, we now stand at what we could call, a peak of civilization, and there's only going ahead hereon. It is not a distant reality to allege all this progress to be a surface-level one in essence, since the undercurrents that flow beneath the larger societal transformation so far, are in no way whatsoever, proportionately indicative of any such progress. Primitively as a society beginning to grasp its functioning and subsequent demarcating of a collective understanding of morality, societal obligations and roles, we did develop and establish an almost crude understanding of the same. With time, we have also seen how some of those cultivated notions would pan out in terms of insufficient practicality and more so, the hindrances it puts forth in terms of social development. Our society has, as is iterated before, only evolved in time and it follows that our collective social mindset ought to as well, in consonance with the overall social and moral development and growth.

### **A brief insight into the Theme of the Paper:**

Discrimination has been one social issue that has been faced by the human race since times immemorial. To this date in fact, we cannot stand to confidently say that the problem of inequality and discrimination have been completely done away with, although there are multitudes of socio-legal provisions and discourses to help achieve such elimination. On a legal front, the world has now come down to following a democratic pattern of governance and regulation, promoting the principles of equality and non-discrimination in its very base functioning.

We have labor legislations in place to mitigate the same, and this paper shall chart out such legislations and assess its impact and efficiency in the midst of identifying and laying out inequalities and the implications of all such instances of discrimination. In the modern workforce of today's global day and age, a workspace culture of inclusivity and equality is more than just "a moral imperative"; it is an enabler of corporate success as well as a socio-legal and moral win for the masses<sup>1</sup>.

Over the course of this research paper, I shall be narrowing down the focus on a very particular theme in the realm of analyzing equality and non-discrimination, i.e., discrimination in the workplace. This paper will at first, dive into assessing the levels of discrimination at the workplace, thereby establishing the importance of equality in the workplace, followed by an insight into the stances that India, amongst nations across the globe have adopted in this regard, with statistical and legal substantiation eventually finding its way to an inference-led conclusion.

### **Levels of Discrimination at the Workplace:**

Workplace discrimination and inequalities result in an occupational health hazard, and such perpetration can occur both on an interpersonal level as well as an institutional one. The discrimination has an aftermath so deeply effectual, that we today observe the socially marginalized not wanting to return to, or join the workforce for that matter, despite how well-qualified they may be, owing to the preemptive fear of injustices being meted out against them.

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<sup>1</sup> *supra* Note 65.

**Interpersonal Workplace Discrimination:**

When we talk of interpersonal degrees of workplace discrimination, we refer to acts of “commission and omission”, their intention being intentional or not immaterial<sup>2</sup>. Studies stand testament to a myriad of unfair practices that are borne by the workers vulnerable or susceptible to such injustices, which mainly include ostracization in the sense that socially or economically disadvantaged workers of the workplace are made prone to exclusion and explicitly hostile behavior; prominent instances of the same being jokes made insensitively of one’s race, colour, religion or ethnicity. Such maltreatment does make it difficult to establish the presence of a workplace wherein workers would feel like working in voluntarily and happily in the first place, it is a now common observation that it is the racial and ethnic minority groups who tend to become the most frequently targeted groups for workplace disturbances<sup>3</sup>.

**Institutional Workplace Discrimination:**

Structural or institutional injustices on the other hand, is a graver manifestation of the interpersonal injustice’s base reality. Since this form of injustice engages with the society on a larger scale so to speak, there’s a degree of ‘legalizing’ or it being connoted to “normativity”, which eventually comes to bode well in no way whatsoever for our society. The reason for such connotations and association stems from the fact that such injustices have now been prevalent for as long to seem ‘codified’ into our institutional mechanisms, via customs, law and practice, which means that there is no identifiable perpetrator that can be singled out per se. The unfortunate reality that this idea brings forth, is that the reduction in interpersonal injustices at this point so far in time, would not be sufficient by itself in eliminating structural injustices, despite the former being the base point for the latter to have infected the society. This speaks of the degree of the collective social mindset which has been ingrained with this ‘perpetrator’ ideals<sup>4</sup>.

**The importance of Equality in the workplace:**

“Equality in opportunity and treatment in employment and occupation” is as we understand, a very crucial facet to the overall ideal of equality. This principle, now universally endorsed, is the base ground essential for an effective functioning of a democratic society. To this very day in fact, this ideal is propounded via multiple international organizations, national instruments and the general universal set of laws. It’s evidently not as though the real-time implications of these laws are much in motion. Inequality and discrimination in great measures, continues to be a problem across the globe and such discrimination is multi-faceted too at that, ranging from gender-based, to caste, religion, race, etc.<sup>5</sup>

**Practical substantiation to the theme of Importance of Equality in the Workplace:**

It would help better comprehend the importance of equality in the workplace if we were to lay down concrete instances of such injustices, and the aftermath of said injustices prevalent in the society. Studies have gone to prove that preset notions and biases based on outdated and illogical stereotypes do very much

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<sup>2</sup> Souza Kerry, Cassandra A Okechukwu, Kelly D Davis, A Butch de Castro, ‘Discrimination, Harassment, Abuse and Bullying in the Workplace: Contribution of Workplace Injustice to Occupational Health Disparities’, National Library of Medicine, June 27 2013, pp. 573-586, <https://pmc.ncbi.nlm.nih.gov/articles/PMC3884002/>.

<sup>3</sup> *id.*

<sup>4</sup> *id.*

<sup>5</sup> Chapter VII- Substantive provisions of Labor Legislations: The Elimination of Discrimination in respect of Employment and Occupation, Industrial and Employment Relations Department, ILO, December 10 2001, <https://webapps.ilo.org/static/english/dialogue/ifpdial/llg/noframes/ch7.htm#1>.

influence the cuts made in terms of employment in the hiring screens in the regular urban Indian labour markets. Listed below are two prominent instances at first, of the multifaceted nature of discrimination in the workspace-

- a. discrimination based on religion within the context of regular or salaried employment:

Per information of the Periodic Labour Force Survey (2019-20), we come to find that 68% of the difference between salaried workers as Muslim and non-Muslim, and in urban areas at that, who're supposedly modern in their thinking and conduct, was owing to the innate mindset of discrimination<sup>6</sup>.

- b. discrimination based on gender within the context of regular/salaried employment, alongside self-employment:

Per information of the Periodic Labour Force Survey (2019-20), we come to find that 98% of the employment gap between salaried men and women in urban areas, likewise, are owing to the ingrained notions and biases of gender-based discrimination<sup>7</sup>.

### **A theoretical sense of such discrimination mitigation:**

It's become a conscious activity in the modern day and time, to actively make an effort to accommodate the variety into the general social framework, as is evidenced by the inclusion of such provisions explicitly as part of each company's or employer's corporate social responsibility<sup>8</sup>. Discrimination in itself as well, conceptually breaks down into multitudes of nuances as well, such as prejudices, victimization and harassment, so to speak. In a business-beneficial sense, actively promoting equality and diversity in the workplace helps drive and further the range of benefits for the business. Apart from the general benefits like widening the horizon to newer potential markets, taking professional advantage of the vast array of skills and perspectives available and the consequent reduction in employer turnover and recruitment costs that come along with the acknowledgement of the need for equality and putting in active efforts for the same, there's a stance of equality promoted as such here, with respect to the bigger picture in all<sup>9</sup>. And when we talk of the bigger picture here, the implication is such that it helps ingrain the values of equality well enough to break down the archaic and outdated social norms in place, only to give way to the just and ideal society, as we envision it to eventually be<sup>10</sup>.

### **A localized perspective on Discrimination:**

As mentioned before, India's private sector employment machinations are not affiliated with any comprehensive legislation as yet, which would deal with workplace discrimination, with the exception of legislations that specifically protect women from sexual harassment for one, and also transgender persons, persons with disabilities or people affected with sexually transmitted diseases such as HIV or AIDS. But it isn't as though the Indian judiciary have not set out to create laws to have employees protected from discrimination and harassment at the workplace, and these laws and principles are to mandatorily be

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<sup>6</sup> 'Periodic Labour Force Survey (July 2019- June 2020), Annual Report, Ministry of Statistics & Programme Implementation, National Statistical Office, Government of India, [https://mospi.gov.in/sites/default/files/publication\\_reports/Annual\\_Report\\_PLFS\\_2019\\_20F1.pdf](https://mospi.gov.in/sites/default/files/publication_reports/Annual_Report_PLFS_2019_20F1.pdf).

<sup>7</sup> *id.*

<sup>8</sup> Minett Alex, The Benefits of Equality and Diversity in the Workplace, Veriforce Chas, April 26 2022, <https://www.chas.co.uk/blog/workplace-equal-opportunity-importance/>.

<sup>9</sup> *id.*

<sup>10</sup> Needham Amber, Why Equality, Diversity and Inclusion Matters in the Workplace, SPD Newsletter, October 2 2023, <https://www.salford.ac.uk/spd/why-equality-diversity-and-inclusion-matters-in-workplace>.

incorporated into the policy handbooks for employees across all companies in India, as is also mentioned and elaborated upon in due course of this paper. Most employment agencies are currently engaging with the trend that would enforce stricter policies concerning mitigation of the problem that is workplace discrimination, and this implementation stands to be mandatory with the size of the company being immaterial.

### **The interplay of the Industrial Dispute Act into this perspective:**

Considering how laws on unfair labour practice elimination are specific contextually so to speak, we have a broader level instance of the Industrial Disputes Act of 1947 which places a negation on the commission and conduct of ‘unfair labour practices’ which mainly covers instances of discrimination against any workman for filing charges or testifying against an employer in an industrial dispute-related inquiry or proceeding, or dissuading such trade union memberships that are alleged to exhibiting biases to one set of workers, merit immaterial. It wouldn’t be possible to go beyond these vaguely abstract instances so to speak, given the controversial nature of other initiatives so far, like reservation or quota proposals for specific socially backward communities in the workplace, which have only garnered political and social unrest instead of a contemporary co-existence<sup>11</sup>.

Harassment at the workplace, on a more general outlook (contingent on the classification that these don’t account as criminal offences covered by the Indian Penal Code), would ideally be governed by a company’s internal policies and employment-related provisions of a Grievance Redressal Committee which, would be structured in consonance and adhering to the Industrial Dispute Act’s provisions. Such internal policies would establish the conduct that would classify as harassment, along with the approach with which an internal inquiry would be consequently conducted, while also including the disciplinary or remedial action’s nature as is undertaken, based on the gravity of the offence and entailed conduct<sup>12</sup>.

### **Real-time hindrances in adopting the ‘Equality’ stance:**

In a national perspective, equality stands to be a constitutionally guaranteed right and other legislations in place are to have incorporated the principle into its base principles and functioning. But there’s always been a resistance of sorts, when it comes to implementing and adapting to the principle of equality, and while this mostly stems from a fear of the socially empowered losing out on the unjust perks of an unjust social hierarchy, there’s also the implicit fear that equality would mean lesser rights for all. This misconception is to be broken down as well, to instead, establish the ground reality that equality would on the contrary mean that every person’s right to be different is in fact, promoted and encouraged. The larger social systems in place are what needs to be accorded to be in consonance with the diversity and differences in existence<sup>13</sup>.

### **The impact and aftermath of Discrimination:**

Racism, sexism, economic injustice, and all these forms of discrimination are so ingrained into our social framework that at this point, they almost are just systemic. In fact, “structural racism, gender stereotypes,

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<sup>11</sup> Khaitan & Co, ‘Anti-Discrimination Laws in India’, L&E Global, August 2 2024,

<https://leglobal.law/countries/india/employment-law/employment-law-overview-india/04-anti-discrimination-laws/>.

<sup>12</sup> *id.*

<sup>13</sup> Dutta Darshana, Understanding and Driving Equality in the Workplace, Vantage Circle, July 17 2024,

<https://www.vantagecircle.com/en/blog/understanding-equality-in-the-workplace/>.



and bias based on national origin, religion, age and disability” are so deeply entrenched in general employment practices, that we now see issues such as discrimination and “hostile work environments” on a regular. If discrimination on fronts such as race, caste, religion, etc. were not bad enough in itself, we see women being underrepresented at every level amongst this already unjust social structure, with further discrimination being meted out in instances of the women in question being one of color or disabled. There’s a nuanced and multifaceted harm that discrimination in the workplace results in, in the sense that it covers an ambit of impact ranging from personal to societal, apart from a general business-related avenue<sup>14</sup>.

Occupational segregation, as such, ought to be eliminated in due regard and done with for the overall development and betterment of society. The Covid-19 pandemic era, especially highlighted the social costs that are to be borne, consequent to occupational segregation for one, particularly in contexts of racial discrimination herein when black and Latinx workmen were overrepresented in areas of work which are hazardous, and has a disproportionate and excruciating low pay, as these apparent ‘essential jobs’ are not ones that could be worked out from the seeming luxury that is the security of homes<sup>15</sup>.

### **A general insight into Labor Legislations’ stance on Equality and non-Discrimination:**

Ideally, the society is supposed to have ingrained the principles of equality into its functioning but now that we know it to not be the case, figuring out how it possibly could be done, is a gamble, without uprooting the power structures at play within the society. Especially in an ambit like “labor relations”, it is important that we realize the potential of “law to make a modest contribution to the standard of living of the population”<sup>16</sup>.

The understanding of the modern-day requirement that antidiscrimination rules and regulations are instrumental in the fruitful functioning of a company, in the sense decent working conditions for all workers, regardless of being employees and self-employed, is essential to the labor legislations thriving and working efficiently<sup>17</sup>. In an international sense, for context, the International Labor Organization has come up with highly effective and developed legal instruments to promote and implement workplace equality<sup>18</sup>.

### **The ILO’s stance on Equality and Non-Discrimination:**

It so happens that the principle of non-discrimination is a fundamental principle when it comes to the ILO’s basic code of practice and sphere of work<sup>19</sup>.

The biggest fallacy in this promulgation and promotion of the principle of equality, lies in the realization of the fact that said provision seems to be limited to the State and allied entities in terms of applicability, which means that private entities, corporations, etc. are out of its ambit. What India specifically faces, is

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<sup>14</sup> Liu Jane and Jenny R. Yang, Strengthening accountability for discrimination, Economic Policy Institute, January 19 2021, <https://www.epi.org/unequalpower/publications/strengthening-accountability-for-discrimination-confronting-fundamental-power-imbalances-in-the-employment-relationship/>.

<sup>15</sup> *id.*

<sup>16</sup> Davies Paul and Mark Freeland, ‘Kahn-Freund’s Labour and the Law’, Third Edition, Hamlyn Lecture Series, [https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Labour\\_and\\_the\\_Law.pdf](https://socialsciences.exeter.ac.uk/media/universityofexeter/schoolofhumanitiesandsocialsciences/law/pdfs/Labour_and_the_Law.pdf).

<sup>17</sup> Borzauag Matteo, Accommodating Differences: Discrimination and Equality at Work in International Labor Law, Vermont Law Review, Volume 30, <https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/borzaga.pdf>.

<sup>18</sup> *id.*

<sup>19</sup> ‘Equality and Discrimination’, International Labour Organization, <https://www.ilo.org/topics/equality-and-discrimination>.

an insufficiency in terms of a “comprehensive and codified anti-discrimination statute regulating employers as well as compensation for victims of discrimination”<sup>20</sup>. We understand discrimination in all its nuances in terms of panning out in real-time, and herein specifically, as a pre-recruitment stage and a post-recruitment stage. While the former would be indicative of discriminatory behavior exhibited in contexts of rejecting a potential employee on the basis of one’s caste, class, gender, race, religion, marital status, pregnancy, etc. which technically are grounded in no solid truth or fact but rather, are based on outdated social notions and assumptions regarding these facets of said potential employee’s personal characteristics. Post recruitment discrimination on the other hand, is exhibited in more of a continuation to the pre-recruitment biases, in the sense that if said employee were to be hired, they’d be vulnerable to lesser pay, fewer benefits, or in some instances, termination of employment even<sup>21</sup>.

This realization did inevitably factor into the social frame of mind and laws were accordingly brought into place for the same. There are now labor legislations in place that make an active effort to establish laws and practices to mitigate such instances of inequality and discrimination, on part of private entities and employers, to the extent that consequences for the employers and compensation for the employees are mapped out.

### **India-specific incorporations of Equality as a principle in its Labour Legislations:**

In brief below, are explicated specific labor legislations duly warranted, with their provisions in this regard-

- **The Industrial Disputes Act of 1947.**

Schedule V of the Act<sup>22</sup>, when read with Sections 2(ra)<sup>23</sup> and Section 25T<sup>24</sup>, implies that workers, when dismissed via them being victims of unjust favoring of one set of workers over the other, merit and effort immaterial, get to claim ‘unfair labor practice’ which in turn would hold such inflictors liable for punishment, it specifically being imprisonment and fine of the employer<sup>25</sup>.

- **The Equal Remuneration Act of 1976.**

This Act mainly came into place, aiming to prevent gender-based discrimination in the professional sphere. This Act propounds the idea that employees, irrespective of their gender, ought to be paid equal wages for same or similar work. This gender-inclusive approach ought to extend to recruitment of employees as well, in the sense that no employee ought to be rejected based on one’s gender<sup>26</sup>, with the one exception to this being instances wherein the law prohibits employment of women in said category of work. While this legislation does not enable compensation for such instances of provisional violation and discrimination, it does make employees aware of their right to claim wages as denied herein. The Equal Remuneration Act does however impose strict punitive measures<sup>27</sup> such as a fine or imprisonment even, when it comes to the

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<sup>20</sup> Bhide Parag, Anshul Prakash, Legal HR: Workplace and Discrimination- Laws and Recourse for Employees, People Matters, <https://www.peoplesmatters.in/article/legal-and-compliance-outsourcing/legal-hr-workplace-discrimination-laws-and-recourse-for-employees-17201>.

<sup>21</sup> *id.*

<sup>22</sup> The Industrial Disputes Act 1947, Schedule V.

<sup>23</sup> The Industrial Disputes Act 1947, Section 2.

<sup>24</sup> The Industrial Disputes Act 1947, Section 25.

<sup>25</sup> *supra* Note 11.

<sup>26</sup> Equal Remuneration Act 1976, Section 5.

<sup>27</sup> Equal Remuneration Act 1976, Section 11.

employer being transgressive of the ‘equality’ stance so adapted by this legislation. There’s also a provision for aggravated punishment in cases of such offences being repeated<sup>28</sup>.

- **The Maternity Benefit Act of 1961.**

This Act is one of the most progressive legislations taken up in this country in terms of labor laws and protection of women’s professional interests. The aim of this act, as its very name suggests, is to enable provisions of paid maternity leave for female employees, amongst other reliefs. This Act essentially prevents women employees from being unjustly terminated in times of pregnancy, and instead, puts in place a mandate for their pregnancy benefits and reliefs. Moreover, it shall be ensured that a pregnant woman’s wages shall not be lessened or reduced in instances of her being unable to take on strenuous tasks in the course of her employment<sup>29</sup>. Section 21 of the Act in particular, maps out punishments for employers acting in contravention of the provision of this act<sup>30</sup>. 2016-17 as of recently, witnessed a few amendments come into place in terms of this Act, to the point that maternity benefits for women were now increased, as also were provisions of maternity benefit to “adoptive and commissioning women employees”<sup>31</sup>.

- **The Rights of Persons with Disabilities Act of 2016.**

This progressive legislation establishes in the clearest of terms, that no government establishment shall discriminate in terms of employment, against persons with disabilities. Private entities are well included under the ambit of “establishment” as is explicated and defined by Section 2(i) of the act<sup>32</sup>, and there’s also the implicit understanding ensured by Section 20(3)<sup>33</sup> that promotion at the workplace must occur immaterial of discrimination, which in applicability would very well extend to private companies and such entities as well. Consequently, every employment agency essentially has to incorporate what is called as an ‘Equal Opportunity Policy’, and its counterpart in the government-organization setting would be a Government-appointed grievance-redressal officer. Transgressions on part of the employer will mean that a fine could then be imposed, henceforth<sup>34</sup>.

- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013.**

This Act, as the name suggests, offers security to women against sexual harassment, which unfortunately, stands to be the most rampant form of discrimination meted out against women. This Act, hereinafter referred to as the PoSH Act, encourages the formation of an Internal Complaints Committee, whose duty would be to take stock of such situations and recommend a compensatory sum which would be deducted from the perpetrator’s wages, to be provided to the victim. Section 2(o)(ii) of the Act widens the applicability of its ambit to private sector organizations<sup>35</sup> as well<sup>36</sup>.

PoSH as it stands to be, is the only legislation presently in the Indian jurisdiction, which empowers a victim of workplace discrimination, to claim compensation, even in the instances wherein the discrimination in question is not quite in the hands of the employer himself. There’s a dual enforceability to stress upon the importance of doing away with such discrimination, with offences punishable under the

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<sup>28</sup> *supra* Note 11.

<sup>29</sup> Maternity Benefits Act 1961, Section 4.

<sup>30</sup> Maternity Benefits Act 1961, Section 21.

<sup>31</sup> *supra* Note 11.

<sup>32</sup> Rights of Persons with Disabilities Act, 2016, Section 2.

<sup>33</sup> Rights of Persons with Disabilities Act, 2016, Section 20.

<sup>34</sup> *supra* Note 11.

<sup>35</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, Section 2.

<sup>36</sup> *supra* Note 11.



PoSH Act being worthy of prosecution under the Indian Penal Code's Section 354 as well, so as to have criminal action<sup>37</sup> initiated against such perpetrators<sup>38</sup>.

**The additional hindrance imposed by the 2020-led Pandemic on social exclusion and ostracization:**

We cannot particularly ignore the role that the pandemic has played in the current state of affairs that we reside in, especially when the unemployment rates consequent to the infliction of the pandemic has almost doubled from the pre-pandemic quarter of the concerned year. Most of them went by unreported for long, however, owing to circumstances such as salaried and regular workers who technically reported no work but were still considered employed within the referred time frame. Many of these unreported workers stood to have neither work nor earnings, but since they weren't seeking or were available for alternative work in the meantime, and if we were to add this reality onto the unemployment math of the country as is, the increase in the newly compounded unemployment rate (17%) becomes daunting<sup>39</sup>.

The pandemic on a larger scale succumbed only to an increase in the larger concern over discrimination in the workplace, which stands to be a disconcerting repercussion characterized by wrongful termination or discrimination in view of identities such as race, parenthood, age, positions per the general social hierarchy and company, health and disability and otherwise. While it did become legal on a universal basis, to have employees laid off at such a crucial juncture, on account of economic necessity, it was also important to realize that termination if conducted on grounds of race, ethnicity or any such discrimination would still stand to be wrongful and legally invalid<sup>40</sup>.

**Cases to enunciate upon the real-time instances and implications of such discrimination:**

Real-time implications of discrimination in the workplace can be best enunciated upon, via cases that the legislations have dealt with over time. In a bid to better comprehend the impact that each of the aforementioned instances have on the collective social mindset, both in terms of a legal precedent as well as a sociological phenomenon, we shall subsequently delve into a providing a brief insight into infamous and popular real-time manifestations of the discrimination that we have discussed theoretically as far.

**Gender-based discrimination in the Workplace:**

**'Vishakha v. State of Rajasthan', 1997.**

No discourse on the theme of 'gender-based discrimination in the workplace' stands complete without the 'Vishakha v. State of Rajasthan' case of 1997. This case is what led to the realization for one, that India faces the lack of a law that safeguards women from sexual harassment at the workplace. The insufficiency of Sections 354 and 354A of the Indian Penal Code in terms of sexual harassment provisions in terms of it not being particularized to these contexts, was highlighted in the course of this case and it warranted for the effective legislation to be laid out which would properly navigate and deal with mitigating sexual harassment in the workplace.

<sup>37</sup> Indian Penal Code 1960, Section 354.

<sup>38</sup> *supra* Note 11.

<sup>39</sup> *supra* Note 43.

<sup>40</sup> Florin Y. Parker, 'Workplace Discrimination As A Result Of Coronavirus (COVID-19)', Florin Roebig, September 5, 2020, <https://florinroebig.com/workplace-discrimination-covid-19/>.

**A brief insight into the happenings that entailed this case is provided below-**

Bhanwari Devi, a WDP/Women's Development Project worker tried to put an end to a child marriage which was to happen in a family in Rajasthan. A group of local men in a fit of anger at this mitigation, brutally gang raped her and on her approaching the Trial Court, seeking justice, she was denied so on grounds of there allegedly being insufficient evidence. Not willing to stand quiet at this instance of blatant injustice, an NGO named Vishaka filed a PIL/Public Interest Litigation before the Supreme Court under Article 32 of the Indian Constitution, requesting action for a fundamental right violation herein. The Supreme Court took well to this appeal and in its landmark ruling on the same, set forth the Vishaka Guidelines for the promotion and protection of women's rights and safety, which is what formed base for the POSH establishment in time<sup>41</sup>.

The POSH (Prevention, prohibition and redressal of Sexual Harassment) Act of 2013 was eventually set up as a result, and it helped women come forth to seek justice against acts of sexual harassment that they were susceptible to at the workplace. Stigmas attached to sexual harassment complaints were sought to be done away with via this act, and the base ground of right to life and liberty for all women were so propounded<sup>42</sup>. This act becomes a significant precedent in the sense that in the implementation of this act lies the explicit acknowledgement of the fact that women's status in the sphere of employment is to be mended as their involvement and participation in the workplace only advances the country. A certain degree of responsibility is placed upon the employer as well as the employees, to ensure that the workplace that they are part of, maintains an environment conducive to all workers, regardless of their gender being placed on an equal footing and not being made vulnerable to injustice and exploitation<sup>43</sup>.

**'Air India v Nergesh Meerza', 1981.**

Sexual harassment stands to be the most prominent instance of gender-based discrimination in the workplace. It is not to say though, that this is all that women are susceptible to in terms of unjust treatment at the workplace. The 1981 'Air India v Nergesh Meerza' case is one seminal judgement that we will take into consideration, as an instance of the law navigating the problem of gender discrimination and labour laws within the realm of the aviation sector. To briefly shed light on the events that led to this case, we could say that this case witnessed Nergesh Meerza, with other air hostesses working in Air India, contest the sexist and discriminatory conditions of service laid down by the company, which included unjust terms such as compulsory retirement at the age of 35, or upon the first pregnancy, amongst others such as disparity in salaries and employment opportunities between men (male flight pursers) and women (female air hostesses) in the workspace.

These restrictive conditions stood to be a clear transgression<sup>44</sup> of the right to equality<sup>45</sup> guaranteed by the law of the land<sup>46</sup>. While this judgment does garner a mixed reaction (owing to the fact that a reluctance on a larger social scale is observed in the judgement's upholding the 35-year retirement age cap for air

<sup>41</sup> Vishaka & Ors. vs State of Rajasthan & Ors., AIR 1997 SC 3011.

<sup>42</sup> Constitution Of India, 1950, Article 21.

<sup>43</sup> Gayatri Sai, Jyotika Saroha, 'Vishaka & Ors. V State of Rajasthan & Ors.', iPLEaders, September 16 2024, [https://blog.ipleaders.in/vishaka-ors-vs-state-of-rajasthan-ors-1997/#Background\\_of\\_the\\_case](https://blog.ipleaders.in/vishaka-ors-vs-state-of-rajasthan-ors-1997/#Background_of_the_case).

<sup>44</sup> Constitution Of India, 1950, Article 14

<sup>45</sup> Constitution Of India, 1950, Article 15.

<sup>46</sup> Constitution Of India, 1950, Article 16.

hostesses<sup>47</sup>), it does also manage to put forth the point that the need for “reasonable classification based on the nature of the job” should not entail gender discrimination as a consequence at any point whatsoever<sup>48</sup>. This is how the case highlights the uncensored necessity for a continuance in efforts to do away with discriminatory norms, in a bid to make sure that labour regulations reflect the long due contemporary social stance of equality.

### **Caste-based discrimination in the Workplace:**

#### **‘Indra Sawhney vs Union of India & Ors.’, 1992.**

We cannot talk of caste-based discrimination’s corrective measures and legislations, without mentioning the ‘Indra Sawhney vs Union of India’ case of 1992.

This case was a landmark one in the sense that the Courts put forth a concrete step in its attempt to strike the right balance between the society and the rights of the ostracized and backward classes, in the sense that this case witnessed the reservation policies being partially upheld and partially struck down. This case came forth to take monumental decisions such as doing away with the notion that economic criteria was solely enough to be the sole determinant of classification of ‘social backwardness’; caste had resultantly come to suffice as an “acceptable indicator of backwardness” as well, but in a limited line such that reservations could only be applied to the extent of appointments and gaining employment but not further in the line, such as promotions. Caste basically could not be a sole ground for reservation, but if the ambit is widened to a backward class citizen of a particular caste, the multifaceted character and intersection one’s multiple social identities helps gain reservation<sup>49</sup>.

But as this came to be misused by politicians as a vote-bank politics machination, the anti-reservation voices in the country have started to gain avenues and momentum, and at such a juncture, it becomes important to remind ourselves and the law that the reservation phenomenon was originally intended to help uplift the backward classes and its mechanisms in the current day and age, need to be altered accordingly<sup>50</sup>.

### **Religion-based Discrimination in the Workplace:**

#### **State of Madras v Champakam Dorairajan, 1951.**

This case concerned a government order being challenged, which called for allocating seats in a college, for the myriads of communities, from non-Brahmins to backward Hindu communities, Brahmins, Harijans, Muslims, Christians (replete with further specific quotes for Indian Christians as well as Anglo Christians), per a set quota in all. This order was eventually redacted by the law of the land. The reason cited was that per the Constitution, if a citizen could be denied admission due to a lack of required and entailed academic qualifications, it would stand to be fair process, but if admission were to be denied on the basis of one’s religion, case, language, race, etc., it would stand to be a legal wrongdoing<sup>51</sup>. And while this particular instance isn’t one pertaining to the workplace in specific, the precedent set stood to be one

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<sup>47</sup> Bansal Khushboo, ‘Case Comment: Air India vs Nergesh Meerza’, *Academike*, August 14 2024, <https://www.lawctopus.com/academike/case-comment-air-india-vs-nergesher-meerza-and-ors/>.

<sup>48</sup> Air India vs Nergesh Meerza, AIR 1981 SC 1829.

<sup>49</sup> Panda Lalit and Husain Anis Khan, ‘Compilation of Indian Judgements on the Right Against Discrimination’, Vidhi Centre for Legal Policy, [https://vidhilegalpolicy.in/wp-content/uploads/2023/06/Compilation-of-Indian-Judgments-on-the-Right-Against-Discrimination\\_Charkha-1.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2023/06/Compilation-of-Indian-Judgments-on-the-Right-Against-Discrimination_Charkha-1.pdf).

<sup>50</sup> Indra Sawhney vs Union Of India, AIR 1993 SC 477.

<sup>51</sup> Constitution Of India, 1950, Article 29(2).

of significant value in the admission of employees into the workspaces for multiple organizations and companies<sup>52</sup>.

### Recent developments in this regard:

In fact, as recently as on the 4<sup>th</sup> of October 2024, we witnessed the effects of such discourse into avenues as usually left unseen and unacknowledged such as discrimination amongst prisoners. The Supreme Court essentially acknowledged how basic fundamental rights, which are well afforded to prisoners as well as being citizens of India, stand to be transgressed upon when they are discriminated against on the basis of caste, and are accorded work based on such segregation. Prison manuals were called upon to be updated, so as to accommodate this shift in narrative of erasing stigmas based on one's caste<sup>53</sup>.

It bodes well for our country that such glaring instances of discrimination are actively sought to be corrected and remedied. Laws ought to be as dynamic and susceptible to changes since the society is one entity that stands to change and evolve constantly, over time.

A Statistical Inference:

### A. India Discrimination Report 2022.

The consequences of discrimination at the workplace, as is discussed prior, is multifaceted in the sense that not only does it negatively affect the social, moral and the economic constructs of our society, but also imposes a range of other glaring costs to the social well-being. It is truly unfortunate that amongst the already limited and negligible attempts that have been made as far to evaluate and assess the extent of discrimination in terms of its effect on the lives of the marginalized in India, only a few stand efforts stand to correctly estimate discrimination via meticulous research collection and tenable data<sup>54</sup>.

Discrimination as we understand it in context of the workplace, holds three prominent manifestations, such as differential access to the markets of labour (in terms of absorption and wages), factor (in terms of credit access), and endowment (access to medical aid and hospitalization), across the myriads of socio-religious and gender groups that stand to be the most susceptible to such discrimination<sup>55</sup>.

Policy interventions are sought to correct the presence of such injustices on a level as we cannot progress any further a society in a holistic perspective, if we were to continue with injustices as major as these infiltrating any more into our social framework. Listed below are recommendations put forth by the India Discrimination Report of 2022, in light of the aforementioned themes of labour discrimination manifestations-

1. operative enforcement of legislations aimed to secure the grant of the right that is equal wages and work.
2. active incentivization for engagement of women in the workplace, inclusive of a betterment in the paying scale, along with measures such as employment reservations, and more convenient and feasible options for a return-to-employment in contexts of maternity leaves.

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<sup>52</sup> State of Madras v Champakam Dorairajan, AIR 1951 SC 226.

<sup>53</sup> Rajagopal Krishnadas, 'Caste bias, segregation in prisons violate dignity: Supreme Court', The Hindu, October 4 2024, <https://www.thehindu.com/news/national/segregation-of-work-in-prisons-on-the-basis-of-caste-unconstitutional-supreme-court/article68712436.ece>.

<sup>54</sup> Amitabh Kundu, 'India Discrimination Report 2022', Oxfam India, [https://d1ns4ht6ytuzzo.cloudfront.net/oxfamdata/oxfamdatapublic/2022-09/Low%20Res%20IDR%202022\\_0.pdf?kY0rnFo63vB4a5VOLwnbHJJl0zqaXam9](https://d1ns4ht6ytuzzo.cloudfront.net/oxfamdata/oxfamdatapublic/2022-09/Low%20Res%20IDR%202022_0.pdf?kY0rnFo63vB4a5VOLwnbHJJl0zqaXam9).

<sup>55</sup> *id.*

3. enforcing “living wages” instead of “minimum wages” and proposed specifically for informal workers so as to promote the formalization of contractual, temporary and casual labour as much as is feasible.
4. priority lending and credit access extended to all farmers or rural workers for one, immaterial of the present notions and biases attached to certain social groups. we could also impose a penalty to further practices of biased lending.
5. accessibility to hospitals and appropriate health care ought to be accelerated as a service to socially ostracized groups, along with incentives to help such propounding, such as insurance coverage and bed reservations in private hospitals.

On an analytic note, based on the above-mentioned recommendations, such affirmative measures help in the longer run of guaranteeing a parity of sorts in the establishment of endowments and capabilities, specific to contexts of health and education as facets ancillary to equal labour opportunities, across all ethnic groups and mainly the backward populations. In an equally broader social sense, it would be of immense help if a newly set mindset of civil societies are strengthened such that a more equitable distribution of household and childcare workloads amongst men and women are fortified<sup>56</sup>.

#### **B. Caste Based Discrimination: Evidence and Policy (Discussion Paper Series 2008).**

From this paper, one can gauge the extend of caste-based discrimination in the labour sectors of India, and particularly so in the private sectors. On an average allegedly for an instance, applicants for a job from a lower caste are seen to have sent in 20% more resumes and CVs than their high-caste counterparts for the same callback. As is discussed before, the nature of discrimination does not end here; there's a certain intersection of sexism as a vice that features herein in the sense that if said low-caste applicant was a woman, her degree of inputs for a call back would only be furthered, disproportionately. This multifaceted discrimination is best explicated by yet another statistic herein, that there isn't largely a participation difference in men across different categories of caste, but for women, the high-caste category is observed to have the lowest participation rates. Apart from the evident discrimination in light of lower-caste citizens being service sector employees predominantly and their high-caste counterparts operating in the skilled operations, there's also a nuance observed in the levels of discrimination around, in the sense that there's also a certain level of favoritism in the awarding of jobs via high-caste candidates are just inherently preferred in terms of qualitative output, which is quite an unfounded and arbitrary preference since it stands substantiated by no merit, and is purely based on a preset bias against people belonging to low castes. There stands to be no valid proof that people belonging to the lower castes do not contribute to the overall productivity of a company or any labour entity for that matter just as much a person of a high caste would. The tendency to discriminate comes in strong from the point of view of recruiters and firms and hence, it would help if we were to have incorporated and implemented caste-based affirmative actions into our general social framework. This potential policy change could be replete with timely studies and surveys of this nature which would help evaluate the degree of multivariate regressions that our social notions and biases operate upon<sup>57</sup>.

#### **Analysis of the present labor-legislation's effectiveness:**

There is no umbrella legislation that exists per se, when it comes to acknowledging and compensating people falling prey to unjust discrimination at the workplace. The aforementioned set of laws are an

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<sup>56</sup> *id.*

<sup>57</sup> Siddique Zahra, 'Caste Based Discrimination: Evidence and Policy', Discussion Paper No. 3737, IZA Discussion Paper Series, September 2008, <https://docs.iza.org/dp3737.pdf>.



attempt in fact, to establish a check-and-balance of sorts, and provide penalties in such instances, such that a substantive push is extended to employers, mandating for equal and fair treatment for all employees. On part of employees as well, it would be prudent if they were to set up an anti-discrimination policy so as to explicitly support the company's commitment to equality, and such policies in place help put forth mechanisms for such complaints' redressals<sup>58</sup>.

There's a resultant asymmetry of information and power between workers and employees, which only stand to be more apparent in the processes of hiring and recruitment<sup>59</sup>. Additionally, on a more realistic and ground-level basis in terms of dissemination and incorporation of information in terms of related rights, countries like India, which aren't completely developed and are on its way to working up there, face one major hindrance, which is implementing all the idealized norms envisioned, to actually live up to its potential of improving working conditions<sup>60</sup>. There's also a lack of awareness so to speak, in terms of the information in the workplace as to co-workers' pay, and such information. This lack of awareness in the first place, only makes it difficult in identifying the enforcement of already in-place provisions, if not establish more, and workers are only consequently more susceptible to exploitation at the hands of the employer<sup>61</sup>.

#### **Newer instances and nuances of discrimination:**

In time, our society has taken from step to step and our social behavior and characteristics have only been dynamic and ever evolving, with our preset notions and biases notwithstanding. While we have been perpetuating the ideal and practice of equality so as to have it incorporated into our collective social mindset, we may have forgotten to factor in the nuances that are developed within the social evil that is discrimination after all. In a day and age as modernized and fastly paced as ours, we have come to factor in yet another manifestation of discrimination, and this on the basis of age. A recent JobBuzz survey points out the reality that 33% of the employees in the Indian workspace continue to face and have faced biases on the basis of age in terms of their employment. While a Stanford Graduate School of Business research paper of 2021 finds ageism to be the "only condonable prejudice", it is important to note that a differential treatment at the end of the day, is still a violation of the law, and such biases that go by unnoticed and unchecked in the landscape of inequality often tend to become problems at some later point of time. It is not as though age discrimination is well-founded in some major truth, since it very evidently upon analyzing, is a consequence of stereotypes and presumptions associated to age. People older in age are often assumed to be connoted qualities such as being "less adaptable, lacking physical capabilities, and having limited knowledge in terms of technological competence" and while the technical incompetence bit might be true, it is not as though the older generations have ironically been provided an opportunity to be trained to come to terms with the technical updates to contribute to the workforce as well. There's consequently a natural tendency to hire the youth and while employing the youth is important, it shouldn't come at the cost of the older generation being left out of the employment cycles. A nuanced, multi-pronged approach would be the need of the hour, to enable a mutually beneficial scenario of work for people across all age groups and competencies. Navigating this particular manifestation of inequality and discrimination

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<sup>58</sup> *supra* Note 11.

<sup>59</sup> *supra* Note 6.

<sup>60</sup> *supra* Note 9.

<sup>61</sup> *supra* Note 6.

is relatively new, and hence is still under the works of establishing concrete guidelines to mitigate the same<sup>62</sup>.

### **Conclusion:**

### **Inference:**

It would tremendously for one, benefit the country if we were to alter our mindset that placed social hierarchies on a purity scale. This scale or parameter so to speak, is the root cause of discrimination in our country; the need to have the masses classified into degrees so strong that it rules our overall social interaction is in no way whatsoever, a fruitful endeavor for the overall health and development of our society. The workplace is supposed to be an enabler of laws and a peaceful space to develop the nation's present and future, instead of an enabler of its outdated and unjust notions and biases that ought to have been long done away with. At this point, what we are looking at here, is the quintessential need of the hour to have workspaces made inclusive, so as to encourage our country's staple state of a comprehensive diversity maintained via well-mapped out inclusion strategies<sup>63</sup>.

Call it the advent of the present-day avenues of mass media and swift coverage of news, there does lie an advantage therein, in the fact that the ideal of equality is well propounded and discrimination is frowned upon. And with the betterment and development of laws in this regard, employees find themselves possessing options for better legal recourses than ever before, and are now if nothing, better equipped to fight workplace discrimination and more so in the organized sectors. While the corresponding status in unorganized sectors remains a case for concern, it is good to note that labour organizations are now more sensitized towards discrimination as the age of media implies swift dissemination of information and no firm or entity for that matter would want to garner negative publicity and entailed liabilities<sup>64</sup>.

### **Call For Action:**

Creating a thriving workspace is the corporate dream, and in lieu of this vision's accomplishment, it becomes important to foster an environment wherein discrimination and harassment would be done away with. It is in no sense, an easy feat to achieve and such a challenge is integral to be dealt with on so many social levels that it becomes important on all fronts, from socio-legal to economic, to make an active effort to minimize the ambiguity in such workplace contexts. Creating a workplace of equality would only bode well for the retention of happy and productive employees, which in turn indicates a healthy outcome for the nation's development at large. Every office and labour organization is endowed with a provision for competent HR/Human Resources benches, to specifically help navigate such discrimination-related turbulences in general employment workflows. A culture of inclusivity is so built and embedded into the social frame of mind and injustices are thus, to whatever feasible degree, mitigated<sup>65</sup>.

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<sup>62</sup> Bhatt Sakshi, 'Does India need an age-based employment discrimination law?', HR World, Economic Times, February 10 2022, <https://hr.economictimes.indiatimes.com/news/workplace-4-0/does-india-need-an-age-based-employment-discrimination-law/89467382>.

<sup>63</sup> Abhilasha S.G. and Suma R V, 'Diversity and inclusion in Indian workplaces', People Matters, <https://www.peoplesmatters.in/article/diversity/diversity-and-inclusion-in-indian-workplaces-38970>.

<sup>64</sup> 'Workplace Discrimination: What Is It? How Can It be Prevented?', India Law Offices, September 29 2022, <https://www.indialawoffices.com/legal-articles/workplace-discrimination-how-to-prevent-it>.

<sup>65</sup> 'Can HR stop discrimination in the workplace?', People Hum, April 9 2024, <https://www.peoplehum.com/blog/stop-discrimination-in-the-workspace>.

As is personally inferred off the research so far, I believe systemic interventions could be institutionalized, and at every level at that. From policy makers to the corporates, each and every component and part of the civil society would benefit from a joint effort in fostering a general practice of fairness and inclusivity. Some concrete and actionable claims as interpreted from the aforementioned conclusion are listed below-

**1. Executing well-structured Anti-Discrimination laws:**

- a. It is pivotal to categorize a legislation specifically catering to the addressing instances of workplace biases, immaterial of its arising out of caste, gender, religion, age, etc. Protection of all workers need to be ensured.

**2. Advocating for Sensitization Programs:**

- a. Working spaces could use mandatory awareness campaigns so as to disassemble the inherent, ingrained biases, and set up an inclusive work culture for the generations to come.

**3. Maintain transparency in the hiring processes:**

- a. Merit-based recruitments ought to be the norm, so as to avoid and prevent further the existence of further discriminatory practices.

**4. Setting up mechanisms to assess Responsibility:**

- a. Some corporate spaces now follow the practice of having third-party audits come in to conduct regular assessments of the workplace and its manner of functioning, which ends up regularizing the abidance to standards of equality. This helps ensure accountability practices are well in place.

The effective implementation of these general practices can help workplaces redevelop themselves into platforms of renewed growth and opportunity, owing to its consequent ability to retain happy and productive employees easing the promotion of the equitable space that work environments now ought to connote itself with. Such a collective effort, especially if continual and persistent, ensures that the mandate of equality cuts across the connotation of a legal implication to a “shared social” duty.