

## Women's Mental Health and Human Rights at Workplace in India - An Analysis

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### Abstract

“Any women who understand the problems of running a home will be nearer to understand the problems of running a country.” – Margaret Thatcher

Women constitute half of world population and makeup a significant percentage of the labor work force. In this regard, the United Nations (UN) has chartered gender-specific laws to protect the rights and interests of working women. In the last few decades Indian society has witnessed transition of women from their perceived conventional role in full-time household work to a larger participation in workforce. Globally, the Human Rights framework promotes the basic rights for both men and women. In 1948, the Universal Declaration of Human Rights proclaimed equal entitlements to all human beings on issues of education, housing and property, etc. However, women continue to face multiple challenges at workplace like sexual harassment, fear of job loss due to pregnancy, late night shift and so on which can be intimidating and have negative impact on their mental health. There is a bidirectional relationship between human rights and mental health. Violation of human rights has a negative effect on the individual's mental health; inversely following human rights can positively influence the mental health. The laws are made to protect rights of working women, but it cannot be denied that the discrimination is structurally embedded in our society. At the level of society, structural changes, change in attitude towards women is required. There is a high demand to raise the awareness on women's rights at workplace and women must advocate their rights. The first part of this paper discloses the mental health of Indian women at workplace. The second part consists of human rights of Indian working women, few relevant case laws wherein Indian women were given justice and the general association of these with the mental health of working women worldwide. At the end, suggestions are made to increase the awareness and strict implementation of the laws for the mental well-being of working women.

**Keywords:** Women – workplace-sexual harassment-mental health-human rights-UN Declaration on Human Rights

### Introduction

In India women are largely viewed in the conventional role which is limited to domestic sphere highlighting the existence of gender-based bias.<sup>2</sup> However, in the last few decades Indian women

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have made a considerable progress in multiple domains like education, politics, healthcare, legal profession, etc. Women are taking leadership responsibilities,<sup>3</sup> taking the role of managers in corporate sector<sup>4</sup> and public sector.<sup>5</sup> Though the changing economic and social scenarios have led women to work, but in many organized sectors like service, education, IT and manufacturing sector women face multiple problems like gender discrimination, sexual harassment, gender-pay gap, difference in work-orientation and so on.<sup>6,7</sup> Although Indian women are progressing in their career path, the 2020 Economic Survey, reported a gradual decline in female labour-force participation from 34 per cent in 2006 to 18 per cent in 2020<sup>8</sup>; indicating a gradual dropout of Indian women from the work force. According to the World Economic Forum's Global Gender Gap Report (2020), India ranks 149<sup>th</sup> among 153 countries on economic participation and employment opportunity for women<sup>9</sup> and as reported by UNGC (United Nations Global Compact) India study and also India has the highest gender pay gap of 19%.<sup>10</sup> Indian women's low labor force participation could be due to multiple challenges like poor working conditions, lack of safety and security of public transport, maternity leave liability, gender discrimination, lack of employment opportunities, maintaining work-life balance, to name a few.<sup>11</sup>

### Working Women's Mental Health

Mental health of women is very important; approximately every one in three women show symptoms of depression and anxiety in their lifespan due to multiple reasons like gender discrimination and other associated factors like poverty, hunger, etc. In case of a working woman both personal and work-related factors could lead to mental health problems.<sup>12</sup>

In India working women mental health problem is a large issue. Meeting social, family and work demands put immense pressure on them. The stressors of poor mental health for Indian working women include sexual harassment, bullying, gender-bias/discrimination, discrimination due to ethnicity, unequal pay, lack of safety while travelling and insufficient maternity leaves.<sup>13</sup> Besides

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<sup>3</sup>Gupta, V., & Saran, A. (2013). Making of the Trendsetter Generation of Women Leaders in India: Dimensionalizing the Impact of Economic Liberalization. *IUP Journal of Business Strategy*, 10(2).

<sup>4</sup>Datta, S., & Agarwal, U. A. (2017). Factors effecting career advancement of Indian women managers. *South Asian Journal of Business Studies*.

<sup>5</sup>Naqvi, F. (2011). Perspectives of Indian women managers in the public sector. *Indian Journal of Gender Studies*, 18(3), 279-309.

<sup>6</sup>Kaushik, N., Sharma, A., & Kaushik, V. K. (2014). Equality in the workplace: a study of gender issues in Indian organisations. *The Journal of Management Development*, 33(2), 90-106.

<sup>7</sup>Woszczynski, A. B., Dembla, P., & Zafar, H. (2016). Gender-based differences in culture in the Indian IT workplace. *International Journal of Information Management*, 36(4), 507-519.

<sup>8</sup>Dhillon, C. S., & Singh, N. (2020, April 7). Disappearing through the cracks. Retrieved from <https://www.telegraphindia.com/opinion/economic-survey-2020-60-per-cent-of-women-in-india-in-the-productive-age-bracket-of-15-59-years-are-engaged-in-full-time-housework/cid/1762953>

<sup>9</sup>Press Trust of India. (2020, March 9). Women's participation in Indian workforce plummets from 37% to 18% in 13 years: Report. Retrieved from <https://www.indiatoday.in/india/story/women-s-participation-in-indian-workforce-plummets-from-37-to-18-in-13-years-report-1653772-2020-03-09>

<sup>10</sup>Outlook Web Bureau. (2019, March 7). Gender Pay Gap High In India, Women Earn 19 Per Cent Less Than Men: Report. Retrieved from <https://www.outlookindia.com/website/story/business-news-gender-pay-gap-high-in-india-women-earn-19-per-cent-less-than-men-report/326623>

<sup>11</sup>Verick, S. (2014). Women's labour force participation in India: Why is it so low. *International Labor Organization*.

<sup>12</sup>Salem, M. E. A., Salama, A. A., & Negm, N. A. A. (2017). Mental health among working women in Tala District, Menoufia Governorate. *Menoufia Medical Journal*, 30(1), 57.

<sup>13</sup>Barati, A., Arab, R. O., & Masoumi, S. S. (2016). Challenges and Problems faced by women workers in India. *Chronicle of the Neville Wadia Institute of Management Studies & Research*, 76-82.

these, adjusting to workplace culture, job insecurity, lack of family support can also lead to stress and mental issues in working women. Indian women employed in different sector or holding different occupation at bank, schools, hospitals and shops have reported one or the other form of harassment (verbal) during their course of job and this was more evident in younger girls of less than 25 years of age.<sup>14</sup> Likewise, working women from different categories like single parent, separated, married or divorcee faced both mental and physical stress due to multitude of problems like lack of proper balance between employment and family care, unfair treatment in the workplace, work place discrimination, etc. Women also found safety and security issues, ego hassles with colleagues, and problem of glass ceiling, etc.<sup>15</sup> Women domestic workers of Gurugram, Delhi-NCR region have also raised complaints of workplace sexual harassment.<sup>16</sup> Depressive symptoms, suicidal tendencies were also high in low-income urban working mothers like construction workers, domestic workers, factory workers and fruit and vegetable street vendors hailing from Bengaluru, India.<sup>17</sup> Additionally, workplace bullying involving covert and overt form of harassment like verbal abuse, rage, hostility, etc. also has both psychological and physical impact on women. Bullying of female employee working in University and public institution by male colleagues or by person with more power at workplace was also reported.<sup>18</sup> In a psychosocial survey poor mental health among married working women from Bhubaneswar City, India was found.<sup>19</sup> Indian women manager from backgrounds ranging from public, private and MNCs from Mumbai also indicated that competition, clash with superiors, long working hours, internal politics, gender discrimination were the major stressor of health problems which included headaches, exhaustion, gastric problems, low appetite, asthma, low blood pressure and sleeplessness.<sup>20</sup> The reviewed literature show cases of mental health problems in working women thereby highlighting lack of national mental health policy or inadequate law to protect working women in India.<sup>21</sup> Globally, gender is a critical determinant of mental health. At workplace women's mental wellbeing is influenced by gender discrimination.<sup>22,23</sup> According to the WHO report, women had larger disadvantage due to the social and economic inequalities in terms of lack of education, less opportunities for employment, low pay for jobs of similar nature, care-giving responsibilities and often leads to mental disorders like depression, anxiety and somatic

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<sup>14</sup>Unnikrishnan, B., Rekha, T., Kumar, G., Reshmi, B., Mithra, P., & Sanjeev, B. (2010). Harassment among women at workplace: A cross-sectional study in coastal South India. *Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine*, 35(2), 350.

<sup>15</sup>Kumari, V. (2014). *Problems and challenges faced by urban working women in India* (Doctoral dissertation). National Institute of Technology Rourkela

<sup>16</sup>Gupta, R. (2019). Workplace Sexual Harassment of Women Domestic Workers: Issues and Challenges in the Legal Framework in India. In *Recognition of the Rights of Domestic Workers in India* (pp. 71-86). Springer, Singapore.

<sup>17</sup>Travasso, S. M., Rajaraman, D., & Heymann, S. J. (2014). A qualitative study of factors affecting mental health amongst low-income working mothers in Bangalore, India. *BMC women's health*, 14(1), 22.

<sup>18</sup>Kishore, B. (2015). Bullying of female employees at workplace. *Review of HRM*, 4(1), 19.

<sup>19</sup>Panigrahi, A., Padhy, A. P., & Panigrahi, M. (2014). Mental health status among married working women residing in Bhubaneswar City, India: a psychosocial survey. *BioMed research international*, 2014.

<sup>20</sup>Kaila, H. L. (2004). Indian Women Managers: Their Stresses, Health and Coping Behaviour—A Survey in Mumbai. *Journal of Health Management*, 6(2), 147-161.

<sup>21</sup>Travasso, S. M., Rajaraman, D., & Heymann, S. J. (2014). A qualitative study of factors affecting mental health amongst low-income working mothers in Bangalore, India. *BMC women's health*, 14(1), 22.

<sup>22</sup>Malhotra, S., & Shah, R. (2015). Women and mental health in India: An overview. *Indian journal of psychiatry*, 57(Suppl 2), S205.

<sup>23</sup>Parashar, M., Singh, M., Kishore, J., Pathak, R., & Panda, M. (2017). Prevalence and correlates of stress among working women of a tertiary health centre in Delhi, India. *Indian journal of medical specialities*, 8(2), 77-81.

complaints.<sup>24</sup>Besides gender inequality in terms of domestic violence and sexual abuse, work-related elements like competition at workplace, unequal pay for equal work, etc. can also cause depression.<sup>25</sup> In this context, for working women, work conditions as an environment have a significant role in stress which can result in physical and mental issues. The work stress due to high job demands, night shift, conflict at work are directly associated with depression and anxiety in working women.<sup>26</sup>Though not widely covered in this review it is essential to understand the work-place related factors and their association to the mental well-being of working women, because the mental distress can affect the performance, increase the absenteeism, productivity and pose other issues.

### **Human Rights of Working Women**

Globally, the Human Rights framework promotes the basic rights for both men and women. In 1948, the Universal Declaration of Human Rights proclaimed equal entitlements to all human beings on issues of education, housing and property, etc.<sup>27</sup>Under the Protection of Human Rights Act 1993, section 2(d), Human Rights is defined as right relating to life, liberty, equality, and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India.<sup>28</sup>In this world, though half of the world population is comprised of women, gender discrimination is in existence from ages at home/society and at workplace. To protect the rights and interests of working women, the Universal Declaration of Human Rights has listed out certain rights and these laws with modifications based on cultural and social norms are prevalent in different countries across the globe.<sup>29</sup>

The Constitution of India has provided every Indian with the Fundamental Rights. The Fundamental rights of Indian Constitution has multiple articles like Article 14 which supports equality; Article 15(1) states no discrimination by the State; Article 16 states equality of opportunity; Article 39(d) supports equal pay for equal work; Article 42 states that the State is obligated to “make provision for securing just and humane conditions of work and for maternity relief”; Article 21 states that every woman is entitled to the elimination of obstacles and of discrimination based on gender to name a few.<sup>30</sup>In short, Indian women have the right to equality, education, live with dignity, liberty, political activities, property, equal opportunity in employment, free choice of profession, work in equitable condition, equal wages for equal work and protection from gender discrimination.

The main focus of this articles on Indian women’s human right in workplace. Over a period of time, women have entered into multiple domains yet the wrong doings against women have

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<sup>24</sup>Gender and women’s mental health. (n.d.). WHO. Retrieved August 28, 2020, from [https://www.who.int/mental\\_health/prevention/genderwomen/en/](https://www.who.int/mental_health/prevention/genderwomen/en/)

<sup>25</sup>Yu, S. (2018). Uncovering the hidden impacts of inequality on mental health: a global study. *Translational psychiatry*, 8(1), 1-10.

<sup>26</sup>Melchior, M., Caspi, A., Milne, B. J., Danese, A., Poulton, R., & Moffitt, T. E. (2007). Work stress precipitates depression and anxiety in young, working women and men. *Psychological medicine*, 37(8), 1119.

<sup>27</sup>United Nations. (2014). Women's Rights are Human Rights. Retrieved August 28, 2020, from <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>

<sup>28</sup>How are human rights defined in the Protection of Human Rights Act, 1993? Retrieved August 28, 2020, from <https://nhrc.nic.in/faqs/how-are-human-rights-defined-protection-human-rights-act-1993-0#:~:text=In%20terms%20of%20Section%202,enforceable%20by%20courts%20in%20India.>

<sup>29</sup>Singh, S. (2016). The Maternity Benefit (Amendment) Bill, 2016: A Critical Analysis. *Space and Culture, India*, 4(2), 22-28.

<sup>30</sup>Canada: Immigration and Refugee Board of Canada, *Human Rights Briefs: Women in India*, 1 October 1995, available at: <https://www.refworld.org/docid/3ae6a8394.html> [accessed 17 August 2020]

expanded and women are second to men is yet undergoing. To ensure the safety of women at workplace, the Constitution of India has ensured laws related to working women. Among many laws, there are laws that are specific such as prevention of sexual harassment, maternity benefits, and equal remuneration.<sup>31</sup>

### **The Prohibition of Sexual Harassment of Women at Workplace Act, 2013**

Harassment can be of any form such as use of words, actions and gesture to abuse, intimidate, humiliate or embarrass.<sup>32</sup>In society and workplace, sexual harassment against women is frequently very high. In the context of sexual harassment at workplace, the landmark case<sup>33</sup>Visaka vs. State of Rajasthan (1997) gave a detailed guidelines for the protection of fundamental rights of working women and set the foundation for The Prohibition of Sexual Harassment of Women at Workplace Act, 2013(POSH Act)applicable to both organized and unorganized sector. According to this Act any physical contact and advances, demands of sexual favor, sexually colored remarks, and display of pornography and any conduct of sexual nature is considered as a sexual harassment.<sup>34</sup>

According to this law, women can pursue a legal recourse in case of sexual harassment. In case of Dr. S. Murugan & Others v. The State of Tamil Nadu, the victim reported anxiety, physical and mental stress due to sexual harassment, and safety and security issues while working in Police department and the victim was moved forcefully to take medical leave.<sup>35</sup>Likewise, in another case study, a woman working as commercial assistant in Air France alleged sexual harassment on multiple occasions by a senior official at work place. The woman further indicated that she was threatened and molested by other officials and was compelled to submit her resignation.<sup>36</sup>In another case wherein male doctor examined the lady patient and examined her in the absence of lady attendant, court supported the termination of doctor's employment indicating that in such cases gain of public confidence on judiciary is important.<sup>37</sup>

In case of Apparel Export Promotion Council v. A.K Chopra wherein the Director only tried to molest without any physical contact, the dismissal of director was not encouraged; however, this led to new the definition of Sexual Harassment stating that physical contact is not just essential to act for sexual harassment.<sup>38</sup>Yet in another sexual harassment case, the victim complained of mental torment and misery by employer who demanded sexual favors and disturbed her by making calls at midnight.<sup>39</sup> The Supreme Court also introduced the penalty fine in case the organization does not organize an internal complaint committee including a women member to address the sexual

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<sup>31</sup>Patnaik, B. C. M., & Agarwal, M. M. (2014). An Introspection Into Awareness of Maternity Benefit Act 1961 In Semi-Urban Area. *Journal Impact Factor*, 5(9), 13-17.

<sup>32</sup>Unnikrishnan, B., Rekha, T., Kumar, G., Reshmi, B., Mithra, P., &Sanjeev, B. (2010). Harassment among women at workplace: A cross-sectional study in coastal South India. *Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine*, 35(2), 350.

<sup>33</sup>Vishaka and others v. State of Rajasthan and others (1997) 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202

<sup>34</sup>Singh, T. (2016). Prevention of sexual harassment of women in the workplace: seeking gender equality at work in India. *Journal of International Women's Studies*, 18(1), 104-113.

<sup>35</sup>*Dr. S. Murugan & Others v. The State of Tamil Nadu*, Represented by its Chief Secretary to the Government & Others, 2019 (2) MLJ 613; 2019 MHC 483

<sup>36</sup>*Ruchika Singh Chhabra v. M/s. Air France India & Another*, 2018 DHC 578; (2018) 170 DRJ 609; (2018) 158 FLR 651; 2018 LLR 697

<sup>37</sup>*Dr. Varun Tyagi v. Central Government Health Scheme, Bikaner House, New Delhi & Another*, LQ 2014 CAT 23551

<sup>38</sup>*Apparel Export Promotion Council vs A.K. Chopra* on 20 January, 1999

<sup>39</sup>*G. Pushkala & Another v/s High Court of Judicature at Madras*, W.P. Nos.10157 of 2000 and 29024 of 2003 and W.P.M.P. No.17558 of 2006

harassment case.<sup>40</sup> However, the court also ensured that there should be no misuse of this Act for the personal vendetta. Under the POSH Act strict actions will be taken on false complaints of sexual harassment at workplace.<sup>41</sup>

In spite of laws and procedures for the protection of working women, the case studies show that there are significant numbers of cases wherein women are sexually harassed. According to the official data, approximately 54% rise in the sexual harassment at workplaces was found between the year 2014-2017 and according to the National Crime Record Bureau number of registered sexual harassment cases were higher in places related to work compared to the office premises.<sup>42</sup>

Multiple research studies have theorized sexual harassment as a stressor of poor mental health. Depressive symptoms, anger, loss of self-esteem and self-doubt were higher in individuals who faced sexual harassment early in their career.<sup>43</sup> Sexual assault psychologically affects the women and they experience high blood pressure, anxiety and insomnia.<sup>44</sup> From the healthcare sector nurses also reported negative mental health including depression, anxiety and stress due to sexual harassment at workplace.<sup>45</sup> Globally, strong association between sexual abuse and negative health outcome was observed. In Indian context, very few research studies have addressed workplace harassment of women.<sup>46,47</sup>

The other legislature measure for the protection of working women are the Maternity Benefit Act, 1961, the Factories Act, 1948, the Equal Remuneration Act, 1976 and Minimum Wages Act, 1948.

### **Maternity Benefit Act 1961 or Maternity Benefit (Amendment) Act, 2017**

Another major issue faced by women is the pregnancy and maternity leave while employed. Pregnancy can interrupt the career-path of women and also burden them with financial expenses. Therefore, the International Labour Organization (ILO) has given major importance to maternity protection for women at work during their child-bearing years.<sup>48</sup> In Indian scenario, the Maternity Benefit Act 1961 and amended Act - the Maternity Benefit (Amendment) Act, 2017 protects the rights of pregnant Indian working women. According to this Act, a pregnant women is entitled for 26 weeks of paid maternity leave and likewise, organization cannot fire employee during maternity

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<sup>40</sup>*D.S. Grewal Vs. Vimmi Joshi* and Ors. (JT2009 (1) SC400; 2009(I) OLR (SC) 308;. 2009(1) SCALE54; (2009)2SCC210)

<sup>41</sup>*Anita Suresh vs Union Of India & Ors* on 9 July, 2019, W.P.(C) 5114/2015

<sup>42</sup>Mallapur, C. & Alphonso, A. (2018, October 15). #MeTooIndia: 54% Rise In Sexual Harassment Reported At Workplaces Between 2014-17. Retrieved August 28, 2020, from <https://www.indiaspend.com/metooindia-54-rise-in-sexual-harassment-reported-at-workplaces-between-2014-17/>

<sup>43</sup>Houle, J. N., Staff, J., Mortimer, J. T., Uggem, C., & Blackstone, A. (2011). The impact of sexual harassment on depressive symptoms during the early occupational career. *Society and mental health, 1*(2), 89-105.

<sup>44</sup>Thurston, R. C., Chang, Y., Matthews, K. A., von Känel, R., & Koenen, K. (2019). Association of sexual harassment and sexual assault with midlife women's mental and physical health. *JAMA internal medicine, 179*(1), 48-53.

<sup>45</sup>Mushtaq, M., Sultana, S., & Imtiaz, I. (2015). The trauma of sexual harassment and its mental health consequences among nurses. *Journal of the College of Physicians and Surgeons Pakistan, 25*(9), 675-679.

<sup>46</sup>Kachru, S. W. (2019). Gender inequality & workplace harassment of women in India. *Arts and Humanities Open Access Journal, 3*(6)

<sup>47</sup>Bhat, R. A., & Deshpande, A. (2017). An overview of sexual harassment of women at workplace in India: An analytical study. *International Journal of Innovative Research in Science, Engineering, and Technology, 6*(7), 14361-14369.

<sup>48</sup>Maternity protection at work. Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95). Fifth item on the agenda. Retrieved August 28 2020, from <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm>

leave and neither can hire women 6 weeks post-delivery, miscarriage or medical termination of pregnancy. Other benefits include crèche facility, maternity leave for adoption and surrogacy, paternity leave, work from home.<sup>49</sup>It is mandatory that employees be informed of the benefits as per the Maternity Act.

In Indian scenario, in many maternity related cases, the petitioner has complained that their period of maternity leave was quashed and short maternity leave was approved without compensation or honorarium.<sup>50,51</sup>In both the cases the court ruled for the leaves with remuneration. In other case, wherein the organization nixed the extension of maternity leave and accepted other kind of leave for an employee who was employed on contract-basis, the court ruled to provide applicant with maternity leave for 180 days.<sup>52</sup>Similarly, even woman who begets child through surrogacy were entitled for maternity leave and ordered to be treated as a mother even though there was no prenatal phase.<sup>53,54</sup>

It was found that 70% of Indian women in the age range of 15-59 years are involved in full-time household work and the remaining who work, in that only 1% of Indian working women are benefited by Indian Maternity Act because larger number of women work in unorganized sector or in companies with less than 10 employees and those who work in organized sector, the majority are involved in informal work where maternity law is not applicable.<sup>55</sup>In general there is a higher prevalence of postnatal psychological distress among Indian women.<sup>56</sup>Research has shown that maternity leaves are important for mental health of women. The return-to-work decision immediately after delivery could be physically and mentally challenging for mothers.<sup>57</sup>Lack of maternity leaves (paid or unpaid) have detrimental effect on maternal mental health. Shorter duration of maternity leave like less than 6 months leave was associated with higher frequency of depressive symptoms.<sup>58</sup>Studies from European countries have shown that maternity leave benefits had positive mental health benefits in working mothers and had a long-term benefit in terms of reduced depressive symptoms in older age.<sup>59</sup>Likewise, paid maternity leave reduced the negative

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<sup>49</sup>Uma, S., & Kamath, A. (2020). Gamechanger or a Trojan Horse? Some Reflections on the Maternity Benefit Act, 1961. *Economic & Political Weekly*, 55(20)

<sup>50</sup>*Tasneem Firdous v. State and Others*, (2006) 3 JKJ 432 : (2006) 2 SriLJ 699

<sup>51</sup>*Anshu Rani v. State of U P & Others*, (2019) 3 LLJ 50 (ALL): (2019) 162 FLR 16: (2019) 4 ADJ 809: 2019 5 ALJ 286: (2019) 3 AWC 2049 (ALL): (2019) 134 ALR 444: 2019 ALL HC 174

<sup>52</sup>*Dr. Kamini Singhal v. The Government of NCT of Delhi, Through its Chief Secretary, New Delhi & Others*, LQ 2015 CAT 19833

<sup>53</sup>*Dr. Hema Vijay Menon v. State of Maharashtra, through its Secretary of Higher & Technical Education & Others*, 2015 (5) ABR 370: 2015 LABIC 3470: 2016 (5) ALLMR 622: AIR 2015 BOM 231

<sup>54</sup>*SMT. SADHNA AGRAWAL v. STATE OF CHHATTISGARH*, (2017) 1 CLR 686 : (2017) LIC 617

<sup>55</sup>Kapur, M. (2019, September 25). India's seemingly generous maternity law benefits merely 1% of its women. Retrieved August 28, 2020 from <https://qz.com/india/1715618/indias-maternity-leave-policy-benefits-only-1-percent-working-women/>

<sup>56</sup>Satyanarayana, V. A., Lukose, A., & Srinivasan, K. (2011). Maternal mental health in pregnancy and child behavior. *Indian journal of psychiatry*, 53(4), 351.

<sup>57</sup>Dagher, R. K., McGovern, P. M., & Dowd, B. E. (2014). Maternity leave duration and postpartum mental and physical health: implications for leave policies. *Journal of Health Politics, Policy and Law*, 39(2), 369-416.

<sup>58</sup>Chatterji, P., & Markowitz, S. (2004). *Does the length of maternity leave affect maternal health?* (No. w10206). National Bureau of Economic Research.

<sup>59</sup>Avendano, M., Berkman, L. F., Brughiavini, A., & Pasini, G. (2015). The long-run effect of maternity leave benefits on mental health: evidence from European countries. *Social Science & Medicine*, 132, 45-53.

psychological effect once the women return to work after giving birth.<sup>60</sup> Knowing that maternity leave can significantly impact on working women's mental well-being, the government and the organization must work in accordance to the law thereby guaranteeing maternity benefits to the working women which will benefit their mental as well as physical health.

### **The Equal Remuneration Act, 1976**

Provision of equal pay for equal work was one of the most significant Human Rights adopted by the United Nations. However, gender inequality with respect to pay is prevalent all around the world and has resulted in discontent among employees especially the women. The gender pay gap is defined as difference in earnings between women and men in the paid employment and labor market. In this regard, to prohibit the discrimination on the grounds of pay, The Equal Remuneration Act, 1976 states payment of equal remuneration to men and women workers and the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.<sup>61</sup> The violation of this law has been found in case of women working as packers. They were paid less compared to men who were doing the same work. Under this Act, the court ruled that irrespective of the designation, women and men should be paid equally for similar nature of work.<sup>62</sup> Under the same Act, filing of other case involved discrimination in allotment of work due to which women laborers were left with work only for few days. The court ruled that there should be equal representation of women workers. Likewise the Equal Remuneration Act, 1976 support equal pay for equal work between men and women. In this regard, in a prior case the Supreme Court favored female stenographers for compensation equal to men stenographers.<sup>63</sup>

Comparing the income of men and women, the gender pay gap or underpay affects women's self-esteem, self-confidence and also has an impact on their economic independence. In short, less pay represents being undervalued and underappreciated and similar feelings have been shared during Corona pandemic by Indian women who are actively involved in health sector.<sup>64</sup> This calls for government and policy maker's attention to modify the policies grounded by the rights of women during the critical conditions like pandemic.<sup>65</sup> In many cases, these feelings lead to depression and anxiety. In general lower wages and disadvantaged social status (gender discrimination) are associated with higher psycho-social stress.<sup>66</sup> According to the author, women who make less money compared to their male counterparts are likely to have more chances of depression and anxiety.

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<sup>60</sup>Mandal, B. (2018). The effect of paid leave on maternal mental health. *Maternal and Child Health Journal*, 22(10), 1470-1476.

<sup>61</sup>Sahni, M. (2018). Equal Pay for Equal Work in India. *International Journal of Law Management & Humanities*, 2(1).

<sup>62</sup>*Bimla Rani & Others v. Appellate Authority Equal Remuneration Act, 1976 & Others*, LQ 2004 HC 5788

<sup>63</sup>*Kishori Mohanlal Bakshivs Union Of India & Ors* on 11 April, 1962 AIR (SC) 1139

<sup>64</sup>Mohan, R. (2020, June 27). India's female Corona-warriors: Underpaid and unappreciated. Retrieved August 28 2020, from <https://www.straitstimes.com/asia/south-asia/indias-female-corona-warriors-underpaid-and-unappreciated>

<sup>65</sup>Mercado, L., Naciri, M., & Mishra, Y. (2020, June 1). Women's unpaid and underpaid work in the times of Covid-19. Retrieved August 28 2020, from <https://reliefweb.int/report/world/women-s-unpaid-and-underpaid-work-times-covid-19>

<sup>66</sup>Platt, J., Prins, S., Bates, L., & Keyes, K. (2016). Unequal depression for equal work? How the wage gap explains gendered disparities in mood disorders. *Social Science & Medicine*, 149, 1-8.

The other Acts for the Indian working women includes The Factories Act, 1948 which states that no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m. (Section 66(1)(b)). Further, Section 46(1)(b) of the Mines Act, 1952 prohibits employment of women in any mine above ground except between the hours of 6 a.m. and 7 p.m. The Minimum Wages Act, 1948 states payment of minimum wages for occupations in both formal and informal sector. The Shops and Establishment Act protects the women who work at night shifts.<sup>67</sup>It is organization and employer's responsibility to enforce these Acts because these will increase women's faith in Indian judiciary and also improve the current women participation (27% vs. 48% world average) in workforce which is essential to boost India's GDP.<sup>68</sup>

### **Guidelines to Improve Women's Mental Health at Workplace**

There is a bidirectional relationship between human rights and mental health. Violation of human rights has a negative effect on the individual's mental health; inversely following human rights can positively influence the mental health.<sup>69</sup>Research shows that violation of working rights of women affects their mental health. There are multiple numbers of national laws to protect the right and interests of working women and under the provision of these Acts, the victim can seek justice. In the context of India very few empirical papers have addressed working women's mental health due to work-related factors like gender-pay gap, sexual harassment or lack of maternity benefits, but it cannot be overlooked that these may have impacted the mental well-being of working women.

With respect to harassment, it is found that in many cases women do not raise/report the sexual harassment complaints due to multiple reasons like fear of losing the job, creating a hostile work environment for themselves.<sup>70</sup>The legal professionals from India conveyed lack in significant reinforcement of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 which negatively impacted their career growth in Indian legal profession. In this regard, the professionals suggested interventions to revamp The Advocates Act 1961 and include sexual harassment as a professional misconduct.<sup>71</sup>

Likewise, women are not given due consideration of being pregnant and other maternity benefits at workplace. Not just maternity leave, paid maternity leave can financially burden the organization. Many Indian organizations see maternity leave as a liability with cost implications supporting pregnant women and hiring a temporary substitute and therefore do hesitate to employ

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<sup>67</sup>Women Rights Under Indian Labour Laws- A Socio-Economic Study. Retrieved August 28 2020, <http://www.legalserviceindia.com/legal/article-3425-women-rights-under-indian-labour-laws-a-socio-economic-study.html>

<sup>68</sup>PTI (2019, August 09). India needs to increase women workforce to global average of 48% in 10 next years: Amitabh Kant. Retrieved August 28, 2020, <https://economictimes.indiatimes.com/news/economy/policy/india-needs-to-increase-women-workforce-to-global-average-of-48-in-10-next-years-amitabh-kant/articleshow/70609617.cms?from=mdr>

<sup>69</sup>Mann, S. P., Bradley, V. J., & Sahakian, B. J. (2016). Human rights-based approaches to mental health: a review of programs. *Health and human rights, 18*(1), 263.

<sup>70</sup>Unnikrishnan, B., Rekha, T., Kumar, G., Reshmi, B., Mithra, P., & Sanjeev, B. (2010). Harassment among women at workplace: A cross-sectional study in coastal South India. *Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine, 35*(2), 350.

<sup>71</sup>Aina-Pelemo, A. D., Mehanathan, M. C., & Kulshrestha, P. (2020). Indian legal profession and the Sexual Harassment of Women at Workplace Act. *Sexuality & Culture, 24*(1), 248-272.

women at work.<sup>72</sup> Indian married working women from semi-government schools of semi urban areas of Bhubaneswar, Odisha showed a complete lack of awareness on maternity benefit Act. This low awareness was probably due to lack of publicity by the government. Besides, among those who availed maternity benefits many were not satisfied by the leave provided by the government.<sup>73</sup> A similar study on female construction workers from northern India showed lack of awareness of legal rights, maternity benefits, crèche facility and also mentioned that under schemes they did not receive any maternity benefits.<sup>74</sup> Since many workers are employed in unorganized sector it is essential that government must implement the laws universally in all the sectors.

With respect to the wage differences, globally economists believe that existing wage-gap cannot be closed in near future therefore it is essential that we create policies to improve the mental health of working women. In India, the gender pay gap is high and comparatively women earn 19% less than men and this gap widens with increase in work experience and tenure. This is largely contributed to their change in their status from marriage, maternity and work-family balance.<sup>75</sup> Despite the provision of law for equal pay for equal work it is essential to understand the existing disparity.<sup>76</sup> Use of Machado-Mata-Melly decomposition method showed that in India gender wage gaps for different cohorts is largely driven by sticky floor effect referring to engagement of women in part-time jobs.<sup>77</sup> Similarly, daily wage gap in Indian salaried workers from the formal sector has been observed<sup>78</sup> and this gap could likely be due to low skill and lack of experience among women.<sup>79</sup> This could be inferred that besides existing laws, there is a need to train or develop the skills among women to increase their participation at work.

The laws are made to protect rights of working women, but it cannot be denied that the discrimination is structurally embedded in our society. At the level of society, structural changes, change in attitude towards women is required. There is a high demand to raise the awareness on women's rights at workplace and women must advocate their rights. Steps at multiple levels need to be taken. To prevent wrongdoings against women at workplace should be the legal rights of women should be notified, published and circulated in appropriate ways. Likewise the appropriate penalties against the offender must be ensured. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment. Further, every organization must

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<sup>72</sup>Barati, A., Arab, R. O., & Masoumi, S. S. (2016). Challenges and Problems faced by women workers in India. *Chronicle of the Neville Wadia Institute of Management Studies & Research*, 76-82.

<sup>73</sup>Patnaik, B. C. M., & Agarwal, M. M. (2014). An Introspection Into Awareness of Maternity Benefit Act 1961 In Semi-Urban Area. *Journal Impact Factor*, 5(9), 13-17.

<sup>74</sup>Gopalakrishnan, G., & Brindha, D. G. (2017). A Study on Maternity Benefit and its Effectiveness in Construction Industry. *International Journal of Civil Engineering and Technology*, 8(10).

<sup>75</sup>Outlook Web Bureau. (2019, March 7). Gender Pay Gap High In India, Women Earn 19 Per Cent Less Than Men: Report. Retrieved August 28 2020, from <https://www.outlookindia.com/website/story/business-news-gender-pay-gap-high-in-india-women-earn-19-per-cent-less-than-men-report/326623>

<sup>76</sup>Agrawal, T. (2013). Are there glass-ceiling and sticky-floor effects in India? An empirical examination. *Oxford Development Studies*, 41(3), 322-342.

<sup>77</sup>Khanna, S., Goel, D., & Morissette, R. (2016). Decomposition analysis of earnings inequality in rural India: 2004–2012. *IZA Journal of Labor & Development*, 5(1), 18.

<sup>78</sup>Mohanty, S. S., Bisht, M., & Mohapatra, P. (2014). Gender Wage Gap among Salaried Workers in India: Results of a Principal Component Analysis of State Level Statistics. *Economic Affairs*, 59(2), 175-190.

<sup>79</sup>Poddar, S., & Mukhopadhyay, I. (2019). Gender Wage Gap: Some Recent Evidences from India. *Journal of Quantitative Economics*, 17(1), 121-151.

develop and integrate human rights framework involving elimination of harassment, prevention of discrimination, decent wage and so on depending on their organizational structure and this strategy should go through continuous improvement.<sup>80</sup>It is essential that the health management team of the organization ensure communication on information on laws and procedure for the protection of women.

### **Conclusion**

Despite the enforcement of law by the government, issues like gender-discrimination, unequal pay, sexual harassment and many other socio-economic inequalities are faced by working women. As seen this is not particular to any one country like India which is being covered in this review, these scenarios are prevalent across countries indicating that society is ingrained with such norms and to change them will require effort from society, community, organizations, government and policy makers. Ideally, every organization should have specific committees to handle such issues as per provisions of POSH Act 2013. Furthermore empirical work is required to understand the work-related mental issues in women working in different sectors and also need to explore the implementation of these existing laws in the organization.

The perfect woman, you see is a working woman not an idler not a find lady, but one who uses her hands and head and her heart for the good of others – Thomas hardy

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<sup>80</sup>Victorian Equal Opportunity. (2008).From principle to practice: implementing the human rights based approach in community organisations. *Victoria: ictorian Equal Opportunity & Human Rights Commission.*