

GENDER PAY DISPARITY AND WORKPLACE VIOLENCE IN CORPORATE INDIA: A LEGAL AND CONSTITUTIONAL ANALYSIS

ARCHITA DIXIT

Abstract

This article explores the fundamental problems of gender pay disparity and violence against women in Indian corporate settings within the framework of legal regulations and constitutional protections. It examines the degree to which existing legal and policy frameworks have managed to tackle these systemic challenges, and it explores the extent to which these inequalities are firmly embedded in the structural and cultural frameworks of Indian corporations.

By contrasting constitutional directives, making ordinances and judicial decisions, the research gives a critical insight into the progress and limitations of enforcing gender justice within the workplace. Based on comparative legal principles and empirical data, paper highlights the imperative for institutional reforms, enforcement through law, and cultural change to achieve material gender equality in corporate India.

Key word

Gender Pay Gap, constitutional equality, workplace harassment law, equal remuneration act, POSH Act, corporate law reforms.

Introduction

India's post-1991 economic liberalization resulted in a huge growth in the corporate sector, along with assurances of gender empowerment and inclusivity. Although there is an increasing number of women in the workplace, women within Indian corporate hierarchies continue to experience complex discrimination. Gender pay gap is still an ongoing and quantifiable gap, whereas workplace violence—ranging from sexual harassment, verbal abuse, and exclusionary tactics—destroys women's dignity and efficiency.

Gender equality is guaranteed in the Indian Constitution by Articles 14, 15, and 16. Article 14 ensures equality before the law; Article 15 ensures non-discrimination based on sex; and Article 16 ensures equal opportunity in governmental employment. Further, Article 39(d) under Directive Principles of State Policy ensures equal pay for equal work. In spite of this normative structure, the lived experience of corporate India's women is one of exclusion, vulnerability, and a lack of adequate redressal mechanisms.

1. Literature Review on Gender Pay Disparity.

There have been several empirical and theoretical examinations of gender-differentiated wage gaps between nations and in India. Claudia Goldin (2014), in examining the gender wage gap for the United States, highlighted how most of the difference comes not from direct discrimination but from structural limitations, including penalties for motherhood and the absence of flexible work policies. Using the same frameworks, Indian researchers like Deshpande and Sharma (2016) contend that occupational segregation as well as implicit biases explain much of India's wage gaps.

Sundaram and Vanneman (2008), working with National Sample Survey data, were able to demonstrate that wage differentials by gender are particularly high in the private sector where there is little regulatory monitoring. They find that social norms and organizational culture contribute more to wage distinction than legal impediments. Another essential observation is from Neetha N. (2010), who refers to the fact that women's work tends to be devalued because it is linked to 'soft skills' or clerical jobs, as opposed to key profit-producing functions.

ILO reports emphasize that the international gender pay gap is not merely a matter of earnings inequality but also indicative of larger socio-economic exclusions. The ILO Global Wage Report (2018-19) ranks India among nations with one of the largest genders pay gaps in the world, especially in high-skill occupations. The reports emphasize the necessity of firm action in enforcing equal pay legislation as well as state-led initiative in monitoring.

Despite the passage of the Equal Remuneration Act, 1976, and subsequently the Code on Wages, 2019, several scholars have critiqued the absence of strong institutional provisions for enjoining compliance. Bhatt and Kannan (2017) contend that labour law consolidation under the new code dilutes previous protections and weakens sector-specific assurances. Additionally, they point to a disturbing absence of disaggregated data for remuneration by gender, which is a deterrent to empirical examination.

Corporate reports and surveys, like the Monster Salary Index and KPMG's Women in Business series, show persistent gaps in compensation and leadership diversity. These sources, while useful, also tend not to engage critically with legal compliance or systemic remedies. Thus, there is still a gap in literature that combines legal analysis with empirical wage data—more evidence for the need for multidisciplinary studies.

Workplace Violence Literature Review

Academic focus on violence in the workplace, especially sexual harassment, increased following the seminal Vishaka judgment (1997). Baxi (2001) contends that the Vishaka Guidelines represented a significant turning point towards acknowledging sexual harassment as an issue of constitutional and human rights rather than organizational or personal complaint. Her thesis provided the basis for conceptualizing workplace safety as an issue of basic rights under Articles 14, 15, and 21.

Since the promulgation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, a number of legal scholars such as Dhanda (2015) and Kishwar (2016) have assayed its effectiveness. While Dhanda welcomed the Act's extensive ambit, she warned that mere legislation is insufficient without cultural transformation and effective implementation. Kishwar continued to assert that the Act, while progressive in theory, is frequently tokenized by corporations who value compliance over real change.

Empirical literature-wise, Martha Farrell Foundation's (2018) study revealed that more than 70% of working women are ignorant about the law or their rights under it. FICCI-EY's 2020 survey supported this information to the effect that Internal Complaints Committees (ICCs) in most companies are either non-functional or inadequately trained. Academics like Sharma and Rathi (2019) hold the position that institutional frameworks in corporations tend to perpetuate current hierarchies and silence victims by intimidation and professional backlash.

Additionally, scholarship on intersectionality, including Rege (2008) and Das (2021), indicate the manner in which caste, religion, and region intersect to enhance the vulnerabilities of women experiencing workplace violence. Such intersectional identities are seldom included in corporate policies on anti-harassment, thus rendering vast sections of the female workforce ineligible for institutional support.

Comparative legal writing has stressed that India has been behind in the ratification of ILO Convention 190, which provides a systematic definition of violence and harassment at the

workplace. Authors such as Malik (2020) have called for India to follow international best practices, such as mandatory reporting, third-party audits, and survivor-led models for redressal. This is a reflection of increasing convergence that India's legal frameworks need to be supplemented by system-level reforms and corporate accountability.

Overall, the literature is unified on three aspects: (1) India's workplace violence is underreported and under-addressed, (2) legal provisions available are not enough in the absence of proactive institutional support, and (3) intersectional vulnerabilities need to be recognized more in law and practice. These findings emphasize the need for legal, institutional, and cultural change towards tackling workplace violence in the corporate world.

Comparative Analysis: International Legal Standards

1. ILO Conventions and International Commitments: India has ratified ILO Convention 100 on Equal Remuneration but not Convention 190, which deals with violence and harassment in the world of work. Convention 190 takes a broad definition of violence, covers third-party players, and requires policy changes at the national level. Non-ratification is an indication of India's unwillingness to accept binding international commitments.
2. Other Jurisdictional Best Practices: Nordic nations, Sweden and Norway, implement mandatory gender pay reporting, state audits, and public wage transparency. The UK requires gender pay gap reporting for companies with more than 250 employees. India has no legal mandate for wage transparency. Global companies with innovative HR policies tend to weaken those standards when doing business in India because of poor local enforcement.
3. Multilateral Agencies and ESG Metrics: International rating agencies have now made gender equality a central Environmental, Social, and Governance (ESG) metric. Indian companies vying for foreign investment are now subject to greater scrutiny regarding workplace safety, diversity, and inclusion. But still, this pressure has not yet permeated into significant domestic policy change. Regulatory leniency and cosmetic compliance persist.

Critical Gaps and Institutional Inadequacies

1. Inadequate Enforcement Mechanisms: Under-resourced and overburdened labour inspectors are reluctant or unable to effectively monitor wage parity or ICC compliance. No unified system of reporting exists, nor is there a grievance process available for corporate gender abuses.

2. Deficiency of Transparency and Information: The absence of mandatory disclosures regarding pay scales and harassment complaints makes it easy to conceal systemic imbalances. Disaggregated gender information are not often presented in annual reports and CSR reports. This deficiency of transparency prevents public accountability as well as regulatory action.
3. Restricted Legal Access: It is time-consuming, expensive, and mentally draining to defend legal action under the 2013 Act or labour legislation. The poorest women, contract workers, and those living in rural areas are most severely impacted. Legal aid in such instances is infrequent.
4. Intersectionality and Marginalized Groups: Gender-based job discrimination intersects with caste, class, religion, disability, and place of origin. Dalits, Adivasis, Muslims, and LGBTQ face several intersecting exclusions and violences that the prevailing legal discourse does not speak to.

Suggestions for the covering the Policy Gap

A law-governed and effective response to gender imbalance in corporate India needs multifaceted reforms. The following specific proposals attempt to empower the legislative, judicial, institutional, and cultural domains that govern gender justice in corporations.

1. Legislative Reform

Amendment of the Equal Remuneration Act, 1976: The Act must be amended to provide for compulsory disclosures by employers of wage systems, pay scales, and salary increments in terms of gender. Those disclosures are to be made periodically and in public to the employees and to the concerned regulatory authorities. Equal opportunity audits must be made compulsory, with the companies having to audit recruitment, promotion, and remuneration practices to check for gender stereotyping. Failure to comply must invite graded penalties, such as penalties, criminal liability in case of repeat offenses, and the right of affected employees to seek civil remedies and compensation through labour adjudication.

Amendment of the POSH Act, 2013: The Prevention of Sexual Harassment Act must be amended to prescribe specific employers' duties, including training mandates, procedural transparency, and audit mandates. Internal Committees (ICs) must be annually accredited or audited by external agencies to guarantee operational integrity. Criminal sanctions must be imposed upon companies that fail to set up ICs, conceal complaints, or obstruct proceedings.

The Act must mandatorily provide for the presence of third-party observers in ICs to ensure impartiality.

Legal Harmonization: Existing discrepancies between the POSH Act, Companies Act, and Labour Codes lead to jurisdictional uncertainty and lax enforcement. Uniformity and interoperability in statutory amendments across these legal instruments is imperative. Gender equity disclosure as a mandatory requirement in annual reports and a definition of non-compliance in contravention of gender justice norms as a factor affecting corporate governance ratings must be incorporated in the Companies Act.

2. Judicial Supervision and Compliance

Empowering Labour Tribunals: Labour Courts and Tribunals must be explicitly invested with jurisdiction to adjudicate cases of gender pay discrimination and workplace harassment in the private sector, including MNCs and startups. Time-bound adjudication with the use of fasttrack courts must be ensured to resolve such disputes, without discouraging delay.

Institutionalization of Gender Rights Benches: Special Gender Rights Benches should be set up in High Courts throughout India to address breaches of workplace equality. Special procedures for immediate interim relief, protection of confidentiality, and survivor-sensitive jurisprudence should be developed in these benches. Institutional specialization of this kind would facilitate doctrinal development and jurisprudential advancement on workplace gender justice.

Extension of *Suo Motu* Powers: Quasi-judicial organisations like the National Commission for Women (NCW), State Women Commissions, and Human Rights Commissions should be sanctioned to launch *Suo motu* action on the basis of reliable information received through media reports, whistleblowers, or NGOs. This will prevent under-reporting out of fear and unawareness of law.

3. Independent Audits and Mandatory Disclosures

Inclusion in ESG and CSR Reporting: Gender equality reporting shall be included as part of mandatory Environmental, Social, and Governance (ESG) and Corporate Social Responsibility (CSR) reports. Annual reports submitted to the Ministry of Corporate Affairs and SEBI shall also contain information on gender-based compensation policy, outcome of redress of grievances, and gender breakup at the leadership level.

Third-Party Audits: Legally certified independent audit firms must be required to undertake yearly reviews of pay equity and POSH compliance in medium and large-scale enterprises. The audits must be placed before the regulatory bodies and made available to the public. Audit reports must evaluate the effectiveness of ICs, the quality of complaint redressal, and institution culture for gender sensitivity.

Amendments to SEBI (LODR) Regulations: The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations are to be amended to incorporate gender diversity, anti-harassment policy, and effectiveness of redressal as essential parameters of governance. Non-compliance must attract monetary penalties, revocation of the right of listing, or public censure.

4. Legal Awareness, Training, and Cultural Reforms

Compulsory Gender Sensitization and Legal Literacy: Corporates will be required by law to conduct quarterly training sessions for all staff on gender rights, POSH rules, pay equity norms, and whistleblower safeguards. Training will have to be uniform and enforced through regulation audits.

Strengthening Protection for Whistleblowers: Protection for whistleblowers must be strengthened to specifically include gender-based disclosures. Protection against demotion or dismissal, confidentiality procedures, and legal support to whistleblowers must be legislated and enforced.

Legal-Academic Partnerships: Law schools, legal clinics, and university research centres will have to work with corporate institutions to offer real-time policy advice, training modules, and legal literacy instruments. Such partnerships can foster compliance excellence as well as theoretical enrichment of workplace gender jurisprudence.

5. Technology-Based Legal Solutions

AI-Based Redress Platforms: The government and private sector must collectively provide online platforms where staff members can file anonymous complaints, monitor timelines of redressal of complaints, and engage in online hearings. Patterns of non-compliance, discriminatory behaviour, and delay in adjudication must be identified using AI-based analytics.

Legal-Tech Integration into Corporate Governance: Blockchain technology can be leveraged for creating unalterable records of POSH complaints, investigation timelines, and redress outcomes so that critical information cannot be erased or altered. AI-powered compliance dashboards can identify discrepancies in compensation structures, IC processes, and gender ratios for taking regulatory action at an early stage.

These steps, if institutionalized and enforced rigorously, would re-fashion corporate India's legal landscape into one that not only enforces compliance but also substantive gender equality.

Integration of Judicature Precedents and Case Law

Judicial precedents have played an important role in framing the legal framework for gender-based workplace discrimination and harassment in corporate India. The judiciary, not only interpreted statutory provisions in a gender-sensitive manner, but also plugged legislative loopholes by invoking constitutional principles of equality, dignity, and non-discrimination. The following landmark cases form a sound interpretative foundation for addressing workplace gender injustice:

1. *Vishakha v. State of Rajasthan* (1997)¹: This seminal Supreme Court ruling established the framework to address sexual harassment at the workplace when there was no legislation. The Court held that it constitutes a breach of Articles 14, 15, and 21 of the Constitution by way of recognizing the right to a secure work environment as part of the right to life and equality. The guidelines subsequently gave shape to the POSH Act, 2013, and its focus on the primacy of constitutional morality in work-place jurisprudence.
2. *Apparel Export Promotion Council v. A.K. Chopra* (1999)²: The Supreme Court reaffirmed that employers are under a vicarious obligation to ensure safety and dignity to their employees. The judgment encouraged positive institutional measures and vigilance to prevent sexual harassment, and thereby reaffirmed the constitutional obligation of care cast upon employers.
3. *TCS Internal Complaints Committee v. Tanuja Priya Bhat* (2023)³: In this path-breaking

¹ *Vishaka & Ors. v. State of Rajasthan*, AIR 1997 SC 3011 (India Aug. 13, 1997).

² *Apparel Export Promotion Council v. A.K. Chopra*, 1997 IV AD (Delhi) 646, 68 DLT 303 (Delhi Nov. 15, 1997).

³ *TCS Internal Complaints Committee v. Tanuja Priya Bhat*, Bombay H.C., 2023.

Bombay High Court judgment, the Court held that mere establishment of an Internal Complaints Committee (ICC) would not suffice unless it is effective, trained, and responsive to the rights of complainants. In this case, the jurisprudence evolved by interpreting "safe working environment" as a constitutional and legal mandate under the POSH Act.

4. Poornima Advani v. Union of India (2014)⁴: The Delhi High Court clarified that the POSH Act applies to all government offices and that non-adherence to its provisions—above all, the

creation of ICCs—is a lapse in statutory and constitutional obligation. The judgment reaffirmed that state instrumentalities cannot escape responsibility in the name of procedural failures.

5. Sanchayani Sharma v. National Insurance Company Ltd. (2022)⁵: The Delhi High Court expanded the ambit of definability of sexual harassment by formulating that sexual harassment need not always be physical. Verbal, non-verbal, and suggestive behaviour also fall within the ambit of actionable harassment. Such an interpretation is in accordance with Section 2(n) of the POSH Act and fortifies the victim-centred interpretation of workplace dignity.

6. Madhu v. State of Kerala (2019)⁶: The Supreme Court ruled that sexual harassment allegations have to be decided on the civil standard of "preponderance of probabilities" instead of "beyond reasonable doubt," in recognition of the difficulties of victims in determining such conduct. Such a ruling is crucial in the procedural effectiveness of ICCs and lab or adjudication tribunals.

7. Anjali Bhardwaj v. Union of India (2016): In this case, it was reiterated that ICCs are mandatory for all government departments. The Delhi High Court reiterated that institutional failure to establish such mechanisms constitutes a constitutional violation as well as administrative failures.

8. ICICI Bank v. Vinod Kumar (2021)⁷: Bombay High Court held that employers cannot escape liability by raising the plea of harassment by outsiders like contractors or third parties.

⁴ Poornima Advani v. Union of India, Delhi H.C., 2014.

⁵ Sanchayani Sharma v. National Insurance Co. Ltd., Delhi H.C. 2022.

⁶ Madhu v. State of Kerala, (2019) (SC decision)—Crl. Rev. P. 1097/09 (Ker.).

⁷ ICICI Bank v. Vinod Kuma, Bombay H.C., 2021.

The duty to create a workplace free from harassment is owed by all persons who work within the organizational environment, preserving the broader scope of vicarious liability.

9. Kamaljeet Kaur v. Punjab and Sind Bank (2020)⁸: In this case, the Delhi High Court reiterated the employers are directly responsible for constitution, functioning, and outcome of ICC proceedings, and failure to provide due process, confidentiality, or within the time limit is actionable both under the POSH Act and under the provisions of the Constitution.

Conclusion of Judicial Review, is therefore, the judiciary has categorically established workplace gender justice to be a constitutional requirement, and employer responsibility is not only statutory but based on a duty to promote fundamental rights. These precedents have to be a binding rule of interpretation in improving corporate governance and statutory compliance.

Conclusion

India's constitutional and legal regimes have a principle of protection against gender wage discrimination and sexual harassment in the workplace but their enforcement is selective, weak, and fragmented. The private corporate sector, shielded by secrecy and regulatory inertia, retains structural gender disparities. Complacency with law compliance is insufficient. A paradigm change in corporate responsibility, institutional vigilance, and social attitudes is required. Only then can India fulfil its constitutional promise of workplace equality and dignity.

⁸ Kamaljeet Kaur v. Punjab & Sind Bank, Delhi H.C., 2020.