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The primary duty of the State to protect against adverse human rights impact of business activities has witnessed extensive development in India in matters relating to prevention of sexual harassment at the workplace. Basis the directive of the Indian Supreme Court, in 2013 the Ministry of Law and Justice framed a specific legislation – Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act that considered the challenges faced by women in accessing a safe work environment and guided businesses with effective remedies to help achieve workplace inclusion and equal access.

This law intended to achieve objectives mentioned in the UNGPs and despite being complex in nature, has managed to positively impact the workplace environment both in the organized and unorganized sector in a brief span of 5 years. In view of its success, this model should be replicated in other jurisdictions wherein a specific prevention of sexual harassment law is either absent or not impactful. Some significant requirements include, filing of written complaints by any woman who is subject to sexual harassment at the workplace regardless of whether she is employed with a company on a full time or part time basis, or even indirectly as contractor. It permits women to access this remedy even when they are travelling to a place of work or attending events in connection with their employment. This has encouraged businesses to implement safe working practice across their supply chains, and each phase of employment is covered within the ambit of the law.

All complaints are protected by confidentiality, and there are penalties for disclosure. The complaints are inquired into by an independent body – known as ICs having powers akin to a civil court comprising majority women members, mandatory inclusion of an independent member and prescribed qualification for other members. Many women are unable to access effective dispute resolution because their issues are either not understood or ignored. By mandating trained and gender – sensitive professionals to comprise the IC, the law sought to achieve majority gender representation in decision – making of matters that are specific to women.

Complaints are also to be resolved in a time – bound manner, and mediation is provided as an option and not as a rule. Unlike other countries, forced arbitrations by business – led committees are not permitted in India and employees have comfort in sharing their grievances with independent and trained members.

All employers need to have a mandatory policy and conduct regular trainings for employees and IC members, which itself has contributed extensively to normalizing open discussions on a woman employees' experience. It has enabled certain progressive businesses to continue the conversation to consider other gender – based discriminations experienced by women. The State has also provided a comprehensive guidance to businesses to aid compliance in the form of detailed training modules, approved list of providers, responsiveness to queries.

Complainants can access multiple remedies, such as leaves, transfer and cessation of working relationship with the respondent. The law has been forward – thinking in recognizing the challenges faced by women in accessing the judicial remedies otherwise available in India and have hence empowered the ICs to provide an effective remedy to women in a place more familiar to them – the place of work. In the unorganized sector as well, women can access local committees that are bound to the same timelines and processes given under the law.

Other Government departments such as Ministry of Labour, Women & Child Development, Ministry of Corporate Affairs have supported this law with policy coherence and oversight by requiring businesses to mandatorily report their compliance on an ongoing basis, failing which prescribed penalties may be levied. This is required regardless of size of business, nature of operations, location, etc. and has therefore had a wide impact. The transparency on workplace safety is now considered a benchmark of corporate governance and encourages peer businesses to do better.

Any violation of the law is subject to sanctions including loss of business license. Complainants can directly request regulatory intervention should employers ignore their complaints. These positive actions have led to a changed workplace environment, and basis



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recent data,¹ have encouraged more women to file complaints. On a long-term basis, a safe working environment will help address socio – cultural barriers faced by women in joining the workforce and ensure equal economic participation of women.

Businesses in India have responded well to this law and some matured entities have chosen to implement more beneficial measures. The mix of mandatory State – driven measures and voluntary employee beneficial policies adopted by businesses have had a measurable impact in preventing and addressing gender – based sexual harassment faced by women in India.

A lot more however needs to be done. It is recommended to address sexual harassment and gender bias with measures earlier used to prevent anti – bribery in organizations – i.e. build compliance by design. States can continuously examine existing laws to assess if they directly or indirectly impact discrimination so as to prevent women from accessing equal opportunities, and for businesses to identify such instances and address them proactively. For example, businesses should assess women experiences in accessing IC remedies and also fitment of women employees post conclusion of inquiries to assess if more corrective assistance could have been provided. Gender gap studies could help achieve this. While some businesses have proactively accepted whistleblower complaints that expose systemic issues of sexual harassment, more companies can adopt this practice.

Similar to above, it will be encouraging to State intervention and guidance to businesses on addressing gender bias in an equally effective manner. States can consider incentivizing companies who invest in gender equality (by skill development of women, gender equality targets, public disclosures on progress, creation of employment opportunity for women, significant investments in gender equality programs through CSR or voluntary spends, to name a few) in matters of public procurement, simplified labour reporting and access to finance. It should be mandatory to have customized and regular trainings on gender and cultural norms for management personnel and employees, conduct gender gap studies internally that are followed with time – bound reports on next steps.

The intent should be to address other forms of gender - based discrimination which is an exercise that will require consistent measures. One critical area that requires intervention is maternity – based discrimination or rather economic exclusion faced by women in the workplace. Women face life and impact of laws differently than men, and pregnancy and its related complications, lifestyle changes and family commitments contribute to this differed impact. Unlike other countries, Indian women are entitled to a generous maternity leave of 6 months, however it is widely understood to adversely impact women, indirectly. Informally, certain businesses are reluctant to bear the costs, or exclude women from critical decision – making roles due to maternity or childcare related absence from work. For this reason, many women choose not to use their extended break for fear of job repercussions or bear childcare costs from their income should the employer fail to adequately cover for it. While the Indian Government has introduced incentivized employers by offering to share maternity costs of eligible women, and also imposed sanctions for employer's failure to comply, these are not enough to address the systemic discrimination that accompanies maternity leaves.

Research² in jurisdictions with equivalent leave periods establish that opting for 6 month' mandatory leave does not lead to increased women employment, wage earnings or attachment to employers. This perhaps is an area wherein the gender lens needs to be adopted in a way to distribute an experience unique to women and its related impact amongst genders equally. States and businesses should implement gender – neutral childcare laws and encourage employees of all genders to opt for the same. Gender gap studies should be conducted to assess women inclusion in critical job profiles after maternity leave, and the impact of transformative impact of gender – neutral maternity policies. Eventually, the sharing of childcare costs and responsibilities, and equal absence from work for either gender will address the inadvertent maternity – related discrimination.

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¹ Government of India, Lok Sabha Unstarred Question No. 963 answered on 08.02.2019 <http://164.100.47.194/Loksabha/Members/QResult16.aspx?qref=79252>.

² The Long-Term Effects of California's 2004 Paid Family Leave Act on Women's Careers: Evidence from U.S. Tax Data, National Bureau of Economic Research <https://www.nber.org/papers/w26416>.