

Chapter 3

Empowerment and/or Oppression: Women in the Workplace

This chapter attempts to analyse if it is possible for the workplace to be a sphere where women's empowerment can be achieved through legislations. When India became independent, men and women were declared as equal, that is, no discrimination could be made between men and women while distributing civil, political, economic, and social rights. Economic equality or equality of opportunity was granted to Indian citizens after considering the immense amount of inequality which people experience within the economic sphere. Class based inequality combines with gender-based inequality to form an insidious framework of subordination and oppression.

Since centuries, the work done by men and women is segregated on the basis of gender. Due to this the workplace is considered as a male dominated space where the work done by men is both recognized and rewarded. Women also contribute greatly to economic activity, yet the work done by them is rarely recognized or rewarded. Women experience persistent issues of unequal or low pay, limited scope of employment, unpaid labour, sexual harassment at workplace. Compared to men, women are struggling for economic equality. According to the Census of 2011, the work participation rate for women is 25.51 percent of the total labour workforce.¹ According to the Periodic Labour Force Survey, 2019 average wage of women in India was Rs. 8,034 per month, which is 33% lower than the average wage earned by men which is Rs. 12,048. Women tend to be employed in lower income jobs, with only 13% earning more than Rs. 12,500 per month². This shows that the workplace is still extremely discriminating to women. Despite the provisions of formal equality, women continue to face discrimination in the economic sphere. This is particularly worrisome for the notion of empowerment which is closely related to the concept of development in India. Empowerment is supposed to be a result of socio-economic development in India. It is assumed that women's empowerment is also dependent on their socio-economic development. Yet, the obvious discrimination and exclusion which women experience in the economic sphere makes empowerment a distant dream.

The Report on The Status of Women in India (2015) states

‘Though, most Indian women make an economic contribution in one form or another, much of their work is not documented. Owing to societal norms and family

responsibilities that women shoulder, their participation in the formal economy is limited. They tend to face gender discrimination, less wages, often working in hazardous situations and long hours. Back home they have a double burden as homemakers and child bearers and care takers.’³

The report highlights that this economic dependence and exclusion has contributed greatly to the socio-economic injustice which women experience in their day-to-day life. Women are deprived of basic opportunities to improve their lives as they have less access to means of production. Most of the work which women do especially within the household is unrecognized and unpaid labour. The deprivation and exploitation which women experience within the economic sphere in India is against the Constitutional commitment to social and economic justice.⁴

It is a well-known fact that traditionally the economic sphere mainly functions on the basis of sexual division of labour. Men and women are considered to be different within the economic sphere. Men have more access to owning means of production than women. They also have more access to jobs and other economic benefits more than women. The economic sphere privileges men to the extent that it can be called as an androcentric structure. Male experiences and interests in terms of market and profit influence the economic sphere to the extent that women are either completely excluded or included only in a peripheric manner.⁵ The economic sphere constructs an illusion that women are barely contributing to it, while the reality is that economic sphere rarely recognizes the contribution of women in terms of labour. The labour which men do is recognized, rewarded, and compensated, while women’s labour is mostly ignored. Due to this sexual division of labour women are continuously marginalized within the economic sphere.

Like the political sphere, the economic sphere has also been a contentious space for feminist demand for gender equality. The economic sphere has been looked upon as a site for exploitation and oppression by Marxists and Neo-Marxist scholars due to the extreme class hierarchy which aggressively discriminates between the rich and poor. But it is the feminist scholarship pointed out that class-based hierarchies do not function in isolation but are combined with patriarchal hierarchy⁶. People are not just discriminated on the basis of division of labour but also on the basis of sexual division of labour. This combination creates a swamp of oppression and exclusion for women within the economic sphere.

Women are discriminated on the basis of class and also on the basis on sex/gender. It is assumed that functions which are considered as male/masculine ought to be performed only by men while functions which are considered as female/feminine ought to be performed only by women. The functions which are performed by men fall within the public sphere and is hence recognized as economic activity, whereas functions which are performed by women fall within the private sphere and hence is called as household work. The work which men do is compensated more than the work which women do. There is a strict sexual division of labour which rewards and compensates work which men do more than the work which women do. This division of labour is upheld and shaped by the economic sphere which continuously exploits and oppresses women.

The sexual division of labour combined with the patriarchal mode of production highlights that the economic sphere has been extensively oppressive towards women. This oppression is more visible specifically within the workplace which is constructed to facilitate male experiences and demands. Whether it is government office, a private offices or factories and industries, the number of men within the workforce and within decision making positions is much higher than the number of women. It is almost as if the workplace was constructed 'by men, for men and of men'. In such a situation what position do women hold within the realm of the workplace? The conditions of formal equality as enshrined in our Constitutions proposes that there can be no discrimination between men and women. Yet as highlighted men and women are in very different positions within the workplace.

From the work that they do, to the rewards which they get to the level of safety which they experience, the experiences of men and women differ drastically. To say that formal equality has granted men and women equal position within the workplace is an illusion. To say that men and women have equal access to opportunities provided within the workplace is also not true. So where do women stand within the workplace? Can the workplace be a site for patriarchal oppression towards women? If yes, then how does the notion of empowerment address this patriarchal oppression? Is it possible that the policies for women's empowerment has colluded with patriarchy within the workplace which is instrumental is the oppression of women? Or have the laws and policies for women's empowerment actually helped in weakening the patriarchal structure?

In this chapter, I attempt to understand the relationship between women's empowerment and continuing influence of patriarchy within the workplace. I analyse the extent of influence of

the public-private divide on determining the exclusion of women in the workplace despite the provisions of formal equality. I also attempt to examine the how patriarchy manifests itself in the workplace and the manner in which it influences the position of women within the workplace. I focus on some provision against sexual violence within the workplace against women and the extent to which they are capable of weakening the patriarchal structure. Through this chapter I make a modest attempt to contribute to the ongoing discourse on women's empowerment within the workplace.

3.1 The Public vs Private and the Position of Women in the Workplace.

As Pateman states, 'The dichotomy between the private and the public is central to almost two centuries of feminist writing and political struggle; it is, ultimately, what the feminist movement is about.'⁷ The public is the sphere of political, while the private is the sphere of the civil society. All political activities take place within the public sphere and so all activities within the public sphere falls within State's jurisdiction. The private can be hence interpreted as all that which is not governed by the State.⁸ Rights and privileges of a citizen are mainly distributed within the public sphere. Economic activity also functions mainly within the public sphere.

The public-private dichotomy impacts the position of women within economic activities, specifically the workplace. This division sets the basis for the sexual division of labour which stereotypes the roles of men and women in the public and the private. It is assumed that men partake in economic activity and earn a living because they are heads of the households. Women on the other hand maintain the household but do not have any earning or ownership as they are not considered as heads of the household. According to sexual division of labour man is rewarded for the labour done by him at the workplace while the head of the family is rewarded for the labour done by women in a household. This sexual division of labour not only discriminates and stereotypes men and women into fixed roles, but it also contributes to the systematic inequality which women experience. This continuous inequality has created a problem in India which promises equality to all its citizens.

Through the Fundamental Rights especially Article 14, Article 15 and Article 16, formal equality is ensured in India, that is no arbitrary discrimination can be made between men and women⁹. Formal equality has played an important role in setting the foundations of empowered workplace as it delegitimizes the belief system that women are naturally inferior to men. A

belief through which women face arbitrary discrimination and exclusion in the workplace. Legally, women are as free and equal as men. They also have access to the same opportunities as men. Yet women in India are not equal to men in the workplace. As The *Towards Equality* report highlights, ‘The division of labour market in a male a female sector very often controls the distribution of women workers within the economic and restricts opportunities for employment, training and promotions within the industry.’¹⁰ Mostly they are relegated to work done in the private sphere. One of the foundations of patriarchy is the public private division which not only defines the political sphere but also the economic sphere.

Gender based discrimination in workplace, especially related to employment of women is a very common occurrence. The breakdown of formal equality provision under Article 14 and Article 16 has often been observed by the courts who have held on to the mantle to protect gender equality. The cases pertaining to gender equality in the workplace range from equal employment opportunity to sexual harassment at workplace. All these cases have forced legal institutions to carefully analyse the limits to gender equality within the workplace. In one of the well-known cases on gender equality in workplace, *Raghubar Saudagar Singh Vs State of Punjab & Ors* in 1972 challenged the limit on women’s employment to matrons and clerks in a male prison.¹¹ The petitioner wanted to remove the provision which barred women from being appointed at another position except clerk or matron. The Punjab-Haryana High Court upheld the restriction on the women’s employment stating that this would be a hazardous working condition for women. Another well-known cases, is the *C. B. Muthamma vs Union of India & Ors*, a senior member of Indian Foreign Service complained that she was denied promotion due to a change in marital status. At the time of joining, she had given an undertaking that she would resign from service if she were to get married. The Supreme Court held that there should be no discrimination between men and women for recruitment in foreign services.¹²

A similar case but regarding male employment in woman dominated industry was the *Walter Alfred Baid v. Union of India* in which the Delhi High Court struck down the provision which barred recruitment of male candidates in predominately female nursing institutions as a violation of Article 16 (2)¹³. It highlighted that Article 16(2) incorporated the absolute equality of sexes and discrimination in matter of employment was irrelevant. In another case, *M/s. Mackinnon Mackenzie & Co. Ltd. Vs. Audrey D’Costa & Anr* the Supreme Court upheld the importance of application of Equal Remuneration Act 1976 stating that a workplace cannot state lack of financial capability as an excuse to discriminate in the wages of men and women¹⁴.

There is a need to get equal pay for equal work irrespective of the work condition. Overall, the Courts have held the position that men and women should be treated equally at times of employment and remuneration. In most cases they condemn the gender-based discrimination, yet often most judges reflect in the fact that women are also different from men and need to be protected more than men. While Courts believe in the Constitutional guarantee to equal opportunity, they are at the same time also influenced by the sexual division of labour. Let me illustrate this point by reflecting upon landmark case which highlights the discrimination which women continuously experience within the workplace and the possibility of legal intervention in such cases.

In 1957, Air India which was the only international airline in India, put forward a clause in their employment contract stating that the contract for women will automatically be terminated on the event of her marriage. The management assumed that once air hostesses get married, they would not want to continue with the tedious job which requires women to stay away from home for a long period of time. In 1980 this provision was challenged by Nergesh Meerza¹⁵ who filed a petition in the Supreme Court against regulations 46 and 47 of the Air India Employee's Service Regulation which differentiated between the positions of Air Flight Purser and Air Hostess. The main differences which were challenged was the age of retirement which was set as fifty-eight years for men and thirty-five years for women. If women were married within four years of their employment or during their first pregnancy which ever came first, women would also retire. In 1981, after extensive deliberation over this case the Supreme Court was of the opinion that an Air Hostess termination within four years of marriage was valid and not in violation of Article 14 as it upheld the States family planning programme. In terms of retirement after first pregnancy, the Supreme Court concurred that it amounts to compelling women not to have children, which it states is 'the sacrosanct and cherished institution'¹⁶. The court concluded that the pregnancy restriction was arbitrary and a violation of Article 14. Yet the court compromised and stated that the first pregnancy clause can be replaced with third pregnancy

While this landmark case helped in raising awareness about the discriminatory provisions for employment which women experienced it also helped in bringing out the discriminatory assumptions which limited women access to equal opportunity. As Shah and Gandhi highlight about Air India's provisions 'the underlying assumption was that marriage would lead to children (disfigurement of body) and mothering (family incompatible for flying careers)'¹⁷ To

a large extent women were employed as air hostesses due to their physical beauty and sexual appeal, and it was assumed that marriage and children made women less beautiful and appealing to fliers, so terminating them was a good idea. The objectification of women and the forcible stereotyping of women into certain roles was never questioned by the Courts. The stereotyping of women's role as a mother became the basis of invalidating the pregnancy clause¹⁸. I should highlight that male employees of Air India were not subjected to these clauses as they were hired as Assistant Flight Pursuers which was concluded to be a different position from that of Air Hostess. While many look at this case as an achievement to women's rights in employment, I cannot shake the sexist tone of the judgement which fixed women into the role of wives and mothers. Not only did the judgement stereotype women but also made this stereotype instrumental in gender discrimination.

The judgement upheld the 'separate spheres theory' which is the stereotype approach in cases of sex discrimination. According to 'separate sphere theory', the natural difference between men and women determines the role they play in the workplaces.¹⁹ The public sphere is considered as the arena for men's work, while the private sphere is the area which is fit for women's work like caregiving to children and other household work. Due to the provisions of formal equality, women could no longer be forcibly excluded from the public sphere. But the appropriateness of treating men and women's equally in the workplace is questioned often. In Nergesh Meerza case, the court held on to the fact that the discriminatory provisions between Air Flight Pursuers and Air Hostess was valid due to the different roles which men and women played in the private sphere. The courts assumed that women while women worked within the public sphere, they also had a responsibility towards their work in the private as wives and mothers. If employers chose to discriminate between men and women to uphold the institutions of 'family planning', 'marriage' and 'caregiving of children', then this discrimination is valid. As Gautam Bhatia has highlighted,

'In Nergesh Meerza, the separate-spheres theory formed the backbone of the Court's sex discrimination analysis: differential treatment between men and women was held not to be discriminatory, and was justified by invoking 'family planning', 'successful marriage', 'upbringing of children', and 'control of population explosion', each of which was deemed to be the specific responsibility of women.'²⁰

Here the employer takes it upon themselves to make sure that women are able to perform their designated role as wives and mothers in the private sphere even at the cost of their position in

the public sphere. The division between the public and the private spheres is normalized within the discourse of employment and workplace, to the extent that women's position within the private sphere is fixed and secured. The case highlights a belief which has plagued the upper echelons of State institutions especially the legislature and the judiciary. The belief that the position of women in the public as an employee is temporary at its best, while the position of women within the private as a wife and mother is inevitable. Afterall, the belief that men and women's role are segregated between the public and the private still continues to dominate the idea of employment.

The division between the roles which men and women perform within the public sphere and the private sphere has become the crux of discrimination which women face today. The public-private divide creates a twofold discrimination. Firstly, it fixes the work of men within the public and women within the private. Secondly, it ignores the unequal distribution of labour which women do within the domestic space. Classical liberalism assumes that it is natural equality which determines the public and the private spheres. As Will Kymlicka highlights, that public sphere becomes a realm where adult men deal with other adult men on the basis of set conventions, while private sphere is governed by natural instinct or sympathy.²¹ So all that is not within the public, automatically falls within the private. Interestingly, when observed from a feminist point of view, we can actually notice that the public and private spheres are not constructed in such a clean manner.

The public sphere may be the realm of politics, where adult men play an important role in decision making and economic activities, but the private is not the 'personal, intimate or familial'²², but rather it is the civil society. A social sphere which is free from the constraints of the political activity but is not really involved with the household or familial relations. Mostly, we assume that the public and private spheres are in opposition to each other. The spheres of public and private are separate but not agonistic to each other. When it is said that women function within the private realm and men function within the public realm, it is assumed that there is an agreement about the roles which men and women perform. But if we keep in mind, that the private is actually the civil society then we question the sphere in which women are working. As Carole Pateman highlights,

'Participation in the public sphere is governed by universal, impersonal and conventional criteria of achievement, interests, rights, equality and property – liberal criteria, applicable only to men. An important consequence of this conception of private

and public is that the public world, or civil society, is conceptualized and discussed in liberal theory (indeed, in almost all political theory) in abstraction from, or as separate from, the private domestic sphere'²³

The story told so far makes us believe that men are public entities and women are private entities, but the private is the civil society within which women's or men's roles in the household and family is not included. This means that there is a third sphere where household and family or all intimate relations fall. Judith Squires calls it a 'Tripartite'²⁴, where the public, private and the personal exist together. She highlights, that due to this tripartite the role of civil society becomes very confusing. The civil society is viewed as private sphere when placed in opposition to the public, but it part of the public sphere when placed in opposition to the personal. It is due to this confusion that the position of women both in the public and the private is understood in vague terms. The division between the public and the private sphere is a division within the world of men. The notions of 'State' and 'society', 'State' and 'economy' all are divisions within the world of men. The domestic sphere hence tends to fall outside of the State and civil society. So, the position of women in the domestic sphere is mostly ignored. But why is the family excluded from the private sphere?

According to Will Kymlicka,

'...liberals who were concerned with protecting men's ability to participate freely in social life have not been concerned with ensuring either that domestic life is organized along principles of equality and consent, or that domestic arrangements do not impede women's access to other forms of social life'²⁵

Classical liberalism focused on bringing equality to all men in the public sphere. In order to do so, some interventions within the civil society were necessary. For the sake of freedom, equality and justice, the public sphere and the private sphere need to be modified. But this same concern did not extend to the personal, as classical liberals believed that the domestic sphere, which was made of mainly family, was a voluntary institution where the roles of men and women were 'naturally' or 'biologically' determined. So, men could not do women's work of 'reproduction of labour power'²⁶. Since only women could reproduce and were an essential part of the family, which is the centre of the domestic sphere, work done within the household automatically became women's work. It is assumed that men are supposed to work and earn

money, while women are supposed to take care of the family. Dividing work as 'natural' means that the patriarchal injustice and oppression within the domestic sphere can go unchallenged.

It is the feminist challenge to this position which created a ripple in the otherwise perfect public-private division. Feminists questioned the depoliticization of the patriarchal character of the public and private spheres. The public sphere conveniently excludes women from being equal to men and this is tolerated as family is considered natural and a voluntary organization. Even after granting formal equality, women still struggle to be a part of this political sphere which privileges men. As seen in the previous chapter there is an absence of women as political participants and representatives despite political equality. Even though women in India have economic equality, their position in the economic sphere is not similar to that of men. As Pateman highlights,

'Most women can find paid employment only in a narrow range of low status, low-paid occupations, where they work alongside other women and are managed by men, and, despite equal-pay legislation, they earn less than men'²⁷

The truth is that despite many attempts made to eradicate the economic discrimination between men and women, women still became the victims of exploitation. As observed in the Nergesh Meerza case, it is assumed that women will perform their natural duty within the family as wives and mothers. If they were a part of the workforce like men are then it will affect their work within the household which can only be done by women. As the public, especially the economic sphere is constructed for men to participate, women's participation is seen as only important in order to aid men's work. Women are granted jobs to overcome the paucity of labour. These jobs are mostly low paying temporary jobs which can easily be given up when men are available to take over. Women also work to help men fulfil their work, like women working in farms owned by their husbands, or sitting in shops in their husband's stead. In general, women position within the public sphere exists to supplement the work which men do.

This seems that there is a discrimination in the manner in which women are being paid. If women are considered as temporary or extra labour, then they are being paid disproportionately less than men. Again, if women are considered to be helping out their husbands and fathers, then they may not be getting paid at all. The idea that women's work is within the household and family limits their growth within the economic space. As Nancy Fraser highlights, 'The

male head of the household would be paid a family wage, sufficient to support children and a wife and mother, who performed domestic labour without pay'.²⁸

Engles examine the position of women with the economic sphere in this book, *The Origin of Family, Private Property and State*. He states that within the family, men are like the *bourgeoise* and women are like the *proletariat*. The men dominate over women's labour within the family, the same way the upper class dominate over the lower class in the economy. This a form of domestic enslavement, as women are not given the reward, they deserve for the work which is done.²⁹ In the household women do not just perform the role of wives and mothers, but also the role of slaves and servants. Even when they work outside of the domestic sphere, their role as wives, slaves and servants continues. To illustrate, women who work as labourers at construction sites, or even in farms are often seen taking care of their children during work. They can be seen carrying infants and toddlers while working. Older children help out their parents in the work that they are doing. Even when doing strenuous labour women continue to perform their parental role. There is no adjustment or change in her role as a parent or care giver. Women whether working or not stick to performing their roles as wives, slaves, and servants. The position of women in the economic sphere is hence determined by the position of women within the household.

For Engles the subordination of workers by the bourgeoisie was same irrespective of the sex. He did not see the unjust position of women as a patriarchal influence but rather believed that women's exploitation was a result of the class-based system. He believed that as long as women were included within the work force as equal to men, the subordination which women experience will also go away. He states that the market only wants workers and as long as there is a provision for equal pay, women would not be subordinated within the economic sphere. His view of the exploitation and subordination of women was very easy to overcome. While most Marxist believed this understanding, by early nineteen sixties it was Marxist and socialist feminist themselves who highlighted that the exploitation which women experience could not be overcome so easily.

There are two main reasons for the continuity of exploitation of women. Firstly, the work which women do within the household was still not paid work and secondly, in the workplace women experience gender-based discrimination. There are many examples where women are constantly discriminated against despite existing provisions of equality. In India, Equal Remuneration Act, 1976 ensures that women and men are given wages equally within the public

workplace³⁰, yet the discrimination which women experience within the workplace on wage related issues continues. Ratna Kapur and Brenda Cossman observe, ‘...notwithstanding formal guarantees of equality, Indian women’ lives continue to be characterized by pervasive discrimination and substantive inequality’³¹

On paper, wages are distributed equally for the same amount of work within similar positions. But within the workplace men and women are rarely given the same position. Women are mostly given lesser paid jobs in comparison to men or are rarely given promotions to higher pays scales. As Menon highlights. ‘The claim is that it is not ‘women’ being paid less than ‘men’ but work which is being paid less.’³² As seen in the Nergesh Meera case, too the positions of Air Hostess and Air Flight pursuers were differentiated on the basis of sex which resulted in the discriminatory contracts. The work which women do amounts to lesser pay in comparison to the work which men perform. The manner in which work is distributed among men and women within the workplace relies on the sexual division of labour.

The idea that men and women perform different work in different spheres is such a routine assumption that barely anyone questions its relevance anymore. The sexual division of labour is perhaps one of the most important foundations for the continuation of patriarchy within workplace. As determined, the public sphere focuses on men and male experiences and assumes that only men will have access to modes of production and waged labour. This is reason why the workplace is constructed to accommodate men and their demands. The workplace is structured as a hierarchy where all work done is given a certain reward or compensation. Reward is dependent on the work done and the position of the worker within the hierarchy. The topmost position gets higher rewards in comparison to the bottom most positions. This hierarchy, which is the crux of any workplace is created specifically to accommodate men’s position as either owners of means of production or as breadwinners of the family. The workplace can be considered as a space where men perform the role of which is attributed to them by the sexual division of labour. Men benefit from the workplace as it guarantees them a space to perform their roles within the public and the private.³³

Men work for wages and rewards within the workplace so that they can continue their position as the head of the household in the domestic. Not only do men work in the public, but they also have access to ownership over means of production. The work that they do within the workplace benefits them within the household too as they have control over private resources. Women on the other hand, do not have the same access to such benefits.³⁴ Most of the time women work

in low paying jobs as subordinated to men. Sometimes women also work in jobs that are considered as feminine or womanly, for example as teachers, nurses, care takers. This phenomenon is called as 'feminization' of labour or 'pink collared jobs'.

Basically, some jobs are considered as jobs which women are naturally able to perform better than men. Teaching and caring for children as schoolteachers or nannies become women's work as women are assumed to be more 'nurturing' and 'patient' in comparison to men and hence more capable for taking care of children. Even nursing is a pink collared job as women are considered as 'natural' care givers in comparison to men. This happens because women are either considered as unfit for the given work, or the employer prefers to employ men rather than women. It could also be the lack of training and incentives for women or lack of awareness about the same. While these jobs may be dominated by women, they are not considered as high paying jobs and women are usually in a subordinated position in such a workplace. This leads to women experiencing continuous discrimination in the workplace based on their sex. The limit of the potential of women's capacity is called as a 'glass ceiling' which women find very difficult to overcome.

Except the glass ceiling, there is also the problem of 'double days' work³⁵. Women work within the workplace and within the household. While the work hours of men end with the workplace, women's labour continues. Since the work done in the domestic sphere is not considered as waged labour but rather as voluntary work, women's work is not recognized as hence not rewarded. In comparison to men, women work 'double day' but the work done by them is ignored. This leads to further the exploitation of women, as a huge portion of women's labour is actually unpaid labour. The sexual division of labour places most of the work which women do within the realm of the domestic and so it becomes unpaid work. This causes an asymmetrical distribution of resources and rewards within the workplace which privileges men over women. Workplaces are designed exclusively for men, which means that the work performed by women within the household is ignored. Due to feminization of labour and double day work, women are denied the opportunities for economic development which form the core of women's empowerment.

My research seeks to answer a very essential question which needs to be urgently addressed, 'does the public-private divide empower women or does it aid in the continuation of their exploitation?' The criticism of public-private is the foundation of feminism. In order to address the oppression and exploitation which women experience, engaging within the public-

private spheres is imperative. The public-private divide has more than often been used as an excuse to continue the discrimination which women experience in the economic sphere. While the general idea is that workplace is gender neutral and does not arbitrarily excluded women so it must be a space for empowerment. But in reality, workplace privileges men to the extent that it automatically discriminates against women.

If the workplace considers men and women to be equal, then firstly, it will have to recognize the role women play in the domestic sphere and reward or compensate it accordingly. It will also have to overcome the sexual division of labour and distribute work according to capability rather than sex. As observed in the Nergesh Meerza case, the discriminatory provision of Air India was done to assuming that women's role as mothers and wives was more important than their roles as employees in a workplace. Even the judgement upheld this view, though it did not condone discrimination, it did not challenge the patriarchal assumption of traditional sex roles either. The separate spheres theory became the crux of the judgement. While the discrimination which women faced was reduced, the basis of discrimination was left unchallenged.

According to me this sets a precedence through which the exploitation of women in the workplace continues. This exploitation is not the class-based exploitation which Engels imagined, but a form of patriarchal control which continuously manifests itself within the workplace. This control is based on the exploitation and subordination of women both in the public and the private. The laws and policies which protect women from discrimination within the workplace need to consider the influence of the public-private divide on the position of women. To assume women are economically empowered, without challenging the patriarchal foundations of their oppression within the workplace presenting an illusion.

For the sake of women's empowerment, it is necessary to reduce their economic dependency on men. It is also essential to recognize the continuous pressure women face due to the sexual division of labour. But do the laws and policies for economic empowerment of women in India actually consider these factors? Is the workplace capable of delivering empowerment to women? Is it possible to construct a workplace where women workers are not discriminated on the basis of their sex? It is important to acknowledge that the workplace can be a space for women's oppression or women's empowerment. Through legal intervention can we decide whether women are free or subordinated within the workplace, and this could significantly impact the position of women with the domestic too.

3.2 Workplace, Patriarchy and Women's Empowerment

The sexual division of labour induced by the rigid public and private divide has contributed greatly to exploitation of women. Women are deprived of equal and safe working conditions simply because of their gender. Being a socialist State, economic inequality has been a cause of concern for India. Eradication of economic inequality, like poverty, skewed distribution of resources and class differences have been a recurrent issue within the sphere of political in India. It is common for plans, policies, and legislations to be made for removing this economic inequality which has been the core reason of continues gender-based discrimination. This is also why, for the past few decades, there has been critical lookout for the discrimination which is perpetuated within the workplace. The workplace is just a part of a wider economy, but the discrimination perpetuated within the workplace with regards, caste, class, race, sex, religion, and ethnicity are very hard to ignore making the workplace a place for political concern.

The feminist gaze on the workplace is perhaps the most critical of them all. For a long time, the workplace escaped the critical assessment done to identify the means and methods of economic exploitation. But when feminism started observing the economic exploitation of women, the workplace became a site for contention. As Young states, 'In twentieth-century capitalist economies the workplaces that women have been entering in increasing numbers serve as another important site of gender exploitation.'³⁶ The sexual division of labour and the public-private divide have played an important role in the oppression of women. But what about the workplace, which is constructed on the basis of these patriarchal biases? Is it possible that the patriarchy is embedded in the hierarchy of the workplace? Till what extent can the State through legal intervention identify and correct the patriarchal influence on workplace? Is it possible that the workplace is a potential site for equality instead of discrimination?

To answer these questions, I attempt to understand the provisions which have guided the notion of economic equality within the workplace. The idea of equality and empowerment of women are closely related to each other. But so far economic empowerment has been defined too broadly to be effective. The idea of poverty and unemployment of women has been the basis on economic empowerment in India. While these concepts are essential, they do not look into the everyday discrimination which women experience. This routine inequality which is perpetuated within the workplace has normalized patriarchal oppression against women. While there are political and legal interventions in place to reduce the level of discrimination, they are not always very effective. For example, despite having the provision of maternity benefits,

many women are leave their jobs during pregnancy or after giving birth as the work is not conducive to the demands of care giving.

The workplace is constructed to accommodate men and their demands, so women need, and interests are side lined. Since sexual division of labour burdens only women for care giving of children, when a workplace which does not accommodate the additional work which women have no choice but to settle for leaving the job or applying for a part time lower paid position. This indicates the presence of systematic and structural oppression which women experience within the workplace. Indian State by the virtue of being socialist, presupposes that it is able to overcome various forms of discrimination including gender-based discrimination within the workplace through the use of laws and policies for equality. The Equal Remuneration Act, 1976 is an example of this. It is just assumed that legal interventions can overcome the inequality which men and women experience within the workplace and hence establish empowerment. But what if the workplace is a site for oppression? Afterall, despite economic equality and legal provisions, women are not equal to men in the workplace in India.

The workplace is specifically created for the interest of profit. It does not have the traditional foundations of the society not the contractual nature of the State. The workplace is a space created explicitly to achieve economic goals. The character of the workplace is dependent on the work which is being done. Popular examples of workplace will be a corporate office or an industry, but agricultural land, public spaces and even home can be called as a workplace. For example, for a private chef, the kitchen of the house where they work will become the workplace and for a maid who cleans the home, the entire home becomes a workplace. Simply put, when a work is done and the employee gets paid as salary or wage, then it is called as a workplace. Simply put the site for waged labour is considered as a workplace. But is this enough to understand the extent of work which women do?

As we observed, the position of women in the workplace is very confusing, as most of the work which women do, is not considered as a labour. The sexual division of work and the public-private divide have contributed greatly to making women's work invisible within the realm of the workplace. This invisibility of women's labour is where their oppression beings. The oppression of women is mostly not overtly done, but it is perpetuated through beliefs and practices which are done in a routine manner.³⁷ Discriminating women by offering them low paying or temporary jobs, gender pay gaps, sexual harassment all contributes to a strengthening structural oppression within the workplace. This is not to say that every workplace intends to

oppress women rather due to legal interventions workplaces which are proven to be unequal or oppressive are heavily penalized. I mean to say that most workplaces have normalized patriarchal belief of sexual division of labour and work and wages is divided keeping the bias in mind.

As we saw in the Nergesh Meerza case, women's identity is treated differently not just by the Air India but also by the court, whose well intentioned judgement continued to uphold the patriarchal mind-set. This indicates that oppression of women in workplaces is so routine that it does not even appear as oppression. As Young says, 'The conscious actions of many individuals daily contribute to maintaining and reproducing oppression, but those people are usually simply doing their jobs or living their lives, and do not understand themselves as agents of oppression.'³⁸ This is how the oppression in the workplace against women within workplaces continues.

I would like to argue that the workplace is a site of patriarchal oppression on women. Since women were not a part of the workplace in the traditional public-private division, the oppression which they experience today is a result of the patriarchy adapting to modern systems. I would like to use, Iris M Young's idea of structural oppression as elucidated in her book *Justice and the Politics of Difference* to explain how the workplace has contributed to the continuation of patriarchy. Young, highlights exploitation, marginalization, powerlessness, cultural imperialism, and violence as the five faces of oppression which strengthen systematic oppression.³⁹ According to me, these forms of oppression are continuously used to subordinate and disempower women in the workplace.

Exploitation is perhaps the most common form of oppression experienced within the workplace. The Marxist model highlights the exploitation done on the basis of class distinction. The 'have's' exploit the 'have not's' and in order to do so they control the means of production and surplus value generated from labour. This class-based exploitation in the economic sphere is more clearly visible within the workplace, where the top management earn much more than the workers at the ground level. Those who work at the lower positions are usually underpaid and overworked which is where most portion of profit is generated. Women mostly occupy this position of menial labour, which is characterized as unskilled, low-paying work lacking in autonomy. It is a type of work which supplements another work without receiving any recognition.⁴⁰ For example, a women working in her father or husbands shop or field will never receive special wages. The work that she does will be expropriated by the male member of her

family for which he will earn profit.⁴¹ Women also supplement the men work by taking up gender specific jobs even if they are not low paying jobs. For example, an Air Hostess needs to care about her body, her looks and her age in order to stay in that particular job. There is almost equal weightage given to the skill and the looks of an Air Hostess. It is assumed that the manner and servility that an Air Hostess presents in her job can only be done by women not men. The expropriation of women's work by men and the constant pressure of women to work within feminine jobs which men cannot do is a common practice. The entire workplace contributes to the continuous exploitation of women.

The second form of oppression which women experience is marginalization. The marginalization of women within the workplace is perhaps the most noticeable of all forms of oppression. Marginalization stems from material deprivation and even exclusion. Women in the workplace face both. Many times, women are excluded from work with men do only because of their gender. For example, in most companies' women are not allowed to work at night for the sake of women's safety. But these companies do not consider that women may want to work at night, especially if the work is higher paying. Women are excluded from the workplace, because the workplace cannot guarantee the same safe environment it can guarantee a man. The difference between pay despite the same work which is done in another example of marginalization. Most workplaces assume that since men have to take care of a family, they need to earn more than a woman whose income is regarded as extra income. The role of bread winner of family is considered as reason why women should get less pay. But the woman's work within the family is not acknowledged or paid by the workplace.

This is interesting as women's works in the household is ignored where men's position in the household dictates their pay scale. The patriarchal influence which privileges men while oppressing women is visible here. The problem is that this is also normalized in most workplaces. While legislations like Equal Remuneration Act, 1976 is trying to reduce marginalization in the workplace, it is only available for jobs within the government. The private sector still continues to marginalize women with gender-based wage differences. As Walby highlights, 'The key feature for patriarchal relations in paid work is that of closure of access by men against women. Thus involves the exclusion of women from paid work or the segregation of women within it.'⁴² This leads woman to continuously experience marginalization within paid labour.

Both exploitation and marginalization are supplemented with another form of oppression, which is powerlessness. Within the workplace, women usually experience a position where they have little control over the choices they have. Young describes powerlessness as, ‘inhibition in the development of one’s capacities, lack of decision-making power in one’s working life, and exposure to disrespectful treatment because of the status one occupies.’⁴³ Due to sexual division of labour women usually occupy the position of menial labour. They lack opportunities for skill development, decision-making ability and are usually treated inferior to men. Sexism and misogyny are rampant within workplaces which are constructed to privilege men. Women who work in agriculture fields or construction sites rarely get access to basic human necessities like *pukka* washrooms. They have to use open fields or spaces which leave them vulnerable to sexual attacks.

Rampant sexism in workplaces can affect the emotion and mental wellbeing of the women worker who is humiliated due to her sex. The oppression perpetuated by deliberately relegating women to situations and positions where they possess little, or no power is routinized within workplaces. Powerlessness is not just a situation which only women experience. But when combined with patriarchal beliefs that women are subordinated to men, powerlessness becomes a terrifying tool for oppression. This is mainly because powerlessness goes unnoticed by those who are in positions to do something about it.

Exploitation, marginalization, and powerlessness which women experience within the workplace are very common forms of oppression. As Marxist scholars highlight that the capitalist economies which thrive only if these forms of oppression continue. But India being a socialist country finds it discomfoting to have such a large portion of their workers exploited, marginalized and powerless. The extensive labour laws found in India have play a part in preventing the arbitrary oppression, which is found within the workplace, but it does not eradicate it. Labour laws to protect women specifically, have been applied but they also do not necessarily address the structural oppression which women experience within the workplace. For example, The Factories Act, 1948 bars women from working within factory except for the timing 6 am to 7 pm.⁴⁴ This act is a protective legislation which assumes that women are safer if they do not work during the night shift. Here the law assumes that, firstly, protective women by taking away work opportunities from then is easier than building a safer workplace. Secondly, women are vulnerable during the night hours of 7 pm to 6 am. And thirdly, women are permanently vulnerable because the women mostly work for male managers or supervisors.

This one law renders women as exploited, marginalized and powerless. Even though this may not be the intention of the law, it actually ends up perpetuating structural oppression more than challenging it.

Young describes that structural oppression escapes unnoticed as, 'Its causes are embedded in unquestioned norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules.'⁴⁵ People do not even realize that they are being oppressed or are oppressing others. Patriarchal oppression does not always fit under the paradigm of conscious and intentional oppressive practices especially within the workplace. Sexual division of labour in the economy combined with socially acceptable subordination of women to men, creates an insidious formula for oppression of women which is very difficult to unravel.

Legal interventions can appear to help women to escape oppression, but unfortunately it many times ends up justifying the forms of oppression and rigidly fixing them. It is even worse that protective legislations as such, ends up benefitting men more than it benefits women. As Menon states, 'Protective legislation- restricting of women employment in hazardous work, reduced hours of work for women workers, maternity benefits and so on, has often been used by the male working class to restrict competition by male workers.'⁴⁶ Protective legislations work more in safeguard men position rather than women's position in the workplace. Preventing women from working at night does not remove the unsafe conditions which make women vulnerable. It does not challenge the patriarchal subordination which experience but rather continues it. The priority should be to ensure safe working conditions for women irrespective of the time, not to stop women from entering workplaces. I believe that such a legislation has been made to prevent men from using violence on women rather than keeping women safe. Because if women's safety was a concern, then automatically preventing unsafe conditions within the workplace will be a priority.

Under Young's assessment of oppression, the reason this takes place due to cultural imperialism, i.e., 'the universalization of a dominant group's experience and culture, and its establishment as the norm.'⁴⁷ Men experience in the workplace is the norm, and women are accommodated around it. Due to the constitutional commitment to equality all workplaces have to allow women to work at par with men. Workplaces cannot show sex-based segregation unless determined as reasonable, as this is gone directly against the provision of equality. But workplaces are dependent on the sexual division of labour. That part has not changed due to

the presence of laws. As long of sexual division of labour exists, men's labour and position will always be considered as superior to women's labour and position. Men will always hold the position of the dominant group in the workplace whose experience are enforced on women. Protective legislations do exactly this. They create an image of a vulnerable, dependent women who needs to be taken care off. The problem is not the male dominance within the patriarchal workplace but rather the women's vulnerability, which the State needs to protect. Workplaces project patriarchal culture, an entire system of thought and belief that assumes male domination over women. This create a space where the subordination of women is normalized as work culture. Sexism, misogyny, and even sexual harassment are considered as normal within workplaces most of the time and contribute significantly to the oppression of women.

This brings me to the last form of oppression which Young highlights, that is, violence. Violence is the least evident from of oppression against women in the workplace, yet according to me it the most practiced form. Violence is the most systematic form of oppression because it is directed towards women, simply because they are women. Sexual Harassment which is a consistent form of violence perpetuated within the workplace is a form of oppression which women have to endure. As Walby puts it, 'Men use violence as a form of power over women. Not all men actively need to use this potential power for it to have an impact on most women.'⁴⁸

Just the threat of sexual harassment at the workplace is enough to keep women a subordinated position. Not all men may be harassing but all men definitely occupy a dominant position in comparison to women in a workplace due to the constant threat of violence. Violence against women is a tool to oppress them and is practiced continually within the workplace. The 'Me Too' movement brought out the abnormality of the 'routineness' of sexual harassment which women experienced. Cultural imperialism normalizes dominant norms, even if it is violent. Sexual harassment in the workplace is a result of these two forms of oppression combined with exploitation, marginalization, and powerlessness which completely compromises with equality and empowerment. As quoted by Justice Verma. 'Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace.'⁴⁹

To summarize, women face systematic oppression within the workplace. It is not necessary that all forms of oppression will be functioning within a specific workplace at all times. Rather it can be a combination of some oppressive practices. Exploitation and marginalization are the most common forms of oppression visible within the workplace. Powerlessness and violence

usually combine together during incidents of sexual harassment. Cultural imperialism may not be experienced in an all women workplace. Nevertheless, some form of oppression or multiple forms of oppression are continuously practiced within the workplace. As long as oppression continues in any form, empowerment is far from achieved.

The Indian condition of oppression within the workplace is a well-known problem. There are many legislations which are attempting to address these concerns and empower women in the workplace. Empowerment of women within the workplace is a little bit easier to achieve than empowerment within the political or social spheres. This is due to the fact that workplace is constructed to adhere to certain rules, behaviours and laws which are decided by the State. India is not a capitalist country where the State only plays the role of a watch dog. But the Indian State is committed to create an equal and just economic system where workers are free from exploitation. There are many laws which guide the creation and stability of the workplace. In order to create a gender just system, the Indian State has relied heavily on the presence of laws using different approaches.

Ratna Kapur and Brenda Cossman identify three approaches towards pro woman legislations, mainly, protective, sameness and corrective. Protective approach assumes that women are vulnerable to men and so the State needs to protect them. Sameness approach assumes that women and men are the same so State needs to ensure their equality. Corrective approach recognizes that women have historically suffered from discrimination and attempts to correct this.⁵⁰ For the sake of empowering women within the workplace, India depends on all these three types of legislations.

Protective legislations refer to laws which are meant to protect workers against hard labour, unsafe and exploitative work conditions. In India protective legislations attempt to address the inequality and oppression women experience in the workplace by creating laws which aim for equality. Preventing women from working at nights and banning women from working with dangerous machinery can be considered as protective legislations. These laws have been created to protect women as they are considered weaker and subordinated in the workplace. These legislations do not challenge the difference which subordinates women but rather essentialize it. They consider the sex difference as ‘natural and inevitable point of departure’.⁵¹ The idea here is that women are vulnerable in certain conditions within the workplace, and they need to be protected by the State. So, women cannot work at night in factories, or operate heavy machinery as it is considered unsafe for women. Such legislations fix women into the role of

the potential victim who need protection from the State. Since this approach essentialize difference, it also unfortunately contributes to the continuing subordination of women. The marginalization and powerlessness which women experience within the workplace remains unchallenged here.

Laws like Equal remuneration Act, 1976 which conditions the government employees to receive same wages for the same position is an example of equality of sameness. Equal remunerations do not recognize sex difference in paid work. The gender gap which women experience is in a sense removed by giving equal wages. Equality of sameness is the easiest approach to the question of inequality. It sends out the message that women workers are equal to men, their level of skill and dedication is equal to men and anything men do in the workplace women can do too, so there should not be a difference in wages⁵². Simply put it constructs women as same as men within the sphere of law.⁵³ And while this is a very well-intentioned law, it seeks to make the workplace gender neutral. Gender neutral laws when looked upon critically can be a problem for women. Firstly, it assumes that men and women are not different, so their experiences are not different. Secondly it assumes that equality for women means that they should be equal to a man, so women are constantly trying to achieve the same position as men. Due to this, women's experiences are rendered as either invisible or unnecessary to recognize. While removing the discrimination which women experience in the workplace is important. Is constructing a gender-neutral workplace the right idea?

While gender neutral workplaces can remove the most overt forms of discrimination, it does little to address the marginalization and powerlessness which oppress women within the workplace. Women's experience of discrimination stems from the sexual division of labour which functions within and outside of the workplace. Women are exploited, marginalized, and left with little or decision-making power due to this. If workplaces are designed as gender neutral, then the specific experiences of women are not considered at all. For example, pregnancy is a condition which women experience specifically, so from the number of hours of work, type of work to maternity leave are demand which only women have within the workplace. If the workplace is gender neutral, then such demands ought to be completely ignored. But is this an ideal situation to establish equality within the workplace? Or is this just a cosmetic provision which does very little to empower women in the long run.

The proponents of corrective approach claim that women's equality is better achieved by bringing in women's experience of discrimination within the workplace rather than ignoring

them. Since women have suffered from historical discrimination, this approach is critical of the gender-neutral legislations. Corrective approach will highlight that gender neutral laws are not gender neutral at all, but rather are based on male standards and values. Under the guise of equality women are being discriminated. Equal wages for example, does not consider the work women do in the households. The 'double day duty' which most of the time only women experience is completely ignored thereby continuing the exploitation of women's labour. But corrective approach addresses this difference in order to bring substantive equality for women. Maternity benefits are an example of the corrective approach. Here too the difference is essentialized but within the context to a regular experience. Women are not considered vulnerable but rather it is assumed that since difference is used as means to oppress, the very same difference will be used to guarantee equality to them. But this equality cannot be achieved by arbitrarily recognizing women's differences. For the sake of substantive equality, one needs to make a choice as to when and how difference ought to be recognised.

All the three approaches, attempt to address some form of oppression which women experience within the workplace. Yet none of these approaches completely target the source of oppression which is patriarchy. Protective approach and sameness approach are the most commonly used approach for women within the workplace. While they do have their benefits, such legislations do not address the oppression which stems from patriarchal influence. These legislations are more focussed on delivering a formal equality rather than eliminating the source of inequality. So, is it possible to establish equality and empowerment within the workplace?

As MacKinnon points out, gender-based discrimination in the workplace related to the distribution of power. The patriarchal structure through which women are subordinated to men is also maintained in the workplace and so the distribution of power within the workplace is also skewed. None of these protective legislations attempts to address the influence of patriarchy on the workplace which is continuing the oppression of women. Protective and sameness legislations which ignore sexual division of labour, and the patriarchal culture of the workplace are only short term, temporary solution to long term oppression of women.

Once again, I would like to emphasize that in India, the workplace is designed through laws. Through many laws and regulations, the Indian State is able to create a work environment where laws have the potential to question the oppression which women experience within the workplace. The Indian State can influence the workplace to be less oppressive. This potential

of legislations is seen within the law against sexual harassment for women which attempts to address the oppression of women from the point of view of women.

3.3 Examining Some Provisions Against Sexual Violence at Workplace in India.

As mentioned before, violence is an instrument of patriarchal violence which used to subordinate women. Sexual assault, abuse, sexual harassment are all types of violence used to subordinate women. In the workplace sexual harassment becomes a rampant form of violence. Walby highlights that violence like sexual harassment against women as a resource to dominate them continues due to the lack of State intervention to condemn such violence.⁵⁴ MacKinnon highlights that the State and economy which constructed on male experiences is not able to imagine the experience of sexual harassment against women in the workplace.⁵⁵ The fact is that sexual harassment at workplace as a means of oppression against women has escaped the notice of State for a long time. Statistically, the National Crimes Reports Bureau reported 1658 cases in 2020 and 2032 cases in 2021 of sexual harassment which were filed under the Section 12 of POCSO Act and Section 509 for the Indian Penal code⁵⁶. This number is beyond all cases filed under the internal committees and local committees. As people are getting more aware about sexual harassment and the oppression it perpetuates, the more intolerable it is becoming. Due to this awareness, there was a growing demand workplaces and institutions become responsible not just to prevent sexual harassment about also to devise means to adjudicate it.

This was not always the case. The demand for laws against sexual harassment emerged in the nineteen seventies along with the demand for stronger legislation against violence on women. These demands reflected a growing concern for women's safety in all spheres of life. But it was in 1993 that issue of violence on women merged with the notion of women's empowerment. In 1993 the Convention on the Elimination of All Forms of Violence Against Women (CEDAW) was signed by India which highlighted that States need to create legislations against sexual violence which women experience. It stated,

‘State should develop penal, civil, labour and administrative sanction and domestic legislation to punish and redress wrongs caused to women; women who are subjected to violence should be provided with access to the mechanism of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered’⁵⁷

Prevention of violence against women became the States responsibility and since India had signed the CEDAW automatically Indian legal system became responsible for the acting against all forms of violence which women experience. CEDAW was one of main international conventions which highlighted that woman experienced violence within the workplace. Article 11 of CEDAW states, 'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women...' ⁵⁸. As India is part of the CEDAW it is only natural for India to address all forms of inequalities and discrimination within the workplace.

India acknowledges that violence against women is common problem in our social system. Being a deeply patriarchal society, the problem is not just the act of violence but also the acceptability of it. Sexual harassment at the workplace also unfortunately gets ignored more easily than one would like to admit. This is why creating laws which prohibit sexual harassment in the workplace is very important. As Mackinnon states, 'The existence of a law against sexual harassment has affected both the context of meaning within which social life is lived and the concrete delivery of rights through the legal system.' ⁵⁹ The political-legal ability of ensuring women's empowerment actually rests on the creation of the law against sexual harassment. Women are the main victims of sexual harassment at workplace, so when making a law against sexual harassment, the experience of women have to be considered. This law is specifically made to ensure that the powerlessness and violence which women experience within the workplace is eradicated or at the very least, significantly lessened.

In 1997 the judgement of the landmark case *Vishaka & Ors. v State of Rajasthan & Ors* ⁶⁰., made sexual harassment the centre of debate on women's empowerment. For the first time India has a law made solely for women which considered the experiences of patriarchal oppression which women went through within the workplace. The case started with the social worker in who worked with the government in Rajasthan to stop child marriages. After preventing a child marriage, the woman was brutally gang raped by the members of the family. While criminal action was taken against the rapist, the question of women's safety was also raised. Since there was no provision for creating a law or a judgement against sexual harassment against women within the workplace, the Justice Verma depended on the CEDAW provision to declare sexual harassment as an offensive practice. As the Vishaka judgement states, 'The incident reveals the hazards to which a working woman may be exposed and the

depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures’⁶¹

The judgement did not just highlight the need to legislate against sexual harassment but also delivered a set of guidelines for workplaces to create mechanism’s which prevent and redress sexual harassment. This verdict is touted as one of the landmark judgements for women’s rights. According to The Vishakha judgement, the onus of responsibility was on the employer and the harasser. Employers were responsible to take necessary steps to prevent sexual harassment, take disciplinary actions, initiate legal actions, and ensure that employees were aware about their rights⁶². Though the guidelines were non- juridical, their presence paved the path for creation of laws within criminal justice system. Due to these guidelines, the government also took cognisance of the condition of working women in India.

Sexual harassment became a political issue in a country which is trying to establish a system of empowerment for women in all spheres of life. Sexual harassment at workplace also became an issue which could be legislated solely for women’s equality. Most of government’s efforts to deliver women’s empowerment were criticized as too protective in nature. These policies and legislation mostly did not consider women’s experience, nor did they challenge the patriarchal influence on the oppression of women. This judgement created a clear path for the government to firstly create a law against sexual harassment and secondly to utilize it specifically in favour for women. Instead of depending only on protective legislation or sameness legislation, this time the government could utilize a more correct approach to deliver substantive equality to women. Women’s experience of sexual harassment in all its forms became the sole centre of concern for this particular legislation. The *Vishakha* judgement made it clear that violence against women within the workplace could not be tolerated in a country aiming for equality and empowerment.

In 2013, the Lok Sabha passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to provide protection against sexual harassment against women at work and also provide for redressal of complaints. This is a comprehensive act which not only creates conditions to prevent sexual harassment but also proposes mechanisms to redress complains. This also act delineates many concepts which is otherwise confusing to understand. In order to understand the potential of this law to curb down sexual violence in the workplace, there is a need to critically assess it.

The Act, first and foremost, highlights the meaning of sexual harassment. Usually in cases of sexual harassment, the confusion starts with what exact sexual harassment constitutes off. MacKinnon states,

‘...all sexual harassment is words, pictures, meaningful acts and gestures. Yet it has been legally understood in terms of what it does: discriminate on the basis of sex. Unwelcome sex talk is an unwelcome sex act. When threatening, severe, or pervasive enough, it works to exclude and segregate and denigrate and subordinate and dehumanize, violating human dignity and denying equality of opportunity.’⁶³

Though sexual harassment at workplace is a commonly known form of oppression which women experience within the workplace, there was no real agreement as to incidents, acts, words can be called as sexual harassment. While sexual act due to threat or for favours was accepted as sexual harassment, incidents for verbal sexual harassment, sharing of pornography, unwelcome touch were all written off nonsexual in nature. Many times, the claims of sexual harassment are ignored under the guise of the colleague or employer being friendly or approachable. One of the challenges which legislation against sexual harassment faced was what act can be called as such.

The answer was found in the *Vishaka* judgment, which explained sexual harassment very extensively. This same definition was also included within the law against sexual harassment. According to the Act,

‘Sexual harassment’ means any unwelcome advances either directly or indirectly, which are physical in nature or demand of sexual favours. Making sexually coloured remark, showing pornography or any other physical, verbal or non-verbal conduct which is sexual in nature will be considered as sexual harassment.⁶⁴

This is a very comprehensive understanding of sexual harassment which clearly indicates that any form of sexual coloured remark or action against women will be considered as sexual harassment.

Secondly, this definition is further supplemented by highlighting the conditions in which women are either coerced or manipulated into situations of sexual harassment. According to the Act, any implied or explicit promise of preferential or detrimental treatment in a women’s employment will be considered as connected to sexual harassment. Except that any implied or

explicit threat about her present or further employment, any humiliating treatment to women's health or safety, or any form of intimidating, hostile or offensive work environment is created for women to work in which also be called as a condition of sexual harassment.⁶⁵

Often many women refuse to come forward and complain against sexual harassment as it may have a negative impact on their work or careers, but such threats are recognized and condemned under the current act. The work environment also plays an important role in the continuation of harassment which a woman faces. The current act makes the employer responsible for creating conditions of safety for women employees. Safe working conditions and a non-hostile work environment is a basic human right which needs to be granted by the employer. This act makes it a fundamental requirement for all workplaces. A condition which is unsafe for women would automatically mean that the workplace is creating conditions where acts of sexual harassment can take place.

The Handbook on Sexual Harassment of Women at Workplace, given by the Government of India, highlights that sexual harassment of women happens mainly in two manners, either as a threat or intimidation, or through hostile work conditions. It is necessary to realize that conditions of sexual harassment may not always be visible but can be a result of many hidden factors like threat to the women's job or pay scale or promotion. It can also be lack of awareness of situation which lead to sexual harassment. For examples, when employers encourage or ignore pervasive rumours about a female staff member can be called as a hostile work conditions.⁶⁶

Another major provision of the act is the definition of workplace. The Act states that a workplace can be any organisation funded wholly or partly by the government. any private sector organization, hospitals and nursing homes, sports institutes, a dwelling or a home and even unorganized sector.⁶⁷ The act includes all places where women are employed to do work, irrespective of whether they are permanent, contractual, or temporarily employed. So far laws for women related to workplace has been divided on the basis of place of work. Factories, Beedi Making industry, educational institutions all have different provision for women working within them. Some laws like Maternity Benefits Act, 1961 are available for all women who work in the organized sector. But laws against sexual harassment does not define the workplace in such narrow terms.

The place where a woman conducts her work for which she is getting paid in salary or wages automatically becomes her workplace. The workplace also includes homes and dwellings where women can work as maids or kitchen staff. The idea here is that sexual harassment of women occurs not only because of the location of the work, but rather due to skewed power relations in the workplace. Men are in dominant positions in comparison due to which they can harass women so that they remain subordinated. The sexual violence which women experience is a form of oppression which is used to maintain the patriarchal distribution of power. Therefore, it is possible that women can be exploited anywhere. In the *Tehelka* case, the aggrieved woman was harassed in a hotel where the team was working⁶⁸. This was not their office but rather because she was in a work-related situation, and the advances made were unwelcome, this becomes a case of sexual harassment. Basically, the location or type of workplace is no longer an excuse to claim that women experience with violence is not sexual harassment.

The Act also makes provisions for constituting an Internal Complaints Committee, and a Local Complaints Committee. The Internal Complaints Committee would have a woman presiding officer, two members who are committed to the cause of women's safety and one member from non-government organization.⁶⁹ The Local Complaints Committee is constituted by the local District officer, in order to receive complaints for organization where the Internal Complaints Committee cannot be constituted, for example, for women working as domestic maids, or where the number of employees is less than ten. The Local Complaints Committee is headed by a chairperson who is an eminent social worker. One women member from the district, Taluka, Municipality is nominated with two members from non-government organizations where at least one of them has legal knowledge.⁷⁰ Members from Schedule Caste, Schedule Tribe, Other Backward Classes, and Minority must be a part of the committee as demanded by the government. It is important to acknowledge that the act lays importance on the more women members, especially as chairpersons and presiding officers. It also recommends the members that members are sensitive to issues which women experience.⁷¹ The Act believes that more women within the committee will make the complainant more comfortable in speaking in front of the committee as that in general, sexual harassment is not taken as seriously as it should be. Women who are already sensitized towards these issues can be more open minded in understanding and judging the situations or conditions of sexual harassment.

The act of sexual harassment changes from case to case. While some cases may be similar, most of the time the action or condition of sexual harassment depends on the perpetrator's behaviour. This is why it is important for the committee members to understand the situation which the victim has experienced. The handbook published by the government vaguely defines what the term 'unwelcome' means. The act on its own does not give any explanation about the term 'unwelcome'. The Report on the Constitution Amendment, 2013 states that, 'In determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due weight shall be the subjective perception of the complainant.'⁷² There is a need for the committee to decide whether an action or condition leading to the complaint was valid or not. This meant that the committee may have to interpret the action as sexual harassment or not under some circumstances. The law makers believed that women especially those who are more aware about women's issues and sensitive towards the goals of social justice may be the right people to determine the subjectivity of the claims.

The Act goes on to furnish the method in which the complaint can be made and addressed in Section 9. The act states that the aggrieved woman can make a written complaint of sexual harassment to the Internal Complaints Committee. In case it is not constituted, the complaint can be registered with the Local Complaints Committee also within three months of the incident, or in case of series of incidents, then three months since the last incident.⁷³ The Act guides the chairperson and presiding officer to offer all forms of reasonable assistance so that the woman can give her complaint in writing. According to the act, the committee is responsible for making sure that the complaint is registered properly in writing.

While this seems like a good clause, The Report on the Constitutional Amendment Act, 2013 highlights two main problems in this clause. Firstly, it believes that making the written complaint compulsory will dissuade women from underprivileged backgrounds to make the complaint. It may also lead to misinterpretation of the complaint or in some cases, aggrieved women may be guided to change or ignore some important incidents during their complaints. The report suggests that aggrieved women should be able to give their complaint orally, which can be transcribed by the committee.

The report also questions the clause that the complaint has to be made within three months of the incident. It is possible that a woman may not be able to make the complaint especially the first time an incident of harassment happens. Therefore, the report recommended that the committee decide the reasonable time period of the complaint. I believe that if the time period

of filing a complaint is left to the committee alone, there is a possibility that this provision maybe misused. A committee which is formulated for legal reasons only may end up further victimizing the aggrieved women by not admitting the complaint which may be very serious, conveniently stating 'beyond time period' as the reason. Rather than rigidly fixing three months, it is better that act allows committees to determine if the complaints are valid after three months.

In Section 10(1) of the act, mentions conciliation. It states that the Internal or Local Complaints committee may attempt conciliation between the aggrieved woman and the respondent before starting the inquiry, provided no monetary compensation is made. Here once again, I would quote from the Report which eloquently puts,

‘There are certain areas, such as contractual matters where there could be conciliation, but in matters of harassment and humiliation of women an attempt to compromise the same is indeed yet another way in which the dignity of women is undermined.’⁷⁴

As report states, the fact that conciliation is allowed indicates that the women's complaint is not taken as seriously as it should. One should keep in mind, that the socio-economic conditions which women in India live in does not encourage women to stand up for themselves. The social system which normalizes many forms of patriarchal violence also condemns women who complaint against sexual harassment. Women complaint in their work institutions under great risk of losing their jobs or their promotions. As we have observed before that women in India mostly occupy low paying and temporary jobs, which means that a complaint of sexual harassment could discourage the employer from hiring them back.

Conciliation is a form of compromise which negates the risk which women take to stand up for her own safety. It is also a means through which women can be manipulated, gaslighted or coerced into settling in favour of the perpetrator. I strongly believe that adding conciliation despite many recommendations not to indicates that while making laws for women, the law makers were sympathetic to the male violence that is normalized in our society especially workplaces. My observation may be harsh in nature, but sexual harassment is an experience which most working women have gone through, and most of the time they were discouraged from complaining in the first place. The option of not inquiring into the act of sexual harassment should not be available to any committee, internal or local. This is

counterproductive to the function of the committee which is created for inquiring and redressing sexual harassment of women in workplace.

Even Section 14 of the act which gives the local and internal complaints committee to penalize women for stating a false complaint is counterproductive⁷⁵. I do acknowledge that sometimes, sexual harassment can be misused but the decision for penalizing the complainant should not be within the committee. The committee is constituted to redress the complaint and determine the compensation or punishment of the perpetrator. The same committee cannot be also given the responsibility to penalize the complainant. This will encourage committee to spend more time identifying whether the aggrieved woman is telling the truth or not, rather than inquiring into the actions of the harasser. Again, there is a risk that a woman maybe gaslighted, manipulated or coerced into stating that she made a false complaint.

The committee's aim should be to prevent and redress sexual harassment and not judge the woman. It is my opinion that this section can lead to unnecessary defamation of the complainant. Looking into the nature of Indian social system, the inquiry could easily turn into a mindless witch hunt against the complainant. This would defeat the purpose of the committee and actually make the committee an instrument to discourage women from making complaints in the future. I understand that employers may want to act against women who file false complaint, which is also a ground reality. It would be best if a separate disciplinary committee is constituted which has no member or person involved in the inquiry against sexual harassment. This would allow the committee to peruse the inquiry without being burdened with the responsibility that they may have to take an action against the woman they were supposed to help.

While the act on the prevention, prohibition and redressal of sexual harassment has many attributes there is a question which has come up often, that is can the law be gender neutral? I would like to highlight that the potential of the law is determined by the people making the law. It is the law makers that construct a set of limits which determines the functioning of the law. If the law makers are not completely unbiased or sensitive towards the issue being resolved, then the law created may also display the bias. Which is exactly what happening in the case of law for sexual harassment. The very fact that the law specifies 'sexual harassment of women' indicates appears to be unfair.

There is no denying that numerically, women form the highest number of victims of sexual harassment, but this does not mean that men or transgenders do not face sexual harassment at all. The very fact that this law fixes women in the position of the perpetual victim itself and the man as perpetual aggressor is a form of injustice. These injustices stem from two main reasons, firstly, the idea that only men who display masculine traits have the potential to act aggressively and harass women sexually. Secondly, it is the State's role to protect women against such aggressive men.

In patriarchy, men subordinate and oppress women. This is well known characteristics of patriarchal structure, and of the main instruments to do so is through 'male violence.' As Sylvia Walby states, 'Men use violence as a form of power over women.'⁷⁶ It is almost natural and socially acceptable for men to commit some act of violence over women to subordinate them. It is through State intervention that this violence is condemned and punished. As we have seen before sexual harassment was highlighted as an act of violence against women due to the provisions of CEDAW. The *Vishakha* guidelines broke the belief that sexual harassment is a socially acceptable experience for women in the workplace. It is because of these guidelines that act of sexual harassment of women in workplace were determined to be an intolerable act of male violence. Since patriarchy depends on violence to assert the power relations between men and women, one of the main ways to weaken patriarchy is to delegitimize the act of male violence using legal provisions. This is where the law prohibiting sexual harassment becomes useful.

In doing so, the stereotype that 'all men are violent' and 'all women are victims' is maintained and promoted. This stereotyping serves to continue the binaries on which patriarchal structure is based upon. We must keep in mind, that women are both the subjects and participants of patriarchy structures. While it is true that most women are subordinated within this structure, in some places like workplace, the power structure may change. Women can harass men too and can hide behind the stereotype of being the victim. Sexual harassment is a tool for asserting power within the workplace, so men and women are both capable of using this. But in most cases women are the ones who are sexually harassed. This has led for a call for gender neutral laws for sexual harassment. Why should the focus of sexual harassment be only women?

I have my reservations about gender neutrality in laws against sexual harassment. It is not because women are perpetual victims of violence, but rather because violence as a means to assert patriarchal domination is a privilege given to men. Men recognize their position of power

in a patriarchal structure and use it to concretize their position as the dominant group. The sexual division of labour is normalized so that men can appropriate women's labour, in the same manner violence to subordinate women in the workplace is also required. This is why the law against sexual violence is solely based on women's experience of sexual violence. It is not to say that women cannot sexually harass men, but rather this law aims to assert that the skewed distribution of power within the workplaces needs to be corrected.

Since the workplace is constructed using men's experiences and objectives in mind, if the law against sexual harassment is made gender neutral, then it is possible that this law will be used against women. When women complain against sexual harassment, men can also counter complaint. Due to existing male privilege and power, the decision may go against the women even when she is clearly the victim. Threat, intimidation, compensation may all be used to discourage women from complaining. Since women mostly occupy low paying or temporary positions within the workplace, gender neutral laws will be counterproductive to women's empowerment.

Another major achievement of this law is that it also focuses on the prevention of sexual harassment in workplaces. It focuses on creating workplaces which are safe for women to work in. Section 3 and Section 19 of the law especially focuses on holding the employer responsible for unsafe or hostile work environment. Safe workplaces which preserve the dignity of the employer is a basic human right. The act also provides frameworks for penalizing the employer if provisions under the law are not met or if a complaint is ignored.⁷⁷ If we are able to create more workplaces which are sensitive to issues of sexual harassment and work towards creating a safe work environment, then the workplace will automatically be less patriarchal in nature. Sexual harassment is a power relation which seeks to establish a relation between the dominant and the subordinate. In order to create safer workplaces, these set power relations will be challenged. This means that if the workplaces are created to reduce patriarchal influence, then, the workplace will automatically be safer than before.

This law has played a very important role in recognizing that women experience exploitation, oppression, and subordination in the workplace. Equal pay legislations, maternity benefits are not the only solutions to the inequality which women experience in the workplace. Women continue to experience subordination due to the patriarchal sanction to male violence like sexual harassment. From sexual division of labour to sexual harassment, discrimination and patriarchal oppression manifests itself in many forms. Drafting and passing of legislations is

only a part of the battle to create empowerment within the workplace. There is a need to construct workplaces which are also free from the acceptability of sexual harassment. It is important to recognize the pervasiveness of violence which is perpetuated on women routinely in workplaces. One must understand that the law is limited by the system it functions in. If the workplace wants to punish or coerce the aggrieved woman for filing a complaint, they can still do so. Even though the act penalizes the inaction of the company, many times the injustice goes unnoticed.

Women have to defend their complaint not only in front of the committee but usually also in front their peers. There is an immense social pressure which women who complaint goes through simply because they decided to take a stand against harassment which the society considers as normal behaviour. Sexually coloured remarks are not even considered as sexual harassment in most workplaces. It is written off as jokes, and complaints are many times blamed for being 'too sensitive' or 'humourless.' Women who complaint against sexual harassment to only take a stand against the harasser but also against the society which normalizes violence against women. This is why creation of safe and healthy work environment and practices is imperative to make the law against sexual violence effective. Laws do not work in isolation but work within a specific system. For the law to be effective, the system needs to be constructed to support the law, otherwise law, not matter how well made, would be rendered ineffective.

The law against sexual violence is the same, if the workplace does not support the prevention and prohibition of sexual harassment, then the effectiveness of laws will be compromised. I believe that checks on workplaces to have effective committees should be mandatory. When I say effective, I mean that the Internal Committee's formation and inquire into the complaint should be checked thoroughly. If women are not satisfied with the committee's judgement, there should be an institution where women can address their grievances about the judgement. Section 18 of the act allows for appeals but under very specific conditions. Internal and Local Complaints Committee's should be held responsible for their work by a district or state level institutions made up of retired judges and social workers. While this will add extra pressure on the already overworked judiciary, it would have the committees more accountable towards their judgements.

Another loophole which can be grossly misused is the compensation. While it is very difficult for me to agree that the humiliation of sexual harassment can be addressed through

compensation, I do understand that this is an option which many complainants would prefer as a means of redressal. But there is no minimum amount of compensation which is fixed, and the amount of compensation is decided on the basis of,

‘(a) the mental trauma, pain, suffering, and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; (e) feasibility of such payment in lump sum or in instalments’⁷⁸

This means that the committee may or may not give adequate compensation. It is possible that the workplace may only direct a token amount to give to women. This is especially true for women working in ad hoc or temporary positions as there is a chance that their contracts may not be renewed again. Domestic workers, agriculture workers who also can be easily removed from their jobs, may also only receive a token amount which may not compensate for the distress they faced due to harassment. I believe that if compensation is meant to be given, then the minimum amount of compensation should be specified by the workplace when constituting the Internal Complaints Committee and should be clearly projected in their agenda to prevent sexual harassment. This would act as an instrument to discourage the committee from misusing the compensatory mechanism to give only token amounts to the aggrieved women while at the same time allowing the perpetrator to free from further responsibility for their actions.

Despite some of the provision being questionable, the law against sexual harassment is actually an effective one. The law goes beyond the difference- sameness, protective-sameness options and explores the possibility of corrective legislation. It considers the specific experience of subordination which women suffer in the workplace and attempts to challenge this subordination. It focuses on the creation of a safer and more equal workplace, and also the place where women feel encouraged to speak up against injustice. The responsibility of safety has shifted from women to the workplace and the State. Overall, this displays the potential of corrective approach in addressing women’s concerns. When using the corrective approach, legislations for women do have to potential of creating a workplace which can give the opportunities of empowerment to women. The corrective approach to address women’s oppression is more

3.4 Some Concluding Remarks

Laws are an integral part of the political, social, and economic sphere. They can either legitimize or delegitimize, practice, beliefs and hierarchies which are a part of daily life. The difference between oppression and empowerment is to a great extent defined by law. Before women were considered as equal in the economic sphere, the sexual division of labour was completely accepted as normal economic activity. Its only after the Constitution of India guaranteed equality and makes special provisions for the same, the acceptability of such a discriminatory division of labour has started diminishing in India. Of course, the complete transformation of the economy is a far-off dream, but India has proven that through legislation oppressive practices against women can be recognized and delegitimized.

The workplace is a natural site for oppression as it is based on two discriminatory hierarchies, which are class and patriarchy. The rich still have access and control to modes of production and labour power through which they are able to exploit workers. In a similar manner, men also have access and control to economic opportunities and wages due to sexual division of labour. Class and patriarchy have become convenient allies in systematic oppression within the workplace. While class oppression was recognized and criticized for centuries, the oppression which women face due to the influence of patriarchy continued unnoticed. It is only when more women started working and started contributing to the economy that the inequality that they faced become a national issue. Their inequality stemmed from the exploitation, marginalization, and powerlessness they experienced within the patriarchal workplace. The question which lawmakers faced is, can legislation for equality change the position of women in the workplace? If yes, then what kind of legislations would help in transforming women's position from the oppressed to the empowered?

As observed before, protective legislations, in which women are assumed to be vulnerable and dependent of the State for safeguarding their interests have been preferred. Due to this most mechanisms of empowerment within the workplace automatically depended on such protective legislations. While protective legislations have their merit, they do not really target patriarchy which places women in such a vulnerable position. The sexual division of labour, the public-private divide which create the position of subordination for women are left relatively unchallenged. Yet legislations for women in the workplace have shown the State's commitment to equality and empowerment. The social acceptance towards women's subordination is

disparaged by the State quite vehemently and the workplace is converted into an arena where women's empowerment is negotiated.

Of course, the workplace on its own cannot solve the public-private dichotomy or remove the sexual division of labour. But it is a place where we can test the potential of legislations and policies constructed for women's empowerment. Since the workplace is legally constructed, framing legislations for the workplace is more effective, than any other sphere. Especially when legislating the idea of women's equality within the workplace. Constitutional commitment to equality will state that there can be no discrimination between women and men in the workplace, except that which is defined as reasonable. Any form of arbitrary discrimination would be a direct violation of constitutional provision. Gender pay gap, feminization of labour, gender-based poverty and sexual harassment all became the types of discrimination which the laws makers wanted to eradicate. But can they do so by keeping the women's experience with discrimination in mind?

As we have observed protective legislations are meant for women's empowerment, but in reality, misrepresent women as perpetually vulnerable beings in the workplace. This label of being 'weak' and 'dependent' is something the State forces on women making them more subordinated to men. The idea that the State needs to intervene to protect women means that the workplace is a space which is used to subordinate women. The State does not question the workplace as a site for patriarchal oppression, it does not even make an attempt to modify the workplace. Instead, it forces women to be subordinate themselves to the patriarchal oppression in the name of protection. My observation may be too harsh against the State, but I do recognize that the intention was never to subordinate women. Patriarchy can manifest itself in many forms, therefore even the law is not completely free from it.

This is why, the feminist point of view becomes important in the construction of laws for women. This standpoint emphasise that women's experience of discrimination should be considered while framing a laws and policies for women. In India, the law against sexual harassment is perhaps the only law which attempts to address the discrimination which women experience from their point of view. Such laws do not just prevent or redress discrimination but also challenge all the structures and practices which support such oppression. Women's experience can be used to legislate for their empowerment, which means that such laws do have the potential of changing women's position within the workplace. The transformative potential of law has been explored in the context of corrective legislations.

Catharine MacKinnon elucidates,

‘The law against sexual harassment is a practical attempt to stop a form of exploitation. It is also one test of sexual politics as feminist jurisprudence, of possibilities for social change for women through law.’⁷⁹

It is not just social and economic sphere which can be transformed through such laws. These laws can also be used to test the effectiveness of the legal system in delivering rights. Protective legislations are unable to do so. But as I have highlighted in the previous section, the Act against sexual harassment depends on a system where accountability is held in highest regards. It is a tragic that nearly ten years after applying this law, the structure of accountability still needs to be strengthened. Yet, this law has paved way towards new avenues to address the root cause of violence within the workplace. It proves that laws which are constructed to around women’s experience are more efficient in addressing the issues of patriarchal oppression. It laws proves that laws can diverge from the assumption that man in the centre of all experiences and still be effective in delivering equality. The law against sexual harassment has acted as an experiment in guaranteeing substantive equality by targeting the root causes of patriarchal violence.

Legal interventions for women’s equality in the workplace have been welcomed and unwelcomed at the same time. One side thinks that having laws which can be amended in the future is better than not having laws in favour of women at all. Other side believes that having laws which are only cosmetic in nature is more of a problem as it allows the oppression to continue under the guise of equality. Protective legislations for the workplace do exactly that. Banning women from working at night does not address the violence which women experience within the workplace. It does not to make the workplace safer, instead it imposes restrictions of the potential victims rather than perpetrators. It can be inferred that male violence at workplace is normal but women’s presence within the workplace at night is not normal. The issue with the law is that it is made to accommodate reality which is understood from the man’s point of view.

Laws like The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are created to fit the male construction of reality but it is rather critical of this reality. It is more jurisprudential in nature, giving the people in charge the ability to determine the outcome, rather than fixing the outcome. This law understands that the

experience of sexual harassment is mainly a female experience that stems from the patriarchal desire to subordinate women. It does not predetermine the experience which a women face but rather accommodates the different experiences of aggrieved women.

Catharine MacKinnon calls this approach as the ‘dominance approach’ which is based on critical assessment of women’s lived experiences which laws usually avoid considering.⁸⁰ She highlights that men and women’s experience are significantly different. Men do not experience gender pay gap as women do, there is no feminization of labour for men, no double day duty for men, no pink collared jobs for men. Women’s experience of inequality and oppression is very different from men’s experience of the same. The systematic oppression which women experience is mostly founded on male dominance. Laws for women have to acknowledge that women’s inequality is not rare occurrence which can be prevented through abstract laws, but it rather stems from a deep-rooted patriarchal influence which is difficult to undo without questioning the structure of dominance.

Protective legislations and sameness legislations are created from the man’s point of view. It is a masculinist perspective which is expressed in a female voice. Equal Remuneration Act, 1976 for example, which grants women the same wage which a man earns is framed from a man’s point of view. It does not consider the labour which women do within the household at all. While the wage is equal it may not necessarily be fair. If one has to provide salary to a woman for the work that she does within the public and the personal sphere, women’s earnings would increase significantly. Protective legislations do help women, but only to certain extent. They are inherently myopic and rarely challenge the structure of oppression. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on the other hand, fits within the dominance approach as it considers the female experience of subordination. It functions like laws for women ‘ought to’ in the first place, that is, by understanding the ‘lived experience’ of patriarchal oppression. Corrective legislations or dominance approach, whichever term we use for them, they are framed around women’s experience to weaken patriarchal inequality.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is also an example of how laws can be used to create a system of empowerment for women. Most feminists in India are wary of laws for women, as it can be a site for subordination of women. But laws which utilize the corrective or dominance approach have the potential to weaken the acceptance of women’s subordination. Like the law against sexual harassment at

the workplace empowers women to take a stand against sexual violence and makes the employee responsible for maintaining safe working conditions. The law does not concern with punishing the ‘bad’ or ‘violent’ man, but it is about creating an entire ecosystem which discourages the systematic oppression which women face within the workplace. This has also proven that laws do have the potential to transform the position of women, but such laws have to be made from the women’s point of view.

It is my opinion that a significant source of oppression which women experience also emerges from the household or the domestic sphere. As I observed, sexual division of labour exploits women more within the household than outside it. India has come a long way regarding women’s empowerment in the workplace. Nergesh Meerza case would probably have very different outcome if it was heard in today’s day and age. Since 1997’s *Vishaka* Judgement the legal system has understood their role in the women’s empowerment and is actively participating in achieving this. Within the sphere of the workplace, the transformative potential of law is now slowly being realized.

While the realization of this potential has helped law makers and judiciary more active in making laws which can challenge patriarchal structure, it has also highlighted how lacking Indian system is in achieving this goal at the moment. There are many laws for women which marginalize women more than empower them and amending them is an upcoming challenge. We must remember that empowerment of women is not just the distribution of resources or rights, but it is also the process of correcting the historical discrimination which women have suffered from. To construct laws which only marginally empower women is like leaving the story unfinished. There is a need to emphasize and reiterate the role and the influence of laws in weakening the patriarchal structure in all spheres where women are subordinated, the public, the private and the domestic. Laws have to be created in such a manner that their impact has a ripple effect on the forms of oppression which women experience within and outside of the workplace. I believe that laws can be an important tool in achieving empowerment of women in public and domestic sphere. In the next Chapter I continue to understand and analyse the need for laws in the domestic space, where the lines of oppression are often determined.

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- ⁷⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter II, Clause 4
- ⁷¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter II, Clause 4
- ⁷² Verma, J. S., Seth, L., & Subramaniam, G. (2013). *Report of the Committee on Amendments to Criminal Law* p 130
- ⁷³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter III, Section 9
- ⁷⁴ Verma, J. S., Seth, L., & Subramaniam, G. (2013). *Report of the Committee on Amendments to Criminal Law* p 128
- ⁷⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter V, Section 14
- ⁷⁶ Walby S (1989); *Theorizing Patriarchy*, *Sociology*, 23(2), p. 224
- ⁷⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter VIII, Section 26 (1)
- ⁷⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Chapter V, Section 15
- ⁷⁹ MacKinnon, C (1987), *Feminism Unmodified: Discourse on Life and Law*, p 103
- ⁸⁰ MacKinnon, C (1987), *Feminism Unmodified: Discourse on Life and Law*, pp 32-45