

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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A CRITICAL ANALYSIS ON THE EXISTING LAW - ISSUES & CHALLENGES IN RECONCILING PERSONAL LAWS WITH THE IDEAL OF UNIFORM CIVIL CODE IN INDIA

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ABSTRACT:

A Practice Note setting out the key issues concerning employment anti-discrimination and anti-harassment laws in India. The issues considered include types of discrimination and prohibited conduct, protected characteristics, employer obligations, complaint mechanisms, penalties, and liabilities.

INTRODUCTION

Anti-discrimination and anti-harassment laws, employee protections, and employee awareness vary greatly by country. Global employers must understand their obligations in each country they operate to prevent and protect employees from unlawful workplace discrimination and harassment. With an increased global focus on diversity, equity and inclusion in the workplace, and to remain compliant and reduce litigation and reputation risks that accompany these claims, employers should understand:

- The scope of unlawful workplace discrimination and harassment.
- The personal characteristics protected from discrimination.
- Their potential liability for engaging in or tolerating discriminatory practices or harassment.
- The best practices to minimize and deal with employment discrimination and harassment in the workplace.

Equal Treatment Principle

The principles of equal treatment and equal opportunity are enshrined in the *Constitution of*

India (Constitution) and various Indian employment laws (see *Discrimination and Harassment Laws*). Articles 14, 15, and 16 of the Constitution lay the foundation for equality and non-discrimination:

- Article 14 requires that all persons will be assured equality before the law and the equal protection of laws within India.
- Article 15 prohibits discrimination on the grounds of:
 - religion;
 - race;
 - caste;
 - sex; and
 - place of birth.
- Article 16 specifically ensures equal opportunity for those working in state enterprises, prohibiting discrimination on similar grounds to those contained in Article 15.

Legal protections against discrimination are spread across numerous Indian laws (see *Discrimination and Harassment Laws*). These laws require employers (including private sector employers) to:

- Ensure equal pay for equal work.
- Prohibit discrimination in hiring, promotion, and other employment matters.
- Provide equal opportunities for persons with disabilities, transgender individuals, and those with HIV status.

Discrimination and Harassment Laws

There is no comprehensive and standalone legislation that specifically governs workplace discrimination in India. Articles 15 and 16 of the Constitution protect individuals against discrimination based on religion, race, caste, sex, and place of birth (protected characteristics under the Constitution). However, Articles 15 and 16 of the Constitution are only applicable to public sector employment.

The statutes that extend anti-discrimination protections to employees in both private and public sector employment, with only limited exceptions (such as certain state-specific Shops and Establishment Acts, which generally do not apply to public sector organisations) are as follows (the links to statutes provided throughout this Note may not reflect the most recent amendments and users should consult official gazettes/trusted legal databases for the latest versions):

- The *Equal Remuneration Act, 1976* (ERA), which provides for the payment of equal remuneration to men and women workers for the same work or work of a similar nature, and prohibits discrimination on the grounds of sex against women in the matter of employment and for incidental matters.
- The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, known as the Prevention Of Sexual Harassment Act (POSH Act), provides protection against the sexual harassment of women at the workplace.
- The *Maternity Benefit Act, 1961* (MB Act) protects women from dismissal during maternity leave and provides maternity related entitlements.
- The *Rights of Persons with Disabilities Act, 2016* (RPDA) provides certain rights to persons with a wide range of disabilities and requires employers to publish an Equal Opportunity Policy(EOP).
- The *Transgender Persons (Protection of Rights) Act, 2019* (TP(PR)A) prohibits discrimination in employment against transgender persons and also requires all employers to publish an EOP.
- The *Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017* (HIV Act) prohibits discrimination towards those suffering with HIV or AIDS, and prohibits any requirement for HIV or AIDS testing as a pre-requisite to obtain employment.
- The *Industrial Disputes Act, 1947* (ID Act) which applies to workmen and provides for the resolution of disputes between workmen (see *Workers Covered* for the definition of "workmen"), employers, and trade unions. It specifically considers the following as amounting to an unfair labour practice:
 - discriminating against any workman for filing charges against an employer, or for participating in any enquiry or proceeding relating to an industrial dispute;
 - treating workmen unfairly by showing favoritism or partiality to one set of workmen as against another set of workmen, regardless of merit.
- The *Mental Healthcare Act, 2017* (MH Act) protects individuals with mental illness with a right to equality and non-discrimination in the provision of all healthcare.
- The *Industrial Employment (Standing Orders) Act, 1946* (IE(SO) Act) which applies to workmen and provides a specific requirement for all employers of workmen to define the conditions of employment and make those known to the workmen employed by them. These conditions of employment must include details of the

appropriate means to redress complaints from workmen against unfair treatment, which may result from discrimination between workmen in relation to the protected characteristics under the Constitution as well as under applicable labour laws.

- Several state-specific shops and establishments Acts (such as the *Maharashtra Shops and Establishments (Regulation of Employment and Condition of Service), Act, 2017*) regulate the employment and conditions of service of employees working in the private sector, and contain specific provisions prohibiting discrimination against women workers in matters concerning:
 - recruitment;
 - training;
 - transfers;
 - promotions; and
 - wages.

Employers can be subject to penalties, including fines and, in some cases, imprisonment, for contravening these provisions.

India also provides protection against discrimination based on caste and tribal identity. The *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989* provides criminal penalties for discriminatory acts against members of certain castes and tribes, identified as "Scheduled Castes" and "Scheduled Tribes" ("Scheduled Castes" and "Scheduled Tribes" have the meanings assigned to them respectively under Articles 366(24) and 366(25) of the Constitution). This protection is peculiar to the Indian context due to the longstanding social and economic inequalities historically faced by certain marginalized communities in India.

The RPDA and MH Act have also introduced broader recognition of mental health and neurodivergence in India:

- The MH Act recognises the right to equality and non-discrimination for persons with mental illness, and upholds rights of persons with mental illnesses to confidentiality in respect of their:
 - mental health conditions;
 - mental healthcare;
 - treatment; and
 - physical healthcare.
- The RPDA includes protection for mental illness, specific learning disabilities, and

autism spectrum disorder under its list of specified disabilities. Employers must formulate, and register with the appropriate labour authorities, an EOP under the RPDA, but broader anti-discrimination obligations are limited.

The *Information Technology Act, 2000*, the *Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011*, and the *Digital Personal Data Protection Act, 2023* (which is not yet fully in force) (Data Protection Laws) impose obligations on employing companies handling sensitive personal data stored electronically (including biometric information, health related information, financial information, and so on). Employers using digital tools (including AI-driven tools) for hiring, performance management, or any other employment-related activities must ensure compliance with the reasonable security practices prescribed under the Data Protection Laws. These practices mitigate potential claims of discrimination if decisions are made based on discriminatory outcomes provided by the tools used by the employer.

Protected Characteristics Under Discrimination Laws

The following characteristics are explicitly protected from discrimination:

- Religion (Articles 15 and 16 of the Constitution).
- Race (Articles 15 and 16 of the Constitution).
- Caste (Articles 15 and 16 of the Constitution).
- Sex (Articles 15 and 16 of the Constitution).
- Place of birth (Articles 15 and 16 of the Constitution).
- Caste and tribal identity (Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989).
- Women on the grounds of sex in employment (ERA and POSH Act).
- Equal remuneration to men and women workers for the same work or work of a similar nature (ERA).
- Women during maternity leave (MB Act).
- Women during employment (state-specific Shops and Establishments Acts and SHWW(PPR) Act).
- Mental illness, with a right to equality and non-discrimination in the provision of all healthcare (MH Act).
- Mental health and neurodivergence (RPDA and MH Act).

- Persons with a wide range of disabilities (RPDA).
- Persons with HIV or AIDS (HIV Act) (prohibits discrimination, and pre-employment HIV or AIDS testing).
- Transgender persons (TP(PR)A).

The ID Act, which applies to workmen (see *Workers Covered* for the definition of workmen), provides for the resolution of disputes between workmen, employers, and trade unions. It specifically considers the following as amounting to an unfair labour practice:

- Discriminating against any workman for filing charges against an employer, or for participating in any enquiry or proceeding relating to an industrial dispute.
- Treating workmen unfairly by showing favouritism or partiality to one set of workmen as against another set of workmen, regardless of merit.

The Data Protection Laws also provide that employers using digital tools for hiring, performance management, or any other employment-related activities must comply with the reasonable security practices prescribed under them. This is to mitigate any potential claims of discrimination concerning decisions made that were based on any discriminatory outcomes provided by the tools used by the employer

- C employee who does not fall within the definition of a workman under section 2(s) of the ID Act, and typically includes managerial, administrative, and certain supervisory staff excluded from the scope of "workman" in section 2(s) of the ID Act).

Employees performing non-supervisory work (including any manual, unskilled, skilled, technical, operational, or clerical work for hire or reward) are therefore called "workmen", while individuals performing predominantly managerial, administrative, and supervisory duties (supervisors earning more than INR10,000 per month) are specifically excluded from the definition of "workmen" and are referred to as "non-workmen". Non-workmen are generally governed by state-specific Shops and Establishment Acts, the terms and conditions of their employment contracts, and any other agreements entered into with the employer (such as internal company policies), rather than the provisions of the ID Act.

Workmen enjoy some additional statutory protections under certain employment laws. The courts have clarified that the principal nature of the duties performed, the responsibilities undertaken, and the authorities vested in the relevant working person are the determinative

factors in that worker 's classification, rather than the title/designation provided to that worker or their salary.

Indian employment laws, particularly those related to discrimination and harassment, offer varying degrees of protection to members of the non-traditional workforce (that is, workers who fall outside the scope of the traditional employer/employee relationship), depending on the specific statute, the interpretation of "employee" under that statute, and evolving judicial approaches to extending protections to, for example, gig workers, platform workers, contract labourers, and so on.

Job applicants are generally protected under the principle of equal opportunity contained in the Constitution, although there is no specific legislation explicitly addressing pre-employment discrimination other than that related to the prohibition on HIV/ AIDS testing under the HIV Act (see *Discrimination and Harassment Laws*).

Certain other workers, while not traditionally considered "employees" under employment law, can still be protected from sexual harassment under some specific statutes like the SHWW(PPR) Act where they are women. This is because the broad definition of "employee" under the SHWW(PPR) Act (and certain other laws) includes women employed/engaged on various bases (including on a regular, temporary, ad hoc, or daily wage basis), either directly or through an agent/vendor, which therefore includes:

- Contract workers.
- Probationers.
- Trainees.
- Apprentices.
- Volunteers (individuals working with or without remuneration).

The POSH Act provides wider protection for non-traditional workers against this form of workplace misconduct. However, the extent of protection can vary depending on the nature of the working relationship.

Interns and trainees are recognised as employees under specific regulations (for example, the *Apprentices Act, 1961*) and through judicial interpretations, which extend certain protections related to workplace safety and harassment to these categories of employee.

Temporary workers and those employed through contractors are also covered under the *Contract Labour (Regulation and Abolition) Act, 1970*, which aims to regulate their working conditions and ensure basic rights, including protection against discrimination and harassment at the workplace where they are deployed.

Expatriates and secondees working in India are generally protected under Indian anti-discrimination laws if employed by an Indian entity. Articles 15 and 16 of the Constitution prohibit discrimination against employees in public sector employment based on the protected characteristics under the Constitution. Further, the principles of equal pay for equal work and protection against discriminatory practices will generally apply. The protections provided to women from sexual harassment under the POSH Act also ensure that expatriate and seconded women are protected against sexual harassment at their workplace.

Globally mobile employees (that is, those on international assignments) will also be afforded protection against discrimination and harassment under the Indian employment laws if their employment contract is governed by the Indian jurisdiction. Additionally, bilateral agreements (in particular, various *Social Security Agreements (SSAs)* and Memoranda of Understanding (such as the *Memorandum of Understanding on Labour Mobility Partnership Between the Republic of India and the Kingdom of Denmark*) that have been signed by India with various nations) regulate the rights and treatment of workers who are citizens of one country employed in another.

On 25 April 2024 the Karnataka High Court also struck down certain provisions of the *Employees ' Provident Fund and Miscellaneous Provisions Act, 1952* that related specifically to international workers as unconstitutional and in violation of Article 14 of the Constitution in *Stone Hill Education Foundation v The Union of India and Others (WP No.18486/2012)*, because they treated international workers differently as compared to domestic (Indian) workers without any objective justification for that distinction. The relevant provisions provided that foreign nationals employed with an Indian entity were treated as international workers, and that such international workers ' contributions to the provident fund were based on their entire salary. Since the same contributions for domestic (Indian) workers were notably different, being based on a particularly low wage ceiling, the court ruled that the provisions relating to international workers were discriminatory and in violation of Article 14 of the Constitution.

Employers Covered

Generally, Indian anti-discrimination laws do not impose strict employer-size thresholds and they apply to employers regardless of the number of their employees. Key legislation such as the Constitution (Articles 14 and 15) and the ERA (prohibiting gender-based wage discrimination) apply universally.

However, some employment legislation does only apply to establishments with a specific number of employees. For example:

- The IE(SO) Act only applies to establishments with 100 or more workers (and, in certain states, 50 or more workers).
- The POSH Act applies to all workplaces, but only workplaces that have ten or more employees are required to formulate an internal complaints committee.

Certain state-specific Shops and Establishments Acts may also apply based on workforce size thresholds. Under the RPDA, an employer employing at least 20 employees has the following additional obligations:

- To appoint a liaison officer to oversee the recruitment of persons with disabilities and provide certain facilities and amenities to such employees.
- To have a more detailed EOP than that required for establishments with fewer than 20 employees which contains, among other things:
 - The manner of selection of persons with disabilities for various posts;
 - Post-recruitment and pre-promotion training for persons with disabilities;
 - Any preferences in the transfer and posting of persons with disabilities;
 - Any special leave and other such facilities provided for persons with disabilities; and
 - Any provisions for assistive devices, barrier-free accessibility, and so on, provided by the employer.

Areas of Working Life Covered

For the provisions concerning recruitment, see *Protections Applicable to Recruitment*.

During employment, for workmen (see *Workers Covered* for the definition of workmen), any discriminatory treatment or favouritism in promotions or disciplinary decisions can be challenged as an unfair labour practice under the ID Act. Additionally, all promotions and disciplinary actions must generally not contravene the ERA, which prohibits sex discrimination

in matters relating to employment, including promotions/disciplinary actions.

On termination of employment, employers must ensure that the termination decision is not discriminatory and is based on legitimate, non-discriminatory grounds (such as misconduct, redundancy, non-performance, or loss of confidence) in compliance with the applicable employment laws.

Protections Applicable to Recruitment

There is no single law that regulates job advertisements or interviews, but the general principles under Articles 14 and 15 of the Constitution and public policy prohibit discrimination based on the protected characteristics. Generally, employers should refrain from including discriminatory language in job postings and can only state specific requirements (for example, physical capabilities) if they are essential to perform the job duties.

There are no express statutory limits on the questions that can be asked in job interviews in the private sector. However, any inquiries relating to pregnancy, marital status, disability, religion, caste, or personal beliefs, if not directly relevant to job performance, may potentially be challenged as discriminatory.

Under the RPDA, employers in India must provide reasonable accommodation to both candidates and employees with disabilities. Such adjustments/modifications should ensure, as far as is reasonably practicable and without imposing an undue burden on the employer, equal access to persons with disabilities as those enjoyed by other candidates/employees, and can include:

- Providing accessible infrastructure.
- Providing assistive technologies.
- Making adjustments to workstations.
- Providing alternative assessment formats at the time of recruitment.

All employers must draw up and register an EOP in accordance with the RPDA, which outlines the facilities and amenities provided to persons with disabilities. Beyond disability, certain accommodations relating to pregnancy, maternity leave, and nursing breaks are also required under the MB Act.

Other than the prohibition on conducting HIV/AIDS testing under the HIV Act, there are no

other discrimination-specific laws regulating pre-employment testing, but any such tests must be relevant to the job role and applied uniformly to all candidates. While pre-employment background checks are permitted, they must avoid intrusive or discriminatory questions unrelated to job performance. Medical or disability-related inquiries are permissible only if relevant to the occupational requirements. Such inquiries must also comply with:

- The requirements under the RPDA concerning the employer making reasonable accommodations to persons with disabilities.
- The Data Protection Laws if they involve sensitive personal data or information.

There are no uniform rules on data retention for job applications, but such retention should generally only be for a reasonable period and should be consistent with India's privacy principles. If such data includes sensitive personal data/information, its collection, use, and retention must comply with the Data Protection Laws. Sensitive personal data/information includes:

- Passwords.
- Financial information (bank account or credit card details).
- Physical, psychological, and mental health conditions.
- Sexual orientation.
- Medical records and history.
- Biometric information.

Types of Discrimination

Although not explicitly defined in the same way as in other jurisdictions, Indian law does recognise the concept of "direct" and "indirect" discrimination. Indian law prohibits direct discrimination where an individual is treated less favourably due to a characteristic that is protected under the Constitution. While not always explicitly called "direct discrimination" in the relevant statutes, specific laws, such as the following, prohibit such overt discriminatory practices:

- Article 15 of the Constitution prohibits direct discrimination on the grounds of any of the protected characteristics under that provision.
- The RPDA explicitly prohibits direct discrimination against persons with disabilities in employment concerning recruitment, employment terms, and termination.
- The POSH Act, while focused on sexual harassment, prohibits a specific form of direct discrimination and unwelcome conduct which is based on gender.

- The ERA provides for equal pay for equal work for men and women.

Similarly, while not always specifically called "indirect discrimination", the courts have recognised that policies that seem neutral at first glance can have a disproportionate adverse impact on protected groups and are therefore indirectly discriminatory. For example, in the case of *Anuj Garg & Others v Hotel Association of India and Others AIR 2008 Supreme Court 663*, the Supreme Court struck down a provision under a law prohibiting women from working in bars, recognising its indirect discriminatory effect by holding it unconstitutional (the relevant law, the *Punjab Excise Act, 1914*, had been implemented before the Constitution was enacted). Further, the concept of "reasonable accommodation" provided in the RPDA implicitly addresses indirect discrimination. Failure to provide the necessary adjustments that will consequently disallow a person with a disability to participate equally in the workplace may amount to an indirectly discriminatory practice.¹

Direct Discrimination

To establish a claim of direct discrimination, the claimant must generally show that they were treated less favourably than another person in a similar situation because of a protected characteristic. The courts assess such claims by examining the nature of the differential treatment and whether the protected characteristic (such as gender or disability) was the basis of such treatment, even if that fact was not expressly stated. The presence of a comparator (a similarly situated individual without the protected characteristic) is often relevant, particularly in wage discrimination or employment benefit claims, but not always mandatory.

Intent is not a necessary element to establish direct discrimination under Indian law. It is sufficient to show that the consequence of the action was discriminatory, regardless of motive. However, in some cases, the court may examine whether the discrimination was deliberate, particularly in matters involving caste-based or gender-based discrimination.

Indian law does not specifically provide a statutory defence of bona fide occupational requirement in the private sector. However, the courts may accept such defences in limited and

¹ <https://www.hrw.org> <https://www.un.org/en/>

justified circumstances (for example, religious institutions may require that certain roles (priests, religious teachers) be filled by individuals of the same faith). Such exceptions are narrowly interpreted and must satisfy the standards of reasonableness and non-arbitrariness.

Indirect Discrimination

Indian law recognises the concept of indirect discrimination, though it is not always expressly defined as such in statute (see *Types of Discrimination*).

To establish a claim of indirect discrimination, a claimant must show all the following:

- A neutral policy or practice exists (at first glance, it does not make distinctions that are based on a protected characteristic).
- That policy disproportionately impacts a protected group.
- There is no justification for the policy (that is, the policy does not qualify as a proportionate means to achieve a legitimate aim).

Once a claimant establishes these elements, the burden of proof shifts to the employer to justify the policy. A policy may be justified if it is shown to be a proportionate means to achieve a legitimate aim. Mere administrative convenience or subjective performance standards are generally not sufficient. In *Aditi Kumar Sharma v State of Madhya Pradesh & Another (WP(C) No. 233/2024)*, the Supreme Court questioned whether certain performance standards (disposal rates), which were used against a woman judicial officer who had faced serious personal and health issues, had been applied with adequate gender sensitivity. Justice B.V. Nagarathna raised concerns regarding whether male officers were held to the same standards and whether the criteria used unintentionally disadvantaged women, highlighting the risk of indirect gender discrimination when policies are applied without context. Additionally, Indian law does not formally recognise a mixed-motive defence for indirect discrimination. If the impact is established and the policy is not proportionately justified, liability can still arise even if the employer had additional legitimate intentions. In *Lt. Col. Nitisha & Others v Union of India & Others [2021] 4 S.C.R. 633*, the Supreme Court emphasised that policies or actions which appear neutral but have a disproportionate adverse effect on women amount to unlawful indirect discrimination, even in the absence of malicious intent.²

² <https://www.ohchr.org>

Harassment

Sexual harassment is specifically prohibited based on protected characteristics, most notably under the POSH Act and, to a limited extent, through judicial interpretations of Articles 14, 15, and 21 of the Constitution. While the POSH Act addresses the sexual harassment of women at the workplace, there is currently no standalone statute comprehensively covering other forms of harassment (such as racial or caste-based harassment) in the private sector, though public sector employers are expected to comply with constitutional mandates prohibiting such conduct.

Under the POSH Act, sexual harassment is broadly defined to include any unwelcome acts or behaviour (whether directly or impliedly) such as:

- Physical contact or advances.
- A demand or request for sexual favours.
- Making sexually coloured remarks.
- Showing pornography.
- Any other unwelcome physical, verbal, or visual conduct of a sexual nature.

The POSH Act is gender-specific and currently applies only to women, although some High Court decisions have encouraged employers to adopt gender-neutral policies prohibiting sexual harassment. Same-sex sexual harassment involving women is covered within the ambit of this Act, but it does not presently provide protection for men or non-binary persons.

The prohibited conduct under the POSH Act can be:

- Verbal, such as sexually coloured jokes or innuendos.
- Physical, such as unwelcome touching or advances.
- Visual, such as sharing obscene images or making inappropriate gestures.

The test is whether the conduct is "unwelcome" and sexually oriented, and the impact on the recipient is the key determinative factor rather than the intent of the respondent. There is no requirement for the conduct to meet any particular threshold of severity or regularity; even a single incident can qualify as prohibited conduct if it creates a hostile or intimidating work environment. The Supreme Court in *Nisha Priya Bhatia v Union of India (CA No. 2365/2020)* held that "the approach of the law as regards cases of sexual harassment at a workplace is not confined to cases of actual commission of acts of harassment, but also covers situations wherein

the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in their day-to-day functioning at the workplace".

Employers' responsibilities under the POSH Act are significant. Employers must:

- Set up an Internal Complaints Committee (ICC) at every workplace employing ten or more employees.
- Display the anti-harassment policy.
- Conduct anti-harassment training.
- Ensure that they have a timely redressal process for complaints.

Failure to comply can result in penalties, including fines and the cancellation of business licences or registration. The employer can also be held liable if it is found that it failed to prevent sexual harassment or did not act on a complaint. Additionally, under the POSH Act, harassment by third parties (such as clients or vendors) also triggers employer responsibility, and employers are expected to assist the aggrieved woman in filing a complaint with the appropriate authorities, especially if the harasser is not an employee. While the statute focuses on internal resolution, the courts have held that Article 21 (right to dignity) of the Constitution requires employers to ensure a safe working environment even from third-party harassment. To mitigate risk and liability, employers must:

- Actively implement the provisions of the POSH Act.
- Ensure widespread awareness of anti-harassment policies.
- Regularly train employees and ICC members.
- Adopt a zero-tolerance approach.

Non-compliance can result not only in the statutory penalties outlined above, but also reputational harm and legal exposure through writ or civil proceedings.

For other forms of harassment, redressal can be sought under:

- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for caste-based or tribe-based harassment).
- The RPDA (for disability-based harassment).

Reasonable Accommodation

The RPDA imposes a statutory obligation on employers to provide reasonable accommodation to employees with disabilities, both during recruitment and in the course of employment.

Reasonable accommodation is defined under section 2(y) of the RPDA as "necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others".

Employers must consider reasonable accommodations under the RPDA both at the recruitment stage and during employment. These can include, for example, modifying physical infrastructure, providing assistive technologies, or restructuring job duties where feasible. The duty is proactive and must be tailored to the specific needs of the individual employee with a disability. An employer can deny a request for reasonable accommodation only if it can demonstrate that providing such accommodation would impose a disproportionate or undue burden upon it. The term "undue burden" is not rigidly defined in the RPDA but is interpreted contextually, considering:

- The nature and cost of the accommodation.
- The size and resources of the employing establishment.
- The impact (if any) the accommodation will have on business operations.

The employer must be able to show that the denial is based on practical constraints and not on bias or inflexibility.

The courts have recognised that failure to provide reasonable accommodation can amount to discrimination under the RPDA. In *Vikash Kumar v Union Public Service Commission (2021) 5 SCC 370*, the Supreme Court reinforced the duty of employers to make individual-specific accommodations and emphasised that denial of such accommodation undermines equality. Therefore, while the duty of reasonable accommodation is not universal across all protected characteristics in India, it is a binding legal obligation in the context of disability rights.

The obligation to provide reasonable accommodation currently applies only to persons with disabilities as defined under the RPDA. There is no general statutory requirement under Indian law to provide reasonable accommodations to persons with other protected characteristics (such as religion or gender). However, the protections afforded under Articles 14, 15, and 21 of the Constitution have occasionally been interpreted by the courts to support adjustments in specific contexts (for example, permitting the wearing of a hijab or providing for religious leave).

Indian law also provides pregnant employees with certain rights through various legislative protections. The MB Act specifically provides several rights to pregnant employees, including:

- Maternity leave.
- Nursing breaks.
- The prohibition on arduous work during certain stages of pregnancy (for example, work that involves long hours of standing, or which in any way is likely to interfere with the pregnancy, or may cause a miscarriage or otherwise adversely affect the woman 's or baby 's health).

These protections are not specifically called "reasonable accommodations" but they serve a similar function in practice by requiring adjustments to an employee 's work conditions. Further, in *Aditi Kumar Sharma v State of Madhya Pradesh & Another (WP(C) No. 233/2024)*, the Supreme Court emphasised that any miscarriage/related medical issues must be considered when evaluating a woman employee 's performance and employment continuity, providing judicial recognition of the requirement to make pregnancy-related accommodations.

Employer Obligations to Prevent Discrimination and Harassment

Indian law imposes a positive obligation on employers to prevent discrimination and harassment in the workplace through a combination of statutory provisions and constitutional principles (for an employer's obligations under the POSH Act, see *Harassment*).

Beyond the POSH Act, the ID Act imposes a general obligation on certain establishments to set up a grievance redressal committee (GRC). Under section 9C of the ID Act, every industrial establishment employing 20 or more workers must establish one or more GRCs for the resolution of disputes arising out of individual grievances. This GRC functions as a broader mechanism to address workplace concerns, including those related to discrimination and unfair treatment. While not a substitute for the ICC under the POSH Act, it is an important part of the employer's overall obligation to maintain a fair and responsive workplace.

Articles 14, 15, and 21 of the Constitution form the foundational legal framework for equality, non-discrimination, and protection of dignity at the workplace. These provisions have been judicially interpreted to impose a duty on employers to uphold these rights within their organisations. The landmark judgment of the Supreme Court in *Vishaka & Others v State of*

Rajasthan & Others (AIR 1997 Supreme Court 3011) laid the groundwork for imposing proactive employer duties, emphasising the requirement for preventive action through institutional mechanisms and workplace culture. Furthermore, regulatory advisories, including those from the *Ministry of Labour & Employment*, have also encouraged employers to adopt anti-discrimination policies, implement training on gender sensitivity, and foster inclusive practices. Although not legally binding in all respects, such advisories are increasingly being referred to by the courts and tribunals in assessing employer compliance with their obligations.

Employer Policies and Training

Indian law imposes affirmative legal obligations on employers to prevent discrimination and harassment in the workplace. These obligations extend beyond those required under the POSH Act and are specifically mandated in the RPDA, TP(PR)A and HIV Act.

Under the RPDA, employers must draft, register, and publish an EOP detailing the facilities and amenities provided to persons with disabilities. A copy of the EOP must be registered with the Chief Commissioner for Persons with Disabilities or the appropriate State Commissioner for Persons with Disabilities of the relevant state. The EOP must be displayed on the company's website or at a conspicuous place at the employment premises, and a register containing details of employees with disabilities must also be maintained.

Similarly, the TP(PR)A mandates that all employers formulate an EOP for transgender persons and implement measures to prevent discrimination, which includes developing sensitization and grievance redress mechanisms.

The HIV Act goes further by not only requiring that employers have non-discriminatory workplace policies in place, but also providing that employers abide by certain confidentiality obligations and have in place grievance redressal mechanisms. Employers must ensure that no employee or applicant is denied employment or treated unfairly based on their HIV/AIDS status and must designate a Complaints Officer to handle grievances related to discrimination.

While there is no single statute that provides an overarching anti-discrimination or retaliation policy applicable to all categories of protected characteristics, these statutory frameworks collectively establish an affirmative duty on employers to create and maintain policies that prevent discrimination. In addition, the POSH Act requires that employers have a written policy

prohibiting sexual harassment, as well as awareness programmes and training for employees and ICC members (see *Harassment*). These measures must be regularly conducted and documented, and form a critical part of the employer's compliance obligations.

The law does not explicitly prescribe the frequency of updates to such policies, but best practices and compliance structures under the RPDA and POSH Act indicate that periodic reviews and updates are necessary to reflect changes in both the law and workforce dynamics. These policies should be:

- Integrated into employee handbooks.
- Prominently displayed at accessible locations.
- Communicated to all categories of employees, including interns, trainees, and contract workers/independent contractors.

Employer Complaint Process

Indian law imposes obligations on employers to establish an accessible, non-retaliatory, and structured complaint process to address discrimination and harassment at the workplace. This framework is supported by various statutes including:

- The POSH Act.
- The RPDA.
- The TP(PR)A.
- The HIV Act.
- The ID Act.

Under the POSH Act, the ICC must be formulated to receive and redress complaints of sexual harassment. The complaint process must be clearly disseminated, ensure confidentiality, and protect complainants from retaliation. The POSH Act requires written complaints to be filed with the ICC within three months of the incident, though the ICC has discretion to extend this period in justified cases. While the POSH Act does not require the provisions of anonymous complaints or hotlines, employers are encouraged to provide multiple, easily accessible channels, such as designated HR representatives or external ombudspersons, to support complainants. The POSH Act also prescribes strict timelines on the investigation of complaints of sexual harassment. Investigations must be completed within 90 days, and the employer must act on the ICC's recommendations within a period of 60 days. A complaint of sexual harassment can also be conciliated/mediated between the parties only at the request of the aggrieved

woman, but no monetary settlement is permitted.

For broader discrimination issues, the RPDA provides that employers with 20 or more employees must appoint a Liaison Officer to oversee the recruitment of persons with disabilities and ensure compliance with disability-related provisions. The Liaison Officer also plays a key role in monitoring workplace inclusivity and addressing compliance gaps concerning the rights of employees with disabilities. The TP(PR)A and HIV Act similarly require employers to designate a Complaints Officer to handle grievances, ensuring privacy, sensitivity, and a non-discriminatory environment. These laws underline the obligation of employers to institutionalise accessible and confidential mechanisms for the redressal of discrimination, whether based on gender identity, disability, or health status.

Additionally, for the provisions concerning the establishment of GRCs under the ID Act, see *Employer Obligations to Prevent Discrimination and Harassment*. The GRC should include equal representation from workers and management and must resolve grievances within 30 days.

Employer Investigations See *Employer Complaint Process*. **Employer Best Practices**

It is considered best practice in India for employers to voluntarily implement anti-discrimination/harassment policies and conduct regular training to promote a safe, equitable, and inclusive workplace. Progressive employers, especially in sectors with global exposure or where diversity and inclusion are key values, routinely adopt equal opportunity, anti-harassment, anti-discrimination, and anti-retaliation policies. These are often included in the employee handbook and codes of conduct, or shared via onboarding material and internal HR platforms. Multinational corporations, large Indian conglomerates, and information technology/information technology enabled services firms have taken the lead in adopting these practices, aligning with international standards and environmental, social and governance (ESG) norms.

Voluntary training programmes for employees and managers, particularly in areas concerning unconscious bias, respectful workplace behaviour, and inclusivity, are also being increasingly adopted. Such training helps in the early identification and prevention of inappropriate conduct and ensures that employees are aware of the employer's redressal mechanisms for complaints. These steps, while not legally mandated in all contexts, are also viewed favourably

by regulators, investors, and prospective employees.

Vicarious Liability

Indian law recognises the concept of vicarious liability, which holds employers liable for the acts of their employees when such acts are committed in the course of employment. Vicarious liability in the employment context typically arises where the employer-employee relationship is established, and the wrongful act is sufficiently connected to the scope of employment.

In the context of workplace discrimination and harassment, including under statutes such as the POSH Act, the employer may be held vicariously liable for the actions of employees, particularly if the employer has failed to take reasonable steps to prevent such conduct. Under the POSH Act, for example, if an employer fails to establish an ICC or does not act on the recommendations of the ICC, it can be penalised for non-compliance. The employer's responsibility to maintain a safe working environment includes preventing the commission of harassment by employees, including supervisors, and failing to do so can lead to direct and vicarious liability. Where a supervisor or manager is the perpetrator of discriminatory or harassing conduct, the employer can be held vicariously liable if it is established that the misconduct occurred in the course of employment or was facilitated by the superior-subordinate power dynamic. The Indian courts have also held that knowledge of misconduct by supervisors or senior management can be imputed to the employer, particularly where the supervisor is in a position of authority and acts or omissions are traceable to the organisational structure or culture. Thus, inaction or failure to report by a supervisor can create legal exposure for the employer.

Complaint Mechanisms

Employees can initiate complaints of discrimination and harassment either internally with the employer or externally before the designated authorities (see *Employer Complaint Process* for the designated authorities under each statute), depending on the nature of the grievance. For complaints of sexual harassment, the employee must first approach the ICC established under the POSH Act. The complaint must ordinarily be filed within three months from the date of the incident (though this period can be extended by the ICC by an additional three months if sufficient reason for the extension is shown). There is no requirement for the affected employee to have any minimum period of service to initiate a complaint of sexual harassment.

For other types of discrimination or harassment (such as on the grounds of caste, disability,

religion, HIV/AIDS status, or gender identity), the applicable laws do not impose a mandatory precondition that a complaint be raised internally before approaching external forums. However, in practice, where internal mechanisms exist, such as grievance redressal procedures under the employer's company policy or GRCs established under the ID Act, employees are encouraged to use such mechanisms first. However, if these internal mechanisms are not used, or fail to provide redressal, the employee is not barred from filing a claim with the court or tribunal. There is no general requirement that an employee must raise the complaint before any third party, such as a trade union or government agency, before accessing judicial remedies. However, employees covered under the ID Act can raise disputes through conciliation officers appointed by the Ministry of Labour & Employment. In cases involving discrimination against persons with disabilities, the *Office of Chief Commissioner for Persons with Disabilities* or the State Commissioner can be approached under the RPDA. Likewise, under the TP(PR)A, complaints can be submitted to the *National Council for Transgender Persons*.³

There is no single dedicated enforcement body responsible for all forms of anti-discrimination or anti-harassment law in India. Enforcement is spread across different sectoral and issue-specific agencies. For example:

- The POSH Act requires ICCs and Local Committees (in districts) to address complaints of sexual harassment.
- The *National and State Human Rights Commission* or the *National Commission for Women* can take cognisance of rights violations (though they are not specialised labour enforcement bodies).

The burden of proof in discrimination and harassment cases generally rests on the complainant to establish a prima facie case. However, once such a case is made, the burden shifts to the employer to demonstrate that the conduct was not discriminatory or harassing, or that reasonable steps were taken to prevent such conduct. This shifting burden is particularly recognised in sexual harassment complaints under the POSH Act and in discrimination cases under statutes such as the RPDA. The courts and quasi-judicial authorities consider both direct and circumstantial evidence while adjudicating such matters.

³<https://www.legalserviceindia.com>

<https://www.safecity.in>

Penalties, Sanctions, and Outcomes

Indian employment law provides for a combination of civil, penal, and administrative penalties to be imposed on employers who have been found to have discriminated/harassed or tolerated (or failed to prevent) discrimination/harassment in their workplaces, based on the statute invoked and nature of the misconduct, as follows:

- Under the POSH Act, civil and administrative penalties can be imposed.
- Under the ERA, civil, criminal, and administrative penalties can be imposed.
- Under the RPDA, civil, criminal, and administrative penalties can be imposed.
- Under the IE(SO) Act, civil and administrative penalties can be imposed.
- Under the MB Act, civil, criminal, and administrative penalties can be imposed.

Under the POSH Act, an employer who fails to constitute an ICC or does not comply with the statutory responsibilities under the POSH Act can face a penalty of up to INR50,000. Repeat violations can lead to higher penalties, the cancellation of business licences, or the withdrawal of certain government benefits. Under the ERA, if an employer fails to provide equal pay for equal work to men and women, or discriminates in recruitment based on gender, they can face fines up to INR10,000 or imprisonment for up to one month for repeat offences. Claims for unequal pay can also lead to the imposition of back wages and interest as compensation. Under the RPDA, employers who fail to implement equal opportunity policies or who discriminate in employment can be subject to:

- A fine of up to INR10,000 for the first contravention.
- A fine of not less than INR50,000 but not more than INR500,000 for subsequent contraventions.

Under the IE(SO) Act, an employer who does any act in contravention of the standing orders can be subject to a fine of up to INR1,000 and, in the case of a continuing offence, with a further fine of up to INR25 for every day during which the offence continues.⁴

Under the MB Act, a violation of the maternity rights or the dismissal of, or discrimination against, a woman employee due to that employee's maternity status can be subject to:

- A term of imprisonment of up to one year.
- A fine of up to INR5,000.
- Both the above penalties being imposed.

⁴ <https://www.legalserviceindia.com> <https://www.safecity.in>

The affected employee may also be entitled to reinstatement, back wages, and compensation for emotional and physical distress, where applicable. For workmen (as defined under the ID Act: see *Workers Covered*), unfair labour practices such as discriminatory termination, victimisation, or harassment are actionable, and workmen can seek reinstatement with the payment of back wages. If the discrimination or harassment results in illegal termination, the labour courts can award reinstatement with the payment of back wages, or compensation, or all of these remedies.

The employee must prove all of the different elements for each available penalty, for example:

- A claim for financial losses requires evidence of actual monetary harm.
- A claim for emotional distress requires medical/psychological proof.
- A claim for punitive damages requires the employee to prove the employer's malicious conduct.

Consequences for Employee who Discriminates

Employees who violate the anti-discrimination or anti-harassment laws can be disciplined. Employers have a legal obligation under the POSH Act and other relevant statutes to ensure that discriminatory or harassing behaviour is not tolerated within the workplace. If an employee is found to have engaged in such behaviour, the employer can take disciplinary action (including warnings, suspension, or even termination of employment), the type of which will depend on:

- The severity of the violation.
- The nature of the conduct.
- Whether the conduct violates the company's established anti-harassment or anti-discrimination policies.

Conclusion

The position of the employee within the organisation can also influence the disciplinary action that is taken. For example, supervisors or managers who engage in discriminatory or harassing behaviour are more likely to face more severe consequences than lower-level employees. This is because their actions are viewed as having a broader impact on the organisational culture, as they are in positions of authority and are expected to model appropriate behaviour for other employees. Additionally, a senior employee's actions may have a more significant effect on

the workplace environment, which is why employers are likely to take more stringent action in such cases.

Employees who violate anti-discrimination and anti-harassment laws can be held personally liable in some cases. Under the POSH Act, the individual perpetrator of sexual harassment can be named as a respondent in legal proceedings or litigation. This allows the employee who has been subjected to sexual harassment to take direct legal action against the offending individual in addition to the employer. In cases where discrimination or harassment amounts to a criminal offence (such as sexual assault), the employee responsible will also face criminal charges and personal liability under the relevant sections of the *Bharatiya Nyaya Sanhita, 2023* (the Indian Criminal Code). An individual employee may also be liable to criminal penalties for discriminatory acts against members of Scheduled Castes and Schedules Tribes under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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