

WOMEN'S ECONOMIC EMPOWERMENT IN INDIA

**Policy Landscape on
Quality Work**

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ABOUT THE DOCUMENT

The document, Policy Landscape on Quality Work, is part of a larger study on the landscape of Women Economic Empowerment (WEE) policies in India. It is published along with a main summary document and six other documents, that together look at the domains relevant to WEE - collective action, unpaid work, skill development, quality work, social protection, property and assets, and financial inclusion.

The primary objective of the landscaping study is to map the relevant schemes and policies that are closely aligned with the objective of promoting economic empowerment for women in India. In addition to undertaking a mapping exercise, the authors were tasked with analysing various

central and state government schemes, studying current priorities, international conventions and best practices for promoting women's economic empowerment, and reviewing relevant evaluations to identify implementation and evidence gaps.

The study employs a critical gender lens to identify promising exemplars of transformative policies in terms of design features, implementation efficacy, and impact. It also highlights the gaps in the broader policy landscape of India, with respect to women, as well as in evidence.

Overall, the study aims to inform priorities for addressing critical evidence, data and knowledge gaps to improve the enabling environment for women's economic empowerment, and reduce the barriers for accessing quality work in India.



QUALITY WORK

The International Labour Organisation (ILO) defines 'Quality Work' as involving opportunities for work which produces a fair-income and also delivers workplace security, social protection, and personal development, while ensuring that people have the right to express concerns and participate in discussions affecting their lives.¹ The United Nations General Assembly included 'Quality Work' as one of the goals to be achieved in the 2030 Agenda for Sustainable Development.²

With the inclusion of quality work in numerous international instruments and documents such as the Universal Declaration of Human Rights (1948),³ the World Summit for Social Development (1995)⁴ and the World Summit Outcome Document (2005),⁵ it has become a universal objective across the world. Following the global economic crisis of 2008, the international community has witnessed an increase in the urge to provide better quality jobs to people, thereby respecting their right to social protection, growth, development and ensuring eradication of poverty.⁶

The Overseas Development Institute (ODI) framework on "Women's Economic Empowerment - Navigating Enablers and Constraints" defines women's economic empowerment (WEE) using seven core elements, amongst which quality work is one of the direct drivers of economic empowerment.⁷ A review of the literature also suggests that the availability of quality jobs and implementation of effective policies for the increase in Female Labour Force Participation (FLFP) directly affects the

economic growth of the country.⁸ The International Monetary Fund estimates that the annual GDP of India may increase by 27 percent, if women participate in the economy at the same rate as men do.⁹ Thus, women's access to quality and paid work is undeniable for the development of a better economy as well as to ensure a valid exercise of their rights and aspirations.¹⁰

India's journey towards guaranteeing women quality work has a long trajectory. As a founding member of the ILO, India has over 100 years of collaboration with ILO¹¹ and has worked in partnership for generating quality work under the Decent Work Country Programme (DWCP), with women as the core target group.¹² India's internal programmes and policies have also been instrumental in recognising the changing landscape with respect to work for women, thereby becoming catalysts for improving women labour participation in general, and their access to quality work in particular. For instance, the government's focus for women shifted from welfare to development when transitioning from the 5th to the 6th Five-Year Plan.¹³ The 6th Plan adopted a three pronged approach to women's development by focusing on health, education and employment. From the 6th to the 12th Five Year Plan, India laid down the creation of employment opportunities for women and youth, along with skill development and enterprise development as some of the other objectives.¹⁴ These were also in consonance with the ILO mandate and later found inclusion as priority goals in the DWCP.

Despite the efforts, recent studies show a lack of quality jobs for women in India¹⁵ with only 27.4

¹ Decent Work, Website of the International Labour Organization, <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

² Transforming our world: the 2030 agenda for sustainable development, <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>

³ Art. 23, UDHR, 10/12/1948, <https://www.humanrights.com/course/lesson/articles-19-25/read-article-23.html>

⁴ Report of the World Summit for Social Development, United Nations, 1995, <https://undocs.org/A/CONF.166/9>

⁵ World Summit Outcome: Resolution adopted by the General Assembly, A/Res/60/1, United Nations General Assembly, 24/10/ 2005, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

⁶ Decent Work, Website of the International Labour Organisation, <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

⁷ Women's economic empowerment: Navigating enablers and constraints, Abigail Hunt and Emma Samman, ODI development progress, 09/2016, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10683.pdf>

⁸ Women and Work in India: Descriptive Evidence and a review of Potential Politics, Erin K Fletcher and Rohini Pande, 30/12/2017, https://scholar.harvard.edu/files/rpande/files/women_and_work_in_india_indiaflfp_workingpaper.pdf

⁹ India Must Focus on the Inclusion of Women in its Economy: IMF Chief, The Hindu Business Line, 24/01/2018, <https://www.thehindubusinessline.com/economy/india-must-focus-on-inclusion-of-women-in-its-economy-imf-chief/article10047956.ece>

¹⁰ Rewriting the rules: Women and Work in India, Terri Chapman and Vidisha Mishra, Observer Research Foundation, 2019, https://www.orfonline.org/research/rewriting-the-rules-women-and-work-in-india-47584/#_edn5

¹¹ India: Decent Work Country Programme for 2018-2022, International Labour Organisation, https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-new_delhi/documents/publication/wcms_650121.pdf

¹² India: Decent Work Country Programme for 2018-2022, International Labour Organisation, https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-new_delhi/documents/publication/wcms_650121.pdf

¹³ Volume 1:6th Five Year Plan, Planning Commission of India, <https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/welcome.html>

¹⁴ Volume 1:6th Five Year Plan, Planning Commission of India, <https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/welcome.html>

¹⁵ Why is Female Labour Force Participation Declining Sharply in India?, Steven Kapsos and Andrea Silberman, International Labour Office, 08/2014

percent of women participating in the labour force as opposed to 75.5 percent of men in 2015-16.¹⁶ Women in India still face a multitude of hurdles on their path to economic empowerment. This includes lack of access to skills and quality education programmes that allow their participation and growth in existing as well as emerging industries and occupations. Even after they manage to enter the workforce, the gendered nature of domestic responsibilities such as household tasks and raising children makes it harder for them to retain employment. While restrictions on mobility due to

threats to their safety and security compound such problems. Often, this results in female workforce concentration in a handful of sectors, including education, textiles, health and social work that do not necessarily have the highest wages, or in unskilled labour – both of these result in their poor labour force participation in the economy.¹⁷ Therefore, the interventions aimed at increasing women labour force participation need a multi-pronged approach to enable all factors affecting WEE.



The above illustration is a diagrammatic representation of the aforementioned interventions needed across the board to encourage women's entry into the workforce, followed by provisions to retain their participation. Now, despite the issues of skill development, unpaid work and social protection being deeply interwoven with the interventions within the quality work bucket, we have refrained from analysing the same here. This is because the ODI framework recognises the importance of these as standalone components of WEE, and therefore, these have been covered in sections dedicated to such interventions.

However, these buckets are critically linked to women being employed in decent work environments, and the four aspects mentioned in the diagram together contribute to quality work for women's economic empowerment. Government of India has made many attempts to implement policies which cater to the rights of women, and adopted international

suggestions in its development agenda, in the pursuit of increased women's participation in the labour force. However, these are often challenged in their goals by unanticipated concerns that may not have been factored into policy-making. For instance, studies indicate that India is projected to lose 5.8 percent of working hours in 2030, a productivity loss equivalent to 34 million full-time jobs, due to global warming, particularly impacting agriculture and construction sectors.¹⁸ These sectors employ women in large numbers, and would negatively impact not only their employment and livelihood, but also water and food security.¹⁹ All this serves to highlight areas where the government needs to exercise continued oversight to ensure access to quality work for Indian women.

In the following section, we discuss the above in greater detail, first by understanding the barriers to women gaining access to quality work, and later, the related schemes and policies in India.

¹⁶ Decent Work Country Programme for India (2018-22), International Labour Organisation, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_650119.pdf

¹⁷ Rewriting the rules: Women and Work in India, Terri Chapman and Vidisha Mishra, Observer Research Foundation, 2019, https://www.orfonline.org/research/rewriting-the-rules-women-and-work-in-india-47584/#_edn5

¹⁸ India could lose the equivalent of 34 million jobs in 2030 due to global warming, says ILO, The Hindu Business Line, 02/07/2019, <https://www.thehindubusinessline.com/news/india-could-lose-the-equivalent-of-34-million-jobs-in-2030-due-to-global-warming-says-ilo/article28259436.ece>

¹⁹ UN Women Watch, Women Gender Equality and Climate Change, 2009, https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf

QUALITY WORK SCHEMES – TRENDS

Quality works remains a bucket that is deeply connected and strongly inter-linked with a number of other ODI buckets. The entry and retention of women in the workforce is as much dependent on the supportive welfare interventions enabling women's participation in the workforce, and on skill development and training schemes to facilitate entry, as they are on ensuring a quality professional environment. Such an environment is one where women are afforded equal rights and access to opportunities for growth within the professional sphere, as well as guaranteed a safe and secure environment.

Understanding the same, the Government of India has made many attempts to implement interventions which have sought to improve female labour force participation across sectors, and have adopted

international suggestions to that effect within its development agenda. Given the universality of the principles backing many of the norms that fall in this bucket, a large number of relevant legislation and policies fall within the ambit of the central government. These include the Industrial Dispute Legislations, the Minimum Wages legislation, the Factories Act, as well as those relating to equal pay and the one which seeks to prevent sexual harassment in work spaces. While the former are gender neutral legislations, they have provisions that ease entry barriers for women in the workforce. The latter two, however, are women-centric and look at specifically at easing issues faced at workplaces. This domain also touches upon the schemes and policies – which though not analysed in detail – facilitate women's access to workplaces through the creation of physical infrastructure and assets such as hostels.

A long list of relevant schemes and policies can be found below.



Photo by Kathleen McTigue - Flickr

QUALITY WORK SCHEMES – NATIONAL LEVEL

Policy Name	Focus Area	Target Group	Geographical Reach	Longwe Framework Bucket	Past Evaluations
Beedi and Cigar Workers Condition of Employment Act, 1966	Beedi and cigar establishments	Beedi and cigar workers. (majority of beedi workers are women)	National	Welfare (with associated impact on Access)	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Equal Remuneration Act, 1976	Equal wages to women for work of similar nature done by men and preventing discrimination in subsequent conditions of service	Women employees in establishments, both in the organised and unorganised	National	Access (with associated impact on Heightened Consciousness)	<p>Centre for Civil Society:²⁰</p> <p>While the scope of the study was narrow, it highlighted some issues with the legislation's enforcement in the unorganised sector vis-à-vis its organised/formal counterpart. Major findings included:</p> <ul style="list-style-type: none"> • In the unorganised sector, the monthly average wage of a male worker was Rs. 808 whereas the same for the female worker was Rs. 791. • The number of women being promoted in the unorganised sector was around 2.9 percent less than that of men.
The Sexual Harassment of Women at the Workplace (Protection, Prohibition, Redressal) Act, 2013	Protection from sexual harassment.	Working women, both formal and informal sectors	National	Access (with associated impact on Heightened Consciousness, Participation and Control)	<p>Legal capacity building project for the garment workers of Bangalore Urban district, Karnataka²¹</p> <p>The study reported that the Act has not been effective in curbing sexual harassment of garment workers, predominantly due to the lack of legal accountability of the factory owners/upper management. Specific findings indicate:</p> <ul style="list-style-type: none"> • 1 in 7 female workers have been raped or forced into committing a sexual act. • 1 in 14 female workers have experienced physical violence. • Only 3.6 percent of the cases resulted in any action by the factory or the police, though none resulted in criminal charges being brought against the perpetrators. • 75 percent of the respondents reported the absence of any functioning internal grievance system, while 61 percent were prevented from reporting cases of harassment and abuse.

²⁰ Equal Remuneration Act, Kavarana Aditi, <https://ccs.in/equal-remuneration-act>

²¹ Eliminating Violence Against Women At Work, Sisters for Change and Munnade, 06/2016, <https://www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work>

Policy Name	Focus Area	Target Group	Geographical Reach	Longwe Framework Bucket	Past Evaluations
Mahila-E-Haat	Providing a web-based marketing platform to women entrepreneurs to directly sell to buyers	Women Entrepreneurs	National	Access (with associated impact on Heightened Consciousness)	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Science and Technology for Women Scheme	Helping improve the work conditions of women, new opportunities of gainful employment for women especially in rural areas, increase contribution of women scientists to technology based development	Women	National	Access (with associated impact on Heightened Consciousness)	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Working Women Hostel Scheme - MWCD	Ensuring safe accommodation for women working away from their place of residence.	Working women	National	Access	<p>Evaluation of Working Women's Hostel (WWH) in Karnataka:²²</p> <ul style="list-style-type: none"> • The capacity utilisation of WWH is higher in Bangalore than other districts of Karnataka. • Most of the inmates using the WWH facility are satisfied with services vis-à-vis the rent. However, they also demanded additional facilities available in private hostels. • Though the capacity of sample hostels is 110, a majority of hostels have capacity of only 100. • 80 percent of hostels had a common room and 81 percent had sufficient number of bathrooms and latrines.

²² Evaluation of Working Women's Hostels in Karnataka, Women and Child Development Department, Government of Karnataka, <http://kea.karnataka.gov.in/sites/default/files/Evaluation%20of%20Working%20Women%20Hostels%20in%20Karnataka.pdf>

Policy Name	Focus Area	Target Group	Geographical Reach	Longwe Framework Bucket	Past Evaluations
Mahila Samkhya Programme	Centrality of education in empowering women to achieve equality	Women in rural areas	National	Heightened Consciousness	<p>Mahila Samkhya 2014: A National Review 2014:²³</p> <ul style="list-style-type: none"> The programme had a significant impact on issues of gender and development. 58 percent of the Sanghas have a system of annual programme planning and calendar of events. 96 percent of the sangha members attended Gram Sabha meetings regularly. Only half of the Sanghas surveyed reported having received financial management training.
The Industrial Disputes Act, 1947	Settling disputes between industrial establishments and workers	Persons working in industrial establishments	National	Welfare	<p>Industrial Disputes in India: An Empirical Analysis, Saha and Pan²⁴</p> <ul style="list-style-type: none"> Increase in the degree of unionisation results in a smaller loss of workdays per employee, contrary to popular belief that trade unions result in industrial disputes. Loss in workdays per employee increases with average factory size, which means disputes last for longer in industries dominated by bigger factories. Average monthly earnings of an employee has a weak correlation with workdays lost.
Factories Act, 1948	Regulating labour in factories	Factory workers	National	Access	No key findings on the status or impact of the scheme on women.

²³ Mahila Samakhya 2014: A National Review, Ravi J. Metthai Centre for Educational Innovation Indian Institute of Management Ahmedabad, 11/2014, https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/Report-MSP.pdf

²⁴ Industrial Disputes in India: An Empirical Analysis, Bibhas Saha and Indranil Pan, Economic and Political Weekly, 1994, www.jstor.org/stable/4401140

Policy Name	Focus Area	Target Group	Geographical Reach	Longwe Framework Bucket	Past Evaluations
The Minimum Wages Act, 1948	Fixing minimum rates of wages in specified jobs	Persons engaged in scheduled employment	National	Welfare	<p>The effectiveness of minimum wages in developing countries: The case of India, ILO²⁵</p> <ul style="list-style-type: none"> • 33 percent of the workers were paid less than the minimum wage rate. • None of the states are fully compliant with the minimum wage provisions. • NREGS has helped improve the market wage rate. Extending the coverage of minimum wages in India: Simulations from household data, ILO²⁶ • Even amongst the minimum wage workers, women are paid lesser than their male counterparts and thus, raising the minimum wage would result in a sharp reduction in the gender pay gap. • Payment of minimum wage reduces a worker's probability of being poor by 8-9 percent. Implementation of the Minimum Wages Act, 1948 - Case Study of India, A. Srila²⁷ • The criterion for a scheduled employment to have more than 1000 workers in a state has excluded a large number of active workers from the purview of the Act. • The time bound revision of wage rate every 5 years does not happen. • There is a lack of awareness about the Act. • Non-linking of minimum wages to dearness allowance affects the real wages. • Compliance with the Act is very poor and the penalties for non-compliance are meagre.

²⁵ The effectiveness of minimum wages in developing countries: The case of India, Uma Rani and Patrick Belser, International Journal of Labour Research, 2012, <http://nationalminimumwage.co.za/wp-content/uploads/2015/09/0202-The-effectiveness-of-minimum-wages-in-developing-countries-The-case-of-india.pdf>

²⁶ Extending the coverage of minimum wages in India: Simulations from household data, Uma Rani and Patrick Belser, International Labour Office, http://www.wiego.org/sites/default/files/publications/files/Amara_Minimum_Wages.pdf

²⁷ Implementation of the Minimum Wages Act, 1948 - Case Study of India, A. Srila, https://niti.gov.in/writereaddata/files/document_publication/Publication%20in%20Global%20Journal.pdf

QUALITY WORK SCHEMES – STATE LEVEL

Policy Name	Focus Area	Target Group	Geographical Reach	Longwe Framework Bucket	Past Evaluations
Sathavanimuthu Ammaiyar Ninnaiyu Free Supply of Sewing Machine Scheme	Enhancing income through self-employment by free supply of sewing machines	Widows, deserted wives, women from economically weaker sections, differently abled men and women	Tamil Nadu	Access	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Equal Remuneration Act, 1976	Restriction on night shifts for women and provision of safe travel ²⁸	Working women	Karnataka	Access	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Tamil Nadu Factories Rules, 1950 as amended in 2017	Enhancing working conditions for women, especially those working in night shifts ²⁹	Working women	Tamil Nadu	Access	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Punjab Shops and Commercial Establishment Act (1958)	Providing adequate security and proper transport facility to women workers during night shifts ³⁰	Working women	Haryana (formerly a part of Punjab)	Access	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.
Blue Revolution- Neel Kranti Mission	Income enhancement of fishers and fish farmers	Fishers and fish farmers (Not specific to women)	Bihar	Access	Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available.

²⁸ Guidelines for establishments that employ women on night shifts, Bangalore Mirror, 23/12/2016, <https://bangaloremirror.indiatimes.com/bangalore/cover-story/guidelines-for-establishments-that-employ-women-on-night-shifts/articleshow/56127371.cms>

²⁹ Tamil Nadu issues guidelines for employing women during night shifts in factories, Lexplosion, 04/05/2017, <https://www.lexplosion.in/tamil-nadu-department-of-labour-and-employment-issues-guidelines-for-employing-women-during-night-shifts-in-factories/>

³⁰ For women workers in Gurgaon, strict but toothless laws, The New York Times, 15/03/2012, <https://india.blogs.nytimes.com/2012/03/15/for-women-workers-in-gurgaon-strict-but-toothless-laws/>

ANALYSIS

As seen from the tables above, there exist multiple interventions by the government to increase access to quality work, and advance working conditions as a way to empower women economically. In this section, we present a brief analysis of some of the major interventions to provide an understanding of the design and ascertain their degree of success. These interventions have been selected basis four factors – targeting, size, differences in design and evaluations undertaken.

The Equal Remuneration Act, 1976: The Equal Remuneration Act, 1976 is a central legislation to ensure equal remuneration in jobs for both men and women, thereby complying with Article 39 of the Directive Principles of State Policy, under the Indian Constitution. The 1987 Amendment sought to make the provisions more effective by expanding the law's applicability to subsequent conditions of service such as promotions, transfers and training.³¹ Additionally, in an effort to improve the implementation, it also increased penalties under the law, and attempted to provide avenues for increasing collective bargaining power of women in certain segments such as the unorganised sector.

While well-intentioned, the law falls short of its desired outcomes. Persistent gender and social norms, opaque hiring practices and subjectivity in remuneration decisions, coupled with the need for high state capacity to implement a law that requires redressal of complaints, impedes its proper functioning. Also, the law cannot address the issue of discrimination against women at workplaces in isolation, but needs to be implemented in tandem with policies that ensure women's parity in the workplace, beginning with their entry. Introducing 'work of equal value' as the criteria for payment of

equal wages to avoid the practice of categorising certain sectors as female-dominant and promoting an objective determination of the relative value of work may help, though this is easier said than done.

More importantly, the original law and subsequent amendments confine themselves to the formal sector, even though over 90 percent of Indian women tend to work in the informal sector.³² Enacting a similar law to address inequalities in the informal sector – though much needed - would be hard to implement and monitor.

The Sexual Harassment of Women at the Workplace (Protection, Prohibition, Redressal) Act, 2013: This is a central government legislation aimed at providing women with access to safe workplaces, free from any form of sexual harassment.³³ It does this by fixing accountability of such incidents on the employer, as well as the appropriate government authority at the district level. The law was passed after the Supreme Court put the Vishaka Guidelines into place in the 1990s after a case of sexual harassment led to a widespread women's rights' movement in the country. The law mandates setting up of committees internally within workplaces, as well as at the district and block level for resolving issues related to sexual harassment.

While much required, the way the law is currently structured reduces its effectiveness and makes it extremely implementation intensive. It also requires a realignment of stakeholder incentives as it currently overburdens district officials and requires the presence of eminent members from NGOs committed to the cause of women on every internal committee. Further, studies have also reported that the biggest impediment to the law being utilised is the lack of awareness about its existence, as well as the patriarchal notions which exist in the society.

³¹ The Equal Remuneration Act, Ministry of Labour and Employment, Government of India, 1976, Section 5, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

³² NSSO 68th Round of Employment and Unemployment Survey (2011-12)

³³ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

CASE STUDY ON ENSURING ACCESS TO SAFE TRANSPORT TO WORKING WOMEN

The Factories Act of 1948 was one of India's earliest enactments seeking to regulate employment, but it prohibited companies from employing women in night shifts between 7 pm and 6 am. The prohibition significantly affected the women's access to gainful employment vis-à-vis those available to men. In the years 2015 and 2017, the states of Tamil Nadu and Haryana amended the Factories Act, to permit employers to hire women during night shifts. These were accompanied by guidelines that sought to ensure that women not only enjoyed a safe working environment but also don't face any impediments in their travel to and from work.

Tamil Nadu guidelines required, among other things, for the employer to ensure at least two thirds of the total strength of workers working the night shift and at least one third of the supervisors/shift in-charge/foreman be women. They also made employers

responsible for providing free and separate (women only) transportation for women working the night shift, from the factory to the point closest to their house, a separate dining area for women and female security at both the entry and exist points. The employers are also required to ensure a 12 hours gap between two shifts, along with a creche facility, proper lighting (in and around the factory) and easily accessible toilet and water facilities.

Haryana guidelines-imposed requirements similar to Tamil Nadu, and went a step further to insist that the employer's provision for free transportation be accompanied by security guards (including a female guard), and that each vehicle be equipped with CCTV cameras. The employer is also required to organise monthly meetings to listen to the grievances of the workers. The workers are also entitled to a leave during their menstrual cycle.

Other states with similar provisions include Karnataka which issued a waiver under the state's Shops and Establishments Act to allow for IT firms and BPOs to employ women in night shifts, subject to the similar safety guidelines prescribed by the state.

INTERNATIONAL BEST PRACTICES

Countries around the globe are making efforts to improve the working conditions for women to join the labour force and make work environments safer, equitable and conducive. The following are some international best practices:

1. **Legislation on equal pay:** Equal pay for equal work remains a key concern across many countries, with developed countries leading the charge. Iceland has been the forerunner in the world in terms of gender parity with the wage gap of women to men being only 72 cents.³⁴ However, that too was found unacceptable, since in 2018, it enacted other legislation giving more teeth to equal pay, declaring discrimination in payment of wages on the basis of gender illegal.³⁵ France has been another example, having mandated equal

wage since 1972. In 2001, they passed a law that allowed the use of specialised payroll software to detect disparities in payment and imposing penalties amounting to 1 percent of the total wage in cases contravening the law.³⁶ Among developing countries, the Thai model stands out, particularly with respect to how their laws have tried to include the unorganised sector. The Labour Protection Act (1998) of Thailand provides for a payment of equal wages to women, paid maternity leaves and sick leaves.³⁷ However, unlike India, the Act also provides for payment of an interest on any money owed to the employee and requires the consent of the employee in cases of transfers.³⁸ Recently, the government of Thailand also passed laws to regulate the conditions of service of domestic workers – considered part of the unorganised sector - a majority of whom are women.³⁹ Their conditions of employment are governed by the Civil Commercial Code, which

³⁴ It's Now Illegal to Pay Men More Than Women in Iceland, Sarah Gray, 02/02/2018, <http://fortune.com/2018/01/02/illegal-to-pay-men-more-than-women-iceland/>

³⁵ It's Now Illegal to Pay Men More Than Women in Iceland, Sarah Gray, 02/02/2018, <http://fortune.com/2018/01/02/illegal-to-pay-men-more-than-women-iceland/>

³⁶ A guide to pay parity laws around the world, Cloud Pay, 18/04/2019, <https://www.cloudpay.net/resources/a-guide-to-pay-parity-laws-around-the-world>

³⁷ Labour Protection Act (No 7), B.E. 2562, 2019, <http://www.cpg-online.de/2019/04/18/thailands-labour-protection-act-no-7/>

³⁸ Major Amendments to Thailand's Labour Protection Act to Take Effect in Early 2019, Tilleke and Gibbins, 17/12/2018, <https://www.tilleke.com/resources/major-amendments-thailand%E2%80%99s-labor-protection-act-take-effect-early-2019>

³⁹ Thailand: New Ministerial Regulation offers better protection of domestic workers' rights, International Labour Office, https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_208703.pdf

provides them with weekly, traditional holidays and sick leaves.⁴⁰ Though the domestic workers are not covered explicitly under Thailand's Minimum Wages Act, there cannot be any discrimination on the basis of gender for work of same nature, quality or quantity.⁴¹

2. **Prevention of sexual harassment in the workplace:** This is an under-regulated segment in many countries; the 2018 World Bank's "Women, Business and the Law" report found that 59 out of 189 countries had no specific legal provisions covering sexual harassment in employment.⁴² Having said that, some of the best practices in this space include laws that ensure gender neutrality in defining sexual harassment, such as those of Germany and Italy, which ensure adequate access to redressal for both men and women, and also prevent unfair hiring bias against women.⁴³ Countries like South Korea invest strongly in offering gender sensitive training to its public officials, and Namibia requires its labour inspectors to raise awareness during inspections regarding workplace violence. Such interventions have proven extremely helpful.⁴⁴ While having a law and knowing about it is half the battle, procedural inadequacies in implementing it can also prove problematic when it comes to ensuring proper redressal of the complaint. Here, laws such as those in many Latin American countries that provide protections against reprisals for filing or participating in filing such complaints go a long way.⁴⁵ Germany takes it step further by allowing employees the right to refuse work when confronted with an employer refusing to take suitable measures to address harassment.⁴⁶

introduce 'work of equal value' as the criteria for payment of equal wages might be a good starting point, but this will need to be coupled with an effective adjudication process to handle the complaints. It might also help to encourage employers to follow transparent hiring practices and voluntary salary disclosures.

2. **Workplace safety: Creating a safe working environment for women**
Lack of safety at the workplace/while travel is an important reason why women sometimes opt out of the workforce or out of certain job-roles. Therefore, the law could be amended to ensure establishments in the formal sector take appropriate measures, especially with regard to night shifts or travel at night. However, it will be important to keep in mind that this could also disincentivise hiring of women. For the informal sector, and possibly even for the formal sector, the government could also consider stepping in to make public provision of services such as those for safe travel.

With regard to sexual harassment, there is an urgent need to increase awareness about the law. The government could consider allocating a set budget to building awareness. It could also consider shifting the onus of monitoring and implementing the Act to departments/agencies better suited to handling the concerns of women, such as WCD departments, rather than the overburdened district officials. WCD departments could also be made responsible for aspects relating to organising awareness campaigns and gender sensitisation workshops amongst the public and law enforcement agencies. Additionally, they could also be held accountable for the functioning of the Local Complaints Committee (LCC) in every district, along with maintaining data with regard to the number of sexual harassment cases filed in a year. The State Women's Commission as well as the National Women's Commission, who already exercise suo-moto oversight with respect to sexual harassment cases, and whose opinion has strong persuasive value under the Act, could aid WCDs in this endeavour.

GAPS AND RECOMMENDATIONS

Based on the above analysis, the report makes the following key recommendations for the quality work section:

1. **Equal pay: Strengthening implementation of the law**
Implementing an equal pay legislation is challenging. Therefore, amending the law to

⁴⁰ The applicability of the Civil and Commercial Code is established by section 14 of the Labour Protection Act, as amended by Labour Protection Act (No. 2) of 2008. The Civil and Commercial Code provides, for instance, that domestic workers are entitled to obtain a work certificate from the employers upon termination or end of the contract. It also provides that an employer is obliged to pay the cost of the return travel of a worker at the end of the contract where the worker was hired and brought from elsewhere (section 586).

⁴¹ Section 53, The Labour Protection Act (1998), Thailand.

⁴² Women, Business and the Law 2018, The World Bank, <http://wbl.worldbank.org/en/reports>

⁴³ Sexual harassment at the workplace, a global concern with local solutions, Ius Laboris, 12/01/2017, <https://theword.iuslaboris.com/hrlaw/insights/sexual-harassment-in-the-workplace-a-global-concern-with-local-solutions>

⁴⁴ Ending violence and harassment at work: The case for global standards, Human Rights Watch, https://www.hrw.org/sites/default/files/news_attachments/2018_hrw_ilo_brochure.pdf

⁴⁵ Ending violence and harassment at work: The case for global standards, Human Rights Watch, https://www.hrw.org/sites/default/files/news_attachments/2018_hrw_ilo_brochure.pdf

⁴⁶ Ending violence and harassment at work: The case for global standards, Human Rights Watch, https://www.hrw.org/sites/default/files/news_attachments/2018_hrw_ilo_brochure.pdf

QUALITY WORK ANNEXURE

Detailed Scheme Analysis

The Equal Remuneration Act, 1976

Name	The Equal Remuneration Act, 1976
Type	Central Legislation
Focus area	Providing equal remuneration to women and preventing discrimination towards women at the workplace
Target group	Women
Geographical reach	National
Applicability	Any establishment, factory, mine, oilfield, plantation, port, railway company or shop, subject to certain conditions ⁴⁷
Scheme size	NA
Implementation mechanism	At the central level through the Chief Labour Commissioner, the head of Central Industrial Relations Machinery ('CIRM') and at the state level through the State Labour Department ⁴⁸
Past evaluations	The Equal Remuneration Act by Aditi Kavarana, Centre for Civil Society [LINK]

BACKGROUND AND OBJECTIVE

The Equal Remuneration Act was first implemented in 1976 pursuant to the report of the Committee on the Status of Women in India, constituted by the Ministry of Education and Social Welfare, Government of India.⁴⁹ It was also in line with Article 39 of the Directive Principles of State Policy, under the Indian Constitution. The Act seeks to regulate payment of wages to women and ensure non-discrimination at the workplaces. It casts an obligation upon the employer for the payment of equal remuneration to women and men for the same work or work of a similar nature.⁵⁰ The Central Industrial Relations Machinery (CIRM) in the Ministry of Labour and Employment is in charge of overseeing the enforcement of the legislation across the country.

EVOLUTION OF THE ACT

As mentioned above, the Act came into force in 1976. However, in order to make the provisions more effective and ensure the prevention of any discrimination against women at workplaces, it was amended in 1987 to expand its applicability to other conditions of services such as promotions, transfers and training.⁵¹

Among the major changes brought in by the Amending Act of 1987, was the increased penalties laid down in Section 10 for the violation of the Act's provisions. Another key change was recognising the absence of collective bargaining power among women workers; understanding this, the Amending Act also bestowed certain recognised welfare organisations with the locus to file complaints in cases of violations.⁵² In 1991, in an effort to better realise the provisions of the Act, the Central Advisory Committee responsible for advising the government on increasing employment opportunities for women, was constituted.⁵³ In 2010, this Committee was reconstituted via a notification.⁵⁴

⁴⁷ Note: "Employer" under the Equal Remuneration Act, 1976 has the same meaning as "employer" under the Payment of Gratuity Act, 1972.

⁴⁸ Equal Remuneration Acts and Rules, 1976, Ministry of Labour and Employment, Government of India, <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>

⁴⁹ Towards Equality: Report of the Committee on the Status of Women in India, Ministry of Education and Social Welfare, Government of India, 12/1974, <http://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>

⁵⁰ The Equal Remuneration Act, 1976, Ministry of Labour and Employment, Government of India, Sections 4 and 5, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

⁵¹ The Equal Remuneration Act, 1976, Ministry of Labour and Employment, Government of India, Sections 4 and 5, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

⁵² Complaints can now be filed by a worker, a group of workers, a legal practitioner or a member of registered Trade Union and Central Advisory Committee members; Section 12, The Equal Remuneration Act, 1976, Ministry of Labour and Employment, Government of India, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

⁵³ The Central Advisory Committee on Equal Remuneration Rules, Ministry of Labour and Employment, Government of India, 1991, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

⁵⁴ Equal Remuneration Acts and Rules, 1976, Ministry of Labour and Employment, Government of India, <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>; Minutes of the first meeting of the newly constituted Central Advisory Committee on Equal Remuneration Act (1976), 22/02/2011, https://labour.gov.in/sites/default/files/Mts_%20of%20CAC%20on%20ERA%20held%20on%2022_2%28CAC%20%29.pdf

More recently in 2017, the government introduced a proposal for a single code known as 'The Code on Wages' bill, which sought to subsume four wage base legislations, including the Equal Remuneration Act.⁵⁵ However, the proposal has been referred to a select committee and is still under consideration.⁵⁶

POLICY DESIGN

The Equal Remuneration Act, 1976 provides for the implementation of the legislation at both levels of governance i.e., centre and state. At the centre, the enforcement of the Act is entrusted to the Chief Labour Commissioner (Central) who heads the CIRM, and is assisted by the Deputy CLCs. They in turn monitor the government appointed Labour Enforcement Officers who are tasked as 'Inspectors' in order to carry out investigations regarding the compliance of the provisions.⁵⁷ While Inspectors carry out investigations, the Assistant Labour Commissioner (C) and the Regional Labour Commissioner (C) hear the complaints and appeals respectively, regarding the contravention of any provisions, as well as claims arising out of payment of wages, with respect to the establishments where the central government is the appropriate government.⁵⁸ They are currently appointed in 20 cities across the country, and serve as the appellate authority.⁵⁹

For other establishments, the Act is implemented by the State Labour Department. The District Labour Commissioners are appointed by the government in their respective states. In the sections that follow, the

legislation will be analysed in light of the following points:

- The Amending Act increased the applicability of the provisions to conditions of promotions, transfers etc.;
- The Act imposes a duty on the employer with respect to the maintenance of registers⁶⁰ containing the details of the employees.

POLICY ANALYSIS

Below, we have mapped the Act to an analysis structure that combines the Longwe Gender Analysis Framework and supplemented it with the two lenses on policy design discussed previously - Alignment of Incentives and Implementation Intensity.

Welfare

The Act has no component directly addressing the issue of Welfare.

Access

By ensuring non-discrimination in the process of recruitment, promotions and payment of wages equal to that of men, the legislation seeks to provide women with equal opportunities and continuance of the same. Therefore, it is marked 'Positive' on Access.

Levels of Recognition/ Levels of Equality	Negative	Neutral	State Capacity/ Implementation Intensity	Alignment of Incentives
Control			High	Misaligned
Participation				
Heightened Consciousness				
Access				
Welfare				

⁵⁵ The Code on Wages Bill 2017, Ministry of Labour and Employment, Government of India, 05/09/2017, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=170541>

⁵⁶ The many misses of the Wage Code, Hindu Business Line, 14/03/2018, <https://www.thehindubusinessline.com/opinion/the-many-misses-of-the-wage-code/article23245863.ece>

⁵⁷ The Equal Remuneration Act & Rules, 1976, Ministry of Labour and Employment, Government of India, <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>

⁵⁸ The Equal Remuneration Act & Rules, 1976, Ministry of Labour and Employment, Government of India, <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>

⁵⁹ The Equal Remuneration Act & Rules, 1976, Ministry of Labour and Employment, Government of India, <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>

⁶⁰ The entries required to be filled in the register include the total number of male and female employees, the rate of remuneration paid, basic wage or salary, dearness allowance, house rent allowance and other allowances.

Heightened Consciousness

The legislation aims to prevent discrimination against women at the workplace in all spheres. In doing so, it empowers them by diminishing the dominance of one gender role over another. It is therefore marked as 'Positive' on Heightened Consciousness.

Participation

The Act has no component directly addressing the issue of Participation.

Control

The Act has no component directly addressing the issue of Control.

State Capacity/Implementation Intensity

The Act requires high state capacity for implementation as it necessitates processing of the complaints by inspectors. Given the subjectivity that is often involved in remuneration and promotions, determining the veracity of claims can be difficult. The implementation of the Act is transaction intensive, meaning that it involves multiple agents (inspectors and other appellate authorities) to enforce the legislation on behalf of the government. Decisions also rely on the discretion of the inspector in-charge of each case. All of these factors increase the demands on state capacity, which means that unless monitoring and accountability measures are in place, the implementation of the Act is likely to suffer. Therefore, it is marked "high" on State Capacity/Implementation Intensive.

Alignment of Incentives

The key stakeholders involved in the implementation of the Act are the women employees/workers targeted by the Act, their employers as well as the

inspectors and appellate authorities. The incentives of these stakeholders are not entirely aligned, and this is explained below:

1. **Employers:** The opacity in the process of hiring, particularly in regularised white collar jobs and the inherent ambiguity created by using the term "works of a similar nature"⁶¹ in the text instead of "work of equal value"⁶² as well as the difficulty in quantifying the "value of work", serves as an escape route for employers to categorise the nature of work as per their wishes, and hire and pay different wages to men and women.⁶³ While the law mandates that one cannot contract away one's statutory rights, individual job contracts and flexible salary bands, particularly in the private sector, can also add to the opacity in payments between men and women.⁶⁵
2. **Women Employees:** Women in India, regardless of their job sector, are seen as less willing to confront work-place biases and sue for violations, as compared to their foreign counterparts.⁶⁴ While the law allows for forums where necessary representations can be made, it does not help women with overcoming the cultural and social barriers. The actual impact of the law also differs depending on the sector and type of work a woman is employed. Women employed in smaller units or in sectors with unorganised labour tend to be particularly disempowered, especially given their inability to come together to improve their collective bargaining power. This has fuelled notions of the Act only being applicable to the organised sector, and the huge difference between the number of complaints in the two sectors further corroborates the same point.
3. **Inspectors:** Given the discretion (as well as the subjectivity) involved in determining the veracity of complaints, the Act creates opportunities for corruption. Inspectors have a strong incentive to look away and rule in favour of the employers if a suitable quid pro quo is offered.

⁶¹ The Equal Remuneration Act, 1976, Ministry of Labour and Employment, Government of India, Section 5, <https://maitri.mahaonline.gov.in/pdf/equal-remuneration-act-1976.pdf>

⁶² Equal Remuneration Convention, 1951, International Labour Organisation, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf

⁶³ Individual Case (CAS) - Discussion: 2010, Publication: 99th ILC session, 2010, International Labour Organisation, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:2106768

⁶⁴ Building a case for equal pay, Live Mint, 25/01/2018, <https://www.livemint.com/Leisure/6rtyVZVaAhpOYUNzmaLLfN/Building-a-case-for-equal-pay.html>

⁶⁵ The experience in implementation of the Equal Remuneration Act (1976), The Institute of Social Studies Trust, 2010, <http://182.71.188.10:8080/jspui/bitstream/123456789/34/1/ERA%20Study%202010.pdf>

PROGRESS IN IMPLEMENTATION

Government data on the implementation of the Act at the centre and the states shows that a total of 1,51,715 inspections were conducted and 3,397 prosecutions launched from 2011-14.⁶⁶ Data for the years of 2015-18 at the state level shows a total of 16,952 violations, though it reveals no prosecutions.⁶⁷ Corresponding data for the centre shows 27,309 inspections, yet again without revealing prosecution data.⁶⁸ While both these pieces of information show a general decrease in violations at the state and central level over the last few years, this could be a result of either good implementation or poor reportage and settlement. However, prosecution data for the years 2011-14 mentioned above, which is exceedingly small in comparison to investigations launched, seems to suggest the latter.

Many research articles also corroborate that there has been limited impact of the legislation in India.⁶⁹ The misalignment of incentives as well as the high state capacity required for effective implementation, offer some reasons as to the law's poor impact. But there also remain other pertinent reasons for the law's poor performance, as explained below:

1. **Social barriers outside of legislative scope:** It is an undeniable fact that the wages in the Indian labour market and the consequent wage gaps are characterised by factors beyond sector and skills. Gender biases are also key factors in the way female employment is perceived, and in the kinds of opportunities made available to them. A recent study on gender disparity in wages in India stated that in 2011-12, women received 78 percent of the wages received by men in urban settings.⁷⁰ On the other hand, in rural establishments, the difference was more striking, with women receiving only 68 percent of the wages received by men.⁷¹ This has been attributed to factors such as societal attitudes that exhibit general disapproval of women working, or consider them secondary or supplementary bread-earners, as well as social norms that give preference to early marriages of women over jobs and education.⁷²

2. **Insufficiency in being a standalone legislation:**

While the Act means well in seeking to ensure that no discrimination occurs to women, it cannot accomplish much as a standalone legislation, since it can only take effect once the women have entered the work space. This is doubly so for those sectors which are influenced by opaque hiring practices. The only sure way to circumvent this bias is to ensure ways by which women can be guaranteed entry into the workforce. A good example of this in the informal wage market is the Mahatma Gandhi National Rural Employment Guarantee Act ('MNREGA') which proves to be more effective in terms of women's equal treatment, owing to the statutory requirement which states that roughly one third of the workforce employed should be women.

EVALUATIONS UNDERTAKEN

The Centre for Civil Society undertook a study on the impact of the Equal Remuneration Act, 1976 in Kanpur, Nainital and Moradabad districts of erstwhile Uttar Pradesh and following were the key findings reported:⁷³

- The study showed no difference in the wages paid in the organised sector, and the wage difference existed only in the unorganised sector, where the monthly average wage of a male worker was Rs. 808 whereas the same for the female worker was Rs 791.
- The study also looked at other factors such as promotions, increase in wages wherein women may be subjected to discrimination and reported that the number of women being promoted in the unorganised sector was around 2.9 percent less than that of men.

While the study shows that there is some disparity, given the sectors and regions evaluated, it does not lay out the full picture. There is need for a wider-ranging evaluation that covers a much larger section of the organised and unorganised sectors, especially with respect to jobs that are not standardised.

⁶⁶ Unstarred Question 169, Ministry of Labour and Employment, Lok Sabha, 25/04/2016, <http://loksabhadocs.nic.in/loksabhaquestions/annex/8/AU169.pdf>

⁶⁷ Unstarred Question 1266, Ministry of Labour and Employment, Lok Sabha, 11/02/2019, <http://loksabhadocs.nic.in/loksabhaquestions/annex/17/AU1266.pdf>

⁶⁸ Unstarred Question 1266, Ministry of Labour and Employment, Lok Sabha, 11/02/2019, <http://loksabhadocs.nic.in/loksabhaquestions/annex/17/AU1266.pdf>

⁶⁹ The experience in implementation of the Equal Remuneration Act (1976), The Institute of Social Studies Trust, 2010, <http://182.71.188.10:8080/jspui/bitstream/123456789/34/1/ERA%20Study%202010.pdf>

⁷⁰ Towards an India Wage Report, ILO Asia-Pacific Working Paper series, Papola, T.S., Kanan, K.P., International Labour Organisation, 10/2017, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_597270.pdf

⁷¹ Towards an India Wage Report, ILO Asia-Pacific Working Paper series, Papola, T.S., Kanan, K.P., International Labour Organisation, 10/2017, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_597270.pdf

⁷² Charted: The shocking gender divide in India's workforce, Quartz India, 28/09/2018, <https://qz.com/india/1404730/the-shocking-gap-between-indias-male-and-female-workers/>

⁷³ Equal Remuneration Act(1976), Aditi Kavarana, Centre for Civil Society, <https://ccs.in/equal-remuneration-act>

CONCLUDING NOTE

The above analysis suggests that the Act has had is likely to have limited impact on the status of women in terms of employment and conditions of service. It needs high state capacity to implement, and the incentives of stakeholders are not aligned. It can also be said that the Act cannot address the issue of discrimination against women at workplaces in isolation, but needs to be implemented in tandem with policies that ensure women's parity in the workplace, beginning with their entry. Other benefits

that must go in tandem with this legislation include sharing of family responsibilities, laws promoting better working conditions in working spaces etc., which will allow the Equal Remuneration Act to be implemented in both letter and spirit.

Introducing 'work of equal value' as the criteria for payment of equal wages to avoid the practice of categorising certain sectors as female-dominant and promoting an objective determination of the relative value of work may help, though this is easier said than done.

The Sexual Harassment of Women at the Workplace (Protection, Prohibition, Redressal) Act, 2013

Name	The Sexual Harassment of Women at the Workplace (Protection, Prohibition, Redressal) Act, 2013
Type	Central Legislation
Focus area	Providing a definition for sexual harassment and setting up a redressal mechanism for addressing complaints of sexual harassment at the workplace.
Target group	Working women in the organised and unorganised sector
Geographical reach	National
Scheme size	NA
Past evaluations	Eliminating Violence Against Women At Work by Sisters for Change in partnership with Munnade (LINK)

BACKGROUND AND OBJECTIVE

The Sexual Harassment of Women at the Workplace (Protection, Prohibition, Redressal) Act (henceforth referred to as the 'PoSH Act' or the 'Act') was enacted in 2013, with the objective of providing women with a safe, secure and dignified work environment, free from any form of sexual harassment.⁷⁴ It does this by fixing accountability of such incidents on the employer, as well as the appropriate government authority at the district level.

The law is in tandem with the apex court's judgement in the Vishakha & Ors. vs State of Rajasthan & Ors., and defines "sexual harassment" as any kind of unwelcome sexually coloured behaviour either directly or through implication, such as (1) physical

contact and advances (2) demand or request for sexual favours (3) making sexually coloured remarks (4) showing pornography (5) any other kind of unwelcome physical, verbal or non-verbal conduct of sexual nature.⁷⁵

EVOLUTION OF THE ACT

Vishakha & Ors. vs State of Rajasthan & Ors. was a case adjudicated by the Supreme Court in response to a writ petition filed by a group of female social workers following the trial court's decision to acquit the accused in the Bhanwari Devi⁷⁶ case. The petitioners argued that sexual harassment constituted a form of gender discrimination which was in violation of the fundamental rights prescribed to all citizens under Articles 14, 15 and 21 of the Indian Constitution. They therefore appealed to the

⁷⁴ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁷⁵ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁷⁶ Dalit woman's rape in '92 led to India's first sexual harassment law – but justice still eludes her, Scroll.in, 10/2018, <https://scroll.in/article/899044/dalit-womans-rape-in-92-led-to-indias-first-sexual-harassment-law-but-justice-still-eludes-her>

⁷⁷ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

Supreme Court to constitute guidelines that would aid institutions in recognising sexual harassment, along with mechanisms to prevent and provide redressals to complaints of sexual harassment in the workplace.⁷⁷

In 2013, India enacted its first law addressing sexual harassment: the Sexual Harassment of Women in the Workplace (Prevention, Prohibition, Redressal) Act, and supplemented it with the Criminal Law Amendment Act (2013) which criminalized sexual harassment, stalking and voyeurism.⁷⁸

The PoSH Act is applicable to women across age groups facing sexual harassment in the workplace. The Act also states that for a woman to take refuge under this law, the act of sexual harassment should have taken place at her workplace or any place designated as part of the same (such as offsites, during travel etc.).⁷⁹

POLICY DESIGN

Constituting the ICC:

The Act directs each employer to set up an Internal Complaints Committee (ICC) at every office or branch employing 10 or more people. The ICC enjoys the powers of a civil court and has the power of summoning, discovery and the production of legal documents. The ICC must consist of a senior female employee, followed by two or more employees and one external member working in an NGO 'committed to causes of women.'⁸⁰ The law also requires for the employers to carry out workshops, training sessions and awareness programmes for their employees in order to spread awareness regarding the provisions of the act and develop a work space free from sexual harassment.⁸² The Act also includes a penalty of INR 50,000 to be paid by a firm/business for non-compliance with the law. Continued violations would lead to increased penalties or cancellation of licenses to conduct business.⁸³

Constituting the LCC:

Besides the above, the Act also requires for the setting up of a Local Complaints Committee (LCC), at the district and the block level in order to provide redressal for the following complainants: (1) workers employed in the unorganised sector; (2) to employees of firms without an ICC on the account of there being less than 10 employees employed by the firm or (3) in cases where the complaint is against the employer itself. The LCC too, according to the law needs to be chaired by eminent women involved in the sector and 'committed to the causes of women.' There needs to be at least one member who belongs to the SC/ST group and at least one member with a background in law. The Act also requires for there to be a representative nominated from amongst the women working in the tehsil, block taluka, ward or municipality.

It is important to note that the law requires for 50 percent of all nominated member of the ICC and the LCC to be women.⁸⁴

Filing of a complaint:

The aggrieved woman is required to submit six copies of her written complaint, along with documents containing details of the witnesses to the ICC or LCC within three months from the date of the incident. A delay in filing a complaint needs to be substantiated with sufficient cause for the delay in order for the committee to accept it. There also exists a conciliation provision in the Act, which allows for the aggrieved woman who does not wish to have a formal enquiry, to approach the ICC and request them to settle the matter between the parties.⁸⁵ The law also provides for provisions that allow friends, family, psychologists, psychiatrists, etc., to file a complaint on behalf of the aggrieved woman in situations constituting her physical/mental incapacity or her death.

⁷⁸ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁷⁹ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁸⁰ Legislative Brief: Protection of Women against Sexual Harassment At Workplace Bill, 2010, PRS Legislative Research, 7/11/2010, <https://www.prsindia.org/uploads/media/Sexual%20Harassment/Legislative%20Brief%20-%20Sexual%20Harassment%20-%2020May11.pdf>

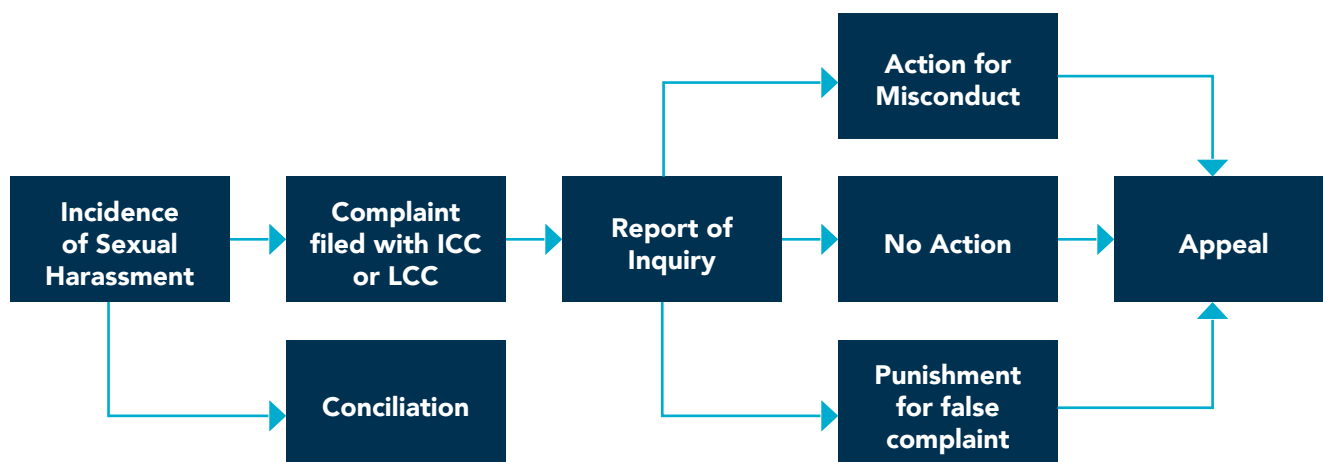
⁸¹ Legislative Brief: Protection of Women against Sexual Harassment At Workplace Bill, 2010, PRS Legislative Research, 7/11/2010, <https://www.prsindia.org/uploads/media/Sexual%20Harassment/Legislative%20Brief%20-%20Sexual%20Harassment%20-%2020May11.pdf>

⁸² Legislative Brief: Protection of Women against Sexual Harassment At Workplace Bill, 2010, PRS Legislative Research, 7/11/2010, <https://www.prsindia.org/uploads/media/Sexual%20Harassment/Legislative%20Brief%20-%20Sexual%20Harassment%20-%2020May11.pdf>

⁸³ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁸⁴ Legislative Brief: Protection of Women against Sexual Harassment At Workplace Bill, 2010, PRS Legislative Research, 7/11/2010, <https://www.prsindia.org/uploads/media/Sexual%20Harassment/Legislative%20Brief%20-%20Sexual%20Harassment%20-%2020May11.pdf>

⁸⁵ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf



Redressal

- **Interim Relief:** The law also provides for provisions for the ICC or the LCC to recommend the employer to provide the aggrieved women interim relief by means of: (1) transfer of the aggrieved party or the respondent, (2) granting of leave (3 months in addition to her contractual leave entitlements) to the aggrieved women or (3) restraining the respondent from filling any report regarding the aggrieved woman's work performance or her confidential report.
- **Other relief:** According to the PoSH Act, following the proceedings of the ICC/LCC, if the

accused is found guilty of sexual harassment, action should be taken in accordance with the service rules of the organisation. In the absence of any such rules however, disciplinary action could be taken, requiring the respondent to submit a written apology, issuance of a warning, censure, withholding of increments or promotion, termination from service, requiring the respondent to carry out community service or undergo counselling sessions. The same rules would be applicable against the aggrieved women for those cases that are found to be false or filed with malicious intent.⁸⁶

Levels of Recognition/ Levels of Equality	Negative	Neutral	State Capacity/ Implementation Intensity	Alignment of Incentives
Control			High	Misaligned
Participation				
Heightened Consciousness				
Access				
Welfare				

Welfare

The Act has no component which is directly addressing the component of Welfare.

Access

The Act improves access to opportunities by making workplaces 'safer' for women. Therefore, it is marked 'Positive' on Access.

Heightened Consciousness

The Act provides for a redressal mechanism for addressing complaints of sexual harassment, along

with requiring companies to host periodic workshops focused on sensitizing and educating employees about sexual harassment and the PoSH Act. Such workshops would help spreading awareness amongst women, and empowering them. Thus, it is marked 'Positive' for Heightened Consciousness.

Participation

The Act provides protection to women against acts of sexual harassment in the workplace. The knowledge of the law and the protection it provides helps reduce fear of speaking out, increasing their participation. Thus, it is marked 'Positive' on the issue of Participation.

⁸⁶ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

Control

The Act helps to balance the power dynamics between men and women in a work environment, particularly when the latter is confronted with sexually threatening behaviour. Thus, it is marked 'Positive' on the issue Control.

State Capacity/Implementation Intensity

According to the provisions specified in the Act, the state government is required to notify the district magistrate/additional district magistrate/collector/deputy collector as the District Officer responsible for constituting the Local Complaints Committee, along with designating a nodal officer in every block, tehsil, taluka, tribal areas, ward and municipality. Each employer with 10 more employees is also required to constitute ICCs at their workplaces.

Compliance with the Act is implementation intensive, both with respect to creating a large number of LCCs as well as monitoring their work, and checking compliance at workplaces. Determining the veracity of complaints requires significant capacity in the committees; the subjectivity involved in judgement also affords discretion to members. Therefore, the Act is marked "high" on this metric.

Alignment of Incentives

The stakeholders involved in the law are as follows:

1. **Aggrieved women:** Though the Act provides for protection of victims of sexual harassment, it does not incentivize the victimized women to come forward and report the case due to a number of factors. For one, the law is not gender neutral, and the resulting narrative of a woman always being the 'complainant' could lead to a hiring bias that works against them. Women who suffer from sexual harassment are likely uninterested in drawing more attention to themselves given the social norms and patriarchal attitudes attached towards them in work spaces, particularly for fear of jeopardizing their jobs.⁸⁷ This is especially true in cases where the alleged harasser is superior to the aggrieved woman in the workplace hierarchy,

resulting in a realistic fear of reprisal.⁸⁸ This fear is supplemented by the law's provision asking that action be taken in cases of false and malicious complaints. This particular clause, called a 'red tag' provision by the J.S Justice Verma Commission Report,⁸⁹ will particularly act as a disincentive for women who do not have strong evidence against the alleged harasser. All of this does not take into account workplaces without ICCs, which might result in a victimized woman having to approach an LCC - an even bigger disincentive, given the effort and time required in doing the same.

2. **Employers:** While the employers are, by law, required to constitute an ICC, its functioning and redressal mechanisms are not the same and most private companies develop an ad hoc procedure of their own,⁹⁰ which has the probability of being biased against the aggrieved woman. The Act also requires a senior women employee to be part of the ICC, however that alone does not guarantee fairness of procedure. The absence of gender neutrality in the law is also concerning, because this could result in an unfair bias in female hiring with at least some companies choosing to reduce the number of female employees hired by the firm in an attempt to reduce the probability of a sexual harassment complaints being filed in the first place.
3. **Member 'committed to the cause of women':** Both the ICC and the LCC require that every Committee have an external member working in an NGO 'committed to causes of women', with the LCC having an additional requirement that such person be an 'eminent woman'. Not a paid post in anyway, an honorarium and basic expenses come with the position. While sound in theory, this is a hard requirement to match geographically and otherwise, particularly in every ICC, especially if said member is to be working in an NGO committed to women's causes. This might result in the same person being an external member in numerous ICCs, resulting in either of the two possibilities – that such a person might make a career out of being in ICCs, resulting in perhaps colluding with the management, or their day-to-day work at an NGO and presence across numerous ICCs might result in them being spread too thin, and thus being eventually ineffective.⁹¹

⁸⁷ On the basis of stakeholder interaction with Ms Monica Sakhrani, who is a lawyer and an Associate Professor at the Tata Institute of Social Sciences, Mumbai and has been a member of various ICCs and LCCs.

⁸⁸ On the basis of stakeholder interaction with Ms Monica Sakhrani, who is a lawyer and an Associate Professor at the Tata Institute of Social Sciences, Mumbai and has been a member of various ICCs and LCCs.

⁸⁹ Report of the Committee on Amendments to Criminal Law, Government of India, 23/01/2013, <https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

⁹⁰ On the basis of stakeholder interaction with Ms Monica Sakhrani, who is a lawyer and an Associate Professor at the Tata Institute of Social Sciences, Mumbai and has been a member of various ICCs and LCCs.

⁹¹ On the basis of stakeholder interaction with Ms Monica Sakhrani, who is a lawyer and an Associate Professor at the Tata Institute of Social Sciences, Mumbai and has been a member of various ICCs and LCCs.

4. **District officer/ government officials in charge of implementation:** The Act requires the District Collector (DC) to discharge certain responsibilities under it, as the nodal District Officer. However, every District Collector reportedly is, as part of his/her administrative responsibilities, the chairperson of 75 committees, and a member or member secretary to 6 other committees.⁹² This totals their membership to over 82 committees, ranging across 23 departments of both the central and the state government.⁹³ An additional responsibility of monitoring the PoSH law implementation and its documentation, along with constituting an LCC, only adds to their excessive responsibility, thereby leading – unintentionally – to inefficient monitoring of the law and its improper implementation.

PROGRESS IN IMPLEMENTATION

According to a lawyer and activist, who has been part of various LCCs and ICCs, there is very poor awareness with regard to the law.⁹⁴ This lack of awareness, particularly in the unorganised sector, impedes achieving the objective of providing for a safe and secure work environment for women. Since the aggrieved women aren't aware of the law, they can't avail the protection that it offers. This is compounded by the inadequate number of LCC forums that women, particularly in the unorganized sector may approach to avail redressal.

Data amply corroborates this. In response to an RTI filed by the Martha Farrell Foundation in the year 2017, the response stated that out of the 655 districts in India only 191 have set up an LCC, out of which only 18 percent are reported to have conducted an orientation for their members.⁹⁵ The state's inability in the constituting of an LCC in every district, and failure to carry out proper workshops for the members of existing committees has affected the women in the unorganised sector the worst (such as domestic workers), who not only lack the awareness

of the sexual harassment law but also don't have access to legally prescribed LCCs required to file a complaint. This is compounded by the fact that the organisational structure in the unorganised sector is quite loose, making it particularly difficult to ascertain the accountability of the employer.⁹⁶

The law also requires for the government to monitor the implementation of the law, along with the maintenance of data of all cases that have been filed and disposed of.⁹⁷ Yet, the government has failed at setting up any source providing exhaustive data of the number of cases filed. This resulted in a 2018 PIL being filed in the Supreme Court by Inclusion Foundation, requesting a direction to states to develop a compiled data source of all cases under the legislation.⁹⁸

EVALUATIONS UNDERTAKEN

In a legal capacity building project for the garment workers of Bangalore Urban district carried out by Sisters for Change and Munnadeit, it was concluded that the PoSH Act 2013 had failed to counter the prevalence of sexual harassment in the lives of the garment workers. The study majorly attributed the failure to the lack of legal accountability of the factory owners/upper management. The findings of the study are as follows:⁹⁹

- 1 in 7 female workers have been raped or forced into committing a sexual act.
- 1 in 14 female workers have experienced physical violence, while only 3.6 percent of the cases have resulted in an action by the factory or the police.
- There were no criminal charges brought against the perpetrators of the crimes.
- 75 percent of the respondents reported the absence of any functioning internal grievance system in their factory.
- 61 percent of the women were prevented from reporting on cases of harassment and abuse.

⁹² Superman or stop gap solution, Rashmi Sharma, District Collector, Livemint, 2/10/2018, <https://www.livemint.com/Opinion/wUF3NfRYLUCdwXeW4S4qRM/Opinion--District-collector-superman-or-stopgap-solution.html>

⁹³ Superman or stop gap solution, Rashmi Sharma, District Collector, Livemint, 2/10/2018, <https://www.livemint.com/Opinion/wUF3NfRYLUCdwXeW4S4qRM/Opinion--District-collector-superman-or-stopgap-solution.html>

⁹⁴ On the basis of stakeholder interaction with Ms Monica Sakhrani, who is a lawyer and an Associate Professor at the Tata Institute of Social Sciences, Mumbai and has been a member of various ICCs and LCCs.

⁹⁵ Who Safeguards a Woman's right to a safe workplace? A Study of Local Committees Across India using RTI Data, Research Report, Martha Farrell Foundation and PRIA, 10/2018, https://www.pria.org/knowledge_resource/1555306595_RTI%20Study%20PDF.pdf

⁹⁶ POSH Act 2013: Addressing sexual harassment at workplace for women in unorganised sector, Ungender Insights, 06/2018, http://blog.ungender.in/sexual-harassment-of-women-in-unorganized-sector-in-light-of-provisions-of-posh-act-2013/#_ftn1

⁹⁷ India's Law on Prevention of Sexual Harassment at the Workplace, Nishit Desai Associates: Legal and Tax Counselling Worldwide, 10/2018, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf

⁹⁸ SC Notice To States On PIL For Proper Implementation Of Rules To Prevent Sexual Harassment At Work Place, Live Law News Network, 4/01/2018, <https://www.livelaw.in/sc-notice-states-pil-proper-implementation-rules-prevent-sexual-harassment-work-place-read-petition/>

⁹⁹ Eliminating Violence Against Women At Work, Sisters for Change and Munnade, 06/2016, <https://www.sistersforchange.org.uk/2018/06/20/eliminating-violence-against-women-at-work/>

CONCLUDING NOTE

The analysis above suggests that the Act is implementation intensive and requires a realignment of incentives – responsibilities may be delegated to officers with greater bandwidth for undertaking the asks under the Act; there is also a need for rethink on the composition of the committees that require the engagement of eminent members “committed to the cause of women”. However, both stakeholder conversations and secondary research reveal that a key driver for the Act’s proper implementation – which ironically is also the Act’s biggest lacunae thus far – is spreading awareness about the law. One strong suggestion that has come through stakeholder interactions, has been to make the PoSH

Act’s implementation the prerogative of the Women and Child Development Department (WCD) at the state level, and making the WCD responsible for aspects relating to organising awareness campaigns, gender sensitisation workshops, ensuring checks of workplaces and being made responsible for the functioning of LCCs at every district and block level, along with maintaining data with regard to the number of sexual harassment cases filed in a year. The State Women’s Commission as well as the National Women’s Commission, who already exercise suo-moto oversight with respect to sexual harassment cases, and whose opinion has strong persuasive value under the Act, could aid WCDs in this endeavour.

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