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GENDER AND GROWTH

Women Redefining
Professional Boundaries



Dr. Baseerat Fatima | Dr. Sadaf Khan
Dr. Kamini Vishwakarma

Dr. Fatima | Dr. Khan | Dr. Vishwakarma

GENDER AND GROWTH

Women Redefining Professional Boundaries



Gender and Growth: Women Redefining Professional Boundaries

Editors

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Dr. Sadaf Khan

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TABLE OF CONTENTS

<i>Chapters</i>	<i>Chapters Particulars</i>	<i>Page No.</i>
1.	Women in Political Leadership: Representation, Challenges and the Impact of Female Leaders in the Era of Globalisation <i>Dr. Seema Siddiqui & Dr. Aijaz Husain</i>	1
2.	Dismantling Workplace Gender Inequality in India: A Human Rights and Legal Perspectives <i>Dr. Mirza Juned Beg & Mohd. Sufiyan Kha</i>	10
3.	Motherhood Penalty and Women's Career Trajectories: Challenges and Solutions in the Workplace <i>Dr Suman Vimal & Mr. Mayur Anand</i>	30
4.	Balancing Career and Childcare: Women's Workplace Struggles <i>Dr. Syedah Fatima Zahara Jafri</i>	42
5.	Gender Inequality at Work: A Legal Study of Wage Gap, Leadership Exclusion and Sexual Harassment -in the Context of Viksit Bharat 2047 <i>Dr. Pradeep Kumar & Adv. Prateek Kumar Sharma</i>	63
6.	Women-Centric Laws and Their Impact on Women's Professional Advancement in India <i>Dr. Anita Ladha</i>	89
7.	Pink Heels, Power Suits: Women, Leadership and the Negotiation of Authentic Identity at Work <i>Ms.Swati Joshi & Dr. Gaurav Gupta</i>	99
8.	Constitutional Framework and Contemporary Challenges to Gender Equality in Professional Spaces <i>Dr. Mohd Talib Ather Ansari & Dr. Bushra Farat Ansari</i>	110
9.	Redefining Safety: Strategies for Combating Workplace Harassment and Sexual Misconduct <i>Dr. Kirti Prajapati</i>	121

10.	Rights on Paper, Realities at Work: A Legal Perspective on Women's Professional Advancement <i>Dr. Wasim Ahmad</i>	132
11.	Gender Equality in Professional Spaces: Constitutional Guarantees, Workplace Justice and Women's Leadership in Contemporary India <i>Dr. Yasharth Gautam & Ms. Sunny Kannojiya</i>	149
12.	Gendered Scripts at Work: Stereotypes, Self-Presentation, and Women's Professional Identity in India <i>Mr. Abhishek Raj & Ms. Ayushi Srivastava</i>	162
13.	Significance of Aligning Workplace Reforms with Global Standards: A Critical Legal Analysis of the POSH Act, Equal Remuneration Act, and Diversity Policies in India <i>Mr. Rajesh Kumar Vishwakarma & Adv. Lovely Yadav</i>	172
14.	Towards Gender-Neutral Workplace in India: Legal Framework, strategies and Challenges <i>Mr. Rakesh Kumar Jaiswal & Adv. Niharika Dwivedi</i>	182
15.	Power Dynamics and the ICC: Structural Limitations of the POSH Act <i>Mr. Faiz Osmani</i>	197
16.	Women's Leadership in the Digital Age: A Socio-Legal Analysis of Opportunities, Cyber Challenges, and Regulatory Frameworks in India <i>Mr. Ram Kumar & Adv. Narendra Kumar</i>	206
17.	Gender Inequality in the Workplace-Addressing the Wage Gap and Limited Representation of Women in Leadership Positions <i>Ms. Reshma Hayat</i>	226
18.	The Fragmented Ceiling: A Comparative Analysis of Women's Political Leadership and Structural Resistance <i>Ms. Komal Aggarwal & Dr. Syedah Fatima Zahara Jafri</i>	250



15.

Power Dynamics and the ICC: Structural Limitations of the POSH Act

*Mr. Faiz Osmani**

ABSTRACT

In order to offer a prompt, civil remedy for workplace harassment, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed. However, this chapter argues that the statute's foundational reliance on an "Internal" Complaints Committee (ICC) is constitutionally fragile when applied to rigid corporate hierarchies. Section 4 of the Act unintentionally establishes a structural conflict of interest that disproportionately benefits senior management by requiring that the ICC be established by the company and made up mostly of workers.

*This chapter presents a critical legal analysis of the "Subordinate Judge" paradox found in Section 4(2), where a Presiding Officer, despite being at a senior level, is frequently required to decide complaints against a superior or a professional peer who is a friend or who they depend on for career advancement. It asserts that the ICC is no longer a neutral tribunal but rather an extension of the employer's defense strategy due to this infringement of the principle of *Nemo iudex in causa sua*, which states that no one should be a judge in their own cause. The chapter also criticizes the legislative shortcomings of having just one external member, whose disapproval can be readily overruled by the internal majority.*

This chapter emphasizes the Chilling Effect that unchecked management power has on the inquiry process through a qualitative analysis of recent High Court rulings where inquiry findings were struck aside because of procedural prejudice. In order to guarantee a fair trial free from workplace hierarchies, the chapter ends with a proposal for legislative changes to the POSH Act that would require the externalization of inquiry panels in cases involving top executive responders.

KEYWORDS: *POSH Act 2013, Internal Complaints Committee (ICC), Institutional Bias, Natural Justice, Conflict of Interest.*

INTRODUCTION

A paradigm shift in Indian gender law occurred with the passage of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In order to provide a quick and practical civil remedy, the lawmakers framed sexual harassment as a breach of the basic right to equality under Articles 14 and 15 of the Constitution. The Internal Complaints Committee (ICC), a body required by Section 4 of the Act to decide complaints within the workplace itself, is essential

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