

The Ethical Corporation
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Lecture - 24
Some Specific Issues in Employer-Employee Relationship

Hello, we are back with our module 5 lecture 24. Today, we are going to talk about very Specific Issues in Employer Employee Relationship.

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And that would be the issue about workplace discrimination and harassment that includes sexual harassment too.

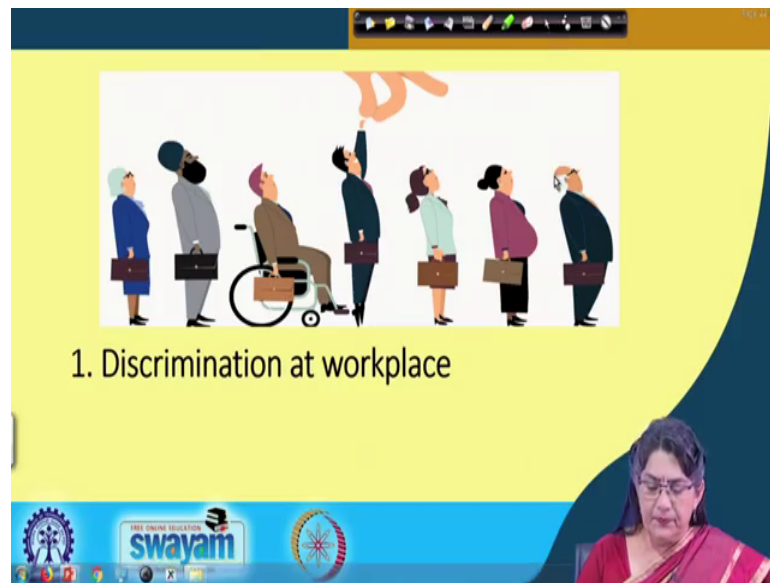
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So, specifically we need to talk about this. You see employee related issues that often are known as the HR issues, human resource issues are many. And each of them is important, there is no doubt about that whether you to talk about any of this you pick any from this chart and you will see that all of them are important.

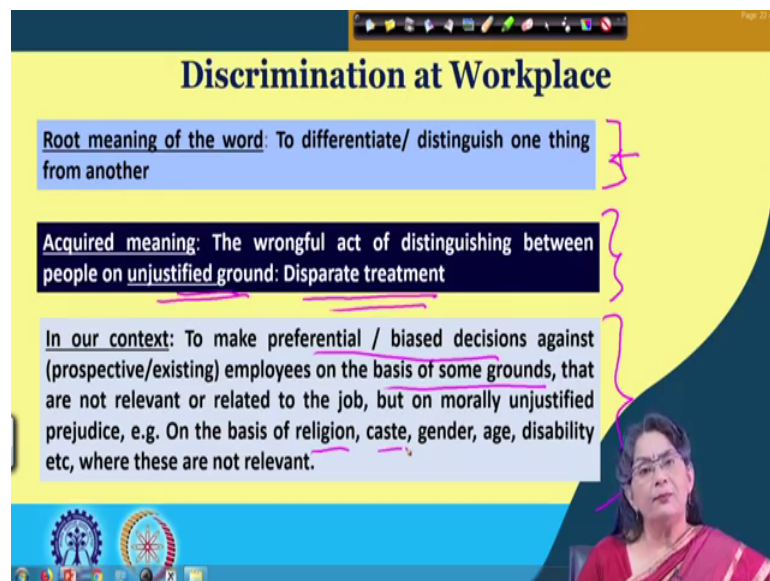
But, we do not have time to talk in great details about all of them. So, I have chosen particularly today to talk about these two issues; discrimination at workplace and harassment at workplace, the deserve some discussion separate. So, therefore, we will only talk about these two today.

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We will start with discrimination at workplace.

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You see, if you ask about the meaning of the term discrimination I have to tell you that root meaning is to learn to distinguish between things which is not bad. In fact, we say that as we grow up you know as we cognitively develop, it is one of the important tasks is to learn to differentiate to distinguish between different kinds of things.

For example the living and the inanimate objects, you know this is how we train children to grow up. So, this is not bad as such, but it is acquired meaning of the term

discrimination is very different, which is the wrongful act of distinguishing between people on unjustified ground, morally unjustified grounds. So, treating people differently when there is no reasonable or morally justified justifiable ground to do so.

So, in an organizational setup or a corporate setup, discrimination at workplace would mean to make preferential or biased decisions, against employees either present employees or the future employees people who were to join on the basis of some grounds, that are not relevant for the job, but on some sort of a unjustified prejudice, it could be religion, it could be caste and so on. So, this is discrimination at work place to treat employees differently based on grounds, which are not relevant for the work at hand and based on some prejudice or bias.

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Discrimination at Workplace

- The Constitution of India guarantees equal rights to all citizens, and prohibits discrimination on the basis of race, ethnicity, gender, caste, and religion. So, legally and morally employees should be free from discrimination on these grounds
- But, sadly, workplace discrimination in India happens regularly on the basis of:
 - Caste ✓
 - Religious Faith ✓
 - Gender ✓
 - Geographical Region/ ethnicity ✓
 - Disability ✓
 - Language ✓
 - Sexual orientation ✓
 - Marital status, etc. ✓

In the US, a major factor is: Race.

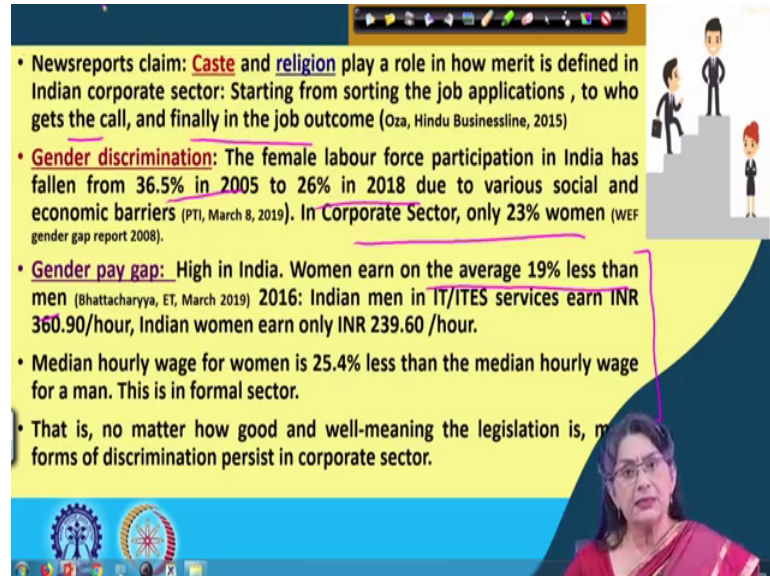
The slide features a central graphic with three stylized human figures: a man, a woman, and a person in a wheelchair, set against a background of colorful dots. At the bottom right, there is a video inset showing a woman with glasses and a red sari speaking. The slide also includes a navigation bar at the top and a footer with logos and icons.

If you ask Indian Constitution, then constitution clearly says that people should not be treated differently citizens should not be treated differently specifically on the basis of caste, religion, or gender and so on. So, if that is the case then legally and morally it follows, that employees also should not be discriminated on these grounds, but the ground state reality is very different sadly workplace discrimination exists in India and it happens regularly on various basis.

For example, caste, religion, gender, ethnicity, disability status, language, sexual orientation, even marital status and so on, even physical health and so on.. In the United

States a major factor of discrimination is the race. So, you must have heard about racial discrimination, we have other problems.

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- Newsreports claim: **Caste** and **religion** play a role in how merit is defined in Indian corporate sector: Starting from sorting the job applications , to who gets the call, and finally in the job outcome (Oza, Hindu Businessline, 2015)
- **Gender discrimination**: The female labour force participation in India has fallen from 36.5% in 2005 to 26% in 2018 due to various social and economic barriers (PTI, March 8, 2019). In Corporate Sector, only 23% women (WEF gender gap report 2008).
- **Gender pay gap**: High in India. Women earn on the average 19% less than men (Bhattacharyya, ET, March 2019) 2016: Indian men in IT/ITES services earn INR 360.90/hour, Indian women earn only INR 239.60 /hour.
- Median hourly wage for women is 25.4% less than the median hourly wage for a man. This is in formal sector.
- That is, no matter how good and well-meaning the legislation is, many forms of discrimination persist in corporate sector.

Newspaper reports claim, that caste and religion play role in how employees are selected in the Indian corporate sector. So, starting from the very sorting of the applications to finally, who gets the call and finally, who gets the job. You know this is what the reports claim and which carries certainly a degree of truth, we know about gender discrimination and it is pervasively present in India.

In fact, the female labor force participation in India has actually fallen what it was in 2005 and what it is it was in 2018 is a stark eye opener, that women are slowly are disappearing from the workforce, for various reasons, but one of them is the discrimination that takes place all over the society. In corporate sector their presence is also as a minority.

There is are also a very strange, but true phenomenon namely the gender pay gap. Women are paid less on the average they earn 90 percent less than men this is the finding and we are talking about the formal sector, we are not talking about the informal sector the bricklayers or the construction workers, we are talking about India ink and this is the situation. And the average pay gap is quite startling. So, no matter how we want to put it there are various forms of discrimination existing in the corporate sector.

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Discrimination at Workplace

- Why people do it? Mostly because of wrong perceptions, social stereotypes:
- (i) Unintentional (regretted when pointed out), or
- (ii) intentional (a strong resentment)
- In an organization, it could be:
 - (a) Unintentional, but non-institutional and at individual level: Unintentional but isolated behavior by a single individual, or
 - (b) Intentional but non-institutional: Intentional but isolated behavior by a single individual in the organization; or
 - (c) Institutionalized discrimination: Regular behavior of an organization. The very culture of that organization is prejudiced against certain groups or communities.
- The last kind is the most serious. E.g. In 2004, Morgan Stanley, an investment firm, taken to court by a female employee on the ground of unequal pay and opportunities: A key allegation: Important client meetings were held at strip clubs and women employees were debarred from attending these meetings.

Now, why people do that, why employees are discriminated at workplace? One answer is because of the social stereotypes that we carry within us because the society is the breeding ground of the social stereotypes.

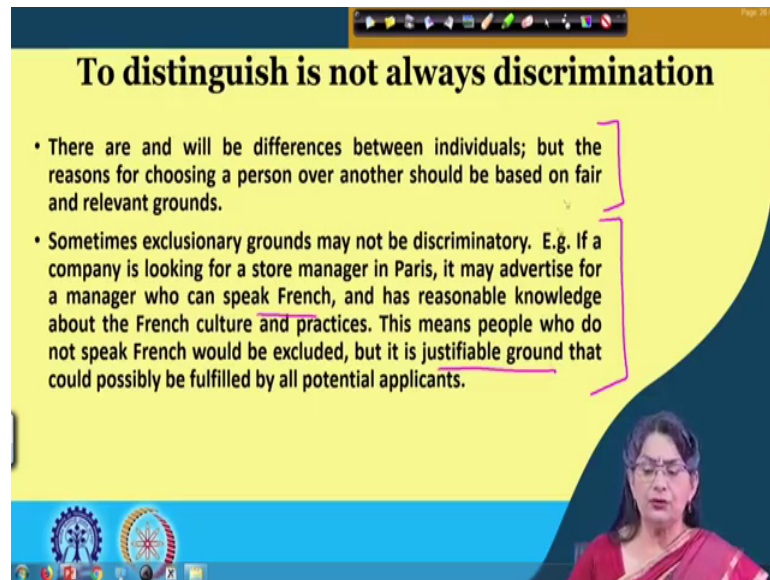
So, the people just carry them into the organization and they work with those stereotypes to classify people according to them. Now, discrimination can be intentional or unintentional. Unintentional in the sense that it could be you know an accidentally you know sometimes we are loose tongued. So, it is regretted when pointed out, but intentional is when there is a very strong resentment and the person stands on ground to say I defend my case. In terms of the organization, it may be unintentional and just an individual phenomenon.

Its just a freak case it does not the organization is not represented by that individuals opinion or it could be an intentional act by somebody within the organization, but not by the organization. Now, these are isolated individual phenomenon, what we are more concerned about is the one that I put a red star against is the institutionalized discrimination. It works as the organizational culture; it is a regular and pervasive phenomenon within the organization.

And this is a very serious kind of a situation in 2004 Morgan Stanley was taken to court by one of the female employees on the ground of serious gender discrimination, in terms of pay and in terms of career opportunities. One of the key allegations was that important

client meetings used to be held at strip clubs, where the women employees were debarred from going. So, there was no question about the women employees getting any access to the important clients those were all taken up by men.

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To distinguish is not always discrimination

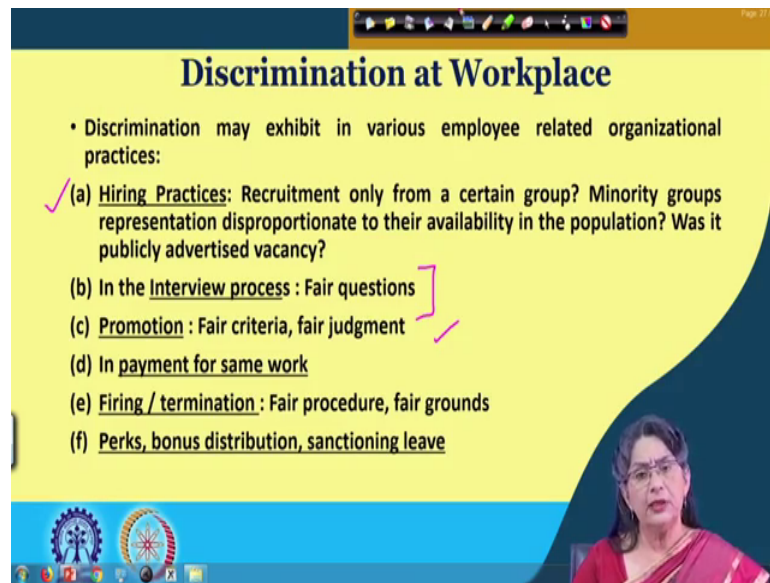
- There are and will be differences between individuals; but the reasons for choosing a person over another should be based on fair and relevant grounds.
- Sometimes exclusionary grounds may not be discriminatory. E.g. If a company is looking for a store manager in Paris, it may advertise for a manager who can speak French, and has reasonable knowledge about the French culture and practices. This means people who do not speak French would be excluded, but it is justifiable ground that could possibly be fulfilled by all potential applicants.

The slide features a yellow background with a dark blue curved shape on the right side. At the bottom, there is a video inset of a woman with glasses wearing a red sari. The slide also includes a navigation bar at the top and a footer with logos and icons.

Having said that, I will also make this point clear that, that not all cases of distinctions are cases of discriminations. Because, individuals will be different, but why person A is chosen over person B, that there should be some fair and relevant grounds for that. And sometimes you know exclusionary grounds may not be discriminatory, it may be justifiable I have given an example.

For example, if companies looking for store managers say in Paris and the advertisement says that the manager needs to speak French. So; obviously, you are excluding people who cannot speak French, but that exclusion is justifiable thinking that you know somebody who is well versed with the language, or well versed with the local culture will be able to manage the store better in Paris is the reason why this is being done. So, once more to distinguish is not always discrimination. We need to understand this difference, when differentiation is a case of discrimination.

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Discrimination at Workplace

- Discrimination may exhibit in various employee related organizational practices:

- ✓ (a) Hiring Practices: Recruitment only from a certain group? Minority groups representation disproportionate to their availability in the population? Was it publicly advertised vacancy?
- (b) In the Interview process : Fair questions
- (c) Promotion : Fair criteria, fair judgment
- (d) In payment for same work
- (e) Firing / termination : Fair procedure, fair grounds
- (f) Perks, bonus distribution, sanctioning leave

Now, in terms of the workplace discrimination towards employees it can show up in various ways you know it is very easy to understand, starting from the whole hiring fraud practice. You know, whether there is a selective recruitment only a certain group or certain group of candidates are informally dismissed all the time, whether the workforce represents all the diverse population groups that are available in the area equally qualified, but not taken as employees in the organization. There are a number of concerns regarding this.

In the interview process; obviously, that the questions need to be fair, otherwise you are not giving everybody the equal opportunity. Similarly for promotion, this is a very raw area the area of raw emotions you know unless you set fair criteria have bringing in bias or prejudice or likes for certain people. And using that as a criteria for promotion often causes a lot of resentment within the organization. Similarly, for firing similarly for distribution of perks benefits and so on.

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What can an Ethical Corporation do?

Affirmative action: Remedies for long-standing discriminatory practices. Policies and regulations to provide fairer conditions for these groups:

Equal opportunity and treatment. Practice Inclusiveness: Representation from different social groups, age groups, different belief systems: Targets set by companies

- Basic idea is to implement procedures that ensure that the present and future employees are treated fairly and unbiased manner.

E.g. **Open public advertisements** for a vacancy / job opening

Recruitment: Make extra effort to reach out to the underrepresented groups, or to areas that are remote.

Job specification: Take up the challenge to make it fair to all. E.g. Inflexible office hours may make a job out of reach for young parents.

Training programs for excluded groups: Targeted pre-recruitment for specific group to increase their eligibility for certain positions.

Promotion: Devise a fair policy and procedure, and see if the outcome is fair for all groups.

So, what can an ethical corporation do about this, regarding discrimination? Now, if it is a long standing discriminatory practice, you know if some groups have been traditionally discriminated against, typically the action the remedial measure is called the affirmative action; affirmative action, positive action to include them, to try to include them to underrepresented and discriminated groups should be given a chance to join in.

So, one of the ways to do that is to practice equal opportunity and treatment so, that even you try for diversity you look for different social groups and how to attract them? You look for different age groups and try look for ways to include them, how they can or you look for different belief systems. Religion religious background, ethnic background and you try to find ways how your corporation can look attractive to them.

So, this is talent hunt among different groups. Advertisements should be made open and public so, that it is equal it provides equal opportunity. Recruitment time as I said make an extra effort to reach out to the underrepresented groups, or to the areas which are difficult to access. Training programs may be targeted training programs for those who are particularly unrepresented. There are several ways one can go about this.

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Quota, reservation, and reverse discrimination

- Some even try to incentivize an increased participation from these groups.

E.g., By special **protection, and reservation**. A quota system: Keeping places reserved for proportionate number of underrepresented groups, or selecting candidates from these groups even when they may be less qualified in comparison to candidates from mainstream group.
Justification: Empowerment. Earlier long and systematic discrimination and deprivation to these groups.

Such measures are controversial, from the point of view of justice. For, unless sensitively handled, it may lead to:

Reverse discrimination: The mainstream groups feel being unfairly put at a disadvantage and discriminated against, because of the overprotection of the underrepresented groups.

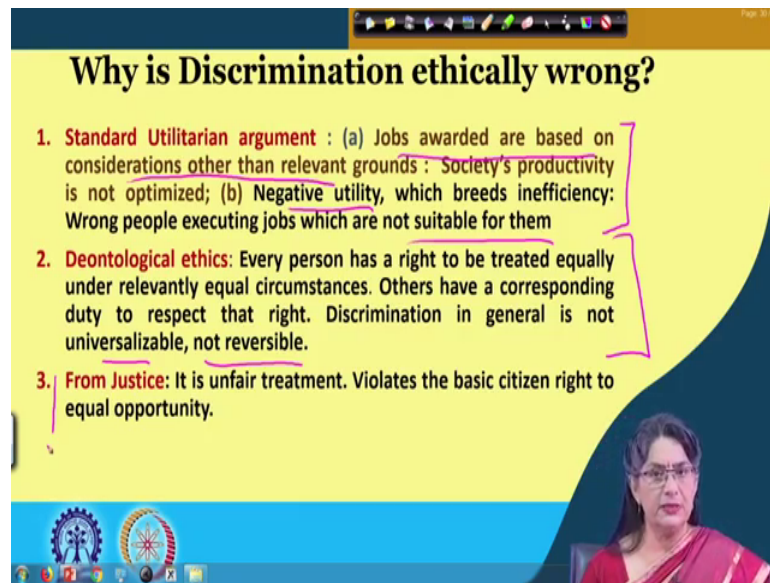
Remedy: Fairer conditions, e.g. Quota only for a short term, additional requirement: 'Merit plus minority status'.

Now, one side of this effort of affirmative action, sometimes it comes through the incentivizing participation from certain groups by special protection or what we call the reservation. Reservation is a quota system. So, keeping places reserved for certain underrepresented groups in proportionate numbers and selecting candidates from those group, even when they are not as or less qualified than the mainstream candidates. The justification given is often the empowerment or the affirmative action.

The problem is that such measures are controversial, as you know from the point of view of justice unless these are very sensitively handled; it can easily lead to something called reverse discrimination. Reverse discrimination which means that the mainstream groups start to feel that they are being put continuously at a disadvantage and only and they are now being discriminated against, because the underrepresented earlier underrepresented groups are being over protected.

What is the remedy here, the remedy here is to look for fairer conditions. Fair for all not only for the earlier discriminated groups, but for all. So, if you want to introduce quota maybe it can be tried out only for a short term just to give a handicap or additional you can add to added extra qualification of merit plus minority status. For example, if you want to encourage the minority to join the workforce then there can be merit as an additional criteria besides being the minority member.

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Why is Discrimination ethically wrong?

- 1. Standard Utilitarian argument :** (a) Jobs awarded are based on considerations other than relevant grounds : Society's productivity is not optimized; (b) Negative utility, which breeds inefficiency: Wrong people executing jobs which are not suitable for them
- 2. Deontological ethics:** Every person has a right to be treated equally under relevantly equal circumstances. Others have a corresponding duty to respect that right. Discrimination in general is not universalizable, not reversible.
- 3. From Justice:** It is unfair treatment. Violates the basic citizen right to equal opportunity.

Talking about the ethical grounds why discrimination is ethically wrong utilitarianism will typically say that you know the total utility is compromised. If jobs are given to people on considerations other than merit or other than ability then; obviously, society's productivity will be compromised. Not only that there would be negative utility, because the jobs are going to go in the wrong hands or wrong people would be trying to do jobs, which are not suitable for them.

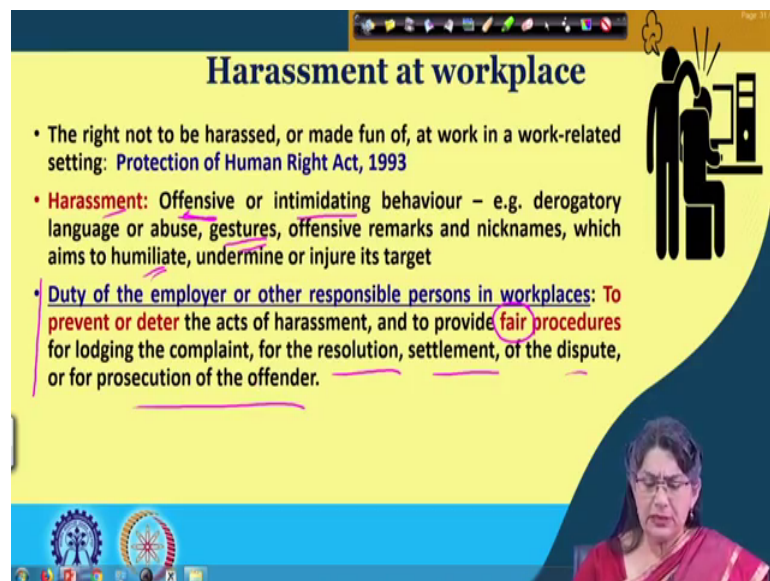
Whereas Kant's deontology ethics which talks about duty, they will say that you know every person deserves to be treated equally under equal circumstances. When the circumstances are equal, if you start treating people desperately and that to unjustifiably that is discrimination that cannot be a duty why not, because it is not universalisable, you cannot even want it to be a law for the entire world nor do you want it to be reversed. People who discriminate they rationally cannot desire themselves to be discriminated against. From justice also it is clearly unfair you know it basically it violates the citizen's right to equal opportunity.

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Next issue is harassment at workplace.

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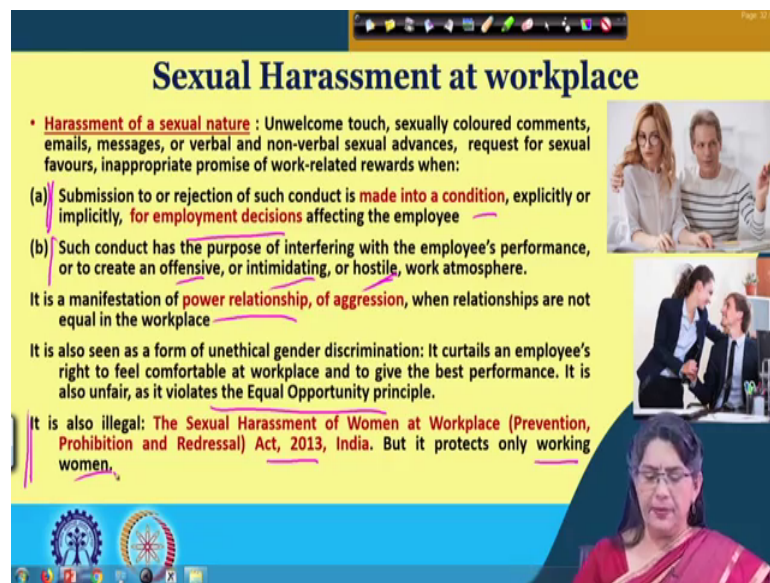


This is also a very problematic area; it comes from human rights. And this harassment one need to understand is actually is not or just hostile or hostility, but it can be also something that the other party finds offensive and feels harassed this is important. So, we often have this habit of you know making fun of people as long as they take it sportingly or in the spirit of being amused it is alright, but there is a point when the other party may not see it as pure fun and may stuff to feel harassed.

So, harassment is of various kinds. It can be offensive, it can be also intimidating, purposely intimate intimidating, you want to make the other person uneasy and this could be done verbally and also non verbally. So, language usage, derogatory language or sort of a provoking language, it could be abuses or it could be just gestures, not even language.

The idea is to unsettle the other side, the idea is to humiliate or sometimes or to somehow insult or endure the target. Now, the duty of the employer in such situations is very clear to prevent such acts of harassment. And not only that to provide procedures that are fair, fair to both sides for lodging the complaint, to pursue the complaint, to resolve the complaint, or to take the disciplinary action against the offender. So, this is the duty of the employer.

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Sexual Harassment at workplace

- **Harassment of a sexual nature** : Unwelcome touch, sexually coloured comments, emails, messages, or verbal and non-verbal sexual advances, request for sexual favours, inappropriate promise of work-related rewards when:
 - (a) Submission to or rejection of such conduct is **made into a condition**, explicitly or implicitly, **for employment decisions** affecting the employee
 - (b) Such conduct has the purpose of interfering with the employee's performance, or to create an offensive, or intimidating, or hostile, work atmosphere.

It is a manifestation of **power relationship, of aggression**, when relationships are not equal in the workplace

It is also seen as a form of unethical gender discrimination: It curtails an employee's right to feel comfortable at workplace and to give the best performance. It is also unfair, as it violates the Equal Opportunity principle.

It is also illegal: **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India**. But it protects only **working women**.

The slide includes three images: a man and a woman in an office setting, a woman in a professional suit talking to a man, and a woman in a red sari speaking.

A very special kind of harassment is the sexual harassment, that name itself should be should make it clear to you that this is harassment, which has a sexual aspect to it namely some undesirable touch, or comments, or emails, messages, sms, you know sometimes even nonverbal gestures, or requests direct requests for sexual favors. When these are being done and these are linked to the employee's submission or rejection of this is connected as a condition for employment decisions. For example, whether or not the employee would be recruited or promoted depends upon whether the employee agrees to submit to this proportion or rejects this proposal.

You know it is power statement or such conduct is simply done for the purpose of making the employee feel not at ease, either to offend or to intimidate, or to express hostility, or somehow to affect the performance of the employee. As, I said it is a statement about power of aggression, you know specifically in workplace it happens when there is a superior and there is a junior, or somebody is the boss and somebody is the employee, that asymmetry in the power relationship gives this authority that I can do this to the other person. It is also seen as a kind of an unethical clearly; unethical discrimination and it because it does not allow the employee perform well.

So, it violates the equal opportunity principle also. We do have a law many of you know it is the sexual harassment of women at workplace, Prevention Prohibition and Redressal Act of 2013. But, this act only protects the working women all right that is it is ambit.

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The slide is titled "What not to do" and contains the following text:

- **What a Corporation should not do:** (a) To ignore and to wish it to go away, (b) To hide, to be in denial, (c) To blame and shame the victim, (d) To protect the perpetrator(s)
- In 2018, A shareholder sued Alphabet, the parent company of Google, and alleged that Google Board is enabler of sexual harassment and gender discrimination. For, the Board had paid excessive severance package to two of its Corporate executives, who for years have sexually harassed women employees of Google. Employees at various Google offices over the world organized walk-outs in protest.
- **Costs of sexual harassment:** Decreased productivity, teamwork compromised, demotivation, employee stress, absenteeism.
- Also: **Litigation.** Infosys (2003) had to fire Phaneesh Murthy, US Based Global Sales Head and Board member, after his secretary filed a sexual harassment lawsuit. Infosys reached an out-of-court settlement with the complainant. Toyota (2006) had to remove its CEO and North American President Otaka after a \$190 Million lawsuit by his secretary.

The slide also features a video inset in the bottom right corner showing a woman in a red sari speaking. At the bottom of the slide, there are logos for various organizations, including the Indian Institute of Management (IIM) and the Indian Institute of Technology (IIT).

Now, what, when sexual harassment happens, what the corporation can do I have said already clear. The employer's duty is very clear, stop it and provide fair procedures. What should a corporation not do and these are some of the things that it should not do namely to ignore. The complaint is coming, but the corporation or the management decides to ignore it and we should go away or to be in denial to hide it from everybody specifically from the outside world.

But, also from the rest of the employees this is also very common to blame or to shame the victim instead of addressing the perpetrator to put the blame on the victim, and this is

the worst of it to protect the perpetrator. This is a recent case in 2018 some of you may remember the Google employees staged walkouts all over the world. Why? Because, there was a legal case behind that a shareholder sued alphabet, which is the parent company of Google.

And under the charge was that Google board actually allowed two of its corporate executives to leave with a huge severance pay package. Knowing fully well that those two corporate employees have been harassing, sexually harassing, it is women employees for years. The board knew about this.

So, the charge from the shareholder was that Google board is the enabler of sexual harassment and gender discrimination at workplace and that is the reason that Google employees staged the walkouts. So, this is the site, what a corporation should not do? Later on of course, Google CEO came out and said that we have completely revamped the sexual harassment policy etcetera, but this is something to keep in mind this happened only last year.

It is also maybe I should remind, that there is a there are stiff costs of sexual harassment. The first cost is on the employee that is clearly understandable demotivation. You know feeling if you are feeling all the time you know coward or feeling uneasy or really afraid or intimidated; obviously, your efficiency will be decreased, productivity will be hampered and stress sometimes absenteeism will grow.

There are rare cases where the employee has even given up the job to leave the workplace that was not to the mark, but on the corporation also there are costs namely of litigation lawsuits. In 2003 Infosys had to fire Phaneesh Murthy, who was accused in the United States he was the global sales head and board member too of Infosys. Because, his secretary filed a sexual harassment case against him, Infosys tried to remain sort of a non-committal, but then finally, had to fire Phaneesh Murthy. And with the complainant that is the secretary they reached an out-of-court settlement, but that is a separate issue.

Toyota in 2006 had to remove its CEO and North American president Otaka, after again his secretary complained about sexual harassment and the lawsuit was slapped for 190 million US dollars. So, there this cost also of that.

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Measures to adopt: Ethical Corporation

1. **Anti-harassment policy, anti-sexual harassment policy:** Duty to provide a safe workplace
2. **Know the Instruments to guide the policy:** UN Human Rights (1948), UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979), Article 14, 15 of Indian Constitution, Criminal law Act (2013), Visakha Guidelines (1997), relevant laws.
3. **Mechanism for lodging a complaint:** The normal complaint procedure may not be appropriate, considering the sensitivity of the issue, and the different needs for resolution.
4. **An internal designated person or committee to approach to receive the complaints:** India: Internal Complaints Committee (ICC). Duty to record the dates, incidents, investigation, report, confidentiality, discuss and agree on the steps to be taken
5. **Disciplinary measures**
6. **Monitoring the implementation of the relevant policies, relevant training and exercises**

So, what are the measures to adopt here first is the corporate policy anti-harassment, anti-sexual harassment policy, this is a duty of the employer to provide a safe workplace. So, safety we need to understand from this aspect also. Second the employer should know the instruments to guide that policy and these are various different kinds the United Nations human rights.

For example, the United Nations convention on elimination of all forms of discrimination against women or to what we call CEDAW. It is 1979 Indian Constitution can give a lot of support, I have already mentioned about the sexual harassment act in itself, but we also have the Visakha guidelines, which are quite helpful to give to help to formulate a corporate policy within the organization. There has to be a mechanism for lodging a complaint by the employee, the normal grievance redressal mechanism may not work for this kind of complaints, considering the sensitive nature of the issue a different mechanism needs to be there, that is confidential and that protects the complainant also.

At a person within the organization preferably somebody senior or a committee needs to be identified to receive the complaint. Now, in India according to that law, what is suggested is that there should be an internal complaints committee or ICC. In fact, the law clearly says the composition of the ICC, the who can be members how many

members it says all that. The committees job is duty is to record the incident the incidents and dates in complete detail as far as possible and then keep it confidential.

And then finally, recommend the steps to be taken. Next is disciplinary measures, if this is established for example, that there has been harassment or there has been sexual harassment then, there should be some procedures that says what to do?

So, that there is a consequence otherwise this kind of behavior cannot be deterred and then this is the last step is monitoring the implementation of the policies from time. To time to have a policy is never enough unless it is reviewed and also monitored regularly and if necessary relevant training and exercises may be imparted to various employees within the organization. I know a few organizations who use the simulation such as the with the video for example, or they arrange workshops. So, that not only the employees are sensitized, but they are also trained to handle such situations.

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So, with that I am going to end this lecture too today we talked about very specific issues, but these are very important issues also. So, we will come back with more on this topic.