



Being Muslim at the Workplace – A Documentation of Experiences

Report by Parcham

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Who We are

Parcham is a feminist collective, based in Mumbai, working towards a vision of ‘A just and equal society respectful of diversity and celebrating interdependence’. Our mission is geared towards empowering marginalized communities to access their fundamental rights, creating spaces for dialogue among diverse sections in society, and working with civil society towards justice and equity. Through our work, we attempt work to break stereotypes based on religion, class, caste, gender and other marginalization.

The study was conducted in collaboration with Advanced Centre for Women’s Studies, Tata Institute of Social Sciences.

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This study has benefited from the consultation with activists

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Razia Patel, activist, founder member of Muslim Mahila Sanvidhan Haq Parishad

Shabana Diler, Member of Bebaak Collective

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Sabah and Sana

For Parcham

18th December 2020

Introduction

The 2006 Sachar Committee Report was the first in 60 years of the country's independence to place on record the status of Muslims vis a vis other Socio Religious Groups in the Country. At the time of the study, Muslims comprised 13.4% of the population. The statistics it put out were alarming. Less than 8% of Muslim workers in urban areas were employed in the formal sector as compared to the national average of 21 %, only about 27 per cent of the Muslim workers in urban areas were engaged in regular work while the share of such workers among SCs/STs, OBCs and Hindu- UC workers was 40, 36 and 49 % respectively. Less than 24 % of Muslim regular workers were employed in the public sector. The workforce participation of Muslim women was more dismal.

The Sachar Committee report describes a sense of perceived discrimination and low return on education due to discrimination in the formal sector. This has resulted in low levels of education and lower participation of Muslims in the formal sector.

Parcham's work with Muslim youth in Mumbra¹ reveals a sense of disillusionment among the majority Muslim youth with the State, a distrust of the 'other' who will discriminate against them whenever possible. This has been a stumbling block to seeking education beyond school or seeking formal sector employment. In a secular country which guarantees its citizens the Right to Equality and the Right to Constitutional Remedies amongst others, hate crimes against Muslims are on the rise. The lack of action on the recommendations of the Srikrishna Commission Report, submitted in 1998, the impunity granted to those responsible for the Gujarat carnage, and many other incidents of communal violence, furthers the sense of injustice felt by Muslims. 70 years after Independence, Muslims continue to be blamed for the Partition of the Country and their nationalism is questioned. Islamophobia, media portrayal of the Muslim as a terrorist, and rising hate crimes add to the sense of persecution.

The Post-Sachar Evaluation Committee chaired by Prof. Amitabh Kundu, in its report eight years since the Sachar Committee Report, reports, 'As high as 18 % of the educated urban Muslim youth report unemployment. The report notes that the rates of unemployment can easily be traced to social and economic discrimination. Both the Sachar Committee Report and the Kundu Committee Report speak of a perception of discrimination. The Kundu Committee notes that 'there was a perception among

¹ Mumbra, a town in Thane District of Maharashtra embodies both the characteristics of a Muslim ghetto and the sense of alienation brought out by the Sachar Committee Report. With an 80% Muslim population, Mumbra reflects the civic apathy echoed in the report: 'Muslims living together in concentrated pockets (both because of historical reasons and a deepening sense of insecurity) has made them easy targets for neglect by municipal and government authorities. Water, sanitation, electricity, schools, public health facilities, banking facilities, anganwadis, ration shops, roads, and transport facilities — are all in short supply in these areas'. The State apathy and civic neglect is hard to miss and over the years people have accepted the neglect as a given.

many Muslims, including men, women and the youth that raising their democratic voice and becoming more visible may attract hostile targeting by both state and non-state actors. Across socio-economic strata, Muslims reported a growing perception of fear, insecurity, vulnerability, and a sense that avenues of justice and development were not equally open to them. They/Some respondents noted that the State machinery was hostile to them and could not be counted upon to provide redressal as they were not seen as equal citizens.’

The Sachar Committee Report speaks of the perception of deprivation among Muslims, adding further that ‘the committee is aware that not all perceptions are correct but they are also not built in a vacuum’. It further adds, ‘The widespread perception of discrimination among the Muslim community needs to be addressed. There are hardly any empirical studies that establish discrimination.’

The purpose of this study was to attempt to fill in the gap of this lack of documentation of experiences of Muslims in the workplace. Having worked with Muslim youth over decades, we were aware of the existence of discrimination from the many anecdotes shared during the course of work. There have been media reports in the past on discrimination experienced by Muslims, mostly in housing but also in employment. In 2009, those of us involved in the current study had come together under the banner CAFYA² to campaign for the citizenship rights and social entitlement for Muslim community as outlined in the recommendations in the Sachar Committee Report. In the same year, a Bollywood actor was denied a house in a posh locality for being Muslim³. Many other high profile Muslims spoke out of being denied houses for being Muslim (practicing or not). This led to a discussion on the need to address the issue of discrimination experienced by Muslims in the area of housing, education, work, by state agencies and a draft Anti Discrimination Bill was drafted. Many other organizations and individuals have since then proposed drafts for anti discrimination legislations. The Kundu Committee too proposed an Anti Discrimination Legislation to counter the discrimination experienced by Muslims and as a means of establishing their trust in the State machinery.

As we began the process of reaching out to respondents, we encountered their reluctance to speak, to have experiences documented for fear of reprisal and implications on their future career. In spite of assuring confidentiality, there were many who chose not to speak. Observing, this reluctance of Muslims to share their experiences for the purpose of documentation, and drawing on our own experience of engaging with Sexual Harassment Committees, we began to rethink the strategies that would aid redress of the issue of discrimination. The reluctance to speak out is in itself very telling of

² CAFYA is an acronym for the five organizations which came together in the campaign (CEHAT, Aawaaz-e-Niswaan, Forum Against Oppression of Women, Youth for Unity and Voluntary Action and Akshara

³ <https://timesofindia.indiatimes.com/city/mumbai/Emraan-Hashmi-cant-get-a-house-in-Pali-Hill/articleshow/4839633.cms>

the perceived citizenship status and the fear of Muslims in this country. We believe this study provides important insights to inclusivity and (lack of) in the work place in cosmopolitan Mumbai and Delhi.

We hope this study will begin the much needed conversation among activists and policy makers to arrive at solutions to enable participation of Muslims⁴ in the formal sector. Far from being an academic exercise, the study is meant to start a conversation on the issue of polarization and othering of Muslims in the workplace. We hope that this document will encourage other Muslims to speak out on the othering and discrimination they experience at the workplace.

To reiterate, we consider this study the beginning of an exercise to understand the nuances of discrimination experienced by Muslims in the workplace to help us collectively work towards solutions.

⁴ By Muslim in this study, one means a person in a Muslim family, having a 'Muslim' name and hence perceived to be Muslim. The study did not concern itself whether the person followed the faith or was an atheist.

Methodology

As described above, there is very little information available on discrimination against Muslims in employment, especially the texture of how this discrimination manifests, in which spheres it operates, and how Muslim employees experience and cope with the discrimination. This study was hence intended to be exploratory, and used qualitative methods - specifically in-depth interviews and focus group discussions.

The process of arriving at methods:

As this is an exploratory study, our first step was to create a mapping of women engaged in paid labour in Mumbai. The mapping was to help us understand how many families have women engaged in paid employment, the nature of the employment, the remuneration for the hours worked, time spent to reach place of employment, and their qualifications. We undertook this exercise in five locations in Mumbai where Parcham conducts the football program. We found that an overwhelming majority of women were engaged in either home-based work, informal work or unpaid work. Very few women were engaged in formal employment. We chose to restrict the focus of our study on understanding individuals' experience of discrimination in the formal labor market as the antidiscrimination law would apply to these spaces. Although the study was initially aimed at understanding Muslim women's experiences of discrimination in the workplace, we broadened the scope of our study to include male respondents as our objective was to capture religious discrimination and othering in the formal sector. Initially, we wanted to conduct focus groups discussions with youth (men and women) in Mumbai on this subject. We had to abandon this strategy after conducting one FGD due to the pandemic. The methodology was modified to accommodate telephonic in-depth interviews.

However, the structural barriers that prevent women and girls from getting into the formal workplace are pertinent and perhaps must be addressed through a separate study.

Sites

We had initially intended on conducting the study in Delhi and Mumbai. In Delhi, we managed to identify academicians and activists who were willing to collaborate with us. However due to the communal tensions in the city from December 2019 onwards, local attention and resources were all directed towards protests and relief work and hence the study could not be conducted in that location. We were, however, able to conduct some in-depth interviews through a snowballing method in the city.

Data collection

One of the major challenges in conducting this study was identifying participants who were willing to be interviewed. We used multiple channels to reach out to potential participants including:

- 1) College faculty and alumni in Mumbra
- 2) Association of Muslim Professionals
- 3) Social media and other online channels

Once we met potential respondents, we asked them to connect us with other potential respondents.

We needed to use multiple channels largely because of the limited response we received. Most people were unwilling to participate in the study. Often, people would come forward and volunteer to be interviewed, and then they would change their mind at the time of the interview, or would not respond after multiple follow ups. For instance, we put out a google form on various social media platforms, whatsapp groups and to those who managed e-groups with Muslim members, resulting in only two responses to the google form. Neither of them responded to our phone calls or messages to speak with us. We believe this may have been on account of fear that speaking out might create hindrances to future employment opportunities. We were unprepared for the reluctance and unwillingness to speak for the purpose of the study even when confidentiality was assured.

Sample

In spite of this reluctance, we were able to conduct a focus group discussion with seven engineers from Mumbra and 10 in-depth interviews with respondents from Delhi and Mumbai. Of the ten respondents, one was a school dropout, employed in the sanitation department. The rest had completed their graduation with three having completed a post graduation, three pursuing a post graduate degree, one a PhD, all employed at mid management to senior management positions in their companies which ranged from IT, Architecture Firms, Academia and Job Placements.

Ethics

Informed consent was sought from all participants and recorded before the interview began. When participants agreed, interviews were recorded, otherwise written notes were taken and immediately transcribed.

Tool

The in-depth interviews were conducted telephonically.

The tool explored the following domains:

- 1) Socioeconomic background

- 2) Life trajectory – childhood, adolescence, adulthood and major life events
- 3) Education – school, college and post-graduate
 - a. Place of education
 - b. Choice of institution
 - c. Choice of subjects/courses
 - d. Barriers faced at the home
 - e. Experience at the institution – of othering, discrimination based on gender, class, caste or religion
- 4) Employment
 - a. Employment history
 - b. Places of employment and reasons for seeking said employment
 - c. Type of workplace, gender, religious composition of employees
 - d. Experience of othering/discrimination – remarks, institutional rules (such as holidays, food related norms etc), hiring practices, promotions, socializing with colleagues
- 5) Coping – what did the respondent do when faced with a hostile situation, how do they process it today
- 6) Suggestions for changing/improving the experience of Muslims at the workplace

Literature review

In India, the Sachar Committee Report (2006) indicates a lack of Muslim representation in the regular, salaried employment sector. Muslims are disproportionately concentrated in the casual labor market and small-scale entrepreneurial ventures along the lines of their traditional occupations of handicraft making, embroidery. They are absent from civil service, security and defense sectors (Sachar 2006). Their political participation is also often not representative of their share in the population (Robinson 2007). They often live in slums and have poor access to quality infrastructure. They have poor access to bank credits compared to other socio-religious communities. The average size of the credit is much lower in the villages where the Muslim population is high. This adds to the financial exclusion of Muslims and has far-reaching consequences for a community already economically vulnerable and educationally backward. While the perception of deprivation is widespread among Muslims, there has been no systematic effort since independence to analyze the condition of religious minorities in the country (Sachar Committee Report, 2006).

According to the 2011 Census, Muslim women are more likely to work in manufacturing (unpaid in family/home-based enterprises), while Hindus are more likely to work in public and social services. Districts with high Muslim FWP have a high concentration of industries where Muslim women are traditionally employed. Urban Muslim women are concentrated in certain districts and a closer look reveals that in districts where urban Muslim FWP is high and more than Hindu FWP (128 districts consisting of 23 % of Muslim female workers), 47.4 % of the industries in these districts are engaged in household manufacturing of apparels, manufacturing of textiles and manufacturing of tobacco products, as compared to only 12.5 % in other districts. It is also possible that there are cultural reasons for the low participation of Muslim women in public and social services (Roy and Mukhopadhyay, 2019). Among community groups, the backward castes (especially Other Backward Castes (OBCs)) and the Muslims dominate in beedi work. This is linked to their adherence to religious strictures regarding mobility and social acceptability of home-based work (Bhatty, 1980, 1985; Gopal, 1999).

There is a sense of "otherness" attributed to Muslims in India, and studies have documented this bias against Muslims for health and education (Betancourt and Gleason, 2000; quoted in Das, 2004). In terms of educational status, Muslims have a low literacy rate, which is a subject of concern (Hasan 2001). According to the Sachar Committee Report (2006), the literacy rate among Muslims in 2001 was 59.1%, below the national average (64.8%), with the gap highest in urban areas. The report also noted that despite a common belief that a large number of Muslim children attend madrasas for primary education, only 3% of Muslim children among the school-going age go to madrasas. Instead, many Muslim children are enrolled in Maktabas, which provides supplementary religious education and enrollment in public schools. The Sachar Committee Report notes that the gap between Muslims and

other Socio-Religious Categories (SRCs) increases as education increases. That unemployment rate among Muslim graduates is the highest among SRCs both among the poor and the non-poor.

A study by Action Aid India conducted in 2012 to assess the conditions of Muslims in Uttar Pradesh notes that historically Muslims have engaged in entrepreneurship (ActionAid 2012). These included lock manufacturing, brassware work, bakery, weaving, and zardozi work. \ Over time, these people have taken up casual labor work as these sources of traditional livelihood have become less viable. the Muslim community is forced to adapt to new sources of livelihood, which has also led to an increase in migration to cities and urban slums. The study reveals that 78.6 % of Muslim households depend upon casual wage labor, and 5.4 % of Muslim households depend on agriculture-based employment. Only 1.0 % of households have government jobs; 3.7 % of households are associated with multiple seasonal livelihoods such as private jobs, shop/business, vendor or petty shops, etc. According to the findings of this study, among the most disadvantaged Muslims, 80 % of women are engaged in agriculture-based work to support their families.

Muslims do not fare better in cities. As per NSS 61st Round in 2004–05, the unemployment rate was found much higher in urban areas with a wider difference by gender and community. Muslim men reported nearly two times higher unemployment than their Hindu counterparts. The unemployment rate was higher in urban areas for both men and women as compared to rural areas (Patel 2013).

Factors contributing to the low participation of Muslims in the formal sector

The Sachar Committee Report (2006) notes that the unemployment rates among Muslim graduates is the highest among SRCs both among the poor and the non-poor. The workforce participation of Muslim women is the lowest among all socio religious communities. Lack of safety for women in public space is a great barrier to urban women's pursuit of education and work. Given that Muslims are disproportionately poor and likely to be living in slums, the obstacles to travelling to and attending college are generally greater for Muslim than for Hindu young women. For Muslim young women, the location of colleges in non-Muslim residential areas raises additional fears about attending college. Muslim young women studying in colleges close to their residential area are likely to face restrictions on subject choice over and above those due to financial constraints (Sahu et al 2016). Muslim young men are less likely to attend college than others, largely because of skepticism that their qualifications will not translate into formal-sector employment because of discrimination (Basant 2012). For urban Bengaluru, for instance, Mohammed-Arif (2012) notes that 'there is growing inverse relationship between higher posts and Muslims'.

A study based on evidence from responses to ‘experimental’ applications against newspaper advertisements announcing job vacancies by private sector companies, during 2005-06, revealed that responses significantly vary among Dalit and high caste Hindus and Muslim candidates. Taking high caste Hindu candidate as reference category (=1) the probability of a Dalit candidate to be called for interview was 0.67 and that of a Muslim candidate 0.33. Probability for a qualified Dalit candidate was less (0.85) even against an underqualified high caste Hindu candidate (Thorat et al, 2010).

When financial resources are scarce, families tend to support higher education for sons rather than daughters because they are the future breadwinners. A further consideration is that people in India generally expect women to be less qualified than their husbands. Thus, the educational level of potential husbands impacts on young women’s education when parents try to avoid over-educating them. This is particularly likely to curtail Muslim young women’s higher education.

Das (2004) uses the 50th round of NSSO survey to find factors that maybe impacting uneducated Muslim women’s low participation in the labor market compared to their Hindu counterparts and she concludes that low level jobs (as also higher level jobs) are acquired through networks and contacts. In particular, jobs as casual labor on public works are acquired in groups. For instance, when a group of women from an area (urban or rural) work at a particular construction site, or as domestic servants, they use networks to secure entry into the job market. They may migrate, move and work in groups, and even form ghettos. Such movement of labor is common in many parts of the world. For Muslim women it is possible that such networks, movements, or market niches have not been built. Possibly, women from a minority moving together for employment in a strange area are also at greater risk of harassment and discrimination than other women (Bordia Das 2004; Laxmidevi 2014).

Laws to address discrimination in India

The Constitution of India provides certain fundamental rights for its citizens that protect them from discrimination (Right to equality, however, is applicable to all persons irrespective of their citizenship).

- Article 14: State shall not deny any person equality before the law and equal protection of laws.
- Article 15: Prohibits state from discriminating on the ground of religion, race, caste, sex and place of birth.
- Article 16: Empowers the state to make reservations with respect to appointment for posts in favour of backward classes if the state believes that such classes are underprivileged.

In an effort made to reduce discrimination at workplace, certain laws were put in place such as Equal Remuneration Act 1976, Minimum Wages Act 1948, Shops and Establishments Act 1953, Employee Provident Fund Act 1952, Industrial Disputes Act 1947. To address Discrimination on the basis of gender, The Equal Remuneration Act 1976, Maternity Benefit Act 1961, The Sexual Harassment of

Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Maharashtra Shops & Establishments (Regulation of Employment & Conditions of Service) Act 2017. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, Protection of Civil Rights Act 1955 and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

None of these Acts address the specific discrimination experienced by Muslims at the workplace.

Objective

This study aimed to understand the experiences of discrimination of Muslim youth in two cities – Mumbai and Delhi towards arriving at policies which would address the discrimination. Mumbai was selected because it is considered the financial capital of the country and Delhi because of its proximity to the policy makers. Both cities are metropolitan centres that offer opportunities for employment and survival for residents and migrants.

According to the Census 2011, Muslims in India are the largest minority in the country constituting 14% of India's population who are increasingly under attack on account of their identity. The women's movement was able to successfully lobby for legislation on sexual harassment at the workplace but women have no recourse for the gender discrimination at the workplace which is not always sexual in nature. The historically discriminated against Scheduled Castes have to use the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 which has its limitations in addressing discrimination. With the decriminalization of homosexuality, the next logical step for Sexual Rights groups will be discrimination faced at the workplace, educational institutions and housing. This study will add to the debates on identity based discrimination towards advancing solutions to address the same.

Findings of the study

The different ways in which discrimination operates as barriers against the participation of Muslims in the workplaces, was brought out in focus group discussions and interviews. The experience of discrimination exists as one readies to start a career with admission into higher education, exists at the level of application for the job and continues at the workplace. Being a woman adds yet another layer to the discrimination. The findings are categorized accordingly and presented below.

Choice of the Educational Institution

The choice of a college is an important decision influenced by a number of factors.

1. Getting out of the ghetto - The respondents spoke of choosing a college which would help them get out of the Muslim neighbourhood, rejecting the local colleges for one located at a distance in a non Muslim neighbourhood. One of the respondents whose junior college had been a minority institution (Jamia) decided to enroll in Delhi University (DU) to experience a 'liberal' institution which she believes 'opens up your mind'. She also felt the need to challenge the stereotype that if you're Muslim, you study in Jamia. For some of the male respondents, college was a means of getting away from family surveillance and becoming independent.
2. Going with the familiar – Recommendations by family or family friends who have heard of the college or have been an alumni have influenced the selection of the institute to study in. For first generation college going youth, recommendation by family friends helped choose the college. Aligarh Muslim University was a natural choice for one of the male respondents as there was always someone from the community, locality or family who had gone there and so it was familiar. "They (the family) knew you would be taken care of". The choice was made not on account of the minority status of the institute but on account of its reputation, good infrastructure and affordability. Members of the family and community had studied and came out with accomplishment, and so it validated the institution. Moreover, AMU published advertisements in Urdu newspapers that informed people of the options that it provided. DU, Jawaharlal Nehru University (JNU) or Tata Institute of Social Sciences (TISS) did not reach out in this manner and so people did not hear of them.
3. Future opportunities / Reputation of the Institute – All respondents wanted to get into a college which had a 'good' reputation. Yet, some had no idea of colleges to which they could apply. The seven engineers who participated in the FGD, were all aware of minority institutes in Bombay such Saboo Siddik, Anjuman Islam and Kalsekar but not of IIT or VJTI (a premier Engineering institute) at the time of application. One of the respondents was told by a family friend to apply to Saboo Siddik or Kalsekar college rather than VJTI where getting an admission would be easier and faculty

would be helpful. The respondent too believed he would not qualify for VJTI so did not ‘bother’ applying.

Discrimination in Educational Institutes

Of the ten respondents interviewed and the seven who participated in the Focus Group Discussion, only one had dropped out of school on account of financial difficulty. The rest whose families could afford higher education, had clarity on the worth of a post graduate degree towards a well paying job and aspired to get one.

The male respondents who had studied in cosmopolitan schools mentioned the use of the derogatory word ‘katua’ (circumcised) by their classmates in school and college. One explained this as simple banter between students. ‘*wo hume gaali dete, hum unhe*’ (they abuse us, and we would in turn). Another said one can distinguish if it is said as an insult or a joke. Yet another respondent who used to be asked questions about being Muslim by her classmates, writes it off as plain curiosity. She felt that they had not interacted with Muslims so did not know about them.

A respondent spoke of her 8th std class teacher in school raising issues of triple talaq and halala amongst Muslims, something she wonders how she was expected to defend at that age. “She loved me so it was a surprise that how these two went together.” She says the teachers who were good to her when she was in school behave very differently towards her younger sister. “There is no apparent Islamophobia. But the teachers who have come now speak favourably about a particular party, speak badly of the anti CAA protests. They say things like women are being paid 500 to sit at the protest. There are no mechanisms to address this.”

Yet another woman respondent describes her experience in college as ‘torture’, ‘it was hell’ she says. She had decided to get into a ‘non Muslim’ college outside of the ghetto she lived in. Here she ended up being the only Muslim in her class, referred to as ‘gundi’ (*rogue*) by her classmates in her absence. No one would sit beside her in class, justifying the discrimination with the rumour that her body emitted an odour as she was a meat eater. In a matter of fact way, she speaks of her classmates spraying perfume after she left the room. She often considered leaving the college but thought that the other colleges (which might have upper class students) might treat her worse as she came from a lower middle class family and couldn’t afford branded clothes that the rest of her class mates wore.

Apart from classmates, faculty have been reported to have acted on prejudice. One of the respondents appearing for the interview to an MBA degree course spoke of being badgered with a number of

questions unrelated to an MBA interview, including her opinion on Narendra Modi as a leader of the masses, lecturing her on his greatness.

The experiences shared by the respondents resonate with the findings of Nazia Erum whose book, *Mothering a Muslim* (2018) is a documentation of bullying of Muslim children in elite schools and cosmopolitan neighbourhoods. Class does not shield a Muslim from discrimination and abuse.

Women respondents who chose to study in minority institutions, encountered the pressure of conforming to the ‘good Muslim woman’ image. One of the woman respondents said she was questioned on not wearing the burkha by other students. One respondent spoke of her faculty picking on Muslim girls for the ‘short’ dresses, asking them to dress ‘professionally’. This advice was limited to Muslim girls in the college.

One of the women respondents in the study spoke of the minority colleges resembling ghettos. She reasoned that such an atmosphere further strengthened the stereotypes of Muslims in the minds of the few non-Muslim students on these campuses.

Finding a Job: Importance of Social Networks

With the exception of one respondent whose college had campus recruitments through which he found a job, none of the others had campus recruitments. Every respondent had struggled to find a job, some remaining jobless for close to a year after graduation. They found jobs through social networks – family, relatives, friends and in some instances faculty referrals. Those who were first generation graduates, whose family had no connections in the formal sector workplace, uploaded their resume on job placement sites, giving multiple interviews (one respondent had given 20 interviews and another more than 10). None of these yielded any jobs.

Three respondents, applied for an internship where they worked for free to build their resume with experience. One was absorbed at the organization he interned at while the others found jobs through references of colleagues at the worksite.

Another medium that one of the respondents stumbled across was a whatsapp group for civil engineers where he found a job. The general opinion was that freshers are not given jobs anywhere. All of the respondents chose to work, some even without a salary to be able to build their resumes.

Social networks play an important role in finding a job. The starting salaries of the engineering graduates interviewed was Rs. 6000 – 12000 per month.

In most of the companies, the respondents were often the first and only Muslim employees. Even in companies which had over a 100 employees.

Discrimination in Hiring

Thorat and Attewell's study has brought out the discrimination at the first level of hiring (sending applications for a job). Over the period of a year, they responded to advertisements in leading English language newspapers with three false applications for each job – one a Hindu name, another a Muslim name and the third a Dalit name with the exact same qualifications. For every 10 upper caste Hindu applicants selected for interview, only six Dalits and three Muslims were chosen.

Those who do get to the interview stage encounter discrimination on account of their dress / beard. One of our respondents said that her hijab came in the way of being recruited in two places she went for an interview to. She was informed that she qualified for the job but needed to let go of the hijab. In both of these places, she was interviewed by Muslims who did not want a hijabi person because she assumes they probably did not want to seem regressive in hiring her.

One of the respondents who works at a job placement company says that companies who approach them never have religious preference in hiring. They may say that they have a gender preference and want to give consideration to women candidates but not otherwise. "You cannot write you are looking only for Muslim candidates." At the same time, he mentions a component of "likeability" in doing business. Likeability was elaborated upon as "People buy from you if they like you. First you have to like the person selling and then then you consider the product being sold. What matters is presentability, my outlook, the value I bring to the table as a professional. If there are two equally meritorious candidates, then choosing might be based on some community preference – that is difficult to call out."

Association of Muslim Professionals (AMP), an organization initiated in 2007 in response to the Sachar Report has conducted 43 job fairs across the country, each attracting more than 500 candidates. The employers are from Banks offering jobs in sales, marketing, banking finance, insurance, BPOs. AMP does not get management profiles or engineering positions. The founder of AMP, Aamir Edresy says that people are happy to employ Muslims and Dalits at the lower rung where others wouldn't want to apply. No one rejects a candidate outright for being Muslim. He said one of their Gujarati clients who had forwarded a cv of a Chartered Accountant to a firm was told that they do not hire Muslims. Probably Aamir would have not been given this reason for rejection.

At one of the job fairs, Aamir was informed that one of the recruiters was asking ‘troubling’ questions which he allowed to pass in the larger interest of the jobs that resulted from these fairs. He likens it to women not making complaints of abuse because of the repercussions. Attrition is a huge problem in all industries at the entry level jobs. Youth are paid 10,000 or 12,000 as a starting salary with corporates wanting to extract as much labour as possible. If they leave on account of discrimination, they do not bring it to AMP. Often youth know that this is a reality they have to deal with.

He believes people will not share experiences because of fear of loss of livelihood opportunities in the future. If we need to understand discrimination, we need to study the employee profiles of companies from top management to the lowest rung if it represents the percentage of Muslim population in the country.

A report in Economic Times presenting the data of BSE 500 and BSE 200 companies states that ‘Muslims constitute a mere 2.67% of directors and senior executives — 62 of the 2,324 executives — among the BSE 500 companies. The Muslim employment figure in senior management for BSE-100 companies, in comparison, goes up slightly to 4.60% — 27 of 587 — of total directors and senior executives, though the remuneration drops to 2.56%. Data on blue-collar employment of Muslims, who constitute 14.2% of population, in the private sector is scarce.⁵

Aamir believes CVs should be forwarded to selection committees without names and interviews should be done away with because interviews out the person’s religion. He reasons that if the person is qualified, it should be the company’s responsibility to train the employee on the job. If jobs were made available only on merit, Muslims would have a greater opportunity at them. There should be no interview in UPSC because that gives opportunity to discriminate. If someone has cleared the written exams, the government should prepare them for the job with training rather than interview them. He added that apart from the inherent discrimination in hiring, the low quality of education was a factor in determining eligibility and salary scales. He had come across MBAs who were unable to write an email or speak in English.

Discrimination at the Workplace

None of the respondents reported being discriminated against at the workplace. However, everyone agreed that as a Muslim, one had to be extra careful about one’s image, work harder and challenge the stereotype. One of the respondents in upper management says that if there is a narrative of bias against

⁵ https://economictimes.indiatimes.com/news/politics-and-nation/muslims-constitute-14-of-india-but-just-3-of-india-inc/articleshow/48849266.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Muslims, this makes it doubly necessary for Muslims to work harder. “If it is raining, I must be prepared with a raincoat. If there is a bias in the market, you have to work extra hard. The onus is not on the other party. I need to build trust.”

There is also a pragmatic acceptance as stated by a respondent, “*Thoda bahot rehta hai Muslim non Muslim ka. India Pak match me ek colleague said if Pak wins Mumbra me bomb phootega.* (There is a bit of the Muslim-non-Muslim thing. During the India-Pak match a colleague said, if Pak wins then bombs will burst [in celebration] in Mumbra) Some people are like this. Not everyone.”

A respondent who sports a French beard wore a kurta pyjama with a topi (skull cap) to work on a Friday which was commented upon by a colleague. This made him rethink the decision. However, his senior intervened and reassured him that the dress wasn't a problem. Some others spoke of their company allowing them to go for namaaz during their lunch break. They spoke of ‘considerate’ bosses who scheduled meetings later in the day if possible to ensure the employee could complete their prayers on Friday. The respondents who had this privilege mentioned the need to safeguard the privilege by ensuring that prayers did not take up office time and were conducted during the lunch hour. One respondent mentioned coming in early to work so that she could leave in time for Iftaar during the month of Ramzaan.

The respondents who had these positive experiences believe that it was on account of their position in the organizational hierarchy that they are not discriminated against. They also believe that their competence at the workplace prevents discrimination. Yet, the need to be careful and discreet at the workplace are repeated often.

In one of the firms – a global conglomerate – Eid was not designated as a holiday (although all Hindu festivals and even Good Friday were holidays). The respondent attributes this to “some form of Islamophobia”.

On probing whether colleagues are offended by the food brought for lunch, the environment during the elections and response post the Tablighi jamaat linked to COVID news story⁶, respondents shared incidents which they had not associated with discrimination. “Some are illiterate people in the company who would come and say indirectly Pakistanis are like this, their work is like this. We realize that this is a taunt but why should it bother us. Its not as if we are Pakistanis.”

⁶ Please refer to the statement by Bebaak Collective for information on the communalising of the pandemic, linking its spread to the Tablighi Jamaat <https://thewire.in/communalism/bebaak-collective-tablighi-jamaat-covid>

Food

While some respondents ate separately to avoid offending the sensibilities of their colleagues, others had no such issues. One respondent mentions that the office had one microwave so they asked for one more to heat the non veg food, which was purchased by the management. One said that there were no issues with non vegetarian food, though fish was not allowed at the workplace as fish made the place smell and they had international clients. He added that his vegetarian boss had his first non vegetarian meal with him. Here too, some of the respondents said they exercised caution by choosing not to bring non vegetarian food for lunch. They reasoned that in a community space, one needs to be careful of the sensibilities of others.

Political Discussions

Around elections, one respondent spoke of feeling physically sick by the discussions at her workplace and decided to take the day off on the day of counting for results. Another said that his colleagues told him he would be unhappy if the BJP won. Yet another mentioned a conversation at work on divisive politics prevalent in the country where someone commented that “we are alright with all communities except (silence)”. She confronted the person to accept that they meant to say Muslims, but also tried to have a conversation with them drawing on her own relationship with that person. She feels this is the only way forward, rather than debating. According to her, people can have a great relationship with individual Muslims but will still hate the community.

Following the news reports of the Tablighi Jamaat linkage with COVID, one of the respondents mentioned receiving a whatsapp forward on the office group blaming Muslims for the spread of COVID. None of his colleagues responded to the message but some reached out to him individually asking him not take the message seriously. He reasoned that this was a stray incident and the person who sent it was an uneducated person who might have sent it when he was drunk. Another said that a colleague posted something on facebook about how Muslims were spreading COVID. She had pointed out that this was only spreading misinformation and fear and asked the colleague to take down the post, with which the colleague complied.

“If people ask me about the Tablighi Jamaat, I say that I am not their spokesperson. Why should I be asked?”

Activism

The respondent believes that in the private sector, companies are only interested in hiring competent persons with good skills. But when asked if participating in social change or activism makes even highly

competent people unsuitable for hire, he says that companies are looking for apolitical people. “People want to hire to help company towards profitability, but if you are political you will bring that into the workplace. Every interviewer, every HR manager wants to keep it as simple as possible. We look to hire people who agree and are compliant – that is the way a chain of command works.” If a background check reveals that a person was part of a protest or was arrested for some reason, that will be a bad record and will make them ineligible for hire.

One of the respondents who has been active in the anti CAA campaign spoke of her participation in the campaign being raised by employers.

Stereotypes

On the question of discrimination, none of the respondents mentioned the burden of stereotypes that Muslims have to challenge at the workplace. Instead, the need to be cautious to not further the stereotype was advocated. One respondent narrated an incident where a Muslim colleague disappeared with the office laptop. “If a person leaves with a lap top and disappears for two weeks, people start with ‘who (name), where does he stay (locality), which community’ - so it furthers the stereotype. It may not be a pattern but nobody is bothered about statistical analysis – the next Muslim who comes in has to work 10 times harder to change that stereotype.” Further substantiating this point, he says that the behaviour of some Muslims affects how companies see the community.

He adds, sometimes people would make assumptions about why he doesn’t drink, or why Muslims don’t educate their women. He took the opportunity to educate them “about Islam, what being a Muslim means” because “among the class which is educated, they have information and are respectful”. Many of his friends credit him with their understanding of Islam “They tell me if it wasn’t for me, they would have a different understanding.”

‘You Don’t Look Like a Muslim’, ‘You don’t behave like a Muslim’ were ‘compliments’ given to some of the respondents who don’t fit into the stereotype of the Muslim. In spite of these ‘compliments’, during India Pakistan cricket matches, it was assumed that the Muslim employee will root for Pakistan. When Ajmal Kasab was given the death penalty, one respondent said some colleagues commented that she must be feeling sorry for him.

The acceptance that a Muslim needs to work ten times harder to be considered competent reflects the recognition of inequality. Even when it is not stated.

Socializing

Post work socializing provides an opportunity to make connections with colleagues and remain informed of the office grapevine. When people go out to socialize, they go drinking which makes non drinkers feel left out. Two of the respondents whose office had the culture of socializing post work, found it difficult to be in these spaces “when everyone is holding a glass”. But they reason that you have to stand up for yourself. One of them recalls that he had a woman manager who was a teetotaler and it never came in her way.

Gender

Women respondents mentioned gender based discrimination within homes and at the workplace. One of them had an uphill task convincing her family to allow her to study for Civil Engineering, a field not considered suitable for women. She says she asked to "take a break" from the job upon marriage as the employer was concerned she would not be able to manage the stresses of the job along with a new marriage and household. She herself didn't think it would be a problem to manage both and found herself a new job. She believes the discrimination she experienced was on account of gender, not religion.

This sentiment was shared by another woman respondent as well who worked at a BPO. She was denied promotion twice though she was the most experienced person who was entrusted with responsibility beyond her job profile by her bosses. She had to negotiate with the threat of leaving the job to get a promotion. When promoted, it was without an increment. She had to lead a team of young men who harassed her using ‘vulgar’ language in her presence. Her complaints to the management were attended to twice but the third time they ignored her and she left the job. The person who instigated the harassment was made the team leader after she left.

Another respondent spoke of a colleague who quit her job because her boss wanted her to party with him.

Compromises to Avoid Discrimination

Some of the respondents believed Muslims gave the opportunity to be discriminated against. They question the need of Muslims to bring non vegetarian food to office every day. One of the respondents reiterated that there was no discrimination yet felt the need to assess the workplace and act accordingly “*Parakhna hai jagah. Roz dabbe me ghost mat le jao* (Have to assess the place. Its best not to bring non-veg lunch everyday)” Another respondent echoed a similar sentiment, “If I know my best friend

uncomfortable with non veg food, I have to take care. It is part of the social values of how you live in communities.”

Suggestion to not wear one’s religion on one’s sleeve were also expressed. ‘Don’t broadcast your religion to the world’. A respondent gave the example of a colleague who went to a fast food joint and asked if the meat was halal. She felt that asking such questions makes other colleagues uncomfortable. “People are confused. They do not know anything about Islam except for what is written about the religion in media.” she wondered.

One respondent says, “Hindu-Muslim conflicts will always be there, and Muslims must also make more of an effort to not exacerbate situations. Muslims sometimes don’t assess the social situation and may suffer because of that.”

Advice for the Community

Respondents believed that the problem was not only outside but within the community as well which needed introspection and acting on. Muslims need to “open up” and “get out of our bubble”. The engineers who participated in the Focus Group Discussion, all from Mumbra, a Muslim ghetto too felt the need for Muslims to begin to look outwards, to recognize that a world exists outside of Mumbra.

Some spoke of the need to get out of the victim mentality among Muslims which kept them from seeking higher education and jobs. They believe the need for Muslims to prove themselves by working harder than the rest, to ensure that their actions did not further strengthen the existing stereotype of the Muslim.

“If the majority community has stereotyped Muslims, Muslims too are unwilling to assimilate and accept different cultures.” A respondent who went to a convent school says “every Monday we sang hymns. That did not make me a lesser Muslim.” Another speaks of participating in the Diwali puja at the workplace, even allowing the pandit to apply tilak on his forehead. The belief is, “if you participate, they respect you.”

Another piece of advice is to remind oneself that colleagues are not friends and limit interaction accordingly.

Discussion

This study is a pilot, which needs to be expanded with more empirical data. Though a limited sample, the interviews highlighted the existing prejudice against Muslims working in the formal sector in Mumbai and Delhi. It described the difficulties in accessing higher education, entering the formal sector and the everyday Islamophobia at the workplace. Our study notes the different ways in which discrimination operates to exclude Muslims from the workforce. Unchecked bullying, suspecting the nationalism of Muslims, making assumptions based on bigoted notions of Muslims were so common, that none of the respondents except one who was a Professor in the Humanities considered these everyday acts as discrimination. Women were doubly marginalized. A female respondent was not promoted despite being qualified, and her complaints of abusive behaviour remained unaddressed. There's the Muslim (the stereotype) and then there is the good Muslim (who is unlike the stereotype that has been manufactured and popularized by media and politicians) who you can engage with, employ, have social interactions with. This is the Muslim with whom social conversation is often about being invited for a Biryani party "as if that is the only thing Muslims do – cook biryani!" Those who do not fit the stereotyped image are complimented for 'not looking / behaving' like Muslims.' Being Muslim is considered equal to being regressive, fundamentalist and anti national. Rakshanda Jalil in her book, "But you Don't Look Like a Muslim", asks the pertinent question 'Is this forsaking of reality for an erroneous perception not tantamount to aggravated assault?'

At the workplace, respondents recounted incidents and behaviours that made them feel othered such as colleagues' reluctance to share food with them, commenting on their dress and casting aspersions by labelling them as 'Pakistanis'. Politics was a point of contention between Muslims and other employees, especially those who had voted for the BJP. Some respondents emphasized the importance of having employers who address this kind of behavior. Employees welcomed situations where employers took a stance against Islamophobia/ an employer stepped in and set the standard for intolerance to such remarks. However, respondents felt that leaving the job was the only option when Islamophobia in the workplace was not addressed.

Respondents were also cognizant of the risks of speaking up against Islamophobia. Just as women often learn to deal with 'everyday' misogynistic culture, choosing when to ignore and when to raise issues of harassment, the interviewees chose to ignore the taunts during the cricket match, or not having colleagues share their lunch with them. They seem minor issues, not called out as acts of discrimination or harassment unless probed for. Then again, calling out this everyday in-your-face prejudice might have you labelled a trouble maker. This has repercussions on employment status as experienced by one of the respondents who had to leave her job after calling out the harassment from her colleagues three

times in six months. Muslims who have managed to get their foothold in and made a place for themselves in the workplace, do not take acceptance for granted.

Muslims have also found different ways to cope with harassment in the workplace. They have come to accept the bigotry, name calling and othering, taking it in their stride, often making excuses for colleagues as acts of ignorance. It is telling that Muslims are quick to provide excuses for the discrimination that exists, rationalizing it as an aberration than a norm. Yet, the Muslims who refuse to generalize these 'individual' acts of violence to the majority community, are aware that they themselves cannot make mistakes or give any reason to cement the stereotype of the Muslim. Muslims in India not only deal with Islamophobia which is a global phenomena by also bear the cross of the country's Partition nearly 70 years ago.

One of our respondents told us 'The only religion of a capitalist is Money' making the point that discrimination in hiring does not make economic sense. Yet we have a mere 8% Muslims in the formal sector. One way of seeing is that there are fewer Muslims applying for work in the formal sector. Studies are needed to understand the picture better. This study is about those who managed to get past the hurdles of completing education and getting into the formal workspace and their experiences once they are in the system. Measures are needed to get Muslims to qualify for the formal workspace, measures are needed to ensure that once they get into the formal workspace, they are treated as equals without being discriminated against.

Recommendations

We feel the need to reiterate the recommendations made by the Sachar Committee and have the following recommendations based on the study.

Review Proposed Guidelines of Equal Opportunities Commission

The Report by the Expert Group to examine and determine the structure and functions of an Equal Opportunity Commission (EOC)⁷ set up by the Ministry of Minority Affairs, Government of India in 2008 is an important document for laying out mechanisms to ensure equal opportunities to deprived and discriminated groups. The draft of the EOC Bill, which draws from experiences of a number of countries including the UK and South Africa, is promising from the point of view of inclusion of a number of marginalized groups, not limiting its mandate to religious minorities. However, the mechanisms for redress, which include class action suits, need to be reviewed based on empirical data on discrimination.

Our understanding based on our experience of Sexual Harassment Committees is that punitive actions instead of working as deterrents would construct an additional barrier to the employment of Muslims. Taking an organization to court to get redress is an immensely challenging task with repercussions on future career prospects. Employers do not want to employ trouble makers. This could explain the unwillingness of many of the employees to be interviewed. Those who agreed, were clear on the need for confidentiality.

In their article⁸ in the Harvard Business Review, Why Diversity Programs Fail And what works better, Frank Dobbin and Alexandra Kalev make a case for doing away with a punitive approach and bringing in positive employee engagement for encouraging diversity. The fear of Muslims not being employed because of the possibility of a discrimination suit, was mentioned by one of the respondents in the study. He mentioned an incident at work, where a Muslim employee accused the employer of discrimination for being called out on poor performance. He felt that such allegations would ensure that the manager would not hire a Muslim again to prevent being labelled anti Muslim.

⁷ http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/eoc_wwh.pdf

⁸ <https://hbr.org/2016/07/why-diversity-programs-fail>

Implementing the Diversity Index

In addition, to the EOC, the Sachar Committee Report recommended the formulation of a Diversity Index. The Committee proposed that institutions who provide more diversity will be rewarded, along with disincentives to counter lack of efforts to promote diversity. This was believed to be more effective than the system of reservations in jobs and educational institutions. The Kundu Committee in 2008 presented the Report on the Diversity Index⁹ that would be the basis for providing incentives for better representation in educational institutions, work places and housing situations. These included larger grants to educational institutions and tax breaks to industries and housing societies.

We believe this is a much needed initiative to encourage diversity in workplaces and educational institutions.

Policies promoting Affirmative Action by Corporates

In 2007, the Confederation of Indian Industries (CII) in response to a call by the then Prime Minister Manmohan Singh up a Task Force resulting in a 100 companies drawing up an Affirmative Action Agenda for SC/ST youth¹⁰. **The affirmative action programs are limited to Scheduled Castes and Scheduled Tribes and need to be expanded to other marginalized groups including Muslims.**

Affirmative Hiring Policies: Hiring calls by International companies are accompanied with affirmative statements such as ‘Equal Opportunity Employers’, ‘Women and Minorities are Encouraged to Apply’. Insistence of funders, funding the development sector organizations for diversity in their workplace has pushed Non Governmental Organizations into consciously hiring minorities. Placing recruitment advertisements in regional language newspapers, participation in recruitment fairs in minority institutions could increase the outreach to a more diverse population.

On the job training: Recognizing that it is not lack of capacity, rather the lack of opportunity and exposure that works against employability of candidates from marginalized communities such as Dalits and Muslim, on the job training during the probation period will ensure a more just and diverse workspace.

⁹ http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/di_expgrp.pdf

¹⁰ <https://cii.in/WebCMS/Upload/report-affirmative-action.pdf>

Internship Opportunities advertised in minority institutions will provide students an opportunity to learn about the industry, adding to their experience and possibility of employability.

Inclusivity Affirming Workplaces

Some Indian companies have initiated processes to make their workplaces more inclusive.¹¹ The measures include setting up prayer rooms, allowing for non vegetarian food, allowing staff to conduct religious ceremonies on special occasions.

Zero Tolerance to Violence: Workplaces should advocate zero tolerance policies on harassment and bullying with guidelines for reporting the same. Staff orientation programs should educate on diversity and inclusivity policies.

Setting up a diversity cell: This cell should represent the diversity that one seeks in the workplace. It can be the go to place to report against harassment. Its task will include programs to promote an inclusive workplace culture, educating staff on the diversity policy, and against stereotypes of communities. This cell will function as a support system for employees from marginalized communities.

Mapping Diversity

Another important recommendation of the Sachar Committee that we want to reiterate was the setting up of the National Data Bank (NDB) where all relevant data pertaining to the socio-economic and educational status of different Socio-Religious Communities is maintained. The NDB was to be a repository of data on different beneficiary-oriented government programmes undertaken at the national and the state levels along with the details of beneficiaries drawn from different SRCs. The Committee recommended the setting up of an autonomous Assessment and Monitoring Authority (AMA) to evaluate the extent of development benefits which accrue to different SRCs through various programmes.

Apart from the NDB, a policy by the State Governments requiring companies (public, private, Non Government Organizations) to maintain and publish employee profile on their website is recommended. The data should be broken down to reflect employee profiles (religion, caste, gender, disability) across hierarchies at the company. Such data will provide an insight in diversity at the workplace. Workplaces which reflect diversity can be rewarded with tax breaks as recommended by the Kundu Committee.

¹¹ <https://economictimes.indiatimes.com/jobs/how-india-incs-workplaces-are-accommodating-employees-religious-and-cultural-needs/articleshow/46567865.cms?from=mdr>

Muslim Chamber of Commerce

Setting up of a Muslim Chamber of Commerce on the lines of Dalit Indian Chamber of Commerce and Industry (DICCI) will help provide a support system for Muslim entrepreneurs. They in turn will be able to provide support by way of professional associations which can promote employability and hiring of Muslims.

Interventions in Schools

Starting Young - Respect for Diversity in School Curriculum

We realize that the prevalent Islamophobia has seeped into our everyday lives. Schools play an important role in creating mindsets. Homogeneity in student profiles in schools vis a vis religious and class takes away the opportunity to know people different from us. These spaces can become fertile grounds for the strengthening of stereotypes if not challenged. Policies are needed to reward schools with a diverse teacher and student population. Schools need to include programs which encourage children to learn about and respect diversity, learn empathy and inclusiveness.

Guidance in choosing a future

A policy is needed for schools to include career guidance for students of the 9th std, with information on career options, qualifications, entrance tests for choosing certain streams.

Research agenda emerging from the study

This study is a beginning to documenting the experiences of Muslims at the workplace to better understand the ways in which Muslims experience othering and discrimination. The study will benefit from expanding to more respondents, a study on sector specific experiences, bringing together of studies done by other identity groups to understand the commonalities and specificities of discrimination are required to be able to come up with proposals for redress.

This study was not able to delve in greater detail on the impact of ghettoization on aspirations and employment opportunities. This aspect needs further study.

As mentioned earlier, numerous structural barriers prevent women and girls from getting into the formal workplace and perhaps must be addressed through a separate study.

Government Reports and Policies such as the Equal Opportunities Commission Report, The National Education Policy need to be studied in light of the experiences being brought out by identity groups in the country working towards addressing discrimination.

Annexure 1 : Interview Schedule

1. Name
2. Where did you have your schooling?
3. What degree, why did you choose this area, how was the experience in college?
4. Which college
5. Year of graduation
6. What made you want to look for a job / Motivation to join the workforce
7. Where are you working? Name of establishment, Location
8. Is this the only paid employment or are there more than one (remuneration in each)
9. What designation at the work --- (job description)
10. Terms of employment
 - a. Do they have a contract?
 - b. Weekly off
 - c. SL / CL
 - d. Pension, Provident Fund
 - e. possibility of flexible working hours
 - f. 4. Expense to get to work
 - g. 5. What happens at home when they go to work
 - h. Increment
 - i. Travel allowance
 - j. Canteen facility
 - k. Crèche facility
 - l. Pension
 - m. Insurance – what kind
 - n. Housing allowance
 - o. Tax deduction? Take home salary
11. What are the levels at work, where are you in the hierarchy?
12. How are promotions decided at work
13. How are tasks allotted? Are some people chosen or not chosen for certain jobs? What is the criteria for choosing?
14. Salaries drawn at each job
15. In what way do they feel "different" at work, if at all?
16. Do they engage in informal social activities with other employees (a big part of "networking")? If not, what stops them? Do you go for office Picnics / parties? What is your experience?

17. Are there restrictions/comments on clothes?
18. Trouble getting leave on festivals?
19. Any assumptions made about their capacity to work late hours/travel because they are Muslims?
20. Food restrictions - do non vegetarian people have to eat at different tables, use different plates etc?
21. Do they feel treated differently in any way?
22. Would they be more comfortable working in a Muslim establishment - in what way would that be different (could be better or worse)?

Annexure 2 : Key Informant Interview Schedule

1. Name (optional)
2. Educational background
3. Educational institution – year of graduation/post-graduation/any other
4. Area of Expertise/specialization
5. Current employment/job/vocation
6. Place of work
7. Employed or Self-employed or Running own establishment
8. Type of colleagues working with you/staff employed by you (number, gender/caste/religion disaggregated etc.
9. Social background of colleagues/employee
10. Your perception of their needs, requirements
11. Experience related to social background/minority status (please describe in detail)
12. Day to day experience?
13. Any spectacular or eventful experience?
14. What are your recruitment, promotion (including incentives), and retrenchment practices?
15. Any trajectory of recruitment and subsequent experience of any employee that you wish to describe (including their motivation, training, number of years/places of work, expectations of pay, benefits, self-motivation at work, performance, and reasons for leaving the job)
16. What terms of employment do people expect and get
 - a. Do they have a contract?
 - b. Weekly off
 - c. SL / CL
 - d. Pension, Provident Fund
 - e. possibility of flexible working hours
 - f. 4. Expense to get to work
 - g. 5. What happens at home when they go to work
 - h. Increment
 - i. Travel allowance
 - j. Canteen facility
 - k. Crèche facility
 - l. Pension
 - m. Insurance – what kind
 - n. Housing allowance
 - o. Tax deduction? Take home salary

17. Do prospective job aspirants have high motivations? What are the aspirations of new recruits and how do they keep it up?
18. How do the aspirants from minority groups deal with the labour market discrimination? How does this affect their motivation to seek jobs as well as continue in their jobs?
19. Within organizations how are tasks allotted? Are some people chosen or not chosen for certain jobs? What is the criteria for choosing?
20. Salaries drawn at each job
21. In what way do recruits from minority groups feel "different" at work, if at all?
22. Do they engage in informal social activities with other employees (a big part of "networking")? If not, what stops them? Do you go for office Picnics / parties? What is your perception?
23. Any assumptions made about their capacity to work late hours/travel because they are Muslims?
24. Are there restrictions/comments on clothes of the recruits?
25. Trouble getting leave on festivals?
26. Food restrictions - do non vegetarian people have to eat at different tables, use different plates etc? What is your perception of some of the organizations you recruit people for?
27. Do they feel treated differently in any way?
28. Would they be more comfortable working in a Muslim establishment - in what way would that be different (could be better or worse)?

Annexure 3 : FGD Pointers

1. How did they decide on choosing this college / stream of education
2. Process of getting admission? Anyone who gave direction towards career?
3. Their careers now
4. Does being Muslim have any implication at the workplace?
5. Any Muslim girls from your college / batch?
6. What is needed to be done for youth to get jobs more easily?

Annexure 4 : Study of Laws - Anti-Discrimination Analysis

Concept of discrimination at workplace: Workplace discrimination takes the form of prejudicial decisions against a person (s) relating to recruitment or availing of opportunities at the workplace. The grounds for such discrimination can be age, sex, qualification, disability, pregnancy, marital status, national origin/ ethnicity, race/colour, religion, caste and sexuality. Discrimination can take the form of explicitly prejudicial treatment against certain groups like a training policy that excludes an individual based on their sexual/ marital/ racial/ disability status or when an individual is terminated from employment services after they choose to cohabit with a person from the same sex. Discrimination can take more discreet forms like a condition that seems to be applicable on both sexes but which one sex may have lesser probability to comply with like: a condition that a candidate for a job must be of a certain minimum height.¹² This would put women at a disadvantage to avail the opportunity. Employers should differentiate between the employees on the basis of their ability, potential and experience instead of the grounds mentioned above. The anti-discrimination laws are essential for ensuring equality of opportunity at work and to maintain harmony between employees coming from different backgrounds and embodying different identities. The career progression of women, Dalits, Muslims will prove to be more beneficial for the society as it will enhance the social capital investment in the vulnerable communities and help assist the poverty alleviation efforts taken up by the government. The anti-discrimination laws will also educate employers on diversity and equality which is of immense importance in the wake of the economic globalisation of business.

Incidence of discrimination at workplace in India: Following are observations made by Teamlease Services in a survey called Bias@Workplace:

- 5/10 employees have experienced one form of discrimination or the other at the workplaces in India.
- Common grounds of discrimination include gender, age and qualification while discrimination based on caste and religion had almost become obsolete.
- Discrimination at work based on qualification bias goes as high as 50%.
- Majority of the bias is based on gender (25%), age (22%) and caste or religion (18%).¹³

¹² “The Multiple Grounds of Discrimination.” *Discrimination at Work: Comparing European, French, and American Law*, by Marie Mercat-Bruns et al., University of California Press, Oakland, California, 2016, pp. 145–246

¹³ M Saraswathy, ‘Five out of 10 Indian employees face discrimination: Study’, Business Standard, August 5 2013.

- Younger generation (21-35 years) is reported to have experienced more discrimination, at a rate of 54%, than employees above 50 years of age.
- Expectant mothers and mothers of young children face disadvantage over others at the time of recruitment and at the time of vying for opportunities. While percentage of discrimination is not high, it is only desirable that this kind of discrimination is done away with as biased behaviour against women can have debilitating effects on employee growth and productivity.
- ‘Good looks’ is also considered as criteria of favourable treatment and advantage in metro cities like Mumbai and Pune.
- Geographical perspective: Ahmedabad faced the lowest amount of discrimination while it was widely prevalent in the cities of Delhi, Pune and Chennai. Delhi practices discrimination rampantly, discrimination rates in Pune and Chennai stand at 85% and 75% respectively.
- Shockingly enough, only 30 % of the companies surveyed in the 8 major cities had a clear anti-discrimination policy in place.

Legal protection in India against discrimination: The Constitution of India provides for its citizens certain fundamental rights that protect them from discrimination (Right to equality, however, is applicable to all persons irrespective of their citizenship).

- Article 14: State shall not deny any person equality before the law and equal protection of laws.
- Article 15: Prohibits state from discriminating on the ground of religion, race, caste, sex and place of birth.
- Article 16: Empowers the state to make reservations with respect to appointment for posts in favour of backward classes if the state believes that such classes are underprivileged.

The above-mentioned protections ensure that an aggrieved person, one who had to face prejudicial treatment on the ground of either religion, race, caste, sex or place of birth in terms of policies and regulations regarding recruitment, promotions, transfers, demotions and removal from services; can file a writ before the concerned High Court or Supreme Court. However, such protections can only be availed when discrimination is faced at the hands of offices of Central or State Government. Article 39 in part IV (Directive Principle of State Policy) of the Indian Constitution urges the State to ensure that citizens- both men and women have an equal right to adequate means of livelihood, right to shelter, food, education and work.¹⁴ However, it must be noted that this article cannot be invoked in a Court of law, i.e. this right cannot be challenged in court and this provision fails to extend protection to the third gender.

¹⁴ Article 39, Constitution of India 1950

It is observed in India that an effort is made to reduce discrimination at workplace by regulating working conditions by way of the following statutes:

1. **Discrimination against the financially vulnerable groups:** The financially vulnerable groups may have to face discrimination in terms of remuneration: payment of wages/ pay/ overtime dues/ bonus/ stock option benefits/ life insurance, etc.
 - **Equal Remuneration Act 1976:** It stipulates that it is the duty of the employer to ensure that equal remuneration is paid to men and women for same or similar work. The Act does not provide for protection of the third gender. Putting women at a disadvantage in terms of the policy on hiring, transfers and promotions on account of their gender is prohibited under Section 5 of the Act.¹⁵
 - **Minimum Wages Act 1948:** The object of this statute is to safeguard the interests of the workers engaged in the unorganised sector by regularly fixing and revising the wages of the workers. Both the Central and the State Government are given the responsibility for fixing the wages under the Act. Minimum wage in this context refers to all remuneration in cash including HRA (declared minimum wage and special allowance). It extends protection against exploitation of labour to poor workers and daily wage labourers belonging to financially weaker sections because they are more vulnerable to unfair employment practices. The Act lays emphasis on what the minimum wage should be, what the employee must get in return of their services, instead of focussing on the capacity of the employer.¹⁶ It also provides for variation of minimum wages across different states but this is necessary in order to account for differences in socio-economic factors, agro-climatic conditions, and prices of essential commodities, paying capacity, local conditions and difference in productivity in general.
 - **Shops and Establishments Act 1953:** The Act is applicable to all premises where any trade, business or profession is carried out and regulates not just commercial establishments but also societies, charitable trusts, printing establishments, educational institutions run for gains and includes premises in which functions of banking, insurance, stock or share brokerage are carried out.¹⁷ The administration of this Act is looked after by the Department of Labour. The factors of employment that the Act regulates include: payment of wages, precautions against fire and accident, provisions for leave/ working hours/ holidays, terms of service, dismissal, cleanliness, lighting

¹⁵ Section 5 of Equal Remuneration Act 1976

¹⁶ Minimum Wages Act 1948

¹⁷ Shops and Establishments Act 1953

and ventilation, record keeping, intervals for rest or meals, prohibition of child labour, among other factors.

- **Employee Provident Fund Act 1952:** Employee Provident Fund Scheme is the main scheme under the Employee's Provident Funds & Miscellaneous Provisions Act 1952 and the scheme is managed by the Employee's Provident Fund Organisation (EPFO). This scheme applies to all establishments in which 20 or more persons are employed and certain organisations are included if they fulfil certain conditions even if they don't employ 20 people. The employer and employee have to make equal contributions to the scheme and the employee receives a lump sum amount including interest on the contribution made by themselves and the employer upon retirement. An employee whose pay is more than Rs 15,000 per month at the time of joining is not considered as eligible to be a member under EPF. Only employees drawing less than Rs 15,000 are eligible to be members under EPF, however, exceptions can be made with the permission of Assistant PF provided the employee and the employer are willing.
- **Industrial Disputes Act 1947:** It provides for investigation into and resolution of industrial disputes. The provisions that deal with reducing discrimination at workplace are Section 2 (ra) and Section 25T of the Industrial Disputes Act read with Schedule V, which deems dismissal of a worker over the other regardless of 'merit' as an unfair trade practice punishable with fine and imprisonment of the employer.¹⁸
- Among other such statutes is the Employee State Insurance Corporation Act which covers medical needs, the Payment of Gratuity Act that covers retirement benefits, the Payment of Bonus Act that regulates the maximum bonus including productivity linked bonus that can be paid in an accounting year which is not required to exceed 20% of the salary or wage of the employer under Section 31A of the Act.¹⁹

2. Discrimination on the basis of gender: Discrimination on the basis of gender arises when an employee or a candidate is subjected to prejudicial treatment on grounds of the gender that the person belongs to. A person can face gender discrimination in terms of decisions relating to hiring, conditions of employment, promotion, benefits and perquisites and allocation of work. Gender based discrimination is explicitly barred under Article 15 of the Indian Constitution alongside discrimination based on caste, place of birth, religion and race, however, the law provides for affirmative action in which policies may be beneficial for women over men.²⁰ This provision, however, does not apply to private entities and hence employees cannot approach

¹⁸ Section 2 (ra) and 25T Industrial Disputes Act 1947

¹⁹ Section 31A of Employee State Insurance Corporation Act

²⁰ Article 15 of the Indian Constitution 1950.

courts of law for enforcement of their rights under Article 15 if they are employed with a private entity.

- **The Equal Remuneration Act 1976:** It prohibits discrimination against women at time of recruitment unless employment of women in that category of work is prohibited by law. It also stipulates that men and women be paid equal wages for same (or similar) work. Employers found to be violating anti-discrimination provision during recruitment and payment of wages will be punished with fine/ imprisonment and can also be subjected to aggravated punishment in case of repetition of offence. Employees are not entitled to compensation under this statute; however, they can claim the amount of wages that they were denied as a result of the discrimination.
- **Maternity Benefit Act 1961:** In India, discrimination on the ground of pregnancy may translate into decisions like refusal to grant a job or dismissal of a woman from an organisation upon the disclosure regarding their pregnancy. This Act aims at providing maternity leave and maternity benefits to expectant mothers and prohibits termination of employment of pregnant women employees. Deduction of wages based on inability to do strenuous tasks as a result of pregnancy is also punishable. A woman cannot be dismissed or discharged from her services if she absents herself from work in accordance with the provisions of the Act. It is not permitted to vary her conditions of work to her disadvantage: her wages will not be subject of any reduction if she is entitled to maternity benefits and she will not be expected to work in any establishment during the six weeks following her date of delivery. Maternity leave has now been extended to 26 weeks from the previous 12 weeks and the benefits have been extended to include adoptive and commissioning mothers. An employer who violates the provisions of this Act will be liable to be punished under Section 21 of the Maternity Benefit with imprisonment or fine.²¹
- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act:** In recognition of the egregious nature of sexual harassment, the Act empowers the Internal Complaints Committee to recommend a compensatory sum to be deducted from the wages of the perpetrator and provided to the victim. Section 2 (o) (ii) implies that the Act is applicable to private sector.²² The Act is the only legislation in India that allows the victim to claim compensation even when the discrimination has not occurred at the hands of the employer itself. The offences laid down under the Act can also be held punishable under Section 354 of the Indian Penal Code 1860 and criminal action be taken against the perpetrator.

²¹ Section 21 of the Maternity Benefit Act 1961

²² Section 2 (o) (ii) of the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act

- **Maharashtra Shops & Establishments (Regulation of Employment & Conditions of Service) Act 2017:** It is a state law that prohibits discrimination against women in matters of recruitment, payment of wages/salary, training, transfers, promotions, with the employer being made punishable with a fine on contravention.

The #MeToo campaign gaining momentum meant that employers reached out to law firms in a desperate attempt to draft a plan for navigating through sexual harassment issues at work along with measures for prevention, protection and reprisal.²³ The cause of sexual harassment at workplace along with the growing awareness leading to filing of complaints grew to be a major concern for the corporate and became the single largest source of anxiety after GST and tax related issues. They were concerned with the training that the middle and top management should receive in order to condition themselves as to how one should respond to harassment complaints, the precautions that the firms can take at unofficial gatherings or parties, or the punitive actions to be taken after such complaints are reported. Khaitan & Co. is a law firm and a partner at Khaitan named Anshul Prakash said that corporates are taking active interests in drafting working models on sexual harassment at workplace complaints because they fear that it may pinch their top management the highest. In fact, queries regarding pre-emptive measures to be taken are far more than queries seeking punitive actions pursuant to filing complaints. This displays the misogynistic nature of the corporate world- where they are more concerned about the top management getting caught than taking corrective measures against women who have been wronged. This is in contrast to New Zealand, for example, where employee protection is the topmost priority, an employee may decline to work and still receive pay if they perceive the working environment to be unsafe and their request for reassignment of workplace is denied.

3. **Disability discrimination:** A disabled person is said to have been subjected to disability discrimination if they are treated unfavourably when such individuals interact with the employer, either in the capacity of an applicant or an employee, during hiring, payment of wages and deciding promotions/ termination of services. India is a party to the UN Convention on the Rights of Persons with Disabilities. India has made a commitment towards promotion of disability rights by protecting and ensuring the rights provided in the Convention through

²³ Shambhavi Anand, '*#MeToo effect: Pro-active companies seek advice to make workplaces safer*', ET Bureau, December 9 2018.

legislating The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 that protects the following disabilities: blindness, low vision, leprosy-cured, hearing impairment, loco-motor disability and mental retardation. It is a progressive legislation that establishes in strong unambiguous terms that discrimination in terms of employment of disabled persons will not be tolerated. Section 24A of the Act guarantees no discrimination in employment, Section 24C protects from discrimination in cases of promotions, Section 24 D furthers an equal opportunity policy and Section 24F protects against removal or reduction in rank based on disability.²⁴ The Act also made it compulsory for all government establishments to reserve not less than 6% of vacancies arising against all posts and promotions for persons with disabilities. It even goes a step ahead to include within its ambit private companies in the definition of ‘establishment’ under Section 2 (i) of the Act and it is contended that Section 20 (3) embodying the ‘non-discrimination for promotion’ principle may apply to private entities too. Therefore, every establishment is expected to devise an ‘Equal Opportunity Policy’ and every Government establishment must appoint a Grievance Redressal Officer, failing which an employer will be held liable to payment of a fine.

4. **Discrimination on the basis of caste:** Caste based discrimination affects 18% of the workforce and in order to protect a person belonging to Scheduled Caste from acts of injury, molestation, boycott, obstruction, insult or an attempt to do any of these acts, **Protection of Civil Rights Act 1955** provides for a punishment of not less than one month but which may extend to 6 months and with fine not less than one hundred rupees and not more than five hundred rupees. If a person belonging to the Scheduled Caste faces boycott in the sense that the person is not allowed to work, render services or do business with someone or carry out any operation that is commonly done in the ordinary course of business, would be entitled to take criminal action against the offender and may file an FIR in the local police station. It should be noted that this provision is restricted to the state and its entities and does not cover private corporations.

India lacks a comprehensive and codified anti-discrimination statute working towards anti-discriminatory workspaces which lays down regulations for employers and compensation for victims of discrimination. Statutes that govern private entities include: The Equal Remuneration Act 1976, Maternity Benefit Act 1961, The Rights of Persons with Disabilities Act 2016 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. It can be observed that even if there exists no umbrella legislation dealing with workplace discrimination, the rules addressing victim complaints and compensation under the laws mentioned above ensure that employers are motivated to ensure that workers are

²⁴ Sections 24A, 24C, 24D, 24F of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act

treated with equality and dignity and that no discriminatory act is taken place at their workplace. As stated earlier, The Rights of Persons with Disabilities Act 2016 mandates formulation of an 'Equal Opportunity Policy' for every establishment which can help outline the company's commitment to equality and prescribe redressal mechanisms and penalties for the same. In cases of 'pre-emptive screenings' being conducted before the recruitment process, the employer should limit the analysis to essential details such proof-checking educational background and criminal history, should comply with privacy laws and the stipulation of a prior consent.

Legal protection in United Kingdom against discrimination along with comparison with India:

Part 1: Pre-emptive screening

While discussing about anti-discrimination policies in India, we indulged deeply into details regarding post-recruitment discrimination which manifests itself into decisions like lesser pay, minimised perquisites, unjust policy on leaves and termination. However, discrimination can also take place before recruitment. Pre-recruitment discrimination is observed when prospective employees and candidates are rejected on the basis of their religion, pregnancy, sexual orientation, marital status, caste, etc. This discrimination is caused due to bias that the employers hold with respect to different identities or it could also be a result of plain intolerance. The pre-recruitment prejudicial treatment can start at the stage of pre-emptive screening of employees, a process that is also called 'background check', 'criminal screening' or 'background screening' and involves carrying out a thorough check of the credentials of the employees before they are hired. The checks may be conducted without the consent of the potential recruit relating to their educational degrees or salary slips and can also include checks that are conducted without the prior knowledge of the potential recruit like taking feedback from previous organisations, checking criminal record, etc. These processes can also be outsourced to specialised HR agencies and the primary motive behind such checks is to detect falsification of records.

India: Owing to the fact that pre-emptive screening in India is only limited to sophisticated organisations and applications made for senior management positions while other firms rely on informal checks like personal references; there does not exist any legal directive in India governing pre-emptive checks.²⁵ However, an exception to this are regulations monitoring pre-emptive checks made for appointment in the bank or for cross-checking requirements under

²⁵ *Legal HR: Laws governing Pre-Emptive Screening of Employees in India*, People Matters, December 19 2017.

certain certifications. Therefore, India is likely to witness violation of privacy norms when such pre-emptive checks are carried out. SINCE India is moving towards greater awareness regarding privacy of personal data along with the judicial recognition for the same, it can be observed that it is increasingly difficult for Indian employers to get away with privacy infringements in the process of data digging. Government is mandated to recognise right to privacy as a fundamental right as it was held to be an intrinsic part of the Right to Life and personal liberty after the landmark judgement delivered in Justice K.S. Puttaswamy (Retd.) v Union of India.²⁶ However, there still exists a lacunae in the law as the ‘right to privacy’ of individuals cannot be enforced against private entities.

- **Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011** is the law governing collection and use of personal information. These rules cover limited information like password, financial information, sexual orientation, physical, physiological and mental health condition, medical records and history along with biometric information.
- **Section 43A of the IT Act** protects against privacy invasion as bodies corporate found to be negligent in the implementation of security practices while possessing and handling sensitive personal information, would be held liable to pay damages as compensation to the affected persons.²⁷

United Kingdom: Following are the regulations monitoring ‘pre-emptive screening’ in the UK:

- **British Standard 7858:** B S 7858 lays down recommendations for the pre-emptive screening that is conducted on prospective employees in cases where such information is in public or corporate interest or is necessary for the employing organisation’s operations.²⁸ The details that might be looked into include proof of identity and address, investigation of education and employment records, criminal records check, financial check, assessment of character reference. According to the regulations, minimum screening period is set at 5 years with no unverified gaps greater than 31 days. It stipulates that the screening should be completed within 12 weeks from commencement of employment for checks totalling five years and within 16 weeks for checks longer than five years.

²⁶ Justice K.S. Puttaswamy (Retd.) v Union of India Special Leave Petition (Criminal) No 2524 of 2014.

²⁷ Section 43A of the IT Act 2000

²⁸ BS 7858: 2019 Screening, Background Checks, UK Employee Checks:
<https://www.ukemployeechecks.co.uk/employee-screening-packages/bs7858-security-checks>

- **Data Protection Act 1998 (DPA)** strikes a balance between individual rights or privacy and organisational needs. Legal requirements to be observed while conducting pre-emptive screening include: checks to be carried out on a non-discriminatory basis, data to be fairly and lawfully processed, privacy rights to be maintained, data to be used only for the intended purpose, only relevant data is to be collected, the data should be up to date and not kept for a time longer than necessary and data should be held securely and not transferred to other countries without adequate protection.²⁹ An individual might be refused employment if they refuse to undergo an essential check and the individual should be made aware of this. This is different from making the pre-recruitment screening a condition of employment where it may not actually be necessary. The individual is entitled to view the personal data under Subject Access as also object to the processing of such information which is likely to cause damage to the individual or cause them distress. The individuals can also have decisions be taken by automated means in order to preserve their privacy. They can also have the personal information which inaccurate to be rectified, erased or destroyed.

Part 2: Trade Unions

United Kingdom allows formation or membership of a trade union even when a union is not recognised. The laws regarding regulation of trade union include the Employment Act 1980, the Trade Unions Reform and Employment Rights 1933 both of which were developed by Conservative regimes. This was followed by the reforms included in the Employment Acts of 1994 and 2004 introduced by the Labour government. Trade Union regulations hamper the functions of such unions as:

- Balloting provisions restrict the ‘right to strike’ and have a bearing on disciplinary procedure, financial affairs and autonomy over the industrial actions of the Union.
- In order to get a trade union registered, the union is to consist of not less than 50 members or not less than one-fourth of those working in an enterprise/ organisation/ branch.
- Workers cannot be subjected to prejudicial treatment owing to their membership in a union.
- Members of a union cannot be dismissed from services or refused employment merely because of their membership in a union.
- The law also gives a person the right to not join a trade union.
- When a trade union is recognised by an employer, members have a right to take time off from work for the purpose of trade union activities (voting in ballot or meetings to discuss urgent matters).

²⁹ 'About the DPA 2018', Information Commissioner's Office: <https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/about-the-dpa-2018/>

Trade Unions enjoy large memberships but the downsizing of public sector employment by the Conservative-led coalition government may affect such unions as membership levels is primarily high due to employees from the public sector enterprises. With the growing awareness about anti-discrimination laws, workers in the UK are also resorting to taking individual action by raising claims in the employment tribunals. However, it should also be understood that not all workers can afford to take such individual legal actions and hence continue to depend on trade unions. From July 2013, the Coalition government announced new upfront fees of up to 1200 Euros which the workers will have to pay for taking up sexual harassment or racial discrimination complaints with the employment tribunals.³⁰ Such measures lead to employers finding it easy to get away with harassment and discriminatory behaviours (80% drop in sexual harassment claims and 85% drop in unpaid wage cases).

The Trade Union Bill 2015-16 shook the activists as major changes were brought in the organisation of trade unions:

- Strike used to require a simple majority of those Union members that take part in the ballot. But the Trade Union Bill imposed a requirement of a minimum 50% turnout along with the backing of at least 40% of those eligible to vote, i.e., everyone with a vote and not just those who cast a vote. Therefore, if there are 100 workers in a union, 50 of them will have to vote and 40 would have to vote for the strike in order for it to go ahead. However, such restrictions do not apply to any other elections. For example, in the first past the post system, MPs can get elected with as little as 30 % of the votes cast which, if the turnout is 65% will amount to just 19.5% of those registered to vote.
- The laws mandates the union to give the employers a 14 day notice before a strike and also have agent staff members be placed in their positions of work so that they cover for workers on the strike.

It is observed that right to freedom of peaceful assembly and freedom of association under Article 11 of the European Convention on Human Rights be acknowledged in local laws of the United Kingdom. The right to form and join trade unions is a direct manifestation of this right. Restrictions on the right to strike should only be justified if it is in the interest of national security or public safety.

Legal protection in South Africa against discrimination:

³⁰ Matthew Taylor, 'Unions protest over new employment tribunal fees', The Guardian, July 29 2013.

Status of fundamental rights in South Africa: The fundamental rights in South Africa are applicable to all persons and are inalienable, i.e., a person is bestowed with such rights forever and these rights can be taken away or be revoked.³¹ These natural rights were not legally protected before the country became a constitutional democracy in 1994. The fundamental rights were first introduced in Chapter 3 of the interim Constitution and were enshrined in Chapter 2, Sections 7-39 of the 1996 Constitution. In contrast to the traditional view that constitutional rights do not bind private entities, South African constitution expressly recognises the responsibility of the non-state actors to uphold constitutional rights. According to Section 8, the Bill of Rights is interpreted to be applicable to private entities as it expresses that while applying a provision of the Bill of Rights to a natural or juristic person, the Court may give effect to a right in the Bill by developing a common law to the extent that the legislation does not give effect to the right.

The common grounds for discrimination at workplace in South Africa include race, colour, ethnicity, nationality, social origin, sex and gender.

- The **International Convention for Elimination of All Forms of Racial Discrimination** affirmed the principles of equality and dignity and condemned the doctrine of superiority based on racial differentiation as scientifically false, morally corrupt, socially unjust and dangerous.
- Refugees and asylum seekers may apply for a right to work in the Republic under the **Refugee Amendments Bill of 2016**. Such an application is to be made at the time of applying for a refugee status, however, such a request can be denied if it is found that the asylum seeker can sustain itself and its family for a period of four months while awaiting the outcome of an asylum application. This is antithetical to the view that refugees deserve equal opportunities at workplace of the criterion for refugees is merely sustenance for four months and not career progression in general.
- **Equality legislation as well as Section 9 (3) of the Constitution** prohibit discrimination on the grounds of gender and sex.
- **The Basic Conditions of Employment Act** entitles a woman to benefits from the Unemployment Insurance Fund as also a minimum unpaid maternity leave for four months, however, internal policies may extend the period and also offer paid maternity leave as per internal policies. In addition to that, all persons are entitled to three days family responsibility leave per 12 month cycle and this is inclusive of the right to paternity leave for fathers. However, it is to be noted that this provision for paternity leave is far less than the international standards and also insufficient in general.

³¹ 'The Bill of Rights', Constitutional Court of South Africa: <https://www.concourt.org.za/index.php/constitution/your-rights/the-bill-of-rights>

- **Section 9 of The Promotion of Equality and Prevention of Unfair Discrimination Act 2000** prohibits discrimination against people on the grounds of their disability. However, in reality disabled persons in South Africa are more vulnerable to poverty, deprivation, lack of access to healthcare, social and economic exclusion and HIV/AIDS infection.
- Although age discrimination is widely prevalent across workplaces in South Africa, there is lack of awareness and political will to take measures against it.
- **Section 31 of the Constitution** provides that persons cannot be denied their right to practice their language. It is observed that prescription of official business language policies can lead to a hostile environment and prohibition of the use of all other languages apart from the official language prescribed in office is discriminatory.
- The principle of ‘Equal Pay for Equal Work’ outlined in the **ILO Equal Remuneration Convention in 1951** was absorbed into domestic law by virtue of **Section 6 (4) of the EEAA** as well as through the development of the **Code of Good Practice on Equal Pay Remuneration for Work of Equal Value (2015)**.

In South Africa, like India, there are no formal regulations or laws on curbing discrimination against persons on the grounds of language, religion and culture. However, applicability of fundamental rights to private entities is a lesson that India can learn from South Africa. Policy researchers suggest that there is a need to promote an inter-sectoral approach to tackling persisting barriers to equality and that greater cooperation between the various state and non-state actors is required for sustainable solutions to promoting diversity at workplaces.³² A landmark policy adopted under the Black Economic Empowerment Act 2003 called as “Preferential Procurement” aims at creating more opportunities for black and women owned enterprises by providing them preference during the letting of public tenders. Similar target based policies should be adopted by India so an affirmative action be taken to promote vulnerable communities like women and Muslim or Muslim women, Dalits, etc.

³² Bolton, Phoebe. “THE PUBLIC PROCUREMENT SYSTEM IN SOUTH AFRICA: MAIN CHARACTERISTICS.” *Public Contract Law Journal*, vol. 37, no. 4, 2008, pp. 781–802.

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