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Anti-Discriminatory Law in India Challenging Gender Bias

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ABSTRACT

Gender inequality remains a persistent global issue, deeply rooted in social, cultural, and institutional structures, with India being no exception. This paper critically examines gender inequality in India, emphasizing its systemic nature and the disproportionate impact it has on women and girls. Despite constitutional guarantees and legislative safeguards, Indian women continue to face discrimination, marginalization, and violence—manifested through domestic abuse, sexual assault, child marriage, dowry deaths, and human trafficking. The study underscores the role of entrenched patriarchal norms and religious customs in obstructing women's empowerment and justice. A significant focus of the research is on gender justice within the Indian criminal justice system, highlighting how patriarchal attitudes often influence judicial outcomes. By analyzing landmark judgments from 1979 to 2023, the paper reveals inconsistencies and biases in the handling of sexual crimes against women. It argues for urgent legal and structural reforms to promote equitable access to justice and to dismantle the societal barriers that hinder progress toward gender equality. Ultimately, the paper advocates for a comprehensive approach that includes legal reform, policy interventions, and cultural change to ensure that gender justice is not merely aspirational, but actionable.

KEYWORDS

Gender Inequality, Gender Justice, Patriarchy, Sexual Crimes, Indian Judiciary

INTRODUCTION

Gender inequality is a worldwide problem impacting people, communities, and economies on a grand scale.¹ It pertains to the unequal treatment, opportunities, and access to resources that individuals experience because of their gender, with a greater impact on women and girls. This study investigates and discusses gender inequality in India, which is ingrained in the societal structure. Studying gender inequality in India holds significance for numerous reasons. India, being the second most populous country in the world, plays a critical role in shaping global gender dynamics through its social dynamics. Moreover, gender disparity in India significantly impacts sustainable development, human rights, and social justice. By investigating the unique obstacles experienced by women in India, we can acquire understanding. Gender justice refers to the equal treatment of men and women in criminal justice, which is often denied due to patriarchal mindsets. Domestic violence, sexual abuse, human trafficking, child marriage, and dowry deaths continue to affect women in India, who suffer in silence. Social, cultural, and religious norms frequently impede women's progress. This paper examines landmark case laws from 1979 to 2023 to better understand the biased nature of judgments and orders in sexual crimes against women. It calls for immediate action to ensure gender justice is upheld.

RESEARCH QUESTION

Why equal pay for women is the need of the hour?

HYPOTHESIS

Paying women for equal work done as men is found on logic. Payment of equal wages helps in the development of the economy and society as a whole.

BREAKING THE CHAINS: ADDRESSING GENDER BIAS IN INDIA

Gender bias is a wider concept in India. gender gaps or bias can be seen in different ways such as unequal pays, sexual harassment, wages etc. are the reflection of inequality and discrimination.² This exists across different regions, sectors, types of works. There is a discrimination globally which impact

¹ Pallavi Gupta & Satyanarayan Kothe, *Gender Discrimination and the Biased Indian Labour Market: Evidence from the National Sample Survey*, 35 World Development Perspectives 100613 (2024).

² Poorna R & Parasuram. D, Study on Gender Discrimination on Workplace, 2 *IJLSSS* 527-541 (2024).

women's opportunity, career growth and overall, wellbeing. There is a gender inequality which prevent women from opportunities that are needed to create an equal, just and developed society.

Women in India constitute almost half the total population, there contribution to the economy in terms of paid labour are far lower that of a man. Historically women are suppressed and pushed to domestic duties they are burdened with work from such a young age that many are force to drop out of schools. The United Nations development programme 'India skills Report', In 2019, found that 68% of women graduates in urban India were not working in paid jobs.

RESEARCH METHODOLOGY

Considering the objective of the paper, the 'qualitative research method' is applied. Qualitative research is generally more explorative, that is dependent on the collection of verbals, behavioural or observational data that can be interpreted subjectively. The hypothesis will be either validated or refuted at the end of the paper.

FOUNDATIONS OF GENDER EQUALITY IN THE INDIAN CONSTITUTION³

As there is patriarchal society due to which there is a disparity and gender gaps in Indian society, women continue to face discrimination due to uncertainties in the legal-juridical framework, which perpetuate discriminatory gender stereotypes. Women's unequal access to the court system is clear evidence that gender discrimination continues to exist. To eradicate the evil of gender gap or to challenge its deep roots in Indian society; constitution of India provides article 14 & 15 and several grounds on which many anti-discrimination acts enacted such as equal remuneration act, maternity benefit act, sexual harassment of women at workplace act etc.

PILLARS OF GENDER EQUALITY IN THE CONSTITUTION⁴

Right to equality, guaranteed in the Indian constitution where it commands that the state shall not deny to any person equality before the law or equal protection of law. Article 15 prohibits the state from discriminating against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Indian constitution provides the fundamental rights, directive principles and structure of Indian government to promote gender equality. The Constitution guarantees equal treatment for all citizens, regardless of gender, through Articles 14 and 15, prohibiting sex-based discrimination in public places, facilities, and services, and

Article 16 ensuring equality of opportunity in public employment.

The Directive Principles of State Policy outline the government's objectives, aiming for equal pay for equal work, regardless of gender, and just and humane work conditions for all, including women. The Constitution promotes gender equality through Special Provisions for Women, which include reserved local body seats and maternity relief, ensuring women's active participation in governance and childbirth. The Indian Constitution, despite facing challenges due to social, cultural, and economic disparities, remains a powerful tool for addressing gender equality in India. It guides the government, civil society, and individuals in creating a just and equitable society. Affirmative Action Measures, such as the National Commission for Women and the National Commission for Scheduled Castes and Scheduled Tribes, are also being implemented.

CONCEPTUAL FRAMEWORK

It can be argued that recent figures may not show the best picture due to Covid lockdowns and exits from the workplace, but it is believed that such exits were temporary.³ In 2019, the female LFPR in India fell to 20.3%, according to World Bank estimates. These estimates further show that India has one of the lowest female labour force participation rates in the world, with less than a third of the women working or actively looking for a job. One of the main reasons for the discrimination at the workplace is the presence of an implicit bias. Unconscious biases, or implicit biases, are attitudes that are held subconsciously and affect the way individuals feel and think about others around them. In fact, many researchers even say that the true measures of gender bias are much worse than noted in studies because people tend to answer survey questions in a manner that will be viewed favourably by others. Researchers call it the social desirability bias, and it often results in people giving responses they believe are politically correct instead of revealing how they truly feel.

Traditional Indian women are expected to be deferential and submissive. But if a woman wants to excel in a masculine environment, she must deny her gender. She must be willing to abandon "traditional femininity and domestic duties". This not only causes women to lose their identity as they strive to "fit in" with their male colleagues by cracking sexist jokes or participating in the "not like other girls" narrative, but it also contributes to the already existent gender bias by dividing women themselves. There has been significant progress towards gender equality, but discrimination still exists. This is particularly

³ Policy Perspectives Foundation, Policy Perspectives Foundation.

evident in organisational structures and practices that favour men. And, while there are laws and rules in place to address explicit or conscious prejudices, dealing with unconscious biases may be more difficult. Worse, several studies suggest that gender bias persists even in professions where women are well represented. In reality, in many cases, those who believe that biases no longer exist may be unintentionally perpetuating them. As a result, efforts focused solely on raising the number of women in the workforce may fail to address the issue of gender disparity.

Equal Remuneration Act: An In-Depth Analysis

The Indian Government passed the Equal Remuneration Act 1976 in 1976 to address the wage gap between men and women workers. The Act aimed to provide equal wages, equal opportunities, protect against discrimination, and prevent unfair dismissal based solely on sex.⁴ It ensured that no person was unfairly dismissed based on their gender, and it facilitated equality among all sexes, regardless of gender. Section 2(e) of the remuneration act states that a woman cannot be paid less than male workers of the same grade in the same establishment if the nature of employment is not essentially different, but pay should be based on skills, capacity, and performance.

HISTORICAL BACKGROUND AND EVOLUTION OF THE EQUAL REMUNERATION ACT

Men and women were treated equally throughout the Vedic period in India, but by the time the British established a monarchy, men had taken control of society.⁵ Indian society is considered patriarchal, with regulations and religious laws that favor males in property succession, marriage, and remarriage.⁶ Family conventions assign males to farming and business, while women care for children and home tasks. Education was not regarded as necessary, and women were not permitted to study beyond basic or secondary school. Gender inequities emerged after independence, and the writers of the Constitution addressed them. Constitutional rules and regulations have established the basis for equal opportunities for men and women. Employers are also responsible for ensuring equal pay for women. Employers must provide equal opportunity for both gender to ensure social progress.

⁴ Clarity on Equal Remuneration Act, 1976, Unacademy, <https://unacademy.com/content/bpsc/study-material/labor-and-social-welfare/clarity-on-equal-remuneration-act-1976/> (last visited Apr 18, 2025).

⁵ Omkar Apugol, Analysis Of The Equal Remuneration Act And The Need For Equal Wages For Women, 17 *Supremo Amicus* 47 (2024)

⁶ Ibid.

Implementation of the Act

The Equal Remuneration Act, passed in 1976, aims to ensure equal pay for men and women workers and prevent discrimination based on sex in employment. The Act contains 18 sections and was amended in 1987. The success of education programs has led to a gradual increase in women's employment in all sectors, with gender-neutral jobs becoming more prevalent. Women are now considered equal employees to their male counterparts, as enshrined in legislations such as the Workmen Compensation Act, Payment of Wages Act, Factories Act, Minimum Wages Act, Maternity Benefits Act, Employee State Insurance Act, and The Equal Remuneration Act. These laws aim to ensure equal wages without gender bias.

International Conventions

India, a UN signatory, follows the Equal Remuneration Act, which is consistent with the criteria established by the UN, ILO, and CEDAW under the Universal Declaration of Human Rights. In 1951, the International Labour Organisation (ILO) conducted its 100th convention on Equal Remuneration for Men and Women Workers of Equal Value. This convention, one of the ILO's eight fundamental conventions, empowered member governments to achieve their objectives through legislation, wage determination procedures, or collective bargaining agreements.

MATERNITY BENEFIT ACT: A COMPREHENSIVE REVIEW

Women confront severe impediments to paid labour around the world, generally earning less than males and working in insecure, dangerous, and low-wage occupations.⁷ This is largely due to the stereotype of women as housewives, carers, mothers, and secondary income providers. Women are frequently responsible for children, domestic chores, and unpaid community service, limiting their possibilities for quality paying employment. Salaried employment, on the other hand, is critical for women's empowerment because it decreases economic dependent on male relatives and spouses while also providing departure routes in times of domestic violence. Economic pressure, inequities, or poverty are frequently cited as reasons for low labour force participation, putting women under additional strain. Employment benefits, notably maternity leave, are important complements to women's salaried jobs because they enable them balance work and family life. As a result, greater discussion and analysis of maternity benefits are required in India and other

⁷ CSR, ND, Analysis on Effectiveness of the Implementation of the Maternity Benefit Act, 1961, NCW, GOI (2014).

nations.

The Maternity Benefit Act (MBA) is an Indian statute passed in December 1961. It controls women's employment in particular establishments for a set amount of time before and after childbirth, as well as maternity benefits.

ANALYSIS OF THE IMPACT OF MATERNITY LEAVE ON WOMEN'S EMPLOYMENT

The MBA covers female employees in shops or establishments with 10 or more people, including factories, mines, plantations, and equestrian, acrobatic performances. It also covers casual and daily wage workers. Maternity benefits are available for women who have been employed 80 days or more in the 12 months preceding delivery. The MBA provides female employees with 12 weeks of maternity leave, with six weeks preceding delivery. In cases of miscarriage or medical termination, employees can take six weeks after the miscarriage, and two weeks after a tubectomy operation. Additionally, female employees suffering from pregnancy-related illness can receive up to one month of additional leave. The MBA stipulates that female employees are paid their average daily wage by their employer during maternity leave, as well as after miscarriage, tubectomy operation, or pregnancy-related illness, as per the standard wage.

The Indian Maternity Leave Act (MBA) prohibits employers from dismissing or discharged employees during or on maternity leave, and from giving notice of dismissal on the day the notice expires during maternity leave. The Act also provides full pay (100%) for women on maternity leave, at the rate of their average daily wage. This progressive aspect of Indian law is in line with ILO convention No. 183, which states that maternity cash benefits should be based on previous earnings and not be less than two-thirds of the woman's previous earnings.

Comparative Analysis

The Maternity Benefit Act (MBA) and the Equal Remuneration Act (ERA) are two significant pieces of Indian law aimed at promoting women's working rights, but they target different areas of gender equality. The MBA prioritizes offering maternity benefits to female employees, safeguarding their health and well-being during and after childbirth. It provides women who work in factories and businesses with 12 weeks of paid maternity leave, as well as prenatal and postnatal care. This act seeks to safeguard women from work uncertainty due to maternity. In contrast, the ERA seeks to end wage discrimination by requiring equal pay for equal work, regardless of gender. It applies to all businesses and

requires employers to maintain transparency in their remuneration methods.

Both statutes are overseen by the Ministry of Labour and Employment, and infractions can result in penalties. While the MBA addresses women's specific needs during pregnancy, the ERA tackles systemic conventions that undervalue women's work, particularly in industries where women are disproportionately employed. Despite its relevance, both statutes confront implementation issues; the MBA may suffer from a lack of awareness, whereas the ERA must deal with deeply embedded cultural norms that perpetuate wage discrepancies. Overall, both pieces of legislation are critical for promoting gender equality in the workplace, but successful implementation and awareness are required to realize their full potential.

GAPS IN THE EXISTING LEGAL FRAMEWORK THAT MAY HINDER EFFECTIVE ANTI-DISCRIMINATION MEASURES

A genuinely fair society is undermined by judicial stereotyping and gender bias, which affect judges' views of roles, behaviour, and credibility based on gender. These prejudices impede the fundamental principles of justice and cast doubt on the idea of equal treatment before the law. The use of stereotypes in court decisions illustrates how judges associate certain traits with social groups, and how the Indian legal system fails to confront judicial stereotyping.

There are certain specific criticisms regarding the current legislation:

1. *Equal remuneration act*⁸

- a. Any bonus paid under this Code that is not covered by employment terms, awards, settlements, or court or tribunal orders.
- b. Wages do not include the cost of housing, light, water, medical care, or other services prohibited by a government order.
- c. Employer contributions to pension or provident funds, including any accrued interest.
- d. Suggested creating a basic description allowing laypeople to better understand the legislation, as it is

⁸ Dr. Shashi Bala, *The Equal Remuneration Act, 1976: Identifying the Affirmative Initiative & Challenges in the Implementation of the Act*, VV Giri National Labour Institute, GOI (2019).

intended for everyone, not only legal professionals.

2. Maternity benefit Act

The fundamental purpose of implementing maternity leave regulations is to recognise and preserve women's self-esteem as they become pregnant.⁹ The number of women working in both the public and commercial sectors has risen considerably as a result of the beginning of globalisation, improved awareness among women, and increased education. Thus, it is critical that legislation be enacted and that female employees be allowed maternity leave. In the Indian context, this is the primary purpose of the Maternity Benefit Act of 1961.

The Act outlines in detail the various requirements governing the benefits offered to female employees while on maternity leave. According to the Act, an employer is not allowed to knowingly interact with a woman at work for six weeks following her delivery or miscarriage. It is now anticipated that the Labour Ministry will require a 26-week maternity leave for both the public and private sectors. Still, a lot of women who work in the private sector suffer as a result of variations in how the maternity benefits are applied. There is proof that the management frequently fires female employees through layoffs before they file for maternity leave.

- a. One of the major issues concerning the implementation of the Act is the lack of proper adherence to the statute by the employers. Despite the prevalence of this statute over any employment contract which provides for a reduced period, it is very common practice in the employment contracts to provide for a lesser period or to make the maternity leave unpaid.³¹ The employers mostly don't pay any heed to the statutory provisions and leave no scope for bargaining. The employer doesn't take much adequate measures to ensure maternity protection. Increased medical costs happen in relation to a child who is not being taken care of by either of the parents. These costs are mostly borne by the employer through the medical benefits to dependents, and can be avoided or reduced by providing maternity benefit.³² They tend to disregard the maternity protection allowance as it involves the paying of wages to the female workforce who has opted for maternity leave. Under this Act, a female employee is entitled to 12 weeks of paid maternity leave. The employer hesitates to give the financial support because he/she does not get the requisite profit due to the absence of the female employee. Thus, it provides

⁹ Rubanya Nanda & Debadatta Bose, *Maternity Benefit Act And The Private Sector: Implementation Issues*, 1 *NUJHS JRS* 137 (2016).

for a major drawback in the accurate implementation of the Act. The employer should adhere to the statutory regulations so that the maternity protection can be ensured.

- b. After discovering that the worker was on maternity leave, the employer acted improperly. The most severe layoff action against the female employer is started by the company even before she requests maternity leave. This is being done in order to absolve the responsibility and liability for approving maternity leave. ³⁴ This is done to prevent giving female employees cash benefits during their maternity leave.
- c. Employers, particularly in the private sector, are sometimes hesitant to hire women because they believe they may need to take maternity leave in the future. As a result, it diminishes the likelihood of hiring female employees. This is more typical in the private sector, as employers must bear the costs associated with women who opt to take maternity benefits.

CONCLUDING REMARKS ON THE OVERALL EFFECTIVENESS OF THESE LAWS IN PROMOTING GENDER EQUALITY IN THE WORKPLACE

Keeping all of the previous arguments in mind, I wishes to elaborate on the need of creating comprehensive laws that satisfy the communal needs of all The aforementioned initiative to increase the maternity benefit is definitely excellent, but there must also be legislation governing paternal payments. The implementation of a paternity bonus will encourage fathers to care for their children while easing the burden on mothers.

Proposed Solution

1. India should follow Sweden's lead and provide two months of paternity leave and 16 months of shared paternal leave. Several weeks of paid parental leave may also be awarded. The Swedish model shown that for each paternity leave taken by the father, the mother's income increased by 6.7% over the next four years.
2. Proper Orientation Programme There should be a regular orientation programme in the workplace for both employers and employees. This should be done by specialists to ensure that female employees are fully aware of their claim to maternity benefits.

3. Compliance must be followed: The business must provide the labour inspector with information about female employees, including their maternity leave records, in the form of a report or other document. It should also provide details on the maternity leave stipend and other employer-provided benefits. This should occur on a frequent basis. The inspector should pay frequent visits to the workplace to guarantee compliance.

CONCLUSION

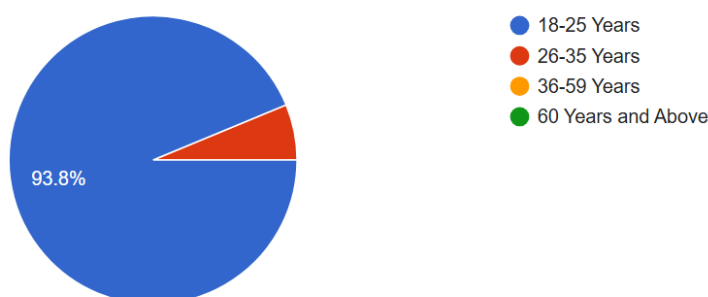
Despite the government's concerted efforts to provide maternity protection, actual implementation varies by location. As a result, a quarterly survey and a grievance redress mechanism are necessary to identify and address problems with the Maternity Benefit Act.

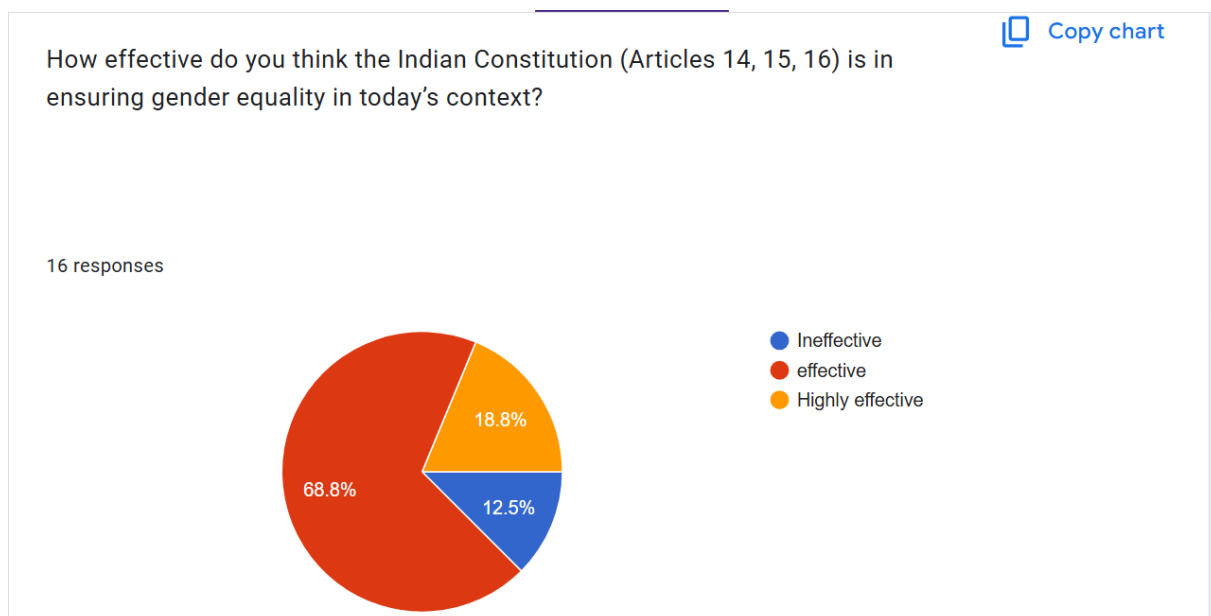
Women's families should not urge their mothers to take a career vacation from work, but should instead support and aid them in achieving financial independence. In this sense, both the private and unorganized sectors should be taken into account. Moms have new hope now that the Maternity Benefit (Amendment) Bill, 2016, has been passed. It aims to widen the notion of "mother." and increasing maternity leave for women. Although this is a positive step forward, it is only the beginning of a bright future in which these benefits will culminate in a faultless gender-sensitive maternity-benefit system based on shared responsibility, particularly in the business sector.

Age Group

16 responses

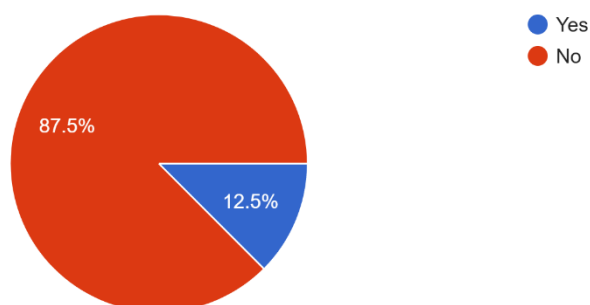
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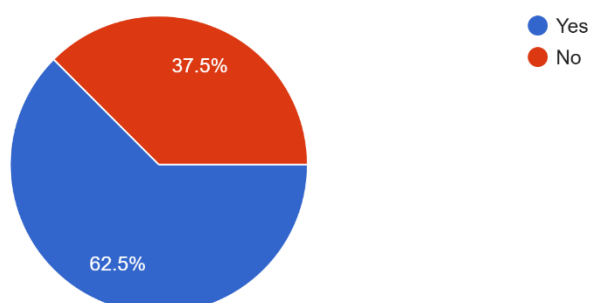
In your opinion, do existing gender laws adequately address both direct and indirect gender discrimination?

16 responses



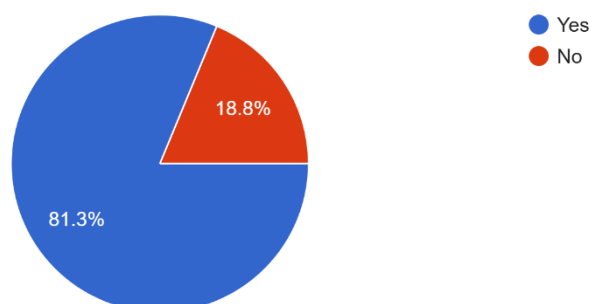
Are you aware of the Equal Remuneration Act, 1976?

16 responses



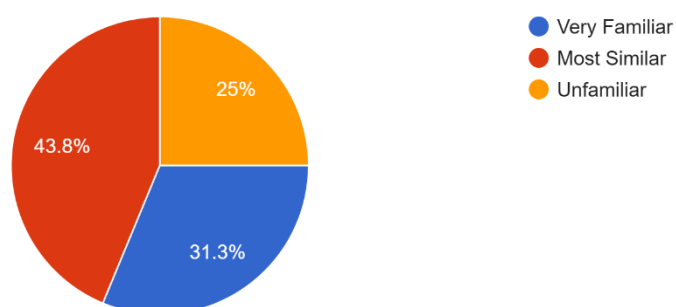
Should India implement a mandatory paternity leave policy like Sweden

16 responses



How familiar are most employees in your sector with gender equality laws (ERA, MBA, POSH, etc.)?

16 responses



Do you think Indian courts are consistent in applying gender-neutral principles in sexual assault and domestic violence cases?

16 responses

