

C190: ILO's Unrealized Milestone

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Abstract

C190 is the first international treaty on violence and harassment in the world of work. By introducing a common framework for action and recognizing the collective responsibility of institutions, C190 has provided the world with an exceptional opportunity to battle violence and harassment at the workplace. Further, C190 is the first international legal standard that specifically addresses and regulates violence and harassment against women in the world of work. However, this convention has not been met with the expected amount of enthusiasm, and to date only 10 nations have ratified the convention. India is one among the many countries that are yet to ratify it. The ratification of C190 would entail completely redrafting the labor laws for India, which unfortunately seems like a distant vision. This paper acknowledges the urgent need for India to adopt policies and laws that will guarantee the right to equality and non-discrimination in the world of work, as proposed by C190, while also suggesting practical measures to ensure effective implementation.

Key Words: *World of work, International labor treaty, Framework for action, Labor jurisprudence, Equality, Non-discrimination*

Introduction:

Violence and harassment are intolerable in any space and at any time. A better future of work must be free of violence and harassment. On June 25th, 2021, Convention 190 (C190) - the first international treaty on violence and harassment in the world of work - came into force. It covers all workers, irrespective of their contractual status.

Although there exist several international laws that protect certain sections against workplace violence and harassment, there were no internationally accepted definitions of the terms “violence” and “harassment” in the world of work. Further, these laws lacked practical implementation guidelines and redressal mechanisms against violence and harassment. While recognizing the right of every individual to work in an environment free from violence and harassment, C190 proceeds to define violence and harassment as “*a range of unacceptable behaviors and practices*” that “*aim at, result in, or are likely to result in physical, psychological, sexual or economic harm*”⁵⁵. The main breakthrough of the convention is that it extends the scope of protection of individuals against violence and harassment by expanding the concept of the world of work beyond just the physical workplace. To date, only 10 countries have ratified this momentous convention, and India is not one of them.

The Desirability of C190:

Considering that violence and decent work cannot co-exist⁵⁶, C190 is a milestone in the history of the ILO. The convention directly addresses the impact that violence and harassment have on an individual's wellbeing, dignity, mental and physical health. By introducing a common framework for action and recognizing the collective responsibility of institutions, C190 has provided the world with an excellent opportunity to combat violence and harassment at the workplace.

One of the greatest strengths of C190 is that it has broadened the definition of a “worker”, and increased the scope of legal protections available. It has taken clear cognizance of the disadvantages presented to those workers who do not fall under the conventional definitions of “full-time workers”. It attempts to provide the social and legal protection that has been systematically denied to

⁵⁵ *Series of technical briefs : Violence and harassment in the world of work*, (March 3, 2020) <https://www.ilo.org/global/topics/violence-harassment/resources/WCMS_738113/lang-en/index.htm> accessed February 3, 2022.

⁵⁶International Labour Office. Governmental Body. Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work. 328th Session, Geneva, 25 October 2016 GB.328/INS/17/5, paras 4–5.

unorganized and informal workers for decades. Unlike most of India's labor regulations, the contractual status of the worker will not affect the applicability of the convention.

Furthermore, C190 has broadened the definition of a "workplace" beyond just the physical place of work. As per the convention, the workplace also includes places linked to or arising out of work. It does not necessarily need to be a physical site provided by the employer, and can also include private and public spaces, such as work-related trips, training, social events, commutes, etc. As such, during the era of remote working, C190 also guarantees that protection against violence and harassment is extended to the confines of homes. This protection is also applicable to informal and unorganized workers such as agricultural workers who might work out of their private property, or street vendors who occupy public spaces.

C190 holds the potential to strengthen legislative conversations surrounding several unrecognized and unaddressed issues in the labor sector. Topics like the reproductive health of workers have not been fully addressed in the past, which is a crucial aspect with regards to gender-based power relations. However, the preamble of C190 has recalled and reaffirmed several other conventions like the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. When these previous conventions are put together with C190, it leads to cogent arguments in favor of the promulgation of other specific social and legal protection measures.

C190 is celebrated for being the first international legal standard that specifically addresses and regulates violence and harassment against women in the world of work. It acts as a guiding force on what the future of work should look like, especially by developing norms to create a safe working space for vulnerable groups like women. The convention acknowledges that gender-based violence

affects women disproportionately⁵⁷, and calls for the adoption of national laws and regulations on the right to equality and non-discrimination⁵⁸. It attempts to make workplaces free of patriarchal violence - which manifests in the form of women being harassed and exploited - by urging signatories to provide access to gender-responsive, safe and effective support services and remedies.⁵⁹

Therefore, C190 can be instrumental in restoring the rights of all workers, especially those groups who tend to be targeted owing to perceived or real differences in religion, caste, gender, sexual orientation, etc., by calling for social and legal protection.

Reasons Behind India Not Ratifying C190:

While ILO's C190 was lauded for having been the tool to revolutionize modern labor laws, and despite massive efforts aimed at campaigning, it was not met with the enthusiasm as was expected as to date only 10 nations have ratified the convention⁶⁰, with India being one of the many countries that are yet to ratify.

While Indian government authorities have not expressly cited any reason for not being party to the convention, there appear to be several plausible reasons as to why this is. Although the ILO did a commendable job in defining employment and also expanding the scope of it, much of India's most vulnerable workers belong to the unorganized sector. According to the Union government data, there is an estimate of 50 crore workers in the organized and

⁵⁷ United Nations High Commissioner for Refugees, "Gender-Based Violence" (UNHCR) <<https://www.unhcr.org/gender-based-violence.html>> accessed February 3, 2022.

⁵⁸ Convention concerning the elimination of violence and harassment in the world of work (Adopted June 2019, entered into force 25 June 2021) 206 UNTC art 10.

⁵⁹ "All You Need to Know about ILO Convention 190 and ..."

<<https://www.akinamamawaafrika.org/wp-content/uploads/2020/03/AKINA-ILO-Convention-190-on-Violence-and-Harassment-.pdf>> accessed February 6, 2022.

⁶⁰ Ratifications of c190 - Violence and Harassment Convention, 2019 (No. 190)" (Ratifications of ILO conventions: Ratifications by Convention) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A11300%3A0%3A%3ANO%3A%3AP11300_INSTRUMENT_ID%3A3999810> accessed February 4, 2022.

unorganized sector of which 90 per cent are in the unorganized sector.⁶¹

At present, India has no legislation governing the maltreatment of workers in the unorganized sector which is deeply concerning as many of these people are subject to inhumane treatment, sexual harassment and abuse. The present legislative framework that exists to govern sexual harassment at the workplace - which is The Prevention of Sexual Harassment (PoSH) at Workplace Act - has gotten its fair share of criticism for not being adequately implemented. The Act only provides for guidelines in the formal sector but seemingly ignores the welfare of the majority of workers who are employed in the unorganized sector. In these socio-political circumstances where India lacks basic structured legislation to address these issues, India cannot commit to a binding convention such as C190.

Although India recognizes international law, all too often there is no clear view of the scope of its application or its enforcement due to rampant corruption and red-tapism. Due to the situation wherein existing legislations such as the PoSH Act are falling behind, it cannot be guaranteed that India will efficiently be able to uphold and enforce C190. While the research shows that abuse and harassment at work can occur as a consequence of unequal power relations, this does not negate the fact that people in positions of power may also hold marginalized identities, thus affecting their experience at the workplace. Gender, class, caste, sexuality, ethnicity and religion are intersecting factors, and can thus create situations where even high-ranking female employees can be the victims of harassment and mistreatment at the workplace. Through this, it is evidenced that there are several factors to look into with regard to safety at the workplace.

In every sense, the ratification of C190 would entail completely redrafting the labor laws for India, which

unfortunately seems like a distant vision. With deep-rooted issues such as the wage gap, poverty and rampant exploitation of workers, enforceability is the biggest barrier. Additionally, implementation of such a convention would also call for increased participation by victims. This is difficult to achieve as it has been exhibited that whistle-blowers are constantly met with the fear of losing their job, thus losing their livelihood.

One of the more commonly faced issues concerning international law is the vast gap that exists between theoretical existence and enforcement and implementation. Additionally, there is a lingering unclarity regarding the consequences of violation or non-compliance. While conventions are legally binding on parties who have ratified them, much of the enforcement lies in the hands of the judiciary within the State itself. This, yet again, circles back to the lack of harmony between domestic and international law where they are treated as two different entities. As long as international law is read separately from domestic law, there is almost no way by which a nation can fully benefit from its provisions.

One of the social and diplomatic impacts of non-compliance is the public image issue. India has always been a key player in the ILO and hence noncompliance with conventions will reflect extremely poorly on the nation as a whole. The possibility of failing to comply with international law may lead to sour diplomatic ties between nations involved and hamper global cooperation and overall leads to a poorer image of the nation. This is one of the reasons that countries such as India must value conventions and do their best to work towards their implementation.

Making India C190 Compliant:

Making India compliant with C190 will be a long-drawn process. Reading domestic law in line with international law is considerably the best way to ensure compliance. As of today, these legal systems are viewed as completely different entities. It is notable that according to dualism theory, international law and municipal law represent two

⁶¹ Jadhav & R, "25% Of Workers in Unorganised Sector Registered on e-Shram Portal" (*The Hindu BusinessLine* December 15, 2021) <<https://www.thehindubusinessline.com/data-stories/data-focus/25-of-workers-in-unorganised-sector-registered-on-e-shram-portal/article37963659.ece>> accessed February 4, 2022.

entirely distinct legal systems⁶². The fundamental issue with regard to effective implementation is that domestic courts may choose or be obliged to ignore international law until it is incorporated into domestic law⁶³ making it one of the biggest challenges in modern times.

For India to fully and efficiently enforce treaties, India must modify domestic law to accommodate international law as the binding force is the former as iterated by Justice Krishna Iyer.⁶⁴ According to the Constitution of India, treaties that are ratified do not automatically have the force of law in domestic courts, but the Constitution also provides that the Indian Government adheres to its treaty obligations⁶⁵.

To incorporate treaties, there are several approaches that India may take.

- Wherever necessary, the Indian courts may refer to international treaties and conventions when it comes to forming legislations. For example, just as how the courts referred to international conventions⁶⁶ as precedents with the Vishaka case, the PoSH Act can be amended to meet the requirements under C190. Although the judiciary is not empowered into the domestic laws in pronouncing its decision in cases concerning international law.⁶⁷
- For India to enforce C190 and other international law instruments, India must first study and cite international treaties and instruments. By citing more treaties strengthens enforcement on a global scale. Additionally, citing more treaties also helps strengthen its influence of it on domestic law. In India, the judges can use the principle of systemic integration and carry out integrationist

interpretations of international law. Therefore, judges in India can potentially elevate themselves into architects of the law that is consistent with international legal systems⁶⁸. By incorporating and becoming a party to more treaties, India will be in a better position to enforce international treaties.

- India should also consider working on a document that outlines a framework of sorts within which international law may be applied. An expert panel of scholars consisting of judges and legal scholars can be formulated to look into the task of establishing such a framework to ensure a harmonious existence of international and domestic law.

Conclusion:

There is an urgent need for India to adopt policies and laws that will guarantee the right to equality and non-discrimination in the world of work, which is precisely what C190 calls for. The holistically expanded definitions of "worker" and "workplace" brings about a nuanced understanding of the workplace and the power dynamics that operate in it. This allows for the potential to introduce and call for a guarantee of social and legal protection that have been denied to systemically marginalized groups for years.

India's tolerance towards harassment, violence and abuse at the workplace is not one-dimensional, as it fuses with intersecting factors such as class, caste, ethnicity and sexist gender roles. This manifests into systemic issues such as the wage gap, rampant exploitation of workers, and/or rising poverty rates, and gender inequality. These discriminatory and abusive beliefs that exist in the workplace must be condemned and overhauled, and C190 has a crucial role to play in mitigating these conditions. India's decision to not ratify the convention is indicative of other underlying political forces that refuse to reckon with the inequalities that exist in various public and private spaces, thus making

⁶² Ahuja VK, *Public international law* (42nd edn LexisNexis 2016).

⁶³ *Ibid*

⁶⁴ Anmolan P and Ahmad F, "Is the Supreme Court Confused about the Application of International Law?" (The Wire September 28, 2018)

<<https://thewire.in/law/supreme-court-international-law>> accessed February 5, 2022).

⁶⁵ Tandon MP and Anand VK, *Public International Law & Human Rights* (Allahabad Law Agency 2003).

⁶⁶ Ahuja supra 8.

⁶⁷ Agarwal SK, "Implementation of International Law in India: Role of Judiciary" [2010] SSRN Electronic Journal.

⁶⁸ D'Aspermont J, "The Systemic Integration of International Law by Domestic Courts: Domestic Judges as Architects of the Consistency of the International Legal Order" (2012) 4 *The Practice of International and National Courts and the (De-)Fragmentation of International Law* 161.

India “C190 compliant” a challenge. However, if India decides to make the bold decision of making futuristic strides towards a healthier workplace, the adoption and implementation of C190 is a triumphant place to start.

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