

E-E

Survey on Equal Employment Opportunity

2019

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The laws and references are provided keeping in view the Acts mentioned in the references section. This report does not cover implications and references drawn from each and every law of India and talks mainly from the views of the mentioned Acts. The opinion given is a reference point and may not constitute legal or business advise.

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Equal Employment Opportunity

Equal employment opportunity is not be seen through the eyes of the law, but has to be seen through the heart of humanity. Equality isn't about giving preferential treatment to someone or depriving rights to someone, it is about bringing in a balance which neither deprives nor prefers anyone.

In the context of a workplace, equal employment opportunity has to be seen on a much broader scale than what our laws mandate us to, the purpose of the laws is not to set the outer limits of equality at workplace, but to provide guidance and a direction.

Equal employment is an ever expanding field and requires a continuous monitoring mechanism to ensure that the practices, systems and culture of a workplace fulfils the goal of staying on track.

This survey has tried to talk about a few aspects which form part of the equal employment at workplace, there are yet many more areas which foster equality and can be judged, however for the present moment, we have focused on a few areas to highlight the reality in understanding and practice of being called an Equal Employment Opportunity Provider.

1. Demographics & Methodology

The survey, which ran in the form of a public survey collected data from General Working Public about the systems and processes their workplaces demonstrated in relation to equal employment. Data was collected from 20th January 2019 to 20th February 2019 using online medium.

In order to spread awareness, the survey was run in the form of a quiz, and correct responses were displayed to participants at the end of submitting the entire questionnaire. As a result, there were instances of individuals taking the exercise who weren't currently employed, or individuals who took the survey more than once.

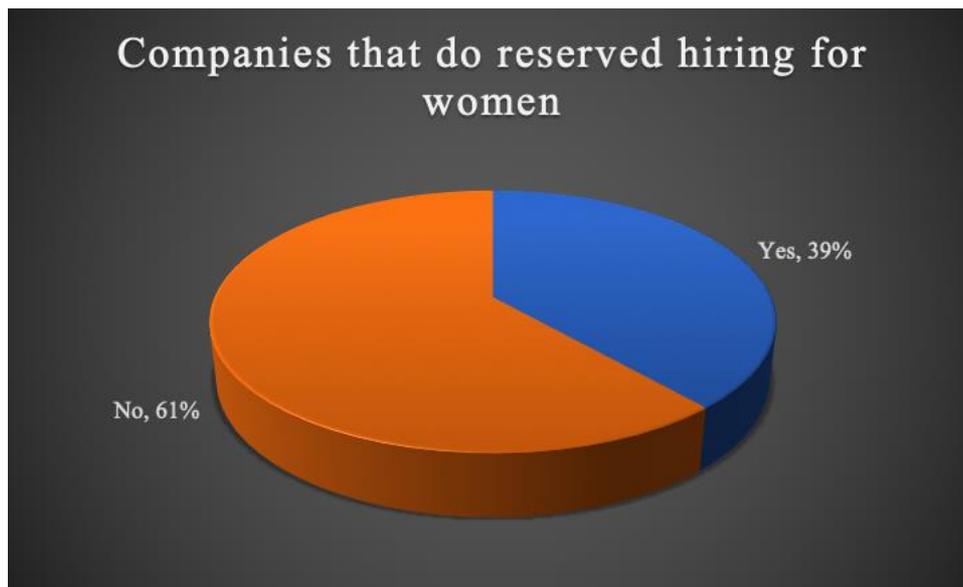
A total of 535 responses were received, post various validations we chose the data of 389 companies (from India) to analyse the corporate landscape in India with relation to equal employment opportunity.

Of the total 389 companies, a healthy mix of Indian origin and Multinational companies employees participated, giving us an understanding of the corporate Indian landscape rather than of Indian or Multinational organizations.



2. Reserved hiring for women

This is not a straightforward question as it seems, this question is actually trying to understand the cultural mind-shift, the maturity of an organization and the far sightedness of human race itself.



On one hand, it is appropriate to ensure that women are given an opportunity to be included in the workforce, and if they have been deprived of workplace equality because of intentional or un-intentional progress in the society, this gap should be fulfilled by bringing in women on reserved vacancies only for women.

At the thought of it, there is nothing wrong in this and neither is there anything right about it, so let us look at the legal perspective in India before we proceed further

The legal interpretation

Article 15 of the Constitution of India mandates prohibition of discrimination on grounds of religion, race, caste, sex or place of birth by the state and so does Article 16, which mandates equal opportunity in matters of public employment by the state. When we look at Equal Remuneration Act, it too talks about equality, but mentions that employment cannot be denied to women on the grounds of Gender and does not say the same for men. Even if we look at any other law which talks about employment conditions, none talk about reserved hiring for women being something not acceptable. Therefore, practically speaking, it is not really illegal if a private enterprise takes out reserved vacancies for hiring women in its workforce, the same cannot be said true for organizations that are Government run or can be perceived to be Government run, unless there are specific notifications that the government takes out for reserved hiring of women, as that is something it is permitted as per law.

Conclusion

As we started saying, there is nothing illegal about doing reserved hiring for women in private organizations in India, however, this goes against the very framework of equality. The concept of men being given opportunity over women over centuries has led us to this time when despite the advancement in human race, we are still dealing with the basics of having a fair representation of women in the workplace. The method of reservation and giving opportunities to women should be looked at in a different mind set rather than only fixing roles which will be manned only by women, reserved hiring is self-defeating to the organization.

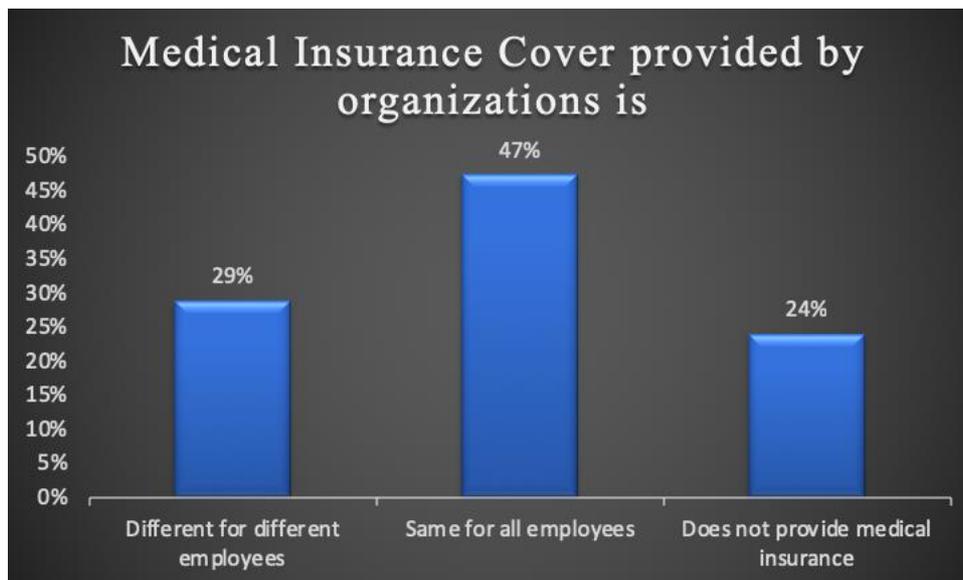
The idea should be to let all candidates apply, but give the women applicants an advantage over men in terms of experience or qualifications or other criteria that are essential for performing that role. The gap between the minimum requirements and what is essential for the role should be filled up by training or upskilling the women applicant if they get selected. When we do reserved hiring, we are in a way not really focused at upskilling, but more focused at filling vacancies with already trained applicants, the entire purpose is to provide opportunities to women who have not been fortunate to achieve their goals whether it be the right position or whether it be the right company or education. When women are hired for specific roles, the ability for them to grow in the organization is also curtailed, as they are seen and perceived as meant for a specific role only.

We understand that the actual answer to and approach may be a mixture of lot of things, but, in our view, a straightforward reserved hiring approach of women in the organization is not demonstrating Equal Employment Opportunity.

3. Medical insurance cover to employees

What is the purpose of medical insurance? If we can understand the basic premise for the need to provide medical insurance cover to employees, it will be easier to understand that whether as an organization we are demonstrating equal employment opportunity or not. The basic intent of medical insurance is to provide medical expense benefit to employees should they need medical assistance irrespective of the fact that the need for medical attention may arise as a result of work or not. The purpose is to provide the employee a cushion, and an ability to be provided medical care so the employee can ensure their health is taken care of in the fastest possible manner and in the most reasonable medical facilities available in the given cost without having to spend too much from personal savings.

With this perspective, what should an organization do when it comes to medical insurance. Let us look at the legal interpretation and then discuss further.



The legal interpretation

Broadly speaking the topic of compensation on medical grounds to an employee is talked about in the Workmen Compensation Act and Employers Liability Act and somewhat indirectly in the Factories Act. All of them are mainly talking about serious illness or bodily injury caused as a result of the work conditions. Given the broad scope that medical insurance covers, it is not only restricted to serious illness or bodily injury, but it also covers cases where the need for medical cover may arise out of non-work related situations. Therefore, there is absolutely nothing illegal that an organization is doing if they choose to not provide medical insurance cover to their employees.

Conclusion

The rationale for providing medical insurance cover does not rest on legal mandates, organizations that have understood the purpose spend quite a lot of effort in providing the best insurance cover to their employees, the reason being for ensuring higher productivity. A fit and healthy employee with access to adequate medical attention without the fear of dipping into savings comes in as a much more productive resource in the organization than an individual who may not be able to have access to adequate medical attention. This is precisely the reason a lot of organizations have extended this facility to immediate family members of an employee too, given the thinking that immediate family situation weighs on the productivity of an employee.

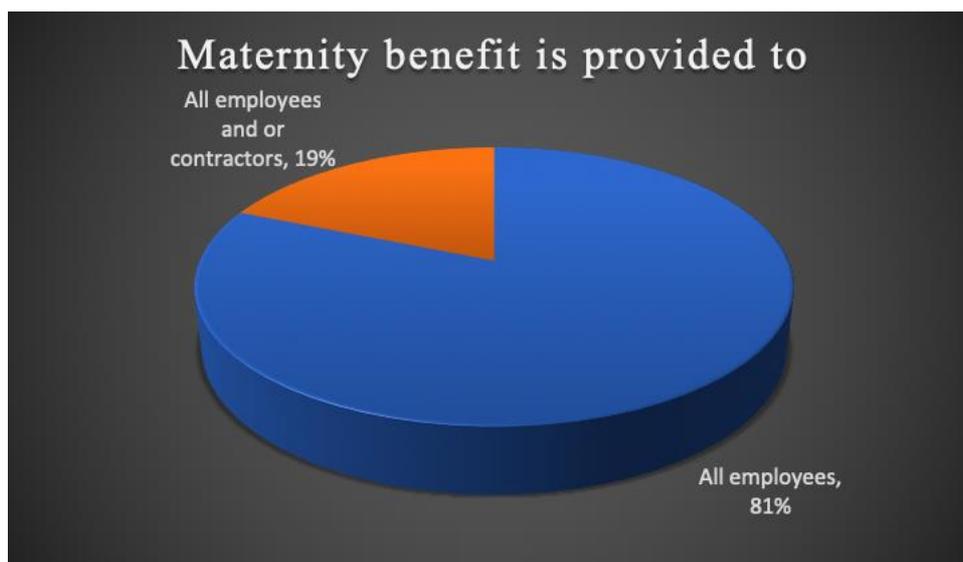
With this background in mind, while it may not be illegal to not provide medical cover, it doesn't seem to be an equality promoting practice, as access to adequate medical facilities is greatly hampered without having medical insurance. This is the reason, organizations that provide different amount of medical insurance cover are seen as promoting inequality, the purpose is to provide adequate medical facility, so the cover should be same, irrespective of the position one holds or the hierarchy an employee represents in the organization. Access of adequate medical facility should be same.

In our opinion, same medical insurance cover should be provided to all employees irrespective of their salary, hierarchy or role in an organization, after all, the cost of saving a life should be same and should not be measured by the salary or designation one holds.

4. Maternity benefit policy

This by far is one of the most important and most basic ways of demonstrating equality. The purpose of providing maternity benefit rests on the premise that women need to not only bring their health to an appropriate level for returning to work, they also need to take care of the baby which is an biological process of human race. Having to undergo career or financial disadvantage as a result of maternity seems to be one of the most blatant forms of inequality being demonstrated by organizations.

However, as we get data we realise that there is a thin line between being seen as compliant and being someone who demonstrates equality. The question asked rested on a simple yet very prevalent practice in corporate India, that is relating to contract workforce in organizations. With this practice of contract staffing begin a multi-billion dollar industry in India, and the focus on contract staff eluding the audit team or employer branding team, it is interesting to understand whether the organizations present a face which demonstrates equality at their workplace. Let us understand the legal perspective.



The legal interpretation

There is a specific law called Maternity Benefit Act which talks about benefits and how maternity should be treated at the workplace. Not only that, even the Factories Act and Shops and Establishment Acts (every state would normally have this) talk about maternity. When we talk about eligibility, while the organization per se may not fall under the purview of an Act, for example, the Maternity Benefit Act covers only organization having 10 or more employees, which women are covered is fairly covered. Almost all Acts talk about contract staff being covered in the gambit of the Act, which typically means that the 19% organizations who have chosen not to extend maternity benefits to their contract staff are not following the law. It would be wise for companies that have not been providing maternity benefit to contract staff to consult a labour lawyer and get into correction mode.

Conclusion

In our view, every women working, whether as an employee or as a contract staff should be provided the maternity benefit, after all, if we cannot even demonstrate equality on basic human processes, what good is talking about being an employer which donates lakhs to CSR or spends millions in branding. Maternity benefit being provided to all women irrespective of their employment type is a sure way of demonstrating equal employment opportunity.

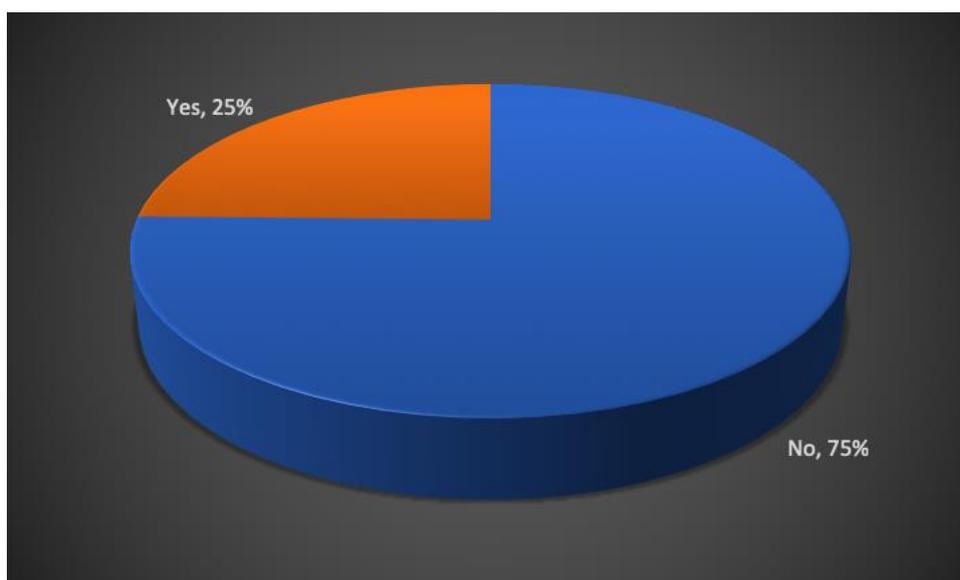
5. Can one go against the directions of the boss and still be promoted?

The idea to talk about this aspect is to talk of organizations culture and understand whether it propagates equality of intellect. Unless this question is answered by individuals from the Armed Forces where going against the boss is a breach of code of conduct, the corporate world actually thrives on diversity of ideas and difference of opinion, after all organizations are working for a goal which can have ideas flowing in from any quarter and that is precisely the reason so much work is put on employment engagement activities and ideation initiatives in organizations.

This parameter is also reflecting on a fact that knowledge is superior than hierarchy, which is an essential premise of the knowledge economy we are all part of. In a mature workplace, views, knowledge and intellect are paramount to decide what actions need to be taken and whose word is the final. Whereas, on the other hand, hierarchy still plays an important role in deciding whose actions should be taken as final in immature organizations. The notion of superior in hierarchy is equal to superior in knowledge is not something mature organizations follow.

But, what has that got to do with equal employment, equality in employment is about giving a level playing field for the work we do and being accorded respect for what an individual brings on the table “as an individual”, equality is respecting not only physical individuality (which has a lot of laws protecting them), but is also protecting a personas intellectual individuality.

This, in the true sense is equality, the ability to exercise my intellectual ability without having the fear of a backlash on my career. Let us talk a little on the legal side to take this further.



The legal interpretation

This area is very complex to be covered under a legal framework, however in certain countries there is focus on trying to address this issue by bring in laws relating to bullying and harassment at the workplace. India hasn't been working on that side yet, though certain laws relating to women make sexual harassment illegal, only harassment or bullying at the workplace isn't yet a legally protected benefit to the Indian workforce. Therefore an organization not typically providing an opportunity to employees getting promoted as a result of standing up against their boss for valid or invalid reasons isn't something illegal.

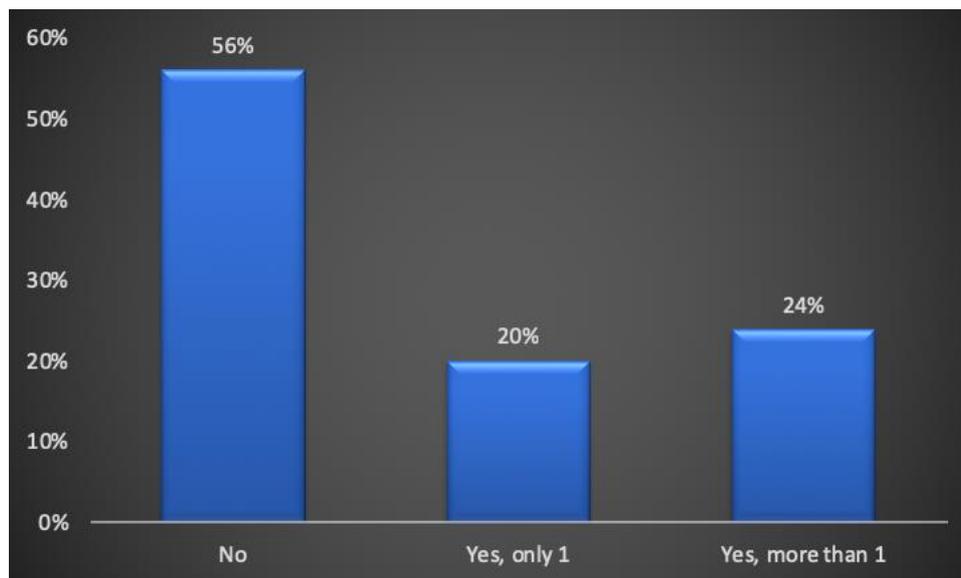
Conclusion

Having said that, equality in its true sense is missing if it doesn't include intellectual freedom and if it doesn't recognize diversity of thinking that is going against a person higher up in hierarchy. There is no pressing need legally or morally (not many civil society NGOs are working for this) for focusing on this area in organizations, yet, there exists a strong business case for providing intellectual equality for businesses to be successful. After all, hierarchy should be treated as information flow channels and not as an intellectually superior race compared to subordinates. One never knows, a subordinate unequally treated for their intellectual ability may create the next big Eureka in the corporate world.

6. Does your company have bathrooms for differently abled people?

The starting point is to mention that the term bathroom here refers to restrooms or commonly known as “Toilets”. An important discussion on this subject would be from a point of view that we ideally wanted to respond “Not Applicable”, which means we have no person who is differently abled, so the need for providing a separate infrastructure doesn’t really arise. Should the organization plan to hire the person, it shall definitely make arrangements. This is more like a chicken and egg situation, who comes first, the chicken or the egg. In a way this is an appropriate plan, but what happens if a visitor with differently abled needs comes to office, how does the organization expect to manage this situation.

We moved a little forward and asked if the organization provides only 1 or more than one Toilets for people with disabilities, a percentage opted to say only 1, now unless the organization has only 1 “Toilet” for all other staff in the organization, this provision of only 1 “Toilet” would be seen as not demonstrating equality at workplace. Let us take a legal view before proceeding further



The legal interpretation

The topic of differently abled individuals is covered in The rights of persons with disabilities Act, while the Act does not necessarily talk about how many restrooms should be there or explicitly state that every company not having a Toilet for disabled person is breaching the law, it does have a section which states that every building, infrastructure shall follow certain guidelines to ensure they provide facilities which are friendly for differently abled people, which means organizations that are not providing Toilets are breaking the law. Whether they

provide 1 or more than 1 Toilet isn't the issue, the point being, not providing definitely doesn't seem to be in line with the law even if the organization doesn't have any person presently working in the company who is differently abled. There is no qualification on the infrastructure to be friendly for all, for example, the law doesn't state that only if the building has more than 10 differently abled person that it should provide such facilities.

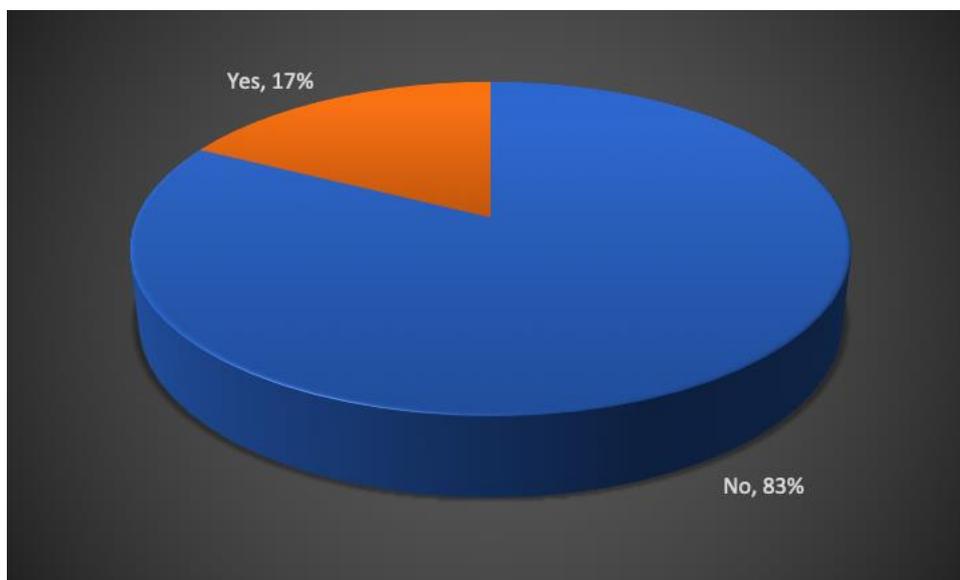
Conclusion

However, equality isn't only about providing an option to cater to a largely unrepresentative group of employees by providing infrastructure supporting basic human dignity. Restrooms or toilets, irrespective of how many people are employed should be a common and equal proportion for the buildings made, after all, we don't make men and women restrooms basis the population of these genders in an organization, but just as a standard practice. It is time we recognize the difference between equality and special benefits.

In our view, the number of restrooms provided for men, women and differently abled should be equal in any organization irrespective of the fact whether there are people in the company or whether there are a few only. This behavior, represents equal opportunity, come to think of it, differently abled restrooms also come in use when employees post accidents may need to operate from office with fractured limbs.

7. Does the company have anyone who call themselves as LGBTQ?

This is a very secretive topic, and with Section 377 verdict by Supreme Court of India, a lot of talk started happening openly about LGBTQ community. First of all, this term refers to Lesbian Gay Bisexual Transgender Queer community, now also referred to as LGBTQ+ to signify a group which has a orientation different than the set norm of Man / Women and sexual concepts surrounding them.



The legal interpretation

Legally speaking there isn't a law which mandates that organizations have to disclose or maintain registers of how many members from the LGBTQ+ community are part of their workforce, that is a different issue that such a law may not be welcome and would be seen as repressive. However, sticking to the legal framework, employees and organizations aren't doing anything illegal if there isn't a reporting of how many people are part of this community as member of an organizations workforce.

Conclusion

Having said that, it is not very difficult to not notice members of the LGBTQ community in the workforce. If an organization really does want to promote equality at the workplace, there are small steps to demonstrate equality, for example, the job application forms always seek to ask the gender as Male/Female. Not only that, why is it essential for taking this information at the interview stage.

It is not illegal in India to hire members of the LGBTQ community in the workforce, yet, the figures are not impressive with 83% respondents saying that their organizations workforce doesn't have members of the LGBTQ community. One could argue that not all information is available, as some members of the community may want to take advantage of privacy and carry on with their life. Yes, that is a fine argument, but a reflection of the organizations equal opportunity is reflective in the number of people who have chosen to be part of the workforce. We can't always take shelter of privacy that members of the LGBTQ community want to exercise without the organizations having a robust mechanism to provide them equality at the workplace, which incidentally also is to include sensitisation of the workforce.

Employment equality is reflected in practices which need to eventually reflect in numbers, therefore if an organization doesn't have numbers to support their claim of demonstrating equality, maybe they need to look at their policies and practices to see whether they are really inclusive.

An important question that will come up is why in the first place should we look at specifically hiring members from this community when we have enough talent available already, and why should an organization spend time & resources to specifically focus on increasing the numbers of this community in the workforce.

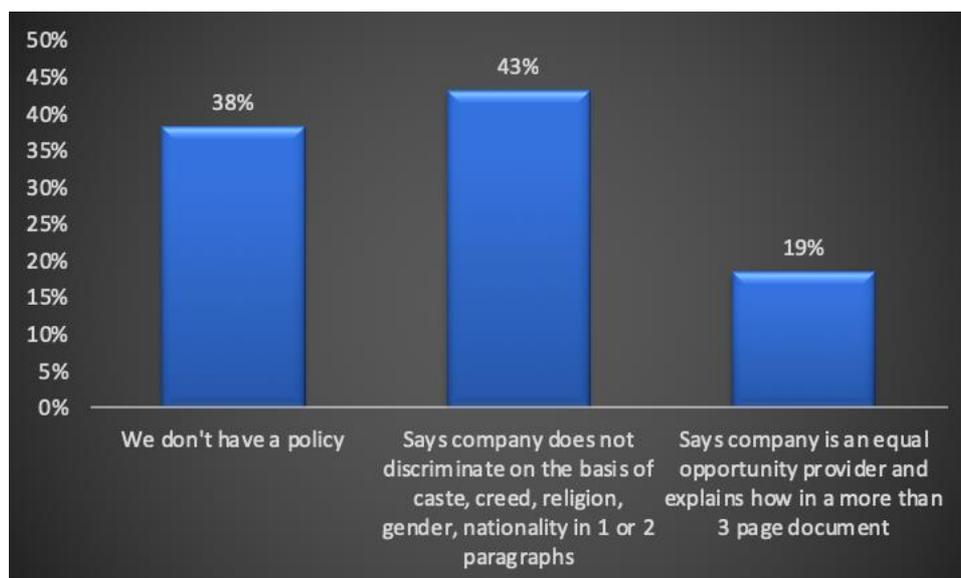
The answer is straight forward, even if we ignore the obligation that we have to the society and to humanity, what this talent brings to the workforce isn't something standard, there is uniqueness and that can come into the workforce only by hiring members of this community.

This discussion of why we need to enhance Diversity in the workforce started when the concept of increasing gender ratio started, not because men were underperforming and taking their organizations to doom, but because women presented a unique skill and talent which can be brought into the organizations only by hiring women and reducing the gender gap at the workplace. The same holds true now in relation to the LGBTQ community, their participation in the workforce is to increase not because the men and women working in the organizations are un-productive or not able to fulfil the goals, but because the unique skills that members of this community bring on the table are different and will assist organizations scale up even higher than what they already are.

8. The policy of the company on Equal Employment Opportunity

Almost every organization today talks about the concept of equal employment opportunity, but strangely, not many understand what it means and why is it essential to be seen as an equal employment opportunity provider. This is precisely the reason for asking this question. Having a well drafted detailed policy comes in handy for building a culture and to explain to various members of the organization what it means by providing equal opportunity.

The document sets the tone for inclusivity and builds a diverse workforce which is based on concepts of equality. A lot of previously asked questions in this survey may have been addressed positively if this policy was well drafted and to the point. Infact, the detailing that is spent on building a code of conduct, is what should be put on building a detailed policy on equal employment. Let us talk a little more post looking at the legal provisions.



The legal interpretation

To this survey as many as 38% organizations were found not to have an equal employment policy in their list of policies. As per the rights of persons with disabilities Act, every organization must have an equal employment opportunity policy and not only that, it must also register that policy with the appropriate Government authority. Even though this law is aimed at protecting the rights of people with disabilities, the absence of a policy does make those 38% companies not following the law and being openly seen as organizations which don't follow the law of the land.

Conclusion

It is mandated by law to have such a policy in every organization, but nowhere is there a restriction that this policy should not only cover people with disabilities but also talk about other practices which will provide equality at the workplace for each and every person irrespective of their gender, hierarchy or role performed in the organization. Organizations which have only 1 or 2 paragraphs, in our opinion haven't really spent the amount of time and detail required to be spent in building this policy, for example, the rights of persons with disabilities Act itself says the policy should explain the measures that the organization has in place to promote equality as required by the Act, these cannot be explained in 2 paragraphs.

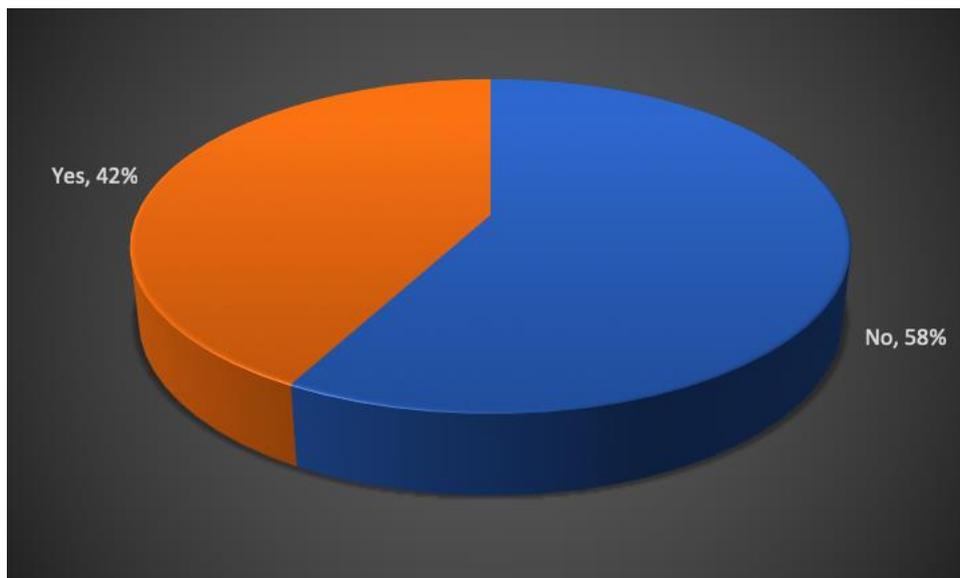
In our view, every organization should spend time building a comprehensive policy which not only ensure that the organization is legally compliant, but also ensures that the organization actually is seen as an equal employment opportunity provider.

9. Supply of sanitary napkins

The question can be seen as in-appropriate, it can be seen as a personal matter being got in the gambit of workplace management. Infact, a lot of times, there have been specific roadblocks created to make sanitary napkins part of the first aid kits citing reasons as, people have preferences towards the brand, the size and other matters.

Sanitary napkin, in simple words, are the need of women and that to on specific days not as a result of medical emergency, but as a result of normal human processes, so why should a corporate spend time, energy and resources in supporting something which is so basic as this, yet can be easily seen as a special benefit being given to women in the workforce, without having a corresponding benefit being given to men.

In a way, this can be seen as promoting inequality by giving preferential treatment to women and ignoring men by not being able to match a equivalent benefit. While we may not have many takers of this view in today's age of knowledge, but it can't be brushed aside without giving a thought to it. Why would providing sanitary napkins be seen as promoting equality rather than promoting inequality. Let us look at the legal provisions.



The legal interpretation

Legally speaking there is no law in India which mandates that organizations have to provide sanitary napkins or any other specific support to women during their days of “periods”. Therefore, organizations which are not providing sanitary napkins aren't really doing anything illegal and it isn't that the others are following the rule of law.

Conclusion

While there is no law making it mandatory, the acceptance of making sanitary napkins available in organizations has been gaining ground quite rapidly over the past few years. While majority provide these free of cost, there are a few, who provide these for a subsidised cost to their women employees.

What is the rationale and why is it rapidly being seen as a tool to promote equality at the workplace. In our view, while this is a very women specific issue, it is a basic human process, and supporting a women in the time of basic human process by providing necessary resources is only seen as being aware of employees specific needs and doing things to address them.

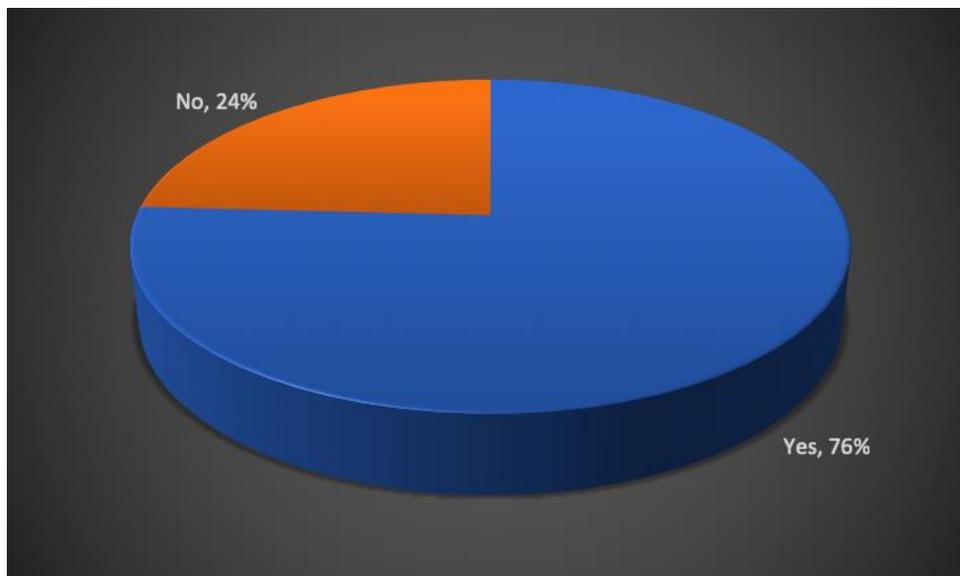
After all, every group of individuals have certain specific needs and organizations are required by law to follow some of those (religious) and some they follow by choice (festivals), yet there are some basic needs which were being overlooked and it is only wise on the part of an organization to promote equality in employment by looking at such needs and fulfilling them by putting resources to make employees comfortable.

In our view, eventually every organization will be mandatorily required to provide for sanitary napkins in their premises in due course of time. Come to think of it, drinking water is a basic human necessity, but, something that everyone has to manage for themselves, it doesn't really impact the productivity of employees if they drink their own water or that from the organization, but there are laws which mandate providing drinking water at the workplace, someone recognised the need of fulfilling this basic need, and it's just a matter of time before which even the basic need of sanitary napkins is recognised by lawmakers.

Till that time, equality is demonstrated by providing sanitary napkins to your workforce.

10. Maintain religious sentiments without approval

India has members from almost every religious community in the world practising religion here. Not only that, India has been the birthplace for 4 of the world's religions. India doesn't have a state religion, and from that comes the fact that the Constitution of India provides for the right to freedom of religion. Being a large democracy having people from almost every religion in the world, it is important to see how aware of the religions issues the Indian corporate sector is. While almost 76% said there are no barriers for them in practicing their faith, 24% still felt there were some barriers. Let us look at the legal provisions.



The legal interpretation

The most prominent being article 25 of the Constitution of India, this article specifically provides right to freely practice religion. The word freely means the special approvals should not be in place for someone wanting to follow laid down specific beliefs and processes in relation to their religion. Therefore organizations where specific approval is needed for an individual to practice their religion are going against the constitution of India and therefore are breaching not only the law but a fundamental right given to every citizen. By the same principles, every Indian citizen can claim compensation should they feel that their organization is curtailing their fundamental rights granted to them by the Constitution of India.

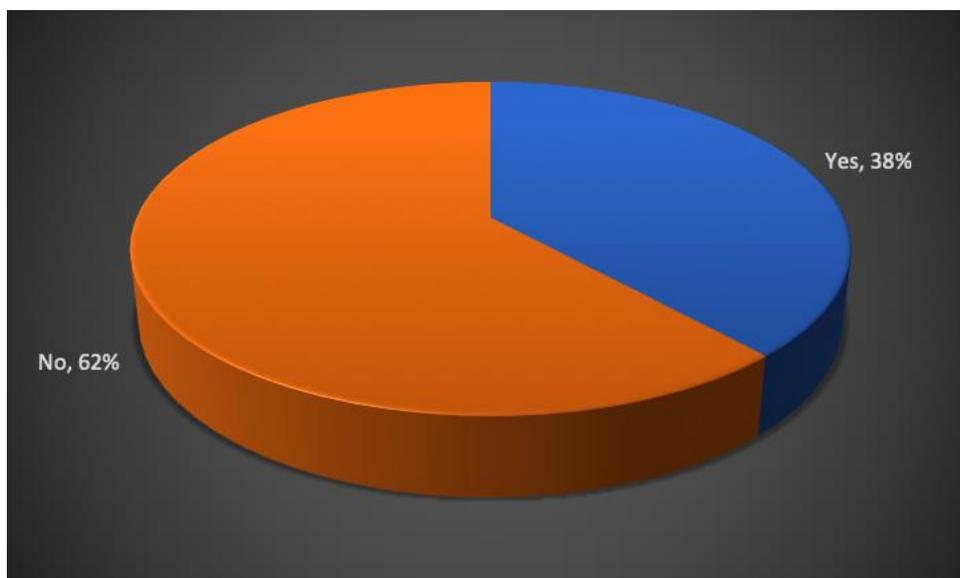
Conclusion

Religion is a basic framework on which the Indian society has been built, not only being one of the largest countries in the world professing many religions, India has culturally demonstrated freedom of religious expression over centuries, that is probably the reason why 4 major religions of the world originated in India. Having said that, religion plays a critical role in how organizations are perceived. Freedom to practice ones religion not only makes the employees feel respected, but acknowledges their personal right and provides them space to co-exist without being made to feel alienated.

Organizations which ensure religious freedom are not only demonstrating clearly signs of equality at the workplace, but are also ensuring a conducive work environment for a productive workplace.

11. Allowed smoking in parties

Smoking is a personal choice and the mere mention of that in being considered an equal employment opportunity may be appalling. But, come to think of it, while smoking is a personal choice, not smoking too is a personal choice. The people who choose not to smoke cannot fulfil their personal choice if events and get togethers are permitting smoking. Which is why this question, this reflects whether the organization is sensitive to individuals on both sides of the divide or are only thinking about only 1 side or the divide. Let us discuss the legal provisions before taking this forward



The legal interpretation

Legally speaking, The Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, prohibits smoking in public places, and when company parties are done, those places become public places, therefore companies which do allow smoking in company parties are breaching the law and propagating unlawful activities.

Conclusion

It is not only about following the law, it is also about respecting another individuals beliefs, specially as those beliefs are known to protect the health of an individual. Smoking is harmful and passive smoking is as much harmful as is active smoking. Organizations have to build systems and processes to respect an individual's ability to protect their health and yet be able to participate in organization events. In our view organizations should look at ensuring that proper care is given to employees for being able to enjoy the employment benefits without having to compromise on their no smoking principles.

References

- Constitution of India. [Read here](#)
- Employers Liability Act [Read here](#)
- Equal Remuneration Act [Read here](#)
- Maternity Benefit Act [Read here](#)
- The Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Distribution) Act, [Read here](#)
- The factories Act [Read here](#)
- The rights of persons with disabilities Act [Read here](#)
- Workmen Compensation Act [Read here](#)