

Women's Right Under Indian Labour Laws: An Analysis

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Abstract: *Women make up half of the world's population, work two - thirds of the world's working hours, earn one - tenth of the world's income and own less than one - tenth of the world's wealth. From time immemorial, women have been accorded the highest and most respected place in society in India. In the Vedic age, women attained a high position in society and played important roles in all spheres including cultural, social, religious and political. His condition worsened after the Vedic period. They were confined within the confines of the home and their role was limited to traditional household chores like cooking, housekeeping and raising children. They should not have found any lucrative employment outside the family. This hampered their economic development and reduced their social status. The history of women's participation in productive employment is recent. After the Industrial Revolution, the social situation changed all over the world and in India. The family is no longer the center of production. Industrialization and urbanization gave rise to new social values. Employment opportunities, economic hardship and favorable cultural and social conditions encouraged women to seek employment outside the home. After the independence of the country, the number of women increased day by day. Although the entry of women into the work force has raised their economic and social status, it has given rise to many problems and difficulties for them through exploitation, discrimination and depressing working conditions. Problems and difficulties multiplied due to their strange social, biological and psychological conditions and due to their illiteracy and ignorance discrimination and exploitation required them to be given some protection and protection by law. The Constitution of India, among other things, provides for the protection and safety of women workers.*

Keywords: women's rights, economic inequality, social change, employment, protection laws

1. Introduction

Women have an important role to play in the development of human society. From time immemorial, women have been accorded the highest and most respected place in society in India. In the Vedic age, women had a high place in society. Women's condition worsened during the post - Vedic period. After the Industrial Revolution, the social situation changed all over the world and in India. After the independence of the country, the number of women leaving home increased day by day. According to the 2001 census, women constitute 25 - 68 per cent of the total workforce in the country. At present women are engaged in various fields such as agriculture, planting, mining, construction, beedi rolling, animal husbandry, locking industry, hicc thermometer industry, brick factory, agarwood industry, handloom industry and many other service sectors. But unfortunately, there are many factors that affect women's employment such as marriage, instability, housing, education, discrimination, labor problem, sexual harassment etc. and cause women to lag behind men in the world of work. ¹ Women are an integral part of the Indian workforce

After independence of Country the number of women to come out of their houses for work increased day by day. They also took to education. In the early period women were mostly engaged in unskilled or semi - skilled occupations, as ayahs, nurses, mid wives, water women, cooks, domestic servants, as labourers on construction sites, in agricultural farm and on plantations. But now they are increasingly being employed in services, industries, shops, establishments,

offices and professional / technical occupations. This change enhanced the status of women on the one hand and Country prosperity on the other, but it gave rise to many problems and difficulties for them by way of exploitation, discrimination and dismal working conditions. They have to perform dual responsibilities respectively termed "reproductive" and productive. This is not an easy task for women to work at home and working place. The problems and difficulties got multiplied due to their peculiar social, biological and psychological conditions and due to their illiteracy and ignorance. ²

Women's Right Under Labour Laws: Constitutional Conspectus

Although the constitution of India guarantees equal rights to women as individuals, the state has broadly perceived them as such. Citizenship has long far been exclusively viewed as the domain of men. Women's identities and lives have been either excluded from or viewed as secondary in the framework of state - citizen relationships. Women's issues have always been dealt with in the context of family and are, therefore, considered private. The preamble is the key to Constitution. It does not discriminate men and women but treats them alike. The Preamble contains various objectives including the equality of status and opportunity to all citizens. The objective has been inserted with the view to give equal status to men and women in the term of opportunity.

Part - III of the Constitution of India deals with the

¹ Retrieved from <https://blog.ipleaders.in/womens-rights-labour-law-statutes-india/>, visited on March 4, 2022

² Mahesh V. Joshi, "Women Rural Labourers, Problems and Prospects", 1999, Pub. A.P.H. Publishing Corporation, New Delhi, p. 21

fundamental rights. The provisions regarding fundamental rights have been enshrined in Articles 12 to 35, which are applicable to all the citizens irrespective of sex. However, certain provisions protect the rights of women of our country. According to article 15 (3) of the constitution, discrimination on the grounds of religion, race, caste, sex and place of birth shall not prevent the State from making any special provision for women and children. Under the Constitution, the State has been given power to make laws relating to women and children but such shall not be violative of Article 15 of the Constitution. The Constitution prohibits gender discrimination.³ The Constitution also lifts that ignominy and permits the state to positively discriminate in favour of women to make special provisions to ameliorate their social, economic and political condition to accord them parity.⁴

Article 15 (3) of the Constitution makes special provisions for women and children. It empowers the state to make special legislation in this regard. It means the equality of opportunity, equality before law, equal protection in laws, not discriminating against any person on the grounds of sex, religion, caste and place of birth and no discrimination in the matter of public employment on the grounds of sex only as provided under Article 16 of the Constitution.⁵ The Supreme Court has struck down a provision whereby an Air Hostess would have deemed to have retires on pregnancy, as being unconstitutional and violative of Article 14 of the Constitution in the case of *Air India Vs. Nargesh Meerza*.⁶

The most radical approach came in the case of *Air India v. Nargesh Meerza*,⁷ which also involved the issue of equality between men and women. In this case Supreme Court struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary.

Another important case which highlights discrimination against women in govt. employment is *C. B. Muthamma v. Union of India*,⁸ the Apex Court held that the provisions in the service rules requiring a female employee to obtain the permission of Government in writing before her marriage is solemnized and denying right to be appointed on ground that a candidate is a married women are discriminatory against women and that if a married man has a right, a married women, other things being equal, stands on no worse footing. The very decision also clarifies the position that it was not meant to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatic where the requirements of particular employment. The sensitiveness of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. It has been also made clear that save where the differentiation is demonstrable the rule of equality must govern.

The Court in *Ms. Githa Hariharan Vs. Reserve Bank of India*⁹, held that the father cannot claim that he alone was the natural guardian and his wife could take no decision without his permission. It was held that the mother of a minor was relegated to an inferior position on the ground of sex alone since her right as a natural guardian is made cognizable after the father, which was violation of 14 and 15 of the Constitution on that ground. Hence the mother can act as natural guardian of the minor during the life time of father who would be deemed to be absent.

Under the Constitution of India, the directive principle of State policy is the reflection of Governance that India is a welfare state. This policy envisaged equal rights to work, equal pay for equal work, adequate means of livelihood to both men and women; these are guaranteed under directive principles of state policy. Part IV of the Constitution containing Articles 38, 39 (a (d) and (e), 42, 44 and 45 deal with the welfare and development of women. According to Article 39 (a) the state should direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. This Article provides equal right to all citizens, irrespective of sex to adequate means of livelihood. As per Article 39 (d) of the constitution there should be equal pay for equal work for both men and women. According to Article 39 (e) of the constitution the health and strength of workers i. e. men and women and that of the children of underage to be protected equally. They should not be forced to work under inhuman and hazardous condition.¹⁰

Article 44 of the constitution requires that state shall endeavor to secure a uniform civil code throughout the territory of India. The founding fathers of the constitution were aware of the gender justice and sexual inequality of women and they incorporated Article 44 of the constitution with the aim that it may be exercised in future at appropriate time. In a landmark judgment of *Sarla Mudgal Vs. Union of India*¹¹, the Apex Court has passed direction to the Central Government to take a fresh look at Article 44 of the constitution which enjoins the State to secure a uniform civil code which, according to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity.

In order to empower the women further the Constitution of India by amendment 73rd and 74th provides for reservation of seats for women in Panchayats and Local Bodies. Inclusion of the provision pertaining to reservation of women in Panchayats and Local Bodies is an indicator of the commitment of the state to provide political justice to its people as envisaged in the preamble. Further a move is on for providing similar reservation of seats for women is State Legislature and Parliament. Article 243 D (3) of the constitution provides that not less than 1/3rd of total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allowed by

³ Article 15, 15(1) of the Constitution of India

⁴ Article 15 (3) of the Constitution of India

⁵ Article 16 of the Constitution of India

⁶ AIR 1981 S.C. 1829

⁷ AIR 1981 S.C. 1829

⁸ AIR 1979 SC, 1868

⁹ AIR 1999, 2. SCC 228

¹⁰Shahwat Tewary, "Equal pay for equal work – How far is it recognized as a fundamental right, Labour Law Journal," 2004 III LJ p. 39

¹¹ AIR 1995 SC 1531: (1995) SCC (3) 635

rotation to different constituencies in Panchayat. Article 243 T (3) of the Constitution provides that not less than 1.3rd of total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constitution in Municipality. Article 243 T (4) of the constitution provides reservation of offices of Chairperson in Municipalities for SC, ST, Women in such manner as the legislature of a State, may by law provide.¹²

The doctrine of “equal pay for equal work” for men and women which is a part of Directive Principles of State Policy has been read in Articles 14 and 16 and made enforceable in the Courts of law. It is no more an abstract doctrine and is considered as the constitutional goal capable of attainment through constitutional remedies. Though the women are physically weak in comparison to men.¹³ Yet the Supreme Court has condemned the discrimination on the basis of sex and has given new interpretation to principle of equal pay for equal work. It has refused to consider the quantum of physical strength of women, a standard for evaluation of work and pay. A new culture of equality of men and women in all walk of life must set the tone to assume dignity and justice for which economic security and equal opportunities are essential.

Women’s Right Under Labour Legislations

Many legislative provisions have been provided in almost all labour statutes which address problems of women labourers in their employment situation. The Second National Commission on labour, 2002 has also justified the protective discriminatory legislation in favour of women by recommending that all such legislations are necessary for women workers. Besides, measures adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. These labour. welfare legislations are of two kinds. The first category contains those statutory enactments which are exclusively for women workers, e. g. the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976. In the second category are included those labour statutes which provide measures for the workers at large but contain special provisions for the welfare of women workers. The Statute in the second category are

- The Factories Act, 1948
- The Mines Act, 1952
- The Plantation Labour Act, 1951
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966,
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Inter - state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996

¹² Shahwat Tewary, “Equal pay for equal work – How far is it recognized as a fundamental right, Labour Law Journal,” 2004 III LJ p. 39

¹³ Versha Sharma, “Constitutional provisions relating to women and International Instruments on rights of women,” Aligarh Law Journal, 2001 and 2002, XVI and VII, p. 171.

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- The Employees’ State Insurance Act, 1948
- The Workmen Compensation Act, 1923,
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952 and
- Payment of Gratuity Act, 1972
- The Code on Wages, 2019

These legislations relate to regulation of employment in dangerous occupations/employments, prohibition of night work, restriction on carriage of heavy loads, wages, health, gratuity, maternity relief, equal pay for equal work, social security, provision of crèches and other welfare facilities etc.

Measures in regard to health, safety and welfare for women

The efficient working process needs sound health of the women engage therein, safety of the workers from accidents causing partial or total disablement and sudden misfortunes affecting the victims and their dependents. Unless the workers are physically and mentally healthy they cannot perform their duties effectively. There are various labour laws which deals with health, safety and welfare to women workers which are as follows:

- The Factories Act is a welfare legislation enacted with an intention to regulate working conditions in the factories and to provide health, safety and welfare measures.¹⁴ Besides, the Act envisages to regulate the working hours leave holidays, overtimes, employment of children, women and young persons etc.¹⁵ The Act was drastically amended in 1987 whereby safeguards against use and handling of hazardous Substances and procedures for setting up hazardous industries were laid down. Separate conservancy facilities are provided to women workers in Factories Act, 1948.¹⁶
- The Mines Act, 1952 has been enacted to amend and consolidate the law relating to the regulation of labour and safety in mines. The Mines Act, 1952 prohibits employment of women during night hours. The Mines Act, 1952 also prohibits employment of women in any part of a mine which is below ground.¹⁷ The Plantation Labour Act, 1951, regulates, for the first time, the condition of work of plantation workers and provides for their welfare. The Plantation Labour Act, 1951 also contains provisions for prohibition of employment of women during night. Under the Plantation Labour Act, 1951, every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women

¹⁴ Suresh V. Nadagoudar, “Right of Women Employees at their work place,” Lab. IC. Feb. 2007, p. 35.

¹⁵ Ajay Garg, “Labour Laws one should know”, 22nd edition 2007, Pub. Nabhi Publication, New Delhi, p. 120.

¹⁶ G.Q. Mir, “Women workers and the law,” 1st edition, 2002, p. 162.

¹⁷ Section 46(1)(a) of the Mines Act, 1952

workers.¹⁸

- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is to regulate the employment and conditions of service of construction workers and to provide for their safety, health and welfare measures. The Act applies to every establishment which employs/had employed on any day of preceding 12 months, 10 or more building workers in building or construction work.
- The Beedi and Cigar workers (Conditions of Employment) Act, 1966 is the only labour enactment, which deals with, home workers in a detailed manner. The enactment is particularly relevant, as bulks of the home workers in beedi rolling are women.
- The Inter - State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to regulate the employment and conditions of service of inter - state migrant workers.
- The Maternity Benefit Act, 1961 was passed with a view to reduce disparities under the existing Maternity Benefit Acts and bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act seeks to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide maternity benefit and certain other benefits to women workers. Recently, the Maternity Benefit (Amendment) Bill was introduced and passed in Lok Sabha on 9th March, 2017, by the Rajya Sabha on 20th March, 2017 and the same received President's assent on 27th March, 2017. Ministry of Labour and Employment vide notification dated 31st March, 2017 appointed 1st April, 2017 to enforce the provisions of Maternity Benefit (Amendment) Act 2017. However, some of its provisions will come into force on 1st July 2017. As per the new Maternity Benefit (Amendment) Act, 2017 ("Amendment Act"), the Maternity leave available to the working women has been increased from 12 weeks to 26 weeks for the first two children. Besides, provisions relating to work from home and crèche facility have been introduced in the Amendment Act.¹⁹

Wages Protection for Women

Though labour welfare enactment's have provided various protections, safeguard and benefits to working women in our country, there was an emergent need to give more protection to women workers who are discriminated as regards employment and wages. The wages of women workers in India are extremely low. In this regard the most relevant and important pieces of legislations for the women workers are Minimum Wages Act, 1948, Payment of wages Act, 1936 and Equal Remuneration Act, 1976 which are as follows:

- The Minimum Wages Act, 1948 is also very relevant for women workers because it is primarily designed for the protection of workers in the unorganised sector, where majority of women work.
- The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in

industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them.

- In Part IV relating to the Directive Principles of State Policy Article 39 of the Constitution envisages that the state shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women.
- The Code on Wages, 2019 was introduced in Lok Sabha by the Minister of Labour, Mr. Santosh Gangwar on July 23, 2019. It seeks to regulate wage and bonus payments in all employments where any industry, trade, business, or manufacture is carried out. The Code replaces the following four laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976. The Code prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of similar nature. Work of similar nature is defined as work for which the skill, effort, experience, and responsibility required are the same.²⁰

Women Right's Under Labour Law: Judicial Aspect

The role of judiciary has been quite significant with respect to women. The Indian judiciary to a certain extent has taken lead in securing socio - economic justice to women. There is a new trend in the judiciary to interpret laws so as to provide better protection to women in respect of their rights. A scanning of numerous rulings reveal that the issues of equality, discrimination, sexual harassment of women at work place, equal pay for equal work, maternity benefits, prohibition of work in hazardous occupations and several other rights of women workers have been recognised by Supreme Court of India and High Courts in their various judicial decisions. A milestone in the area of implementation of Equal Remuneration Act was reached with the pronouncement of the Supreme Court decision in *People's Union for Democratic Rights v. Union of India*,²¹ in this case the Supreme Court ruled: "It is the principle of equality embodied in Article 14 of the constitution which finds expression in provision of the Equal Remuneration Act."²²

In other words if the provisions of the Act are not observed the principle of equality before the law enshrined in Article 14 is violated. In *Randhir Singh v. Union of India*,²³ while construing Article 14 and 16 in the light of the preamble and Article 39 (d), the Supreme Court held that the principle of "equal pay for equal work" is deducible from them and may be properly applied to cases of unequals scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer.

In *Air India Cabin Crew Assn. v. Yeshaswince Merchant and Others with Air India Officer Assn. and another v. Air India*

¹⁸ Section 12(1) of the Plantation Labour Act, 1951

¹⁹ Retrieved from <https://hscw.in/content/images/TheMaternityBenefitsAct-3ac2512835.pdf>, visited on March 2, 2022

²⁰ Retrieved from <https://prsindia.org/billtrack/the-code-on-wages-2019>, visited on March 2, 2022

²¹ 1982 Lab. 9C 1649 at 1658.

²² Ibid

²³ 62

Ltd. and tagged cases ²⁴, where appeals were filed against the Division Bench Judgment of the Bombay High Court. In a batch of petitions filed by the respondents Air India Air Hostesses Association and its members, the High Court held that the age of retirement from flying duties of air hostesses at the age of 50 years with option to them to accept post for ground duties after 50 and upto the age of 58 years is discrimination against them based on sex which is violative of Articles 14, 15 and 16 of the Constitution of India as also Section 5 of the Equal Remuneration Act, 1976 and contrary to the mandatory directions issued by the Central Government under Section 34 of the Air India Corporation Act, 1953.

2. Conclusion

From the foregoing discussion, it is clear that to provide security against various risks, peculiar to their nature, women workers have been given various rights, benefits, concessions, protection and safeguard under different labour legislations. The main objective for enactment of labour laws was to prohibit the violation of rights of women workers and to provide them security and protection. But despite this all, much remains to be achieved. Women workers are still made to suffer discrimination in social and economic spheres and continue to be the most exploited lot. It is true that laws are made for the welfare and benefit of people but laws and Constitution do not by themselves solve all the problems. It is the sincere and strict implementation which matters. Although, the need for more and more laws is always felt in a welfare state like ours, yet the existing labour laws, with necessary modifications and amendments are sufficient, for the time being to take care of the women workers in the organised sector leaving unorganised sector of employment unattended. Therefore, these laws should be extended to unorganised sector also where women workers are in a large number. Let us try to be honest in the implementation of these labour laws. Moreover, much also depends upon the women workers themselves. Their ignorance and lack of awareness about their right is also responsible for the evasion of these beneficial legislations. Therefore, the need of hour is that women should get fully conscious about their rights and should get courageous enough to fight for their rights by participating in the various activities of trade unions.

From the above discussion it is clear, that the role of Judiciary has also been quite significant with respect to women. The Indian Judiciary to a certain extent has taken lead in securing socio - economic justice to women. An analysis of the decided cases reveals that there is a new trend in the judiciary to interpret laws so as to provide better protection to women in respect of their rights. The creative thinking that is evident in cases like Muthama and Nargesh Meerza is a good sign of judicial activism. The Court rightly maintained that women are the participants in the mainstream and deserve equal treatment. Old laws making women's biology as a basis of segregation are un - reasonable and the Supreme Court has held such laws unconstitutional. The Supreme Court has interestingly maintained recently that giving preference to women in jobs

was only an affirmative action and need not be deemed as reservation. The Judiciary is playing a creative role in harmonising and balancing the rights and interests of men vis - à - vis women. Women are suffering from problem of sexual harassment at work place. The judgment of the Supreme Court in Vishaka case is no doubt a step in the right direction. So, the authority should implement the measures strictly described by the Court in Vishaka's case. State Government should enact effective legislation to check the problem of harassment. The Judiciary has played an active role in enforcing and strengthening the Constitutional goal of "equal pay for equal work" for both men and women and has brought equal remuneration within the contours of fundamental rights. The decided cases reveal a creative role of judiciary in securing equal pay for equal work.

²⁴ 2003 SCC (L and S) 840.