

GENDER JUSTICE AND PROTECTION OF WOMEN WORKERS AND LABOUR LEGISLATIONS IN INDIA

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ABSTRACT

Gender equality and protection of women's interests through labour laws are key ingredients of social justice. India's economic progress and development is marred by a consistent rise in gender inequality. This is evidenced by India's poor performance across various socio-economic indicators, reflecting a low considerably female-male labour force participation rate, high maternal-mortality rate, low women's literacy levels and a low representation of women in Parliament compared to other countries in South Asia and other regions. The government's low social and economic investment in promoting the freedom of women in both individual and social capacity, and ensuring equitable development, remain the key factors responsible for a rising gender imbalance.

Women's work in India has been undetectable, unrecognized and untraceable and it is often undervalued. Women comprise of about 33% of the complete workforce and one-fourth of the non - farm laborers in India. India has 397 million workers out of which 123.9 million are women, 106 million are in country territories or rural zones, 18 million are in urban zones, and just 7% of India's work power is in the sorted-out part and 93% is in chaotic casual area. Women Work Participation rate (WPR) has expanded from 19.7% in 1981 to 37% in 2023. In any case, women detailed as non-workers in the statistics found to be going through 4 hours of daily picking, sowing, sifting or filling in as household workers for 8-10 hours every day. Additionally, the consequences of the most recent Employment and Unemployment Survey which demonstrated that women's work power interest declined. So this paper will be able to enlighten the labour legislation with special reference to women in India.

Keywords: Gender Equality, labour, Legislation, Protection, Imbalance.

INTRODUCTION

Women are born into a state of bias and endure it all through their life in one way or the other, the only difference is that the degree of bias may vary from woman to woman. Even in the field of their vocation, they are not without the problems created by a combination of factors leading to exploitation of their labour, person and treating them much inferior to their male counterparts. Looking back at history, we can realize that many major contributions have been made by women. However, due to the underlying flaws in the patriarchal and male dominated society, these contributions have been left unnoticed or there was a deliberate attempt to overlook them or ignore them. The reason behind such situation is the biological entity of woman is a social construction which guides and channelizes the entire human function which results in the exclusion of women from all spheres of life. The higher status of women is inversely related to their participation in work and the type of job performed by them and there is no doubt that participation of women is an important factor in the development of the nation.

Undoubtedly, without the active participation of women in national activities, the social, economic or political progress of a country will fall apart and become stagnant. It is a known fact that, women employees in general, is not taken very seriously by their superiors, colleagues, or society at large. Having a career poses challenges for women who had been home makers traditionally, but in the recent decades the ever increasing cost of living has compelled them to take up work. In a patriarchal society like India; it is still believed that a man generate resources or the means or the needed income for his family. Although Indian women have started working outside their homes but still they have a long way to go culturally, socially and economically to bring in positive changes in the mind-set of people. Most of the times the general perception is that the gender bias against working women starts right from the stage of recruitment as most of the Indian men are not ready to accept that women are capable enough to work side by side with men in all the sectors, other than in a few limited ones like teaching, nursing and in clerical sectors. Their capabilities are generally underestimated as a result of which Indian women have a tendency to opt for less demanding jobs even if they are highly qualified. Women have the responsibilities to effectively manage their multiple roles in domestic as well as professional lives.

Men generally do not offer any help in the household work. This makes the life of working women extremely stressful. Women's rights and gender equality have increased over the previous decades at both global and national levels. It is very dreamlike to discuss women's work support since women work-inside or outside their homes. It is generally recognized that the work environment has been shared along sexual orientation or gender inequality lines considerably and the division still proceeds in different open and unorganized sectors. It begins with the formal meaning of 'work' itself wherein the exercises dominantly pursued by women are excluded. Different investigations across the globe have built up that women's work is neither appropriately recorded nor compensated or perceived and it stays unnoticeable in both the national measurements and socio-legal terms. Further globalization has significantly changed the conditions under which the work towards sexual orientation and gender equality must be completed particularly in big developing nations like India. So this sexual orientation or gender inequality measurement of work enactments in India has led to desperation. Just a far reaching approach that tends to both large scale measurements and small scale issues would thus be able to improve the work environment for women

REVIEW OF LITERATURE

Jyoti Kiran in her book 'Women Labour force and National Product' asserted on the female workers contribution in nation's growth and development. The book explains about the main features of female workers which make them more familiar and happy at their work places. She managed to figure out women participation at various levels. This book emphasized on the

unfortunate outcomes of gender in equality on the performance of female workers. The problems stated in her book are those with which one can easily relate in day to day life.

Irene Tom in his book 'Women in Unorganized Sector' has particularized on different areas of economy and their approach towards female employees. It had given all the particulars about female employees working in an unorganized sector. The discriminatory treatment towards male and female employees, their system of payment has been discussed in the book in a systematical manner. Along with this, the work of Irene Tom on women employees has given them great recognition in the unorganized sector. The book expanded various facets of female employees in unorganized sector and also creative resolution is stated in the end to reduce the gap between male and female workers.

Rao Usha in her book 'Women in a developing society' has showed a crystal clear vision of female employees in the societies which are still developing. The book refined the unfortunate consequences of urbanization on the life of female employees. It has detailed the information of Indian economy's scenario which keeps on changing and not in favour of participation of women in work. Rao Usha established wonderful idea on women in developing society and remarkable outcome on that.

Pillai Kothari Jaya in her book 'Women and Empowerment' has accentuated that women has to entrust and power by themselves. It has refined that female should figure out the pointers of unequal treatment to them and should try to locate the effective steps for making differences in that. The book has various areas which discuss the issues of women workers. Pillai Jaya has detailed a significant work for female workers and also given a bright outcome for the same.

Josh Mahesh in his book, 'Women Rural Laborers' has elaborated the contribution of female employees in the evolution of society. The book explained the valuable viewpoint of various scholars which stated that if one wants to develop nation, one must first think about the women. Once she is developed, the family develops, the village develops and finally the nation develops. The book mentioned all the dimensions of female employees.

SIGNIFICANCE OF THE STUDY

Gender justice is a broad concept that encompasses issues such as economic, social, political, and legal equality for women. Many national and international efforts have been made to reduce the threat of current gender inequality. However, there is still a long way to go before women's dignity is fully restored. After analyzing persisting gender biases, their causes, implications, and the role of National Governments and International agencies, the researcher realized that neither the Indian State nor the various International systems of society had gone beyond the myth of legal equality (which too remained rather hypothetical than real). Hence, this is an absolute failure on the part of policymakers, legislators, the educational systems, the media, and most

other social institutions. Thus, the emphasis of the study is to propose some suggestions that changed the perspective of gender justice. It is intrinsically linked with the achievement of human equivalence and the abolition of all long-lasting inequalities. This research has been completed as a way to spread the message that gender justice is not just important for social justice, but also the nation's socio-economic and political development.

OBJECTIVES OF THE STUDY

- To study the meaning to gender justice in India
- To throw light on the present women worker and labour legislation in India
- To find out the obstacles in the path of gender equality;
- To explore the necessity of women empowerment;

HYPOTHESIS OF THE STUDY

This research paper highlights the status of women in India. There are many Constitutional provisions, special laws, Acts, Regulations, and National and International Commitments for women's empowerment. The government has launched various schemes, policies, and plans, and some NGOs play an active role to protect them. Even though the Supreme Court and the High Courts have acted in a well-defined manner through the judicial activism, the condition of women is still worse. Literacy is only the ultimate solution to curb this problem. Educated women should know their rights and duties and should be able to use them as per their needs. This study has tried to know whether the existing laws are sufficient for gender justice or if some more laws & measures are required. This study has analyzed the provisions of gender justice in the constitution and the role of law in securing justice for women.

RESEARCH METHODOLOGY

This paper employs a doctrinal methodology that includes examination of the case law and the study of a legal institution. A critical and analytical study of theoretical, practical, and legislative/judicial aspects is necessary for the methodology used herein. Secondary materials and primary materials will be used in this investigation. Jurist-based and library-based, as well as doctrinal with historical and analytical methods will be the main focus of this work. Sources of information and data include legal and non-legal publications, such as court decisions, journals, books, and websites, as well as other published works.

FEATURES OF WOMEN'S WORK IN INDIA

In the present situation, one can determine the associate features of women's work in India as under-

Changes in the idea of women's work

Changes in the idea of women's work incorporated an expansion in casual work, portrayed by more noteworthy dependence on easygoing contracts and an expansion in administration work. There had been a generous increment in independently employed low end administration work, particularly in residential and retail business.

Unpredictability of Work

Unpredictability of work is specially one of the biggest concerns for women. For most of them, the work is only intermittent or seasonal. From the role of unpaid homemakers, in less than one generation, there had been large scale movements of women's work into the paid workforce. This has resulted in a situation of a good number of settled independent women in an unpredictable and volatile business scenario. On the other hand, women's jobs in rural areas had been influenced by the agrarian emergency in most of the developing nations.

Emergency of Occupations in Farming

The impact of advancement has come along with a decrease in the global agriculture sector. Farming established the fundamental job of females in the less developed nations and the essential source of income for the major part of the poor of the universe. In the developed countries, machines have taken the place of labour and the number of workers needed for agriculture witnessed a steady decrease.

Gigantic Increase in Women's Relocation for Work

Women are known to deal with homesteads, in home development, and generally, in production lines, manufacturing articles of clothing and factories assembling electronic items etc. The women also carried on in many vocations which are more or less customary or in their own way as independent employment of various kinds or as paid workers. In hill areas, women were largely engaged in work related to fuel wood. A considerable number of women are engaged in the unorganized sector and they are very lowly paid. There is a significant increase in the number of women testing their fortune in the unorganized sector and the numbers have gone up from 50 million to 100million over the years.

Women forms a considerable number of workforce in India, however, inspire of this, it is a sad fact that they are placed behind the men in terms of their ability to perform and in remuneration as well. However, it is a known fact now that, out of the total workforce in the country, a considerable part of them are women and this leads to an increasing trend in the participation of more women and their willingness to enter into professions or fields which they were hesitant to enter or was not allowed to enter. The thing which was new truly was the way women were moving alone. Migration outside the state had become a tremendous issue and it had turned into

a change of macroeconomic strength. It was additionally a change of abuse. Local movement had likewise expanded. Migrant workers had few rights, and governments once in a while pondered guaranteeing their assurance or protection.

GENDER INEQUALITY AND LABOUR LEGISLATION FOR WOMEN IN INDIA

The development of agricultural technology and the transition from subsistence to a market economy have had a profoundly detrimental effect on women, excluding them from the labour force because so many women lack education and skills. Girls frequently work as children, and women frequently get less money for doing the same jobs. All societal groups that employ women are subject to various types of prejudice.

Females experience a variety of ills from birth to death, including abuse, oppression, and prejudice in the home, at work, and in society. Several laws were passed during the colonial era in India to improve the status of women, including the Widow Remarriage Act of 1856, the Child Marriage Restriction Act of 1929, the Dowry Prohibition Act of 1961, the Elimination of Sati Act of 1829, and others.

Aside from these laws, there are other pieces of legislation related to business or the workplace that have special provisions for women Examples include-

- Employees State Insurance Act, 1948
- Maternity Benefit Act, 1961
- Minimum Wages Act, 1948
- Equal Remuneration Act, 1976.
- Factories Act, 1948.
- Unorganized Workers Social Security Act, 2008.
- Payment of Wages Act, 1936
- Plantations Labor Act, 1951
- Employees Compensation Act, 1923
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Mahatama Gandhi National Rural Employment Guarantee Act ,2005
- The Occupational Safety, Health and Working Conditions Code, 2020

- **The Factories Act, 1948**

This Act was enacted to protect children and to provide for a few measures for the health and safety of workers. It also contains many provisions for the health, safety and well being of women as under:

- ✓ Women cannot be made to work for more than 5 hours at a stretch.
- ✓ Women cannot be made to work only between 6 AM in the morning and 7 PM in the evening.
- ✓ State government can grant exemption to nay factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM.
- ✓ Women must have separate toilets and washrooms with doors.
- ✓ If a factory has more than 30 women workers the employer must provide a crèche for the workers children.
- ✓ Women cannot be made to lift more than the prescribed weight.
- ✓ Women cannot be made to clean or oil any moving machine.
- ✓ Women cannot be made to work more than 48 hours in a week.
- ✓ Women must get one day off in a week.
- ✓ Shift can change only after weekly or other holiday and not in between.
- ✓ The new Labour Codes propose to allow night shift for women and some changes in their duty schedule. Now there is a provision under the new Codes to permit a women to work from home or engage herself as part time or prefer to work even at night.
- **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

The fight against sexual harassment culminated in the enactment of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act in the year 2013 and now sexual harassment of all kinds in the place of work are offences which are punishable under the provisions of the Act. The Act defines the term sexual harassment in clear terms and lay down the necessary mechanism to deal with cases of sexual harassment apart from coming to the court. Duty has been imposed on every employer to provide an atmosphere which is free from sexual harassment and constitution of committees so that the matter may be referred to the Committees and action may be taken on the basis of recommendation of the committee.

However, even after a specific law to address the situation of sexual harassment at workplaces, a good number of cases are even reported today and it is a sad fact the law has not been able to deal with this problem and eradicate it and make the work places safer for women. It has no doubt made a tremendous impact but it seems we need to do more than mere enacting of laws.

- **Maternity Benefit Act 1961**

Article 42 of the Constitution of India imposes obligation upon the state to make provisions for securing just and human conditions of work and for maternity relief. Subsequently, the maternity benefit Act was enacted to protect the health and economic well being of the women for a specific period prior to and after childbirth. The provision related to maternity benefit has been reformed and laid down under the Social Security Code.

- **The Equal Remuneration Act 1976**

The right to have equal wages for same work was a part of a separate Act and the Constitution of India. The Constitution along with the provisions of Equal Remuneration Act ensured that the women shall also be paid equal wages for the same work as that of a man. Now a corresponding provision has been proposed to be introduced under the Labour Codes for more strict compliance and to ensure that the principle of equal pay for equal work is not violated to put a woman under disadvantage.

- **The Mines Act 1952**

The Mines Act contained many stringent provisions regarding employment of women in the underground mines. Now, the Labour Codes relaxes these provisions and permits the employment of women even in the mines. The subject of labor comes under the concurrent list of the Constitution and it is for both the centre as well as state government to enact laws on labor related matters. Thus, there is difference under the State laws and the central laws leading to fundamental differences in the provisions. This adds to the prevailing confusion in the field of labor laws with every state having different provisions in different states. Thus, there is a conflict in provisions from state to state according to the local situations but when we talk about India as a nation and in the larger interest of women, it is necessary that there should be uniformity in these provisions.

- **The Occupational Safety, Health and Working Conditions Code, 2020**

This Act is a welfare enactment authorized with a goal to manage working conditions in the Processing Plants, Mines, Dock workers, Construction workers, Plantation labour, contract labour, Interstate migrant workers, Journalist, Motor transport workers, Sales promotion employees, Beedi and Cigar workers, Cine workers and Cinema Theatre workers. The enactment of this Code brought about many changes to the existing labor laws through consolidation. This has brought various employees who were governed under different laws in to the fold of one law. Apart from this, the Act has provisions related to security, safety and other measures related to welfare and other aspects related to working hours, provision for kids etc.

➤ **Special Provisions**

Relating to Women of the Occupational Safety, Health and Working Conditions Code deals with the special provisions which are related to the female workers. Sections 43 and 44 are the two important sections which lays emphasize on many provisions related to employment of women at night hours and safety of women at places of work which deals with hazardous substances.

- **Prohibition of Night Work**

There are specific prohibitions under the Act disallowing the women from work during the night hours. There are chances that the women may be exploited during the odd hour if they are employed at such disadvantageous hours. However, this limitation is applicable to specific industries and enterprises and there are many such professions like call centers etc where women are employed even at night. Thus, even though there are prohibitions under the Code, there may be institutions or establishments where the state government may permit the women to work at night. This prohibition to work at night again is a provision in the welfare of the women as they will be potentially at risk when put on duty at odd hours as it will affect their safety and give a chance of possible exploitation. This prohibition to work at night is provided under section 43 of the Code.

- **Prohibition of work in Hazardous Occupations**

In processing industries where hazardous material is handled, women are prohibited from cleaning, greasing or changing or doing any such process involving hazardous material. In *Pearson v. Belgium Co. Ltd.*, the matter that came for the consideration of the court was whether a woman could be permitted to clean stationary parts of a machine if the machine is in overall movement. The court answered in the negative. The court was of the view that neither a moving part nor the stationary part of a moving machine can be permitted to be cleaned by a women worker under the provisions of the Factories Act.

- **Toilets and Urinal Facilities**

This Act makes it required for each processing plant to keep up a sufficient number of toilets and urinals of the endorsed sort independently for labourers. Such facilities are to be helpfully arranged and available to labourers consistently while they are in processing plant. Each restroom is required to be under spread and thus parceled off as to verify security and have an appropriate entryway and fastenings. Sweepers are required to be employed to keep toilets, urinals and washing places clean. Standard of development and the size of the restroom must afford convenience to the accommodated workers.

- **Washing and Bathing Facilities**

The consolidated Code like the earlier Acts also provides that there should be adequate facilities for bathing and washing particularly for the women workmen. There shall be separate such facilities for men and women workers. These spaces should be adequate and must be kept clean and must have the necessary facilities. The Code deals with such facilities. It is the responsibility of the employer to provide these facilities to the workmen employed in his establishment. However, it is the duty of the central government to prescribe the type of industries in which such facilities should be provided by the employer.

- **Crèches**

The Code deals with the provision for Crèche facilities to be provided by the employer wherever women workers are employed. This facility is to be provided where fifty or more women are employed ordinarily. This again is a welfare measure in the interest of the women employees so as to enable them to care for the children near their place of employment. This will enable them to manage their work and children in an effective manner.

- **Hours of Work**

The Consolidated Code 2020 lays down the provisions related to leave and hours of work of a workman in industrial establishments. **Section 25** of the Code deals with weekly and daily working hours of workforce employed in the establishment. The weekly working hours shall not exceed forty eight hours and the work on a single day cannot exceed nine hours a day. The nine hours of work in a day should also be divided in such a manner that there shall not be work at a stretch for more than five hours. The section further provides that the total period of work including the period of interval shall not exceed more than ten and half hours a day.

- **Maximum Permissible Load**

When it comes to a woman worker, there is a ceiling on the quantum of weight that can be carried by a woman. It is not healthy for a woman to lift unreasonably heavy weight on every day basis as it will affect her health leading to breakdown. Thus **section 123** of the Consolidated Code authorizes the governments to make suitable rules regulating the quantum of load that can be carried on by certain categories of workers.

CONCLUSION

There are provisions under the Constitution of India and other statutes to effectively deal with the problems of discrimination in wages, service conditions, harassment etc. The need of the hour is the effective implementation of these provisions under the Statutes to ensure compliance. Moreover, violation of these provisions should be taken seriously and such discrimination and exploitation must be considered as offences.

Presently, the laws dealing with gender discrimination, exploitation and harassment are scattered in different statutes. Even though the Labour Codes compile these to a limited extent, it is not enough to create the required deterrence against these ways of oppression. No nation can progress by putting half of its population to some disadvantage or discrimination or exploitation. Thus, there should be an effective consolidated Code of various laws dealing with oppression of women workforce and the lapses must be treated as serious offences and punished suitably to create deterrence.



There must be Special Tribunals to deal with Gender Discrimination and Oppression Very few women reach the court agitating their grievance on the basis of gender discrimination and oppression. One of the primary reasons is that the courts will take many years to decide the matter which a poor woman working in the unorganized sector cannot afford. She will have to go for work every day to support her family and it will be very difficult for many women to take break from work and come to the courts on respective dates for recording evidence, cross examination etc. Thus there should be special tribunals or such quasi-judicial bodies to decide the cases of discrimination, exploitation and harassment etc against the women in a time bound manner. Otherwise, many women may not be in a position to put up their fight against these evils.

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