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Labour Standards for Women

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ABSTRACT

The role of women in industries has risen, especially post-independence. Prior to that, women would usually be restricted to the work inside the house. However, in today's time, there is a significant rise in the number of women who are working outside the house and are employed in industries and factories, which is mainly male dominated. Due to this, there is a considerable gender inequality which leads to an imbalance in the social justice. One of the main reasons could be the low number of women employed as compared to men. Hence, it is crucial to bring the labour standards of women at par with that of men or confer upon the women some special standards in conformity with the Articles 14, 15, 16, 21, 39 and 43 of the Constitution of India . The same is also ensured by our lawmakers by enacting and implementing laws for equal pay, preventing sexual harassment at workplace, maternity benefits, etc. This paper will focus on the Indian laws which ensure and promote the standards for women as well as their interests under various labour laws.

I. NEED FOR STRINGENT LABOUR LAWS FOR WOMEN

The women constitute an important part of the workplace in India yet the percentage and number of women in the existing workforce is quite low. According to the census 2011 of the Registrar General and Census Commissioner of India², the total number of female workers in India is 149.8 million and female workers in rural and urban areas are 121.8 and 28.0 million respectively while the participation rate of women was only 25.51%. It is also worth noticing that the women only constitute 20.5% of total employment in the organised sector.³ This low involvement of women could be due to a lot of social and economic factors like immobility, childcare, education, training, infrastructure, payment, gender-based division labour, etc. Hence it is crucial to provide women with equal rights and special protection so as to provide them an equal status like that of their counterparts i.e. men.

¹ Author is a student at Amity Law School, Noida, India.

² MINISTRY OF LABOUR AND EMPLOYMENT, <https://labour.gov.in/womenlabour/about-women-labour> (last visited March 2, 2021).

³ *Id.* At 2.

II. PROBLEMS FACED BY WOMEN IN A WORKPLACE

(A) Wage Disparity

Wage disparity refers to inequality in the average wage earned by women and the average wage earned by men. There exists an unequal pay between men and women, where the women are paid less as compared to them for the same work done. According to the World Economic Forum (WEF) Global Gender Gap Report 2020⁴, India ranked 112th out of the 153 countries on the gender gap index and 117th in wage equality for similar work. According to the Monster Salary Index (MSI) published in 2019⁵, women earn less than 19% than men in India.

This is due to a variety of reasons, like the patriarchal thought that men are the primary wage earner of a family and women are the supplementary wage earner, less percentage of women being allowed to work after marriage, family pressures, extended maternity leaves, etc.

Equal Remuneration Act, 1976⁶ is one such legislation which guarantees equal remuneration to men and women.

(B) Sexual Harassment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁷, defines sexual harassment as verbal or non-verbal conduct of sexual nature or any direct or implicated unwelcome acts or behaviour or which could be physical contact and advances or a demand or request for sexual favours or making sexually coloured remarks.

The landmark case for framing guidelines and laws to prevent women from sexual harassment in the workplace in India is *Vishaka & Ors vs State Of Rajasthan & Ors*⁸ where the Hon'ble Supreme Court of India laid down the guidelines and norms, in the absence of any enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse especially at work places. This gave way to the enactment of the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁹. The main objective of the Act is to

⁴ World Economic Forum, *Global Gender Gap Report 2020*, WORLD ECONOMIC FORUM, (Dec. 16, 2009), http://www3.weforum.org/docs/WEF_GGGR_2020.pdf.

⁵ MONSTER INDIA, https://media.monsterindia.com/logos/research_report/Report_BFSI_low.pdf, (last visited March 02, 2021).

⁶ Equal Remuneration Act, 1976, No. 25, Acts of Parliament, 1976 (India).

⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, §2(n), No. 14, Acts of Parliament, 2013 (India).

⁸ *Vishaka & Ors vs State Of Rajasthan & Ors*, (1997) 6 SCC 241 (India).

⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, *supra* note 6 at 2.

protect and prevent women against sexual harassment at workplace. The Act also provides redressal of complaints.

(C) Maternity Related Issues

Maternity leave refers to “leave from work which is fixed for a woman for a continuous period before as well as after giving birth.” Women who are pregnant or have an infant child often need special provisions for maternity protection. Women are usually the one who take care of the child and not the men. Many women also stop working after a child is born to them. Even though the Indian laws specifically provide for creche facilities for women, the same is often not observed nor seen in informal sectors of the industries. The ILO Maternity Protection Convention and Recommendations of 2000¹⁰ states that the maternity leave is a mother’s right to a period of leave for the purpose of rest and recuperation from childbirth and its consequences thereof. The convention provides for cash and medical benefits and the right to breast feed her child after returning to work. The International Labour Conference (ILO) of 2004¹¹ adopted a resolution on Gender Equality, Pay Equity and Maternity Protection and it was proclaimed that the special provisions provided to women in the form of maternity benefits or protection is equivalent to non-discrimination.

Under the Indian law, Maternity Benefit Act, 1961¹² provides for maternity related benefits to a female employee.

- The Act provides leave to any pregnant employee for a period of 6 weeks prior to the delivery and 6 weeks after the delivery. However according to the 1989 Amendment, if the employee wishes, she can also claim a continuous leave after birth unless the period claimed does not exceed 12 weeks.
- Section 5(1)¹³ states that the employer also is mandatorily required to pay the pregnant employee a cash maternity benefit at the rate of average daily wages, for the period she was missing before and during the time of her delivery as well as 6 weeks immediately after her delivery.

¹⁰ International Labour Organisation, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183, (last visited March 02, 2021).

¹¹ INTERNATIONAL LABOUR ORGANISATION, <https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/guide.pdf>, (last visited March 02, 2021).

¹² Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

¹³ Maternity Benefit Act, 1961, § 5(1), No. 53, Acts of Parliament, 1961 (India).

- Section 6(5)¹⁴ states that the female employee is entitled to this benefit in advance i.e. before the date of delivery.
- Section 9¹⁵ provides that in case of a miscarriage, the female employee is entitled to a leave.
- Section 9A¹⁶ provides for illness in relation to pregnancy.
- Section 11¹⁷ states that no pay may be deducted in place of these breaks or for the light nature of work assigned to her.

III. PROTECTIVE PROVISIONS FOR WOMEN

Some of the important protective provisions for women are as follows:

1. Prohibition of night work

- The Factories Act, 1948¹⁸ declares that woman shall be required or be allowed to work only between the hours of 6 a.m. and 7 p.m. in any factory.
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966¹⁹ prohibits the working of women in any industrial premise except between 6 a.m. and 7 p.m.
- The Mines Act, 1952²⁰ states that women shall not be allowed to work except between the hours of 6 a.m. and 7 p.m. in any mine above ground.
- Other such Acts are The Plantations Labour Act, 1951²¹, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979²²

In the case of *Triveni K.S. and Others v. Union of India and others*²³,

In this case, Section 66(1)(b) of the Factories Act, 1948 was challenged primarily on the ground that it is discriminatory based on sex and therefore ultra vires. The Andhra Pradesh High Court held the same to be unconstitutional and it was viewed that the certain safeguards which are in existence and are provided to the women working in the fishing industry during the night hours should be applicable to women workers in other industries during the

¹⁴ Maternity Benefit Act, 1961, § 6(5), No. 53, Acts of Parliament, 1961 (India).

¹⁵ Maternity Benefit Act, 1961, §9, No. 53, Acts of Parliament, 1961 (India).

¹⁶ Maternity Benefit Act, 1961, § 9A, No. 53, Acts of Parliament, 1961 (India).

¹⁷ Maternity Benefit Act, 1961, § 11, No. 53, Acts of Parliament, 1961 (India).

¹⁸ The Factories Act, 1948, § 66(1)(b) No. 63, Acts of Parliament, 1948 (India).

¹⁹ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, §25, No. 32, Acts of Parliament, 1966 (India).

²⁰ The Mines Act, 1952, §46(1)(b), No. 35, Acts of Parliament, 1966 (India).

²¹ The Plantations Labour Act, 1951, No. 69, Acts of Parliament, 1951 (India).

²² The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, No. 30, Acts of Parliament, 1979 (India).

²³ *Triveni K.S. and Others v. Union of India and others* (2002) (5) ALT 223, (2002) III LLJ 320 AP (India).

nighttime as well.

2. Safety/Health Measures

- The Factories Act, 1948²⁴ states that woman shall not be allowed to clean, lubricate or adjust any part of a prime mover or transmission machinery while they are in motion, or if the same would expose her to any risk of injury.
- The Factories Act, 1948²⁵ also states that where a cotton opener is at work, employment of women in any part of a factory for pressing cotton should be prohibited.
- The Factories Act, 1948²⁶ also states that anything exceeding the maximum limit of 30 kilograms weight shall not be lifted, carried, or moved by hand or on the head of a woman employee.
- The Factories Act, 1948²⁷ further states that on the Canteen Managing Committee, there shall be at least one woman.
- Section 41 and Section 43 of The Contract Labour (Regulation and Abolition) Act²⁸, 1970 as well as Section 40 and Section 41 of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979²⁹ provide for separate rooms and canteens for women.

3. Prohibition of Sub-terrain Work

- In case of mines which are situated below the ground, women are barred for employment according to Section 46(1)(b) of the Mines Act, 1952³⁰.

4. Maternity benefit

- The Maternity Benefit Act, 1961³¹ talks about the type of establishments where women should work for certain periods before and after childbirth. The Act also provides for various maternity benefits.

²⁴ The Factories Act, 1948, § 22(2), No. 63, Acts of Parliament, 1948 (India).

²⁵ The Factories Act, 1948, § 27, No. 63, Acts of Parliament, 1948 (India).

²⁶ The Factories Act, 1948, § 34, No. 63, Acts of Parliament, 1948 (India).

²⁷ The Factories Act, 1948, § 46(2)(d) No. 63, Acts of Parliament, 1948 (India).

²⁸ The Contract Labour (Regulation and Abolition) Act, 1970, No. 37, Acts of Parliament, 1970 (India).

²⁹ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, *supra* note 22 at 4.

³⁰ The Mines Act, 1952, *supra* note 20 at 4.

³¹ Maternity Benefit Act, 1961, No. 53, Acts of Parliament, 1961 (India).

- The Building and Other Constructions (Regulation of Employment and Conditions of Service) Act, 1996³² states that maternity benefits shall be given to the female beneficiaries of the Welfare Fund.

5. Provision for Creche

There are various legislations in existence which provide for provisions for creche facilities. They are as follows:

- The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996³³
- The Factories Act, 1948³⁴
- The Mines Act, 1952³⁵
- The Contract Labour (Regulation and Abolition) Act, 1970³⁶
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966³⁷
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979³⁸
- The Plantation Labour Act, 1951³⁹

6. Provisions for Separate Latrines and Urinals

There are various legislations in existence which provide for provisions for separate latrines and urinals for female workers. They are as follows:

- Section 20 of the Mines Act, 1952⁴⁰
- Rule 53, The Contract Labour (Regulation and Abolition) Act, 1970⁴¹
- Section 19 of the Factories Act, 1948⁴²
- Section 9 of the Plantations Labour Act, 1951⁴³

³² The Building and Other Constructions (Regulation of Employment and Conditions of Service) Act, 1996, No. 27, Acts of Parliament, 1966 (India).

³³ *Id.* at 32.

³⁴ The Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India).

³⁵ The Mines Act, 1952, No. 35, Acts of Parliament, 1966 (India).

³⁶ The Contract Labour (Regulation and Abolition) Act, 1970, *supra* note 28 at 5.

³⁷ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, No. 32, Acts of Parliament, 1966 (India).

³⁸ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, *supra* note 22 at 4.

³⁹ The Plantations Labour Act, 1951, *supra* note 21 at 4.

⁴⁰ The Mines Act, 1952, *supra* note 35 at 6.

⁴¹ The Contract Labour (Regulation and Abolition) Act, 1970, *supra* note 28 at 5.

⁴² The Factories Act, 1948, *supra* note 34 at 6.

- Rule 42 of the Inter State Migrant Workmen (RECS) Central Rules, 1980⁴⁴

7. Provisions for Separate Washing Facilities

There are various legislations in existence which provide for provisions for separate washing facilities. They are as follows:

- Section 42 of the Factories Act⁴⁵
- Section 43 of the Inter-State Migrant Workmen (RECS) Act, 1979⁴⁶
- Section 57 of the Contract Labour (Regulation and Abolition) Act, 1970⁴⁷

IV. CONCLUSION

In the very recent case of MJ Akbar v. Priya Ramani where the allegation was of sexual harassment in a workplace leading to defamation, Judge Ravindra Kumar Pandey has held that “The woman cannot be punished for raising voice against the sex-abuse on the pretext of criminal complaint of defamation.” The Court also held that the prevention of sexual harassment is a woman's right and is the reason why women make up only 25% of the workforce.

One can significantly see and observe a rise in the legislations in place for women both at the national as well as the international levels. It can be said that majority of Indian laws have been shaped around or after the ILO conventions. The various Indian laws in existence do ensure that the rights of women are protected in a workplace so as to empower them.

Earlier, women often prevented working in certain workplaces due to a variety of reasons such as fear of safety and of being sexually harassed, maternity, and childcare issues, societal pressures, family issues, domestic chores, etc. However, with the passing of time and strict enactment of various legislation as mentioned above, many more women have now started to work. With a rise in the number of women being employed in various sectors, there is also a rise to bring the women at par with the men. Even though these legislations are in place, it is often the sad reality that the same are often not being implemented at various places or if they are, then they are being misused by many.

Hence, it is essential that the implementation of these legislations should begin at the grass-

⁴³ The Plantations Labour Act, 1951, *supra* note 24 at 4.

⁴⁴ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, *supra* note 22 at 4.

⁴⁵ The Factories Act, 1948, *supra* note 34 at 6.

⁴⁶ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, *supra* note 22 at 4.

⁴⁷ The Contract Labour (Regulation and Abolition) Act, 1970, *supra* note 28 at 5.

root levels and that a strict enactment should be enforced in the informal sectors especially. Even though there are many rights available to a woman, many women are not aware of the same.

Furthermore, it is crucial that through legal-aid or through any other means, the government and the society in large should make people aware of the laws which are in existence so as to ensure that the labour standards for women are setup.
