

A Study on Women's Rights under Labor Laws in India

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Abstract – The main aim of this article is to deliver the rights under labor laws which are over to the women's based on the Indian constitution and conventions. Ensuring gender equality, and protection of women's interests in labour law is a key ingredient to improving social justice. This article will discuss the various standards conventions as well as domestic law for the promotion and protection of women's interests in labour law, focusing specifically in the issues of equal employment opportunities, wage disparity, sexual harassment at the workplace, and maternity benefit.

Keywords - Labors Laws against the Women, Equal Remuneration, Sexual Harassment, Wage Disparity.

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INTRODUCTION

One of the greatest thing is that the women facing the problem relating to rights and privileges of women in India. From ancient to still today is that the rights and privileges of women in India. Women are struggling to find her social status and a respectable place in the society at the time Indian women were in a need of some laws in order to improve their social position and to ensure proper safety against mental and physical torture. At that time Dr. B. R. Ambedkar, author of our Indian constitution, took certain constructive and much needed steps in favour of Indian women to make them independent and socially strong and today we can see the revolutionary change in the position of Indian women. Due to the revolutionary changes brought by our constitution and efforts made by Indian women, they have earned themselves a respectable position in the society. Now they are treated equally with men. The Constitution not only grants equality to women, it gives the measures and solution for the problem of women's and also empowers the State to adopt measures of positive approach in favour of women[1]. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. There is a lots of provisions in our law which protects a woman from mental and physical torture.

The Constitution of India mandates that women must be treated as equals and prohibits any discrimination against women in all areas, including education, vocational training, skill development and employment. In order to ensure that women get a fair and adequate opportunity of employment, the constitution also mandates reservation for women in

educational institutions and in employment in the public sector. Our Constitution also protects the rights of women workers by ensuring that their health and safety is duly protected in the course of employment, particularly those of pregnant women and breast feeding mothers. The Constitution also safeguards the dignity of women workers and ensures that they are provided a safe working environment free of sexual harassment. In order to fulfill the Constitutional mandate all labour laws contain special provisions regarding the health and safety of women workers by regulating their working hours and by reducing the burden women have to carry. In order to ensure equality the law also mandates that both men and women will be paid the same wages for the same or similar type of work. Recently, a special law has been enacted to protect women against sexual harassment at the workplace.

WOMEN AND LABOUR LAWS

Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 %) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 % of the total organised sector. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of an occupational hazard concerning the safety of women at workplaces, in 1997 the

Supreme Court of India announced that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgement also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers clear understanding that whatever is good and is due to the labour must be given[2]. Industry owners should treat the workers as co-partners. Similarly, "workers in the country must understand fully that if they desire to secure their due place in the industrial economy of the country, they must think more in terms of responsibilities and duties and not interpret independence for impertinence and liberty for licence. Sabotage and violence of all kinds and bitterness in thought, word and deed must be eschewed. Then alone a Socialist Democracy is possible in this country and industrial relations of a higher order can be maintained for the benefit of the country and the community."

Special Protection to Women under the Labour Laws

The following laws are specially enacted to provide further protection to women workers:-

- The Equal Remuneration Act;
- The Maternity Benefits Act;
- The Protection of women from Sexual Harassment Act.

The power to enact special laws for women is given to the legislature under Article 15 (3) of the Constitution which stipulates that providing for additional safeguards to women is not discriminatory but will enhance the principle of equality, as it will help women to overcome the wrongs they have suffered for centuries.

Equal Remuneration Act Safeguard Women's Rights

Under the provisions of this Act, every employer is under a legal obligation to pay the same wages for men and women if they perform the same work or work of a similar nature. Even if it is being performed at different places, the salary has to be the same. An employer cannot discriminate against women while recruiting unless employment of women is prohibited or restricted by law. Thus, in matters of recruitment, promotions, training and transfer, the employer is prohibited from discriminating against women.

The responsibility of ensuring that the provisions of the Act are strictly followed and also that there is no discrimination between men and women in the sphere of recruitment, promotions and training lies with the employer. It is also the responsibility of the

employer to maintain proper registers, documents or muster rolls, etc. which can be scrutinized by the labour officer of the district. Any woman who faces discrimination in these aspects can file a complaint before the labour officer of her area.

Maternity Benefits Act 1961

A maternity benefit Act stipulates that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the daily wage rate for the period of her actual absence. There is need for maternity benefits so that a woman is to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income. This Act was enacted on 12th December 1961, to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

Women's ties with pregnancy and child rearing and the failure of employers and policymakers to deal consistently with this issue exacerbate the difficulties women face in the economy. Women continue to have the primary responsibility for housework and childcare, even when they have extremely demanding jobs. Few employers provide help with childcare, flexible work hours to accommodate children's needs, or paid maternity leaves. Women in blue-collar work as well as clerical jobs face rigid time schedules, low pay, and virtually no recognition or help from employers for their family responsibilities.

In the Indian context under the Maternity Benefit Act 1961, maternity leave is given to any pregnant employee for a period of 6 weeks prior delivery and 6 weeks after. If however the employee wishes, she can claim the leave continuously after birth so long as the period claimed does not exceed 12 weeks, as per the Amendment of 1989 (section 6). In accordance to Section 5(1) of the Act the employer must pay the pregnant employee a cash maternity benefit at the rate of average daily wages, for the period she was actually absent preceding and during the time of her delivery as well as 6 weeks immediately after her delivery. Also in accordance to section 6(5) the employee is entitled to this benefit in advance i.e. preceding the date of delivery. Also similar to the provisions of the ILO conventions, a woman employee who has absented herself from work due to pregnancy, cannot be dismissed (except due to reasons unrelated to pregnancy) as under section 12(1). Also under section 9, she is entitled to leave in case of a miscarriage and under section 9A for illness in relation to pregnancy. Similar to the ILO conventions, a woman is allowed nursing breaks under section 11, and in accordance section 4(3)

no pay may be deducted in lieu of these breaks or for the light nature of work assigned to her.

Sexual Harassment

Sexual harassment is not only viewed as a discrimination problem related to safety and health, but also as a violation of fundamental rights and human rights. It is offensive at a very personal level and in a way undermines the right to equal opportunity and equal treatment of women at the workplace. The first and foremost effort ought to be to prevent the occurrence of such harassment in the first place, but in the event that such harassment does occur, it ought to be punished and the victims protected. Women are often unaware of their rights and also many a time keep things quiet in fear of losing their jobs. Employers need to be more proactive about spreading awareness and fighting against sexual harassment at the workplace. Contrary to popular belief sexual harassment at the workplace does not only have an impact on the victim alone, but affects the productivity of the industry/company as a whole[3]. It can also ruin the reputation of a company, leading to a tarnished public image, which may in turn affect sales and profits. Employers and trade unions ought to take more active steps towards the prevention and punishment of such activities. This can be done through policies and procedures adopted within the industry itself. There should be an adequate complaint mechanism, disciplinary rules, sexual harassment awareness, defence training, and communication strategy. The 71st session of the ILO Conference 1985 adopted a resolution on the matter, which states, “sexual harassment at the workplace is detrimental to employee’s working conditions and to employment and promotion prospects. Policies for the advancement of equality should therefore include measures to combat and prevent sexual harassment[4].

Sexual Harassment at Work Place (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment at Workplace Act of 2013 is a special Legislation aiming towards providing a safe and hostile free environment at work to women[5].

- An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere.
- The sense of security at the workplace will improve women’s participation in work, resulting in their economic empowerment and inclusive growth.
- The Act is gender specific to only women.

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

In 2010, the High Court of Delhi upheld the view that sexual harassment is a subjective experience and for that reason held —A complete understanding of the complainant’s view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as —harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement.... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.

Employment opportunities and wage disparity

Equality of employment and occupation is not possible without equal opportunities and equal treatment. While equal opportunity refers to having an equal chance of applying for a particular job – equal access to employment, which includes, equal chance to acquire training in the field, eligibility for promotions, and eligibility to attain certain qualifications/ enter certain cadres; equal treatment refers to being entitled to equal pay, working conditions, social security, and social protection and quality of family life (in terms of the opposite sex). Promotion of equality in employment is a positive enforcement, unlike prevention of discrimination, which is a sort of negative right or negative equality. This involves breaking down both horizontal and vertical occupational segregation.

The principle of equal pay, the antithesis of wage disparity, is based on the recognition of an objective evaluation of work in order to determine pay; and elimination of “discriminatory structural gender bias in labour markets.” A woman’s income, on average, worldwide, per hour is 75% that of a man. One of the reasons this practice is still so prevalent even today is because of the popular view that the costs of employing women is higher than employing men, because due to the various positive discriminations provided for in statutes women work fewer overtime hours, women must be given maternity leave, etc. Wage disparity is so hard to combat because it is often very hard to detect. It operates through access to promotions and other similar indirect means, as such qualifications affect not only pay, but also perquisites. The ILO Constitution of 1919, and the ILO Convention on Equal Remuneration 1951, both recognise the principle of “equal pay for work of equal value.” This is also enshrined in the Constitution of India under Articles 14 and 15, as well as the Equal Remuneration Act of 1976.

Despite such recognition often the issue of equal pay for women workers goes un-championed, even by trade unions, as they often do not view this to be a problem that affects the workers as a whole.

One of the most basic reasons as to why there is an inequality in the employment opportunities available to women and the disparity in wages is that women are viewed as supplementary earners and men are viewed as primary breadwinners. This operates as a vicious cycle, as the low wages offered to women further entrenches them in lower cadres of employment and continues to perpetuate disparity. Additionally women accept jobs with lower pay in order to avoid sitting idle, and this differential wages works as a discouraging factor against enhanced performance and thus reduces an opportunity for career advancement. Another cause for disparity in income is that a majority of the active female workforce is involved in the informal sector, such as agriculture and domestic work, which have very few regulations in terms of remuneration and social security.

LITERATURE SURVEY

Erin K. Fletcher (2017) et al. Sustained high economic growth since the early 1990s has brought significant change to the lives of Indian women, and yet female labor force participation has stagnated at under 30%, and recent labor surveys even suggest some decline since 2005. Using a nationally representative household survey, we lay out five descriptive facts about female labor force participation in India that help identify constraints to higher participation. First, there is significant demand for jobs by women currently not in the labor force. Second, willing female non-workers have difficulty matching to jobs. Third, obtaining vocational training is correlated with a higher likelihood of working among women. Fourth, women are more likely to be working in sectors where the gender wage gap and unexplained wage gap, commonly attributed to discrimination, is higher. Finally, female-friendly policies, including quotas, are correlated with higher female participation in some key sectors. Combining these facts with a review of the literature, we map out important areas for future investigation and highlight how policies such as employment quotas and government initiatives focused on skilling and manufacturing should be better investigated and leveraged to increase women's economic activity.

Sonali Das (2015) et al. This paper examines the determinants of female labor force participation in India, against the backdrop of India having one of the lowest participation rates for women among peer countries. Using extensive Indian household survey data, we model the labor force participation choices of women, conditional on demographic characteristics and education, as well as looking at the influence of state-level labor market flexibility and other state policies. Our main finding is that a

number of policy initiatives can help boost female economic participation in the states of India, including increased labor market flexibility, investment in infrastructure, and enhanced social spending.

Sudipa Sarkar (2017) et al. This study analyses employment transitions of working-age women in India. The puzzling issue of low labour force participation despite substantial economic growth, strong fertility decline and expanding female education in India has been studied in the recent literature. However, no study so far has looked into the dynamics of employment in terms of labour force entry and exit in this context. Using a nationally representative panel dataset, we show that women are not only participating less in the labour force, but also dropping out at an alarming rate. We estimate an endogenous switching model that corrects for selection bias due to initial employment and panel attrition, to investigate the determinants of women's entry into and exit from employment. We find that an increase in income of other members of the household leads to lower entry and higher exit probabilities of women. This income effect persists even after controlling for the dynamics of asset holding of the household. Along with the effects of caste and religion, this result reveals the importance of cultural and economic factors in explaining the declining workforce participation of women in India. We also explore other individual and household level determinants of women's employment transitions. Moreover, we find that a large public workfare program significantly reduces women's exit from the labour force.

Varsha Kumari (2014) et al. The main objective of the study was to understand the problems and issues faced by urban working women in India. The objectives also included identifying the key socio-economic attributes contributing to women's status, safety and security, and to study women's involvement in various activities/ organizations for improving of family, community and society. The study was confined to the urban working women in white collared jobs in the city of Rourkela, India. A mixed methods approach involving face to face interviews, focus group discussions and questionnaire technique including both close-ended and open-ended questions was chosen for effective elicitation of data from the respondents. Methods triangulation was adapted for establishing validity and reliability of the study. The study was based on primary data collected from Rourkela city to find out the possible solutions for working women which could help them to overcome the problems that they face in the workplace. The results of the study showed that different age group of working women have different kinds of problems and challenges and different categories as married, single, divorcee, single parent, separated, have different issues at stake in the workplace. Some problems are definitely common, like mental and physical stress, lack of proper balance between

employment and family care, unfair treatment in the workplace, stressful life and work place discrimination etc. But some challenges are age or category specific, like prejudiced and stereotyped thinking, safety and security issues, ego hassles with colleagues, and problem of glass ceiling etc. Some probable solutions for problems plaguing urban working women that could help them to overcome the problems that they face in the workplace are proper safety and security measures by the parent organizations, sensitive and supporting partners at home, effective child care policies and appropriate grievance redressal mechanisms for women in place at the workplace.

Karen Pechilis (2018) et al. This article documents the emergent discussion of middle-class women and work outside of the home in India's pre-Independence period through an analysis of articles in the high-profile *Stri Dharma* journal. Prominent themes in the journal's discourse of promoting middle-class working women include the emphasis on women's moral agency and the definition of their work as doing good in a public social space that lies between the familial and the national contexts. To conclude, the author preliminarily gestures towards a further transformation of the discourse of work in the postcolonial era, towards work as both women's rights and personal fulfilment.

Divya. M (2017) et al. This paper deals with the study on the rights and privileges of women in India. The main aim of this article is to deliver the rights and privileges which are over to the women's based on the Indian constitution and conventions. The rights and privileges which is entitlement claimed for women and girls of many societies worldwide throughout the years, in the 19th century in some countries, these rights are institutionalized or supported by law, local custom, and behaviour, later they got the rights also but in this modern world it cannot be functioning in a proper manner. Hence this paper as explain in a detail manner for the better understanding of the rights and privileges of women and the remedies for the violation of those rights in India. This paper is purely based on research methodology. Hope the research paper will give an advanced knowledge in the matter regarding the rights and privileges of women in India.

M.SIVAKUMAR (2008) et al. Gender is a common term where as gender discrimination is meant only for women, because females are the only victims of gender discrimination. Females are nearly 50 percent of the total population but their representation in public life is very low. Recognizing women's right and believing their ability are essential for women's empowerment and development. This study deals with gender discrimination in India, its various forms and its causes. Importance of women in development, legislation for women and solution for gender discrimination are also discussed in this paper.

Varsha Chitnis (2007) et al. The relationship between nineteenth century England and colonial India was complex in terms of negotiating the different constituencies that claimed an interest in the economic and moral development of the colonies. After India became subject to the sovereignty of the English Monarchy in 1858, its future became indelibly linked with that of England's, yet India's own unique history and culture meant that many of the reforms the colonialists set out to undertake worked out differently than they anticipated. In particular, the colonial ambition of civilizing the barbaric native Indian male underlay many of the legal reforms attempted in the nearly hundred years between 1858 and India's independence in 1947. This Article looks at three areas of law reform in India affecting women's rights that were closely modeled on reforms in English law: changes in age of consent laws, changes in widow inheritance laws, and changes in abortion laws. The first two occurred in the nineteenth century and the last in the twentieth century, post-independence, yet the changes in abortion law still bore indelible traces of colonial authority. We explore ways in which, despite the change in legal sovereignty, the colonial influences that characterized the unsteady alliances and interests between colonial rulers, native elite men, and British women infused the law reforms with patriarchal and colonial values. In particular, we argue that the custom of adopting English laws to deal with unique Indian situations, without understanding the different culture and history, meant that many of the reforms within India either promoted British interests or frustrated the interests of Indian women. This Article offers new insights by exploring the interplay of British feminists and activists in law reform movements that usually are studied only from the perspective of colonial male rulers and native male elites. By focusing on the situation of Indian women and adding the perspective of British feminists, this Article highlights numerous ways in which colonial women undermined the reforms of their Indian counterparts.

Sree Krishna Bharadwaj H. (2015) et al. The Constitution of India not only removes inequalities but also provides special status to women and also provides various empowering provisions to bring up the dominated women in the society through various opportunities. Also there are many legislations in India which aim at not only removing the inequalities but also punish the offenders of discrimination under various instances. This paper analyses the laws relating to gender justice in India.

Chandramouli (2018) et al. There has been a significant increase in the number of women domestic workers in India in recent times. The domestic service is now accepted as an important category of livelihood. The domestic labour debate was particularly prominent in the western academia

amongst feminists in the 1960s and 1970s. The steep decline in agrarian produce and livelihood security in rural areas has caused migration of rural people to urban areas. The number of women domestic workers is constantly growing in the informal sector of urban India. Domestic work has remained unorganized, unrecognized and unrewarding for the domestic workers. The domestic workers are denied of minimum wages, healthy work period, safe working conditions and other benefits in the absence of trade unions and state intervention. The women domestic workers do not have support networks and civil society support under the existing circumstances. They experience exploitative situations and multi-faceted abuses. The national and international legal instruments are largely ineffective under the existing circumstances.

CONCLUSION

It can be seen from the multiple special provisions made for the welfare of women that both at the national and international levels, there has been a movement towards the empowerment of women in labour law. There has been a clear move towards making equal pay, equal access to opportunity, prevention and redressal of sexual harassment and provision of maternity benefits a reality in India. There has been a clear move towards making equal pay, equal access to opportunity, prevention and redressal of sexual harassment and provision of maternity benefits a reality in India.

REFERENCES

1. L. Bhasin, Labour and Employment Laws of India, 10-11 (2007), available at: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan029043.pdf>, last seen on 03/04/ 2014).
2. M. Gupta (2014). Women's Rights Under Indian Labour Laws: A Socio-Legal Study of Aligarh and Agra 174 (11/11/ 2013), available at: <http://shodhganga.inflibnet.ac.in/handle/10603/12832>, last seen on 03/0/2014
3. Law Against Sexual Harassment At Workplace Comes Into Effect, Times of India, (13/12/ 2013), available at: <http://timesofindia.indiatimes.com/india/Law-against-sexual-harassment-at-workplace-comes-into-effect/articleshow/27308194.cms>, last seen on 03/03/2014.
4. M. D. Singh & G. Pany (2004). Sexual Victimization of Women in India, 30 Indian Socio-Legal Journal: An International Journal of Legal Philosophy, Law and Society.
5. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.
6. Erin K. Fletcher, Rohini Pande, Charity Troyer Moore (2017). "Women and Work in India: Descriptive Evidence and a Review of Potential Policies" Center for International Development at Harvard University.
7. Sonali Das, Sonali Jain-Chandra, Kalpana Kochhar, and Naresh Kumar (2015). "Women Workers in India: Why So Few Among So Many?", 2015 International Monetary Fund
8. Sudipa Sarkar, Soham Sahoo, Stephan Klasen (2017). "Employment Transitions of Women in India: A Panel Analysis", IZA Institute of Labor Economics, Oct-2017
9. Varsha Kumari (2014). "PROBLEMS AND CHALLENGES FACED BY URBAN WORKING WOMEN IN INDIA", NATIONAL INSTITUTE OF TECHNOLOGY ROURKELA.
10. Karen Pechilis (2018). "A Conjectural History of Cultural Ideas of Women and Work in Urban South India", MIDS Working Paper No. 229, June 2018
11. Divya. M. (2017). "A Study On The Rights And Privileges Of Women In India", IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 22, Issue 7, Ver.13, pp. 28-33
12. M. Sivakumar, Marimuthu (2008). "Gender Discrimination and Women's Development in India", Munich Personal RePEc Archive.
13. Varsha Chitnis (2007). "The Legacy of Colonialism: Law and Women's Rights in India", University of Florida Levin College of Law.
14. Sree Krishna Bharadwaj H. (2015). "LAWS PROTECTING WOMEN FROM GENDER DISCRIMINATION IN INDIA - A CRITICAL ANALYSIS", PARIPEX - INDIAN JOURNAL OF RESEARCH Volume : 4 | Issue : 9 | Sept 2015
15. Chandramouli, Kodandarama (2018). "Women Domestic Workers in India: An Analysis", International Journal of Innovative Technology and Exploring Engineering (IJITEE) ISSN: 2278-3075, Volume-8 Issue-1, November 2018.

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