

INDUSTRIAL LAWS RELATING TO WOMEN LABOUR FORCE IN INDIA: A STUDY

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Abstract: *Despite the enactment of several legislations in India, women at workplace continue to encounter numerous problems. One of the central problems faced by women at workplace is that of inequality in wages and discrimination on the ground of sex. History bears witness to the fact that such problems have existed for decades together, consequent of which several legislations, which include the Maternity Benefits Act, 1961 and the Equal Remuneration Act, 1976 were enacted. The same was in line with and in realization of the constitutional ideal of equality and in consonance with provisions that direct the State to incorporate protective, beneficial and health provisions in the various enactments. This paper is an exploratory study of legislations catering to the needs of women in workplace.*

Key words: *Labour Law, Factories Act, Maternity benefits, Equal remuneration, ESI Act.*

I. Introduction

The Right to Equality is one of the fundamental features guaranteed under the Constitution of India (“**Constitution**”). In accordance with Article 14, “the state shall not deny to any person, equality before law and equal protection of laws”. This Article forms the spirit of the Constitution, inasmuch as it confers upon the State the responsibility to ensure equality in the society and keep a check on discriminatory practices prevalent therein. The same principle is further seen in Articles 15 to 17 of the Constitution too. Article 15 makes it effectively apparent that under no situation can discrimination be permitted on the grounds of religion, race, caste, sex or place of birth. It is the duty of the State to ensure the implementation of the said Articles of the Constitution.

As such, it is not only important to have the right law in place but also to ensure that they are implemented in a just and fair manner. Instances of the laws being misused against the vulnerable sections of the society, including women and other marginal groups are quite common, which further hinders the delivery of social justice. Accordingly, it becomes absolutely imperative that some measures are taken to protect these sections from any

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injustice in the society. One of the ways to ensure the same is by way of enactment of welfare-driven legislations, collectively referred to as social legislations.

The world today is changing rapidly owing to the many technological, economic, social and political factors. These factors tend to cause personal and social disorganizations in the society. In order to combat such disorganizations too, social legislation becomes very important. Some examples of such legislations include legislations for care, protection and treatment of neglected and victimized children, eradication of begging, welfare for prostitutes, economically marginalized sections and so forth.

1. Nature and Scope of Social Legislation

A social legislation, as discussed above, is much like a social institution that addresses the socio-economic conditions of the people. The general subject-matter scope of such legislations accordingly is the socio-economic situations and people belonging thereto in the country. The nature of such legislations however deals with welfare of the people and covers in its ambit the various kinds of welfare which includes women welfare too.

Followings are some important provisions of the various Labour Laws dealing with women:

a. The Factories Act, 1948:

The Factories Act was enacted in the year 1948. At the heart of the Act lies the main objective, which is to provide health, safety and welfare measures to the workers employed in a factory.

Some of the provisions have been enacted especially keeping in view the welfare of women in India working in factories. Following are some of those provisions:

- i. The Factories Act provides for separate and adequately screened washing and bathing facilities for women. Also, sufficient provisions for latrine, urinal accommodation should be made.
- ii. It is further provided that no woman shall be allowed to clean, lubricate or adjust any part of the machinery which is in motion.
- iii. Women are also prohibited to work on a cotton opener.
- iv. As per the Act, no woman shall lift, carry or move by hand any objects exceeding the weight of 30 kg.
- v. There shall be at least one female worker on the Canteen Managing Committee.
- vi. In every factory where more than thirty (30) women workers are employed, suitable rooms for the use of children below 6 years of age should be provided and maintained. Such rooms must have all necessary facilities and should be under the charge of women in case of children and infants.
- vii. Women are prohibited to work during night hours (before 6 am and after 7 pm)
- viii. Women are not allowed to work in dangerous operations.
- ix. Provisions for rest rooms and canteen.
- x. Provisions for maternity benefits

b. The Maternity Benefits Amendment Act, 2017, originally 1961

The Maternity Benefits Act applies to all establishments and factories in which 10 or more persons are employed. A woman is eligible for maternity benefits when she has worked for at least 80 days in the preceding 12 months from her date of expected delivery.

As per the Act, an employer shall pay maternity benefits equal to “*Basic + DA + Cash Allowances + Incentive Bonus*” for the period of absence to the woman employee. The total period of the leave shall extend to 84 days *in toto* (i.e., 12 weeks). Out of the 84 days, the period before delivery should be maximum 42 days.

Employer should pay Rs. 250/- to the woman employee as Medical Bonus if no parental and post natal care is provided to the concerned woman employee free of charge.

Other Leaves:

- i. Miscarriage, Medical termination of Pregnancy – 6 weeks from day after pregnancy.
- ii. Tubectomy operation – 2 weeks from day after tubectomy operation.
- iii. Illness due to pregnancy or delivery – 1 month.

Nursing breaks: Even after delivery, women should be given two breaks in their daily work for nursing the child until the child attains the age of fifteen months.

Procedure for claiming Maternity Benefit:

The procedure to claim a maternity benefit under the said Act is as follows:

- i. The concerned woman has to give a notice to the employer specifying the date from which she will be absent pursuant to her pregnancy, stating that maternity benefit is to be paid to her or a nominee assigned by her.
- ii. If notice is not given during pregnancy, it must be given as soon as possible after her delivery.
- iii. Upon receipt of the notice, payment has to be made by the employer within a period of 48 hours.

Prohibition on dismissal

An employer cannot dismiss a female employee who is availing maternity benefit for absence. A female employee cannot be deprived of her maternity benefits even if such dismissal is effectuated. However, an employer can deprive a female employee of the maternity benefit if the discharge is due to gross misconduct.

Maternity leave for Central Government Employees

Now, for employees of the Central Government, 180 days of Maternity Leave i.e. 6 months is allowed. In addition to it, they are also entitled to the ‘Child Care Leave’ of maximum two years (730 days) during the entire service of a woman “for taking care of up to two children (not more than 18 yrs of age) whether for rearing or to look after any of their needs like examination, sickness etc.” These leaves will have no effect for considering seniority. Some States have extended these benefits to State Government Employees.

c. The Equal Remuneration Act, 1976:

The Equal Remuneration Act of 1976 deals with the remuneration of the workers. Remuneration refers to amount paid in cash in consideration of the work and service. The main objective of the Act is to ensure that equal remuneration is paid to the male and female employee. This Act prevents the discrimination on the ground of sex in furtherance of Article 15 of the Constitution.

It was held in *Jitendra Prasad Singh v. TELCO* that principles of equality are virtually in the nature of natural law and denial of equality would be against the Article of Equality, i.e. Article 14 of the Constitution. Further, the court added in *Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka* that the Act provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on ground of sex. This Act is a guarantee toward payment of equal wages for work of same and similar nature to male and female workers and for ensuring that there is no discrimination against female employees in matters of transfers, training and promotion etc.

d. The Plantation Labour Act, 1951

The Plantation Labour Act, 1951 has provisions for crèche facilities for the children up to 6 years old. In addition to the same, it also provides that without the permission of the State Government, no woman or child worker shall be allowed to work in any industrial premises before 6 AM and after 7 PM.

e. The Mines Act, 1952

The Mines Act of 1952 is yet another legislation that provides for making available- crèche facilities for the children up to the age of 6 years. The Act further prohibits the employment of women in any mines above ground before 6 AM and after 7 PM.

f. The Employees Provident Fund and Miscellaneous Provisions Act, 1952

The Employee Provident Fund Scheme makes certain specific provisions for women. For instance, the Act waives the waiting period of two months for a woman where she wants to withdraw her accumulated fund in case she is getting married. The Scheme under the Act also permits a maternity leave of 12 weeks.

g. The Beedi and Cigar Workers (Condition of Employment) Act 1966

This Act also has the provision of crèche facilities for the children up to 6 years old. No woman shall be allowed to work in any industrial premises before 6 AM and after 7 PM as per this Act too.

h. The Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 is also a legislation that has the provision of crèche facilities for the children up to 6 yrs old.

i. The Inter-state Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1970

According to this Act, there shall be a separate restrooms and canteen facilities for men and women. This Act also has the provision of crèche facilities for the children up to 6 yrs old.

j. The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 is also women-friendly as it recognizes maternity leave up to 12 weeks and provides that the same be counted in the calculation of “continuous service”.

k. Building and Other Construction Workers’ (Regulation of Employment and Condition of Service) Act, 1996

The Building and Other Construction Workers’ (Regulation of Employment and Condition of Service) Act, 1996 also has the provision of crèche facilities for the children up to 6 years old.

l. The Employees’ State Insurance Act, 1948

Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit, and funeral expenses. They can also claim maternity benefit up to 12 weeks in case of certain contingencies arising out of pregnancy, confinement, premature birth of child, miscarriage or sickness related to it.

m. The Employees Compensation Act, 2017, originally 1923

This Act provides that where compensation is to be distributed to a woman or a person with legal disability, the Commissioner in charge may direct that such sum may be invested, applied or otherwise dealt with for the benefit of the woman, in the manner as directed by the Commissioner. It is further provided that where any lump sum amount is payable as compensation has been settled by agreement whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman, or a person under a legal disability a, memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner. This guarantees additional protection to women.

n. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment at Workplace Act, 2013 is by far the most important legislation dealing with the protection of women from any form of sexual harassment that they have to go through at their workplace. This Act defines the term sexual harassment at the work place and creates a robust mechanism for redressal of complaints. In addition thereto, it also provides safeguards against false or malicious charges. There is a very vast definition of the term "aggrieved woman", who shall get protection under the Act. An employer has been defined as any person who is responsible for management, supervision, etc. of the workplace The term “workplace” has also been expanded to include even non-traditional workplaces which involve telecommuting will get covered under this law. Every

employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.

II. Conclusion

In conclusion, it can be stated that various legislations have been enacted in furtherance of and with the objective to alleviate discrimination of all forms against women who work. The many statutes discussed in this paper cover a vast gamut of subjects, ranging from maternity leaves to equal remuneration and even protection of women from any form of sexual violence at the workplace. It is accordingly safe to conclude that we have a very fast framework of statutes which are in interplay to help women achieve equality at the workplace and remain safe therein too. However, repeated incidents of breach of the aforesaid only go on to show that even as the statutes so discussed are very well crafted, the implementation is clearly not being done properly. One can say that the same is essentially a folly of the executive branch of the government and a lot needs to be done in order to reform the same. An analysis of the aforementioned points to the inefficacy of the government in execution of laws and immediate steps must be taken to render the same more effective, only then could true equality be achieved; else it shall only remain the black letter of the law.

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