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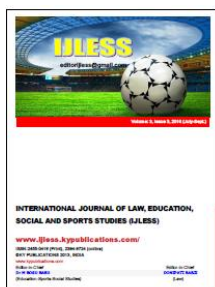
## PROTECTION OF WOMEN WORKERS THROUGH CONSTITUTION AND LABOUR LEGISLATIONS ARE EXHAUSTIVE BUT WHY THE PROBLEM PERSIST

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**RESEARCH ARTICLE**



### ABSTRACT

As in olden days people only depend on agriculture, women permitted to house and allowed to household work. In India because of customs and traditions women not equally treated with men and her role is to procure children. Because of increasing opportunities in urban area and degradation of joint family culture people migrated from village to towns. To facilitate the family, role of women has changed drastically. She has to render services not only internally but also externally for the financial support to the family. It is the fact that she is humiliated from centuries because of male domination. Being a women worker she is facing many problems at work place. From the doing of physical labour to white collar work, women are treated as second citizens, however efficient and skilled they are. The nature has created both men and women as equal, but unfortunately male dominated societies like India, the position of women workers are despondent.

Even legislature passed several legislations to uplift the position of women workers, those are not implemented successfully. Reasons are immeasurable like poverty, illiteracy, male domination, rigid burecaucy and corruption. We are proud to complete 68 years of independence. Still we are in developing stage in all aspects including implementation of gender justice. It is a bitter experience for all of us.

The object behind this paper is to explain the different labor legislations passed by legislature for women workers in India and the lacuna's in it and why those legislations are not resolve the problems faced by women workers.

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### INTRODUCTION

Due to changes in economic conditions of family, role of women has also changed drastically. She has to render services not only internally but also externally for the financial support to the family. It is the fact that she is humiliated from centuries because of male domination. Being a women worker she is facing many problems at work place. From the doing of physical labour to white collar work, women are treated as second citizens, however efficient and skilled they are. The nature has created both men and women as equal, but unfortunately male dominated societies like India, the position of women workers are despondent. It was condemned by Hon'ble Supreme Court of India in VISHAKA vs. RAJASTAN<sup>1</sup> that paved path to frame rules for the protection of women workers in India, which are famously known as Vishaka guidelines. In this case court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein."

Even legislature passed several legislations to uplift the position of women workers, those are not implemented successfully. Reasons are immeasurable like poverty, illiteracy, male domination, rigid burecaucy and

<sup>1</sup> (1997) 6 SCC 241

corruption. We are proud to complete 68 years of independence. Still we are in developing stage in all aspects including implementation of gender justice. It is a bitter experience for all of us. The problems which are being faced by women workers are innumerable. Those are:

1. Unequal pay for equal work
  2. Employment of women in Hazardous industries
  3. Using women workers to lift beyond maximum to lift permissible of loads
  4. Lack of washing facilities
  5. Unhealthy working conditions
  6. Uneven working hours to women workers which may lead to health hazard.
  7. Lack of recreation facilities at work places.
  8. Lack of maternity benefits of women workers in unorganized sectors.
  9. Irregular maintenance of records relating to women workers
  10. Sexual harassment of women workers at work places by their male workers.
1. **UNEQUAL PAY FOR EQUAL WORK:** It is a fact that both men and women workers are engaged with same work, employer pays fewer wages to women comparatively with men because of her physical strength. As they are not suitable for hard work they were oppressed by paying fewer wages. Employer stated that inability to work leads to low productivity, which leads to payment of fewer wage. Another factor is absenteeism among women workers which causes wage differences. Even the concept of equality<sup>2</sup> enshrined in constitution as fundamental right, it is not extended to equal pay for equal work. The concept of equal pay for equal work<sup>3</sup> is mentioned in Directive Principles of State Policy<sup>4</sup>, which are not enforceable by court of law. At the same time the division of labour in India is traditional and customary women not consider equally like male.
  2. **EMPLOYMENT OF WOMEN IN DANGEROUS AND HAZARDOUS INDUSTRIES:** As because of poverty, illiteracy and not having knowledge on legislations women is ready and willing to discharge the work in dangerous and hazardous industries. Several legislations ban the recruitment of woman workers in hazardous industries. Those are (i) The Factories Act, 1948 (ii) The Mines Act, 1952 (iii) The Plantation Labour Act, 1951 (iv) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, (v) The Contract Labour (Regulation and Abolition) Act, 1970 (vi) The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (vii) Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996. Plenty of legislations directs not to allot work to women workers in dangerous places, employer of industry employ the women workers without adequate safety precautions. This leads to threat to health and life of women workers. In an English case *PEARSON vs. BELGIUM CO. LTD*<sup>5</sup> the question was whether stationary parts of a machine can be cleaned by woman if the machine as a whole is in motion. It was held by the Court that if the machinery as a whole is in motion even stationary parts of the machine cannot be cleaned by woman. Mines Act prohibits employment of women below ground in mines<sup>6</sup>.
  3. **USING WOMEN WORKERS TO LIFT BEYOND MAXIMUM PERMISSIBLE WEIGHT OF LOADS:** For the protection of workers the Factories Act prescribes "no person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or move by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process"<sup>7</sup>. Rules framed by all the State Governments (Except U.P.) have fixed the following maximum weights for women employed in factories. Adult females: 65 lbs Adolescent females: 55 lbs Female children: 30 lbs. But because of poor economic position, women workers are bound to perform heavy works on par with male workers. To protect the life and health of women worker, this practice shall be stopped with immediate effect by imposing heavy penalties on the employers whom employ women workers to do heavy works.

<sup>2</sup> Article 14 of Constitution of India

<sup>3</sup> Article 39 (d) of Constitution of India

<sup>4</sup> Article 36 to 51 Constitution of India

<sup>5</sup> (1896) 1 Q B 244.

<sup>6</sup> Section 46 of Mines Act.

<sup>7</sup> Section 34 (1) & (2) of Factories Act, 1948

4. **LACK OF URINAL LATRINE AND WASHING FACILITIES:** One of the practical difficulties which come across by women workers at work place is lack of civic amenities. Many industries even small or heavy are facing this problem, which leads to drastic health problems. Separate facilities washing and bathing are provided for women workers under the Factories Act. According to the provisions<sup>8</sup> of the Factories Act, separate and adequately screened washing facilities shall be provided for the use of male and female workers. Such facilities shall be conveniently accessible and shall be kept clean. However, the State Government is empowered to prescribe standards of adequate and suitable facilities for washing.

Separate conservancy facilities are provided to women workers in Factories Act, 1948<sup>9</sup>. The Factories Act, 1948 makes it obligatory for every factory to maintain an adequate number of latrines and urinals of the prescribed type separately for men and women workers. Such facilities are to be conveniently situated and accessible to workers at all times while they are in factory. Every latrine is required to be under cover and so partitioned off as to secure privacy and have a proper door and fastenings.

5. **UNHEALTHY WORKING CONDITIONS:** The occupier of factory is obliged to undertake following measures for ensuring good health and physical fitness of workers whether male or female:

- (a) Cleanliness and disposal of wastes and effluents
- (b) Ventilation, temperature and humidity
- (c) Prevent dust and fumes
- (d) Avoid overcrowding
- (e) Lighting and drinking water

But these provisions are permitted to papers and not implemented successfully, which leads to chronic diseases in workers.

6. **UNEVEN WORKING HOURS TO WOMEN WORKERS MAY LEAD TO HEALTH HAZARD:** Under the Factories Act, 1948, the daily hours of work of adult workers have been fixed at 9<sup>10</sup>. Though the Act permits men under certain circumstances to work for more than 9 hours on any day it does not permit women to work beyond this limit<sup>11</sup>. Also in case of women workers there shall be no change of shifts except after a weekly holiday or any other holiday. The maximum permissible hours of work for men and women are 48 per week in factories<sup>12</sup>. The daily spread over of working hours has been limited to 10½ hours in factories. The Act provides that no adult worker whether man or woman employed in factories shall be allowed to work for more than 5 hours at a stretch without a rest pause of at least half an hour. Apart from this no women shall be required to work or allowed to work in any factory except between the hours of 6 A.M and 7 P.M. Employment of women between 7 P.M to 6 A.M in any industrial premises is prohibited. But the statutory stipulations are overlooked by the employer in recent past. It mainly can observe in I.T industries and also in the aspect of women working in transport operations.

7. **LACK OF RECREATION FACILITIES AT WORK PLACE:** Occupiers of the industries unfortunately neglects the concept of recreation of workers. Recreation leads to re creation of energy levels that helps to work with joy. Suggestible direction are for recreation conduct games, allow the workers to visit parks and gardens at the expense of employer.

8. **FAILURES IN IMPLEMENTATION OF MATURITY BENEFITS TO WOMEN WORKERS:** Maternity Benefit Act, 1961 is the welfare legislation, which contains the provisions relates to maternity benefit to the women workers. It is an integral part of social security recognized by all the nations. The benefits under this Act are sickness arising out of pregnancy, miscarriage and premature delivery etc. Both physical and pecuniary benefits are given under the provisions of this act. It is utter surprise based on the survey report<sup>13</sup> every year about 2,50,000 mothers lost their lives mostly at an young age during pregnancy or at the time of delivery.

On account of poverty, women are force to take some job and at the same time have to attend to household duties leaving no scope for individual development. The availability of maternity benefits in organized sectors is good comparatively with unorganized sector. In unorganized and private sectors the situation is alarming. So the

<sup>8</sup> Section 42 (1) (b) of Factories Act

<sup>9</sup> G.Q. Mir, "Women workers and the law," 1st edition, 2002, p. 162.

<sup>10</sup> Section 54 of the Factories Act, 1948

<sup>11</sup> Id., Section 66(1) (a).

<sup>12</sup> Id., Section 51.

<sup>13</sup> National Representative Survey 2005

government shall take comprehensive measures to provide maternity benefits to women workers working in all types of industries.

9. IRREGULAR MAINTAINS OF RECORDS RELATES TO WOMEN WORKERS: In general the employer of industry not to maintain the records of women workers to overcome from statutory obligations. Illiteracy, poverty, fear and lack of leadership women afraid to raise their mouth even their rights are violated. Irregularity in maintenance of records leads to pecuniary loss to women worker. The female workers who are engaged by the corporation on muster roll have to work at the site of construction and repairing or roads. Their services have also been utilizing for digging of trenches. As because they are daily labour even at the advance stage of pregnancy and soon after delivery despite of situation they attend to duty even not care about their health and the health of newly born baby.

In Municipal Corporation of Delhi vs. Female Workers<sup>14</sup> Hon'ble Supreme Court held employees of daily wages entitled for Maternity Benefits under the Maternity Benefit Act, 1961.

10. SEXUAL HARASSMENT OF WOMEN WORKERS AT WORK PLACES BY THEIR MALE WORKERS. It is a pressurized problem in India. Sexual harassment has been recognized as violation of human rights and is considered as a crime which violates human dignity and supreme honor of women<sup>15</sup>. The concept of sexual harassment not only permitted to organized sector, but also in unorganized sector too. Sexual harassment comparatively high in private sector rather than the government institutions<sup>16</sup>. Harassment may be direct or indirect. Indirect kind of sexual harassment normally, a job related conditions like promotion, transfer confirmation and leaves etc. These are only granted when women favour for sexual demands. If she rejects the same leads to direct harassment like hostile work environments, display obscene pictures, passing sexual comments and physical touches etc.

The present civil and criminal laws in the country do not adequately provide for specific protection of working women from sexual harassment. There is no specific law in India to combat the sexual harassment. Even hon'ble Supreme Court of India gives detailed guidelines in VISHAKA vs. RAJASTAN<sup>17</sup> and the provisions in Constitution like fundamental rights and directive principles of state policy, outrage modesty of women u/s 354 and 509 of IPC legislature or executive are keeping quite to implement properly the same. To conclude in Vishaka judgment it is clear that gender equality and the right to secure work was part of the fundamental right guaranteed under the constitutional machinery that the state enforced these rights especially in view of the nation's obligation to comply with conventions whatever be the debate that facts there is an urgent need of legislation, in the area of sexual harassment.

## CONCLUSION

The present position in India is that most organizations do not have specific procedure to protect the women workers even after Nirbhaya incident in Delhi. The position of women workers and their problems at work places are not new to the debates and discussions. Many international and national level conferences held on 'welfare of working women' and passed many resolutions. But, the root causes which create problems to women workers are still persistent. Poverty, Poor economic conditions, economic dependency of women workers are the main causes for their miserable conditions. In India we have very good number of bureaucrats and technocrats to craft very good picas of legislations. But it is very unfortunate to say that lack of political zeal, corruption, nepotism and delays on part of administration are main hurdles to overcome this situation. I hope that nation would certainly overcome from this problem by considering that woman is the companion of man, gifted with equal mental capacity.

<sup>14</sup> AIR 2000 SC 1274, 2000 (2) ALT 34 SC

<sup>15</sup> Shalu Nigam, Does law really present sexual harassment at work place P 31

<sup>16</sup> Dr. Manoj Kumar, sexual harassment of women at work place, a critique; criminal law journal 2000 p 7

<sup>17</sup> (1997) 6 SCC 241