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An Analysis of Constitutional Provisions and Acts women in workplace

FATIMAH ZOHRA¹

ABSTRACT

This paper compiles data of the past changes in the law for security of women in India through constitution, acts, and organizations. The paper provides the provisions formed to ensure that there is equal employment opportunities provided to women in work space and they are not being discriminated on the basis of their gender and the landmark cases that guide us through the impact the laws have made. Though we see that women have been provided with legislative measures which should be sufficient for protection of women we can spot lack of benefits of laying down such laws. This because just as various factors affect the functioning of a society there are various factors that affect implementation of these provisions such as corruption, poverty, lack of knowledge etc.

I. INTRODUCTION

In this article we shall study the role of constitution and other acts made for upliftment of women at workplace. To understand the need for provisions in the constitution and acts for women we need to look into the historical as well as the present status of women in India as a society.

It is evident from that in early Vedic society, women occupied the same position as men. Reference to complete gender equality is found altogether parts of Vedic literature . Women reached a really high standard of learning and culture, and made all round progress. But the status of girls starts declining during the amount of Smritis (period of codification of social laws).

Indian women's position in society got further deteriorated during the medieval period when Sati, child marriages and a ban on remarriage by widows became a part of custom in some communities in India. Also, the socio-political rights (right to work, right to education, etc.) for the women were completely restricted by the male members of family.

Ever since independence India has constantly striven for the removal of gender inequality and also raising the status of women in society. Women have excelled in every sphere and have

¹ Author is a student at Faculty of Law, Jamia Millia Islamia, New Delhi, India.

displayed their potential by holding top executive positions. In spite of all the achievements majority of Indian women who generally belong to non-elite urban sector or rural sector continue to be dominated by male members of family and have little participation in society. Thus in order to remove the biases against women still existing in India due to the traditional social structure, this factual inequality expects to be taken care of by the paternalistic role which the state is expected to play. Legal paternalism is inherent in the directive principles of the Indian Constitution.

Indian Constitution deals with diversity and inequality. It explores the linkages between constitutionally approved special provisions surely groups, particularly women, and therefore the judicial activism of the constitutional right to 'life', which incorporates microeconomics rights.² Thereafter came the concept of women empowerment where women began demanding equal rights as men in every sector of life.

Empowerment maybe viewed as means of making a social environment during which one can make decisions and make choices either individually or collectively for social transformation. It strengthens the innate ability by way of acquiring experience, knowledge and power.

As per the UNIFEM³ the term women's empowerment means:

- Acquiring knowledge and understanding of gender relations and therefore the ways during which these relations could also be changed.
- Developing a way of self-worth, a belief in one's ability to secure desired changes and therefore the right to regulate one's life.
- Gaining the power to get choices exercise bargaining power.
- Developing the power to arrange and influence the direction of social change, to make a more just social and economic order, nationally and internationally.

A number of organizations have been formed and efforts from the Indian government have also lead to empowerment of women. One such example is Nari Adalat which exercises broad authority to investigate and dispose of a wide range of domestic violence cases in India. The Mahila Samakhya serves as an advocacy group and provides shelter, legal assistance, and social help as well as education for victims of domestic violence.⁴

² [Women and the Indian Constitution K.Sankaran "South African Journal on Human Rights" Volume 23, 2007 - Issue 2 Apr 2017]

³ United Nations Development Fund for Women, commonly known as UNIFEM was established in December 1976

⁴ Combating Violence against Women in India, Sesha Kethineni, Murugesan Srinivasan & Suman Kakar 13 Jan 2016

The relationship between economic development and woman's labor supply suggests a U-shaped relationship between development and woman's labor force participation, our results suggest there is no systematic U-shaped relationship between level of domestic product and woman's LFPR. It is seen that it is not economic growth but rather the composition of growth that is relevant for women. Also aggregate changes in the proportion of women in the workforce can be mostly attributed to the movement of the workforce across sectors rather than changes in the proportion of women workers within a sector⁵.

II. LITERATURE REVIEW

(A) Indian Constitution

The principle of gender equality is enshrined within the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of girls. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women.⁶ Also the difference of status of woman between the urban and rural areas is also to be considered. While children living in rural areas get older, school attendance falls off much more rapidly for females than for boys; but in urban areas, attendance of boys and girls remains essentially similar⁷.

Hence the provisions made are to be made such that it helps both the sectors in development.

- **Right to Life with Dignity**

One of the most important and basic human need is respect and dignity. A country's progress depends upon how its women and girls are treated. The constitution protects the dignity of women under article 51 A (e) which says is the It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Article 15(1)⁸ prohibits the state to discriminate against any citizen on grounds only of religion, race, caste, sex and place of birth or any of them. This is one of the most basic form of rights that can be exercised by the citizens of India and ask for equal opportunities further the constitution under article 15(3) gives the state right to make any special provisions for women and children.

⁵ Economic Development and Women's Labor Force Participation in India., Rahul Lahoti & Hema Swaminathan 28 Jul 2015

⁶ Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993

⁷ Gender Inequalities in Tasks and Instruction Opportunities within Indian Families, Sripad Motiram & Lars Osberg. 09 Sep 2010

⁸ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- **Education**

It is indeed a key to women upliftment. Thus courts have time and again in its judgments allowed discrimination and taken a liberal view in regard to admission to educational institutions purely on the ground of sex. For example, in *Radhacharan vs. state*⁹, Orissa high court held that the Rule 6 (2) of the Orissa statutory judicial services rules 1963 purporting to disqualify married women from being appointed as district judge was a violation of article 15(1) as the disqualification on the basis of sex. In *P.Sagar vs. state of AP*¹⁰ the court upheld reservation of 30 per cent seats to women candidate for admission in medical college. Which again was an affirmative action by the state.

- **Employment**

Indian constitution clearly talks about equality of opportunity under article 16 of the constitution thus under 16(2)¹¹ the constitution guarantees that no citizen shall be discriminated against or be ineligible for any employment or office under the state on the basis of sex.

This is one of the fundamental rights which promises equal opportunities for women in the work sector on basis of her sex. This also includes periodic increments, leave, gratuity, pension, matters of recruitment, promotion, wages, termination of employment, etc. The Constitution, therefore, provides equal opportunities for ladies implicitly as they're applicable to all or any persons regardless of sex. However, the Courts realize that these Articles reflect only de jure equality to women. They have not been ready to accelerate de facto equality

In *C. B. Muthamma v. Union of India*¹² The petitioner was a senior member of the Indian Foreign Service claimed to be overlooked for promotion because some rules governing the employment of women in the Service are discriminatory in nature, the Court directed the Government to review the relating to the promotion of people junior to her emphasizing the need to overhaul all service rules to remove discrimination.

Also in *Air India v. Nargesh Meerza*,¹³ the Supreme Court struck down the Air-India Regulations relating to retirement and the pregnancy bar on the services of Air-hostesses as unconstitutional on the ground that the conditions laid down therein were entirely

⁹ And Anr AIR 1969 Ori 237

¹⁰ AIR 1968 AP 165.

¹¹ EQUALITY OF OPPURTUNITY IN MATTERS OF PUBLIC EMPLOYMENT

¹² and others (AIR 1868) Supreme Court of India

¹³ (1981) 4 SCC 335

unreasonable and arbitrary.

- **Economic Equality**

Another declaration of the constitution to achieve equality in the status of women is Article 39 (a) & (d). Where article 16(1) prohibits discrimination in matters of employment, 39(d) guarantees equal pay for equal work for both men and women.

These are one of the most empowering articles under the constitution to ensure fair pay to women for the work they do and have rights of adequate livelihood. In simple language these articles mean that there should be equal wages for equal work done irrespective of other factors.

The principle of equal pay for equal work for men and ladies embodied in Article 39(d) of the Constitution was first considered in **Kishori Mohanlal Bakshi vs. Union of India**¹⁴ in 1962. The Supreme Court then said that it had been unable to be enforced during a court of law. Under this law no discrimination is permissible in recruitment and repair conditions except where the utilization of girls is prohibited or restricted by law. The enforcement of this law is regularly monitored by the central ministry of labor and the central advisory committee. The landmark case under this article would be **Randhir Singh vs. union of India**,¹⁵ the court went so far as to say that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. In further cases we can see that in **Bhagwan das vs. state of Haryana**¹⁶ and **R.D Gupta vs. Lt. Governor Delhi administration**¹⁷ the principle of “equal pay for equal work” has also been retained by the Supreme Court. It is a constitutional goal capable of attainment through constitutional remedies by enforcement of constitutional rights. The constitutional principle of ‘equal pay for equal work’ has been upheld by the Supreme Court of India with respect to temporary employees’ vis-à-vis permanent employees in the government sector. In **State of Punjab and Ors. Vs. Jagjit Singh**¹⁸, the SC has ruled that temporary employees performing similar duties and functions as discharged by permanent employees are entitled to draw wages at par with similarly placed permanent employees. The principle must be applied in situations where an equivalent work is being performed, regardless of the category of employees.

- **Health**

Apart from pay there is another important factor is health, the state is required to ensure that

¹⁴ [11 April, 1961, Bench: B.P. Sinha, (Cj), A.K. Sarkar, K.C.D. Gupta, N.R. Ayyangar]

¹⁵ [& ors. AIR 2000 SC 544]

¹⁶ [1987 AIR 2049, 1987 SCR (3) 714]

¹⁷ [1987 AIR 2086, 1987 SCR (3) 808]

¹⁸ [Decided on October 26, 2016] and ors 1

the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength.¹⁹

Health safeguards so as no man, woman, are being exploited by their employers to do work out of their age or strength just because their economic condition forces them to under section 39 (e) Such laws are especially necessary for the labor class who due to economic disabilities, family dependence submit to inhumane terms.

Article 42 of Constitution of India which relates to directive principles of State policy says that State shall make provision for securing just and human condition of labor and for maternity relief. Although, the directive principles of State policy can't be enforced like fundamental rights but the directive principles of State policy cast a requirement upon the State to form law in respect of the aforesaid policies Article 42 of Constitution of India provides provision for just and humane conditions of work and maternity relief where State shall make provisions for securing just and humane conditions of labor and for maternity relief.

In **Smt. Dr. Deepa Sharma vs. State Of Uttarakhand**²⁰ the court says that labor laws in conformity with the recommendations made by the International Labor Organization further it suggests Every female employee and male employee whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis have a fundamental right to reasonable duration of maternity leave also as paternity leave, child care leave (CCL) and adoption leave to market motherhood and child care under Article 21 of the Constitution of India read with Article 42 of the Constitution of India. Mostly female workers, those in rural areas, illiterate or have no mid-level education are more likely to be paid below a minimum wage. In sum, the implementation and enforcement of minimum wages is dismal and marginalized groups and communities suffer the foremost .

(B) Few Other Legislations

Minimum Wages Act 1948

Under the Minimum Wages Act 1948 an Act of Parliament sets the minimum wages that must be paid to skilled and unskilled labors, a 'living wage' that is the level of income for a worker is defined which will ensures a basic standard of living including good health, dignity, comfort, education and provide for any contingency. Some reasons so as to why there was a need for this act are:

¹⁹ [[Article 39(e)] of the Indian constitution]

²⁰ [And Others on 15 December, 2016]

- Large Unemployment
- Less protection against inflation
- Exemptions from payment of Minimum Wages
- Lack of awareness
- Delays and inaction

Mines Act 1952

Apart from everything in Mines Act²¹ there are some important benefits for women such as it prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

The act clearly states that the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees therein employment with none deductions except as could also be authorized within such time and subject to such conditions as may be prescribed²² also there would be fixed hours of working for a normal day and overtime will be paid if duration of employment is extended.

The employee's state insurance act 1948 insures that along with men women also get:

- Sickness benefit
- Disablement benefit
- Medical benefit
- Funeral expenses

Apart from these they also get maternity benefit in case of pregnancy, miscarriage, confinement, premature birth or death of child. In case the insured woman dies compensation is to be paid to the nominee or legal representative for the whole period???. If the child survives and if the child also dies then till the death of the child.

Role of National Commission for Women

The national commission of women 1990 provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.

This commission has the power to investigate and examine all the matters relating to the

²¹ 1952 and factories act

²² Section 12 of minimum wages act 1948

safeguards provided for women under the constitution and other law. The power of this commission is that it has the sanctity to make bring into notice the current status of the crimes committed against women and how they can be modified in such a way that it helps the present law in fulfilling its need.

Major protection is provided to the women in workplace under the **Sexual harassment act 2013**. There was an undeniable need for this act considering the unsafe environment and trauma that women undergo violating their right under article 14 and 15 of the Indian constitution which guarantee them a life of dignity respect and freedom to choose the profession of their preference

Also the procedure is laid down so that any woman can file a complaint in an easy manner without causing her any further inconvenience.

Also some of the other provisions²³ which have been made for the upliftment of women include:

- Prohibition of employment of women during night hours
- Prohibition of employment in hazardous occupations
- Fixation of daily hours of work at nine
- Fixation of maximum permissible load
- Provision for crèche
- Provision for separate washing and bathing facility
- Provision for separate toilets
- Provision for restrooms and canteens
- Provision for mandatory benefits

Under this act a woman no woman is shall be subjected to sexual harassment at workplace, be it in an organized or unorganized sector of employment. Also the circumstances as well as the meaning of such behavior is clearly explained so that there is no way out for the offender, also the concept of an internal committee is introduced in which any women can confide in so that she does not feel discomfort in sharing her issues.

²³ All these provisions are available in the plantations and labours act 1951, the beedi & cigar workers (condition for employment) act 1966, the mines act 1952, the contract labors (regulation and abolition) act 1970 & the interstate migrant workmen (regulation of employment and condition of services) act 1979

III. CONCLUDING SUGGESTIONS

These acts and provisions though have been amended and reformed at numerous occasions but there are reasons. But they still are not been properly enforced in the society and the public.

Some of the reasons that why they are not being able to be implemented are:

Poverty: Poverty plays a major role in why there is are so many unprivileged women in the country. When a woman living in poverty she will have to accept the role given by her family and her rights will remain unused as her basic needs would include shelter, health and three meals a day. Thus poverty is the disease due to which the first step of the ladder breaks and thus there is no development of women under the reign of poverty.

Lack of awareness: Most of women are not even aware of the acts the rules the regulations that have been laid down for their benefit. This lack of awareness really affects the social structure of India.

Culture: The cultural differences in India are very diverse. A wide set of patriarchal ideas believe that women are only made for household work and shouldn't set foot outside their home's boundaries. This ideology of patriarchy is rooted deep in the conscience of many households and is also bounded by a cultural history

Corruption: This is one of the most contributing factors in the lack of resources available to women to reach them. As a whole it is one of the biggest problem that India faces the different level's at which corruption works slowly depleting the resource from reaching from top to bottom and is reduced to a minimal amount till it reaches the needy.

Lack of forces of implementation: These factors play a pivotal role in depreciating the common people from exercising their rights as citizens of India. Many women don't even have the knowledge of the provisions so how can they use them for their own benefits.
