

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Special Provisions to Safeguard the Women Worker's Interest in India

RAYMAN KAUR¹

ABSTRACT

Social Justice is an essential ingredient required for ensuring the protection of women's interest & gender equality. It is a pre-requisite for maintaining sustainable and encouraging sustainable economic growth. Social Justice refers to the attainment of laid down socio-economic objectives by the legislature. Since a very long time, the women workers have been discriminated in the matters of employment, wages, etc. and the fulfilment of gender equality principle was not even realised at the hands of the judges. In order to improve the condition of the women, significant roles must be assigned to them. Being a scientifically proven fact that women are biologically different from the men, equality here signifies equal role while understanding this fact but the differentiation in terms of salary or wages is a matter of discrimination.

This issue was administered by enacting various pro women workers legislations such as The Factories Act, 1948 with the amendment act of 1987, The Maternity Benefit Act, 1961 along with its amendment act of 2017, and The Equal Remuneration Act, 1976, etc. Along with these legislations, the State has been directed by the Constitution of India to create special provisions in this regard. The SC has also tried to secure gender equality by interpreting the various articles of the Indian Constitution and thus prohibiting the use of any discriminatory policies with regard to women employment.

With the help of the provided introduction above, the researcher by way of this paper has tried to highlight the various provisions related to labour laws in the context of women workers and how is it working towards ensuring and preserving the socio-economic justice in the society and maintaining gender equality and raising their standards of living.

I. INTRODUCTION

Women have been assigned a special position under the domain of the labour laws while keeping in view their unique attributes and characteristics – both physically and mentally.

In order to provide equal rights and privileges to the woman, the Constitution of India

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

provides numerous provisions to safeguard the interest of women and to prohibit any gender based discrimination against them. Our Constitution also tries to ensure fair and adequate employment opportunities to the women by providing them reservations in educational institutions as well as in employment under public sector.

With the view to realize the constitutional mandate, special provisions with regard to the health and safety of the female workers are laid down under all labour legislations in India.

In the landmark case of *Vishaka & Others v. State of Rajasthan*², the SC of India held that sexual harassment of women at workplace is a violation of the right of gender equality which is a fundamental right of every citizen., it amounted to the violation of right to practise any profession, or to carry on any occupation, trade or business³. SC also put forth the definition of the term 'sexual harassment' and laid down the preventive measures, complaint mechanism and also emphasised on the need to spread awareness about the rights of women workers.

In a very recent case of *Anshu Rani v. State of UP (2019)*, it was held by Allahabad HC that women workers are entitled to a full period maternity leave of six months.

The principle of 'equal pay for equal work'⁴ was explained in the SC case of *Associate Banks Officers Association v. State Bank of India*⁵. It was held that there shall not be any discrimination on the basis of gender of the worker with respect to the remuneration paid to them for the equal work done in the same organisation.

II. LABOUR LEGISLATIONS FOR THE PROTECTION OF WOMEN

Under the ambit of labour law, numerous provisions for empowering and benefitting the women workers have been enacted and incorporated regularly, some such legislations are:

- a) Equal Remuneration
- b) Maternity Benefit
- c) Factory Employment
- d) Sexual Harassment at the Workplace

(A) EQUAL REMUNERATION ACT, 1976

- i. **Introduction:** The Directive Principle of State Policy under Article 39 of the

² Vishaka & Others v. State of Rajasthan, AIR 1997 S.C. 3011 (India).

³ INDIA CONSTI. art. 19 cl. 1(g).

⁴ INDIA CONSTI. art. 39 cl. (d).

⁵ Associate Banks Officers Association v. State Bank of India, 1996 SCC (4) 378 (India).

Constitution directs the parliament to make legislations ensuring equal pay for equal work for both the male and female workers.

- ii. Object:** To prohibit discrimination based on gender of the workers and providing equal wages for their equal contribution in the work where the nature such work is similar.
- iii. Equal Work:** In order to determine the equal work, there are numerous factors such as skills, condition and nature of work. Such factors must be taken into consideration when distributing the responsibility and for avoiding any discrimination.

The question in the case of *Air India v. Nergesh Meerza* was why is there an inequality between the distribution of the post retirement benefits among the assistant flight members and the air hostesses even though the work done by both of them was similar? The SC said that:

“If the basic requirements are totally different from two classes of employees then such two classes of employees even though during a flight work as cabin crew, they would not come under one/same class of service.”⁶

In this case, the premise of the difference was specifically dependent on the conditions as well as the requirements of the service and was not due to the different sex of the two classes of employees. Therefore, it wasn't a case of gender based discrimination.

- iv. Penalties:** This provision ensures punishment of the employers who commits any act which is in contravention to this Act. Following is the list of such acts:
 - a.** While recruiting; or
 - b.** Paying equal remuneration for same work to men and women workers; or
 - c.** Discrimination on the basis of gender or sex; or
 - d.** In case of any omission or failure in executing any directions given by the appropriate government on the part of the employer as per Section 6 of the Act.

If there is any contravention to any of the acts listed above by the employer then he

⁶ *Air India v. Nergesh Meerza, (1981) 4 SCC 335 (India).*

shall be liable for pay a minimum penalty of ten thousand rupees as fine which may extend to twenty thousand rupees or three months long imprisonment can be sentenced which may extend to one year or both. But in case of a subsequent or second such offence, the imprisonment may go up to two years also.⁷

(B) MATERNITY BENEFIT ACT, 1961

- i. Introduction:** The Maternity Benefits Act was passed by the Indian parliament in 1961 which is amended from time to time. The act repealed the Bombay Maternity Benefits Act, 1929, the Mines Benefits Act, 1941 and various such enactments covering the same field. Also this act is applicable on all plantations, mines, shops, factories and establishments either in organized or in the unorganized sector having 10 or more employees. Any such women who has worked for not less than 80 days⁸ in such establishment is entitled to claim the benefits under this Act.
- ii. Object:** This act was enacted to give special care by providing maternity benefits to the biologically different females employees without causing any financial loss during a certain period of time (before and after the delivery of child).
- iii. Maternity Benefit:** It connotes any benefit in terms of money which shall be based upon the average daily wage for the period of her actual absence from work, according to provisions prescribed under the Act. According to the Maternity Benefit Amendment Act, 2017⁹, the paid maternity leave duration for women employees has been increased from the 12 weeks to 26 weeks. Under this act, such women can avail the benefit maximum before a period of 8 weeks from the expected date of delivery and the remaining time can be availed after the delivery. But in case of women having 2 or more surviving children, such paid maternity leave duration shall be 12 weeks only¹⁰.

The Supreme Court held in a Landmark case of *Municipal Corporation of Delhi v. Female Workers*¹¹ that female workers engaged in both regular and casual work or engaged in daily wage work on muster roll basis shall be qualified to reap the benefits provided under the Maternity Benefit Act, 1976 as well as the Amendment Act, 2017.

⁷ The Equal Remuneration Act, 1976, S. 10.

⁸ Eligibility criteria to avail the benefits of the Maternity Benefits Act, 2017.

⁹ Maternity Benefit Amendment Act, 2017, S. 5 (3).

¹⁰ After sub-section 5 (3) and before the first proviso, this provision was added under the Maternity Benefit Amendment Act, 2017.

¹¹ *Municipal Corporation of Delhi v. Female Workers*, AIR 2000 SC 1274 (India).

- iv. Other Benefits:** The Act also provides for various other benefits such as a leave for miscarriage or maternity termination of pregnancy, payment of medical bonus, with paid leave for tubectomy operation, leave for delivery, premature birth of a child, etc, leave for adoptive and commissioning mothers, provision of crèche facility, etc.
- v. Penalties:** Any default made by an employer to pay the amount that a women is entitled to receive as under this Act, or if he dismisses her or discharges her on the pretext of her absence from work during that period then he shall be liable for a punishment, not less than three months which may extend to a year with a minimum fine of two thousand rupees which may also extend to five thousand rupees or both.

(C) THE FACTORIES ACT, 1948

- i. Introduction:** This legislation was enacted with the intent to provide health safety and welfare measures by regulating the working conditions of factories. It was amended in 1987 in order to establish the safeguards against the use and handling of hazardous substances and thereby laying down the procedure for setting up of hazardous industries.
- ii. Object:** The Act aims at safeguarding the interest and protecting the workers who are working in a factory from exploitation by their employers and ensuring proper working condition to them.
- iii. Applicability:** The act is applicable to the factories which qualify the definition of factory given under S. 2(m). Therefore, the said act is applied to any premise having 10 or more workers with the aid of power or having 20 or more workers without the aid of power, working on any day in the preceding twelve months, where the process of manufacturing is being carried out.
- iv. Special provisions for women workers:**
- Any factory having 30 or more women employees are bound to provide crèche facility to their children who are under the age of 6 years according to S.48 of the Act.
 - The act prohibits women from pressing cotton where the cotton opener is at work, from lifting, carrying or moving any material, tool or thing exceeding 30 kilograms of weight and also from being employed in hazardous operations.

- Provision of separate toilets, washing and bathing facilities for men and women workers shall be provided by the employer. He is also obligated to offer public utility amenities and provision for atleast one women worker in the Canteen Managing Committee of the work.
 - The Act stipulates that the female worker shall not be allowed to clean, adjust or lubricate the machinery when it is in motion.
 - Women and children are prohibited from employment in any part of the factory for the purpose of cotton pressing wherein the cotton worker is at work.
 - Any women employee should not be allowed to work in a factory premises except between the hours from 6a.m. to 7 p.m.
- iv. Penalties:** If the manager or the occupier of the factory disobeys any of the provisions specified under The Factories Act,1948, then he shall be punished with an imprisonment with may extend to two years or with a fine which extend to one lakh rupees or both. If such contravention continues even after the conviction then additional fine of rupees one thousand shall be imposed for each day till such contravention continues.

(D) SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL ACT), 2013

- i. Introduction:** As contained under Article 14, 15 and 21 of the Constitution of India, every citizen has a right to equal protection under law, the right to live without being discriminated on any ground and the right to life with dignity and personal liberty, thus making sexual harassment a violation to these fundamental rights. This Act was enacted to provide a safe and healthy working environment to women wherein they are respected and are given equal status and opportunities as is given to their male counterparts. This statute embodies the guidelines which were put forth by the Supreme Court in the case of *Vishaka v. State of Rajasthan*¹².
- ii. Object:** To protect women against sexual harassment at workplace and establishing a prevention as well as redressal mechanism enables increased women participation in work, thus resulting in their overall growth by providing them with a sense of safety and security at the workplace.

¹² Vishaka & Others v. State of Rajasthan, AIR 1997 S.C. 3011 (India).

iii. Sexual harassment: The Act has defined Sexual Harassment¹³ as an unwelcoming act such as sexual favour demand or request, physical contact, making sexually driven remarks, showing any porn or any such video clip or any sexually oriented unwelcomed verbal, non verbal or physical conduct.

iv. Determination of Compensation: In order to decide the sum which shall be paid to the aggrieved woman, the LCC or the ICC shall keep in account the following:

- The pain, mental trauma, emotional distress and the sufferings of such aggrieved woman;
- The loss incurred in her career opportunity caused due to the predicament of sexual harassment;
- Expenses such as physical as well as psychiatrist treatment incurred by the victim;
- Respondent's income and financial status;
- Feasibility study to ensure whether such payment shall be in lump sum or in instalments.

v. Punishment:

- The employer will be subjected to pay a penalty of Rs. 50,000, if:
- he fails to establish an Internal Complaints Committee; or
- he fails to work upon the recommendations provided by the Committee; or
- where it is required, he fails to file the required annual report to the District Officer; or
- he is held contravening or abetting any of the rules prescribed under the Act.
- In case of subsequent or repeated contravention of the Act, the employer can be subjected to:
- he shall be held liable for twice of such punishment or a higher punishment if provided under the Act.
- his business licence can be cancelled or withdrawn or non-renewal of its registration.
- If any person who is entrusted with the duty to handle the complaints, inquiries or recommendation made under the Act fails to keep its confidentiality, then

¹³ The Sexual Harassment at Workplace Act, 2013, S. 2n.

such person shall be held liable for a penalty as per the service rules or in case of non availability of such rules, shall be made liable in the manner so prescribed.

III. SUGGESTIONS/ RECOMMENDATIONS

According to the OECD report of 2017-18 the proportion of working women has reduced steadily over time, from 36 percent to 23.3 percent in about a decade. Thus, indicating a decline of 33.3 percent in Female Labour Force Participation (FLFP) in 10 years.¹⁴

- I would recommend that the govt. should either share the burden with the employer equally or it should reduce the maternity leave time period to an ILO recommended period of 18 weeks. This will result in eliminating the employers' resistance in recruiting female workers and will also reduce the gender based remuneration disparities.
- The prohibition on women to work at night under The Factories Act, 1948 should be made as choice rather than an obligation as women who are willing to work or want to work for overtime should be allowed to do so.
- I would also recommend that in order to actually achieve equality, a concept of parenthood should be installed in the Maternity Benefits Act, 1961 wherein even the father is allowed to check upon his child during a work day and availability of crèche facility to single father's under The Factories Act, 1948 otherwise the women are favoured and the equality quotient remains delusional in itself.
- I would also suggest that a provision of paternity leave or the parental shared leave should be installed in the existing legislations or by bringing up a new law itself. In the proposed law, the parents would be free to split the leave which they would be sharing and the employer of each parent would be bound to share the 50% of the cost of such leave, even when the entire parental leave is availed by one parent. For instance, if the whole parental leave is used up by the wife, then also the husband's employer is obligated to pay 50% of the leave cost and the wife's employer would pay the rest 50%. In this way, we can promote equality along with reduced burden which would then be borne equally by the two employers.

¹⁴ Surbhi Ghai, *The Anomaly of Women's Work and Education in India*, Indian Council for Research on International Economic Relations, https://icrier.org/pdf/Working_Paper_368.pdf.

IV. CONCLUSION

The government has enacted numerous special provisions and initiated several governmental programmes to safeguard the interest of women at workplace and provide them a place of work which is free from discrimination. Also, a majority of these special provisions are inspired by the International Labour Organisation recommendations.

Despite of these constant efforts, the Female labour force participation (FLPR) is constantly dropping and in 2017-18, it had fallen to the historic low of 23.3 percent. The Dropping figures of FLPR are indicative that the policies formulated by the government overlooked the patriarchal ideologies prevalent in the country.

However, mere implementation of gender sensitive policies for the benefit of women is not enough and thus, in order to reverse this effect, steps should be taken to eliminate the socio-cultural norms and psychological barriers that are present in the country for ages. Women should be treated as an equal to men and not as a supplementary earner to the family where men are considered to be the primary earners. This call for an acceptance from the society at large and the govt. needs to work towards this by bringing this mindset change which is a long and arduous process thus, requiring huge patience, resilience and perseverance. Policies on raising the women's marrying age, enhancing their education quality and thus, improving their employment opportunities and their chances of getting at higher decision making roles in prestigious organisations'. This will not only promote prosperity for women but will also contribute in improving country's economic condition.
