

LABOUR LEGISLATION AND PROTECTION OF WOMEN

INDIAN LABOUR LEGISLATION

HISTORY

The history of labour legislation in India is naturally interwoven with the history of British colonialism. Considerations of British political economy were naturally paramount in shaping some of these early laws. In the beginning it was difficult to get enough regular Indian workers to run British establishments and hence laws for indenturing workers became necessary. This was obviously labour legislation in order to protect the interests of British employers. Then came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier, the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus we received the first stipulation of 8 hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond 8 hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist.

GROWTH

Labour Legislation in India grew with the growth of industry. In the 18th century, India was not only a great agricultural country but a great manufacturing country too.

In India, the plantation industry in Assam was the first to attract legislative control. The method of recruitment of workers in this industry was full of hardships. Workers were employed through professional recruiters. Workers were not allowed by the planters to leave the tea gardens. A number of Acts were passed from 1863 onwards to regulate the recruitments. These legislations protected more the interests of the employers than safeguarding the interest of the workers.

In India, a number of labour legislations have been enacted to promote the condition of the labour keeping in view the development of industry and national economy. But for industrial regeneration it is necessary that the partners of the industry must care their respective defects. Since independence both legislation and public opinion have done a lot to better the conditions of the workers but unfortunately the employers have not responded very appreciably. It is high time that the employers must realise that “ Workers are the dominant partners in the industrial undertakings and without their co-operation and good work, discipline, integrity and character, the industry will not be able to produce effective results or profits. However efficient the machine touch in any industry may be, if the human element refuses to co-operate, the industry will fail to run. Therefore the profit of the industry must be shared between employers, workers and the community; the workers having a dominant share, being the producers of wealth. The Government and the employers must fully understand the labour psychology and a change in their outlook and attitude is desired to secure the industrial peace. Nothing should be done under threat or coercion but on a clear understanding that whatever is good and is due to the labour must be given. 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.”

WOMENANDLABOURLAWS

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.

LEGISLATIVE SUPPORT FOR WOMEN

India has witnessed many social changes post-independence. Today, women have come out of homes and established an identity of their own in different areas of work. Though most Indian adult women make an economic contribution in one form or another (including housework, working in family land etc.), much of their work is not documented. This is because majority of women workforce is employed in the unorganized sector and working for family is considered as responsibility which should not be counted. The Economic survey data for 2007-08 reveals that the overall percentage share of female participation in work was comparatively low as compared to that of male.

Owing to cultural restrictions and family responsibility, women participation in the formal economy is limited. Some other concerns that affect working women relate to gender discrimination, quantum of payment, safety at work place, working hours and conditions of employment that are sensitive to cultural and religious bondages as well as family responsibilities. Indian legislature has been active on this front. Its main focus is on reducing inequality of any sort, and thereby promoting a fair, non-discriminatory and safe work environment.

Indian political and administrative structure is multi-layered. At the apex is the central government, under which there are states and local self-bodies. Responsibilities for legislation are also divided accordingly, so that autonomy of states is protected. In labour legislation, both center and states have powers to enact suitable legislations.

The government has given greater focus to issues relating to women through creation of an independent **Ministry of Women and Child Development**, initiation of legislation that has taken

the country closer to complete legal equality for women, gender budgeting and initiation of programs for greater inclusion of women in all walks of life.

There are over 45 labour legislations from the Central Government and the number of legislations enacted by the State Governments is close to four times that of the Central Act. The government has so far passed/amended **5** women specific legislations. However, effectiveness of the laws can be seen/felt if women's are politically and socially empowered.

PROTECTIVE LABOUR LEGISLATIONS

[1] The Factories Act, 1948

INTRODUCTION

It is a labour welfare legislation where in measures have been laid down to be adopted for the health, safety, welfare, working hours, leave and employment of young persons and women. Exclusive provisions for women have also been incorporated in the act keeping in view their soft and tender personalities.

PROVISIONS FOR THE WELFARE OF WOMEN

1. Prohibition of employment of women during night hours.
2. Prohibition of work in hazardous occupations.
3. Prohibition of employment of women in pressing cotton where a cotton opener is at work.
4. Fixation of daily hours of work at nine.
5. Fixation of maximum permissible load.
6. Provision for crèche.
7. Provision for washing and bathing facilities.
8. Provision for separate latrines and urinals.
9. Provision for rest rooms and canteens.
10. Provision for maternity benefits.

[2] The Mines Act, 1952

INTRODUCTION

This Act has been enacted to amend and consolidate the law relating to the regulation of labour and safety in mines. It regulates the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them.

PROVISIONS FOR THE WELFARE OF WOMEN

[1]No woman shall, notwithstanding anything contained in any other law, be employed -

(a) in any part of a mine which is below ground

(b) in any mine above ground except between the hours of 6 a.m. and 7 p.m.

[2] Every woman employed in a mine above ground shall be allowed an interval of not less than 11 hours between the termination of employment on any one day and the commencement of the next period of employment.

[3] Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, vary the hours of employment above ground of women in respect of any mine or class or description of mine, so however that no employment of any women between the hours of 10 p.m. and 5 a.m. is permitted thereby.

[3] Plantations Labour Act, 1951

INTRODUCTION

The Act aims at providing for the welfare of plantation labour, and to regulate the conditions of work. It applies to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom or any other plant which measures 5 hectares or more and in which 15 or more workers are employed on any day of the preceding 12 months.

PROVISIONS FOR THE WELFARE OF WOMEN

1. Prohibition on the employment of any women in any plantation between 7 p.m. to 6 a.m. exempting those who are employed in any plantation as midwives and nurses.
2. **Sickness and Maternity Benefits** in the form of allowance in case of confinement or expected confinement and **2 Additional Breaks daily** for a woman resuming her work after delivery for nursing her child till the child is 15 months old.
3. **Creche Facility** in plantations where 15 or more women workers were employed or the number of children (below the age of 6 years) of women workers is 20 or more.

[4] The Bihar Shops and Establishments Act, 1953

INTRODUCTION

This Act has been enacted to regulate the service conditions and the conditions relating to the employment of the employees working in the shops and establishments situated in Bihar.

PROVISIONS FOR THE WELFARE OF WOMEN

1. Prohibition on working of women before 6 a.m. or after 10 p.m. in the shops and establishments.
2. Maternity leave of maximum 12 weeks will be exempted during the determination of annual leave with wages.
3. Privilege given under Employees Compensation Act, 1923 are also applicable.
4. Privilege given under Maternity Benefit Act, 1961 are also applicable.

SOCIAL SECURITY LEGISLATIONS

[1] The Employee State Insurance Act, 1948

INTRODUCTION

It is one of the most important social legislation in India. It has been enacted to provide for various benefits in different contingencies. Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit, funeral expenses along with insured men worker. However in addition to these benefits, insured women workers also get maternity benefit in case of certain contingencies arising out of confinement, miscarriage, sickness arising out of pregnancy, confinement, premature birth of child or miscarriage and death. The duration of maternity benefit available to insured women in case of confinement is 12 weeks of which not more than 6 weeks shall precede the expected date of confinement. The maternity benefit is paid subject to the condition that the insured women do not work for remuneration on the days in respect of which the benefit is paid. In the event of the death of the insured women, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives, and if the child also dies until the death of the insured women.

[2] The Maternity Benefit Act, 1961

INTRODUCTION

Keeping in view the need for providing maternity benefits to women workers, especially adequate provisions for leave during maternity period and the convention of the ILO, the Maternity Benefit Act, 1961 was passed. This Act has been passed to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. It is not doubt a significant piece of labour legislation exclusively devoted to working women in factories, mines, plantations and establishments where in persons are employed for the exhibition of equestrian, acrobatic and other performances.

In 1948, the provisions for maternity benefit was made under the Employees State Insurance Act and in 1951 under the Plantation Labour Act. However the conditions for payment, the rate and period of benefit was not uniform under these Acts and in order to remove these disparities and to have uniform rules, the maternity Benefit Act, 1961 was passed. The maternity benefit is applicable to casual workers daily wage workers also.

Definition of Woman- ‘Woman’ means a woman employed, whether directly or through any agency, for wages in any establishment.

PROVISIONS FOR THE WELFARE OF WOMEN

1. Maternity benefit of 12 weeks as the maximum period
2. Various types of Cash Benefits
3. Various types of Non Cash Benefits/Privilege
4. Leave with wages in case of Miscarriage and Tubectomy Operations
5. Leave with wages in case of Illness Arising Out of Pregnancy
6. Prohibition on Employment during Certain Periods
7. Prohibition on Dismissal or Discharge or Variation in conditions of Service from Employment
8. Benefits in Case of Death of a Pregnant Employee

[3] Domestic Workers (Registration, Social Security and Welfare) Act, 2008

INTRODUCTION

The Act was introduced to regulate payment and working conditions and check exploitation and trafficking of women and other young household workers. Domestic workers are in the unorganized sector and unorganized, hence there are practical difficulties to cover them. Though applicable to both men and women, it assumes significance for women due to their presence in large numbers in the occupation.

PROVISIONS FOR THE WELFARE OF WOMEN

[1] Hours of Work i.e.dailyrest period of at least 10 consecutive hours between ending and recommencing work and **Annual Leave with Wages** for at least 15 days for any (male or female) registered domestic worker.

[2] Minimum Wages should be paid as per the Minimum Wages Act, 1948.

[3] Safety & Penalty Provisions in cases where any person knowingly sends, directs or takes any girl or woman domestic worker to any place for immoral purposes or to a place where she is likely to be morally corrupted or in any manner sexually exploited. Such a person shall be subjected to imprisonment for a minimum period of 6 months which may extend upto 7 years and fine up to Rs. 50000 or both.

[3] UNORGANIZED WORKER'S SOCIAL SECURITY ACT, 2008

INTRODUCTION

For the unorganized and self-employed women workers, certain schemes like The Unorganized Sector Worker's Social Security Act, 2008, etc., have been introduced at the Central, State and Local levels. The Act provides for formulation of Social Security schemes for social security and welfare of workers in unorganized sector.

Maternity and Other Benefits

It makes provision for the registration of all unorganized workers. Also it pertains to welfare schemes for different sections of the unorganized sector workers on matters relating to life and disability cover, health, insurance and maternity benefits and old age pension.

LEGISLATIONS CONCERNING WAGES AND BONUS

[1] The Payment of Wages Act, 1936

INTRODUCTION

The Payment of Wages Act, 1936 regulates payment of wages to employees (direct and indirect). The act is intended to be a remedy against unauthorized deductions made by employer and/or unjustified delay in payment of wages.

PROVISIONS FOR THE WELFARE OF WOMEN

[1] Regular Pay - Payment should be made before the 7th day of a month where the number of workers is less than 1000 and 10th day otherwise. The wage-period shall not exceed 1 month.

[2] Mode of Payment- payment has to be made in currency notes or coins. Cheque payment or crediting to bank account is allowed with consent in writing by the employee.

[3] Deduction from Wages - Employer is allowed to effect only authorized deductions, as specified in the Act. This include fines, absence from duty , Damages or loss , deduction for services (amenities) given to employer recovery of advances and loans and payment to cooperative society and insurance.

[4] Claims for excessive deduction and Non Payment - Employers individually or through trade union can approach the authority (Labour Office) for relief.

[2] The Minimum Wages Act, 1948

INTRODUCTION

The Minimum Wages Act, 1948 sets the framework of declaring the minimum wages payable for occupations, both in formal and informal sector. This Act safeguards the interests of workers by providing fixation of minimum wages mainly focusing on unorganized sector and in specified occupations (called scheduled employments). The act binds the employers to pay their workers the minimum wages fixed under the Act from time to time. Owing to their jurisdiction the Central and the State Governments fix, revise, review and enforce the payment of minimum wages without any discrimination of gender.

PROVISIONS FOR THE WELFARE OF WOMEN

[1] Hours of work and overtime - The Act also regulates the working hours and enforces overtime payment for working longer hours or on holidays. If the worker has worked lesser hours not due to own fault like coming late then also minimum wages has to be paid, because the employer has failed to assign adequate work.

[2] Current Minimum Wage - With effect from October 2011 the National Floor Level Minimum Wage has been increased to Rs. 144 from Rs 125. Several states have fixed higher Minimum wages than those prescribed by Central Government for highly skilled, skilled, unskilled and semi skilled workers engaged in Scheduled employments.

[3] The Payment of Bonus Act, 1965

INTRODUCTION

Bonus is really a reward for good work or share of profit of the unit where the employee is working. Often there were disputes between employer and employees about bonus to be paid. It was thought that a legislation will solve the problem and hence Bonus Act was passed. Unfortunately, in the process, bonus has become almost as deferred wages due to provision of payment of minimum 8.33% and maximum 20% bonus. Bonus Act has not in any way reduced the disputes

[4] The Equal Remuneration Act, 1976

INTRODUCTION

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counterparts for the same piece of work. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and social handicaps of the poorer classes, recruited women on a large scale at lower wages and made them work under inhuman conditions. To give effect to the constitutional provision under Article 39, the parliament legislated the Equal Remuneration Act, 1975.

PROVISIONS FOR THE WELFARE OF WOMEN

1. Payment of Remuneration at Equal Rates to Men and Women Workers and Other Matters

2. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature

3. No discrimination to be made while recruiting men and women workers

PROPOSED LEGISLATIONS & OTHER PROVISIONS

Sexual Harassment of Women at Their Work Place (Prevention) Bill, 2006

Introduction

At present, there is no specific legislation in India to deal with sexual harassment of women at workplace. The Sexual Harassment of Women at their Work Place (Prevention) Bill, 2006 is pending approval from both the houses of Parliament. The bill once passed aims at providing legal protection to women at workplace against any kind of sexual harassment ranging from staring to rape. Till then, the guidelines that the Supreme Court has laid down in the case of [Vishaka vs. State of Rajasthan](#) are to be followed. These guidelines encompass a comprehensive definition of sexual harassment, directions for establishment of a complaint mechanism and the duty under which employers are obligated to obviate any such act.

OTHER PROVISIONS

Women Bartenders

The Supreme Court of India has struck down the Excise law of 1941 prohibiting women bartending in Delhi. The Court has also reduced the age of bartenders from 25 to 21 years.

The States where liquor is sold and served lawfully are now free to amend their Excise Laws to allow women to work as bar tenders in pubs and restaurants.

RECOMMENDATIONS OF FIRST NATIONAL COMMISSION OF LABOUR REGARDING EMPLOYMENT OF WOMEN

[1] The right of a woman to employment should in no way be considered subordinate or secondary to that of a man. The necessary training facilities should be created/augmented. Vocational guidance programmes will serve a useful purpose in giving required information to women. It will be desirable to give preference to women for training in those trades and occupations for which they have special aptitude.

[2] Implementation of the principle of equal pay for equal work should be more satisfactory than at present.

[3] (a) Women will have to be absorbed more and more in skilled categories of work to maketheir employment more economic to the employer.

(b) With proper skill generation and rational distribution of women labour force as a part of social and economic planning, it should be possible for an employer to follow a non-discriminatory policy in employing women.

RECOMMENDATIONS OF SECOND NATIONAL COMMISSION OF LABOUR REGARDING EMPLOYMENT OF WOMEN

[1] There should be reduced working hours for adolescents, prohibition of underground work in mines for women workers, prohibition of work by women workers between certain hours and so on.

[2] On the question of night work for women there need not be any restriction on this if the number of women workers in a shift in an establishment is not less than five, and if the management is able to provide satisfactory arrangements for their transport, safety and rest after or before shift hours.

OBSTACLESANDHINDRANCES

There are various reasons why the employment of women has not been up to the mark. In a developing country like India the income, by and large is low but social conventions weight against employment of women. Due to labour surplus the unemployment and underemployment many men are available hence the problem of participation of women, in economic activity become serious. The economic reason involving additional cost is an impediment to women employment. There is statutory

obligation on the employer to pay maternity benefit and it is considered as burden by the employer and affect the employment of women. Some employers recruit only unmarried women on condition to resign their post on getting married. This has been discriminatory, unfair and unjust. Prohibition of night work of women under many legislations too has affected the employment of women.

CONCLUSION

Although the working women have been provided various benefits, concession, protection and safeguards under different labour legislations in order to provide security against various risks peculiar to their nature which are likely to occur in their lives yet their work participation is not up to mark. According to the Human Development Report , 1995, women's participation in the labour force had risen only by 4 % points in twenty years, from 36 % in 1970 to 40 % in 1990. Women normally receive a much lower average wage than men, all religious record a higher rate of unemployment among women than men, women work longer hours than men in every country, the deeply sharing of the adversities between women and men are still persisting.

Indisputably, India is committed to the cause of empowerment of women. However, the journey towards progress is long and arduous. India has witnessed great change in the last two decades. Age old prejudices and gender based biases are giving way to gender equality and harmonious development. Policies to raise women's age at marriage, enhance their education and open greater employment opportunities will also help to empower them, at least in some respects. Our goal is to cause policy, institutional and individual change that will improve the lives of women and girls everywhere.

LATEST DATA

According to 2011 census

- ❖ According to the 15th Census data released on 31st March 2011, India's population rose to 1.21 billion people. Significantly the growth is slower for the first time in nine decades.
- ❖ India now accounts for world's 17.5 % population. It comprises 623.7 million males and 586.5 million females.
- ❖ The male population has grown by 17.19 % to reach 623.7 million (62 crore) while the female population has risen by 18.12 % to reach 586.5 million (58 crore).

- ❖ Literates constitute 74 % of the total population aged seven years and above and the data shows 26 % of the population is still unlettered.
- ❖ India's literacy rate has gone up from 64.83 % in 2001 to 74.04 % in 2011 showing an increase of 9.21 %.
- ❖ The effectiveliteracy rate for males rose from 75.26 to 82.14% marking a rise of 6.9 %, it increased by 11.8 % for females to go from 53.67 to 65.46 %.
- ❖ The gap of 21.59 % points recorded between male and female literacy rates in 2001 census has reduced to 16.68 % points in 2011. The Planning Commission is targeting a reduction of this gap to 10 % points by 2011-12.
- ❖ The literacy rate of above 85 % was the target set by the Planning Commission to be achieved by 2011-12.
- ❖ Kerala has the highest literacy rate at 93.91 % followed by Lakshadweep at 92.28 %. Bihar is at the bottom of the ladder with literacy rate of 63.82 %.
- ❖ India ranks a lowly 112 out of 134 countries in the World Economic Forum's Global Gender Gap Index for 2010 .
- ❖ India's child sex ratio has deteriorated in the past 10 years, now at 914 girls for per 1,000 boys; in 2001 the ratio was 927 per 1,000. It is the lowest since Independence.
- ❖ An estimated 15 million girls were wiped out – simply not born – in India over the last decade, the figure is 25 million in China.
- ❖ Chinese ultrasound manufacturers also see India as their big market.
- ❖ Doctors in India make at least \$200 million a year by conducting illegal sex-selection procedures.

According to study, survey and research

- ❖ 45 % women of the total women labour force are desirous to be engaged in part time jobs.
- ❖ 90 % women are engaged in household works.
- ❖ About 45 % women says that there is no-one to help them in household

works.

- ❖ Women are giving priority to the self-employment.
- ❖ Below 40 % women are aware to the facility of debt given for self-employment.
- ❖ Only 10 % women applies for financial facilities.

REMARKABLE QUOTES

“How important it is to recognize and celebrate our heroes and she-roes.”
-- **Maya Angelou**

“...Gender Equality is critical to the development and peace of every nation.”
-- **Kofi Annan**

“..... We have miles to go, miles to go in the field of Women Welfare.”
-- **Pandit Jawahar Lal Nehru**

“ To secure to each labourer the whole product of his labour, or as nearly as possible, is a worthy object of any good Government .”

-- **Abraham Lincoln**

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