



A COMPARATIVE STUDY OF LABOUR LAWS IN INDIA AND THEIR SIGNIFICANCE ON WOMEN AND CHILDREN

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ABSTRACT

According to a government assessment, the majority of Indian workers make less than half of the minimum wage that is considered to be acceptable. 93% of the total workforce is informal as per the Economic Survey of 2018-19. According to a 2018 NITI Aayog report, 85% of India's workforce is working in the unorganised sector. The informal workforce comprises more than 90% of the overall workforce, according to the National Statistical Commission's (NSC) 2012 report of the Committee on Unorganised Sector Statistics. This demonstrates that there is pressing need for the government to pass labour laws so that their rights can be safeguarded.

This Research Paper will be going to elucidate the basics of labour laws and how they evolve since the Vedic period. It explains the constitutional provision which is given so that the rights of labourers could be safeguarded. It contains some of the important labour laws which in a true sense help in protecting the rights of labourers. The paper will be going to highlight the chief feature of the Act which safeguards the life, health and dignity of labours. The next part of the paper will be going to explain the condition of the two most suffering classes i.e Women and Children and will also put forth

the Laws which are made by the Government of India for Safeguarding the rights of these two sections.

Keywords: Labour Laws, Workplace, Safeguard, Employers, Women and Children.

Introduction

Labour law, also known as 'Employment law' is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations of workers, union members and employers in the workplace. The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to social and economic development since the industrial revolution. (ncib.in)

HISTORICAL BACKGROUND OF LABOUR POLICY & LABOUR LAWS

India's labour policy mainly consists of labour laws. The labour laws of independent India attain their origin, inspiration and strength partly from the views expressed by the **nationalist leader during the days of the national freedom struggle**, partly from the debates of the constituent assembly and partially from the provision of **the constitution of India and international convention and recommendations**. (SALVE) However, it doesn't mean that there were no labour laws in India earlier to independence but the laws enacted in the era



were to secure the interests of the British employers and industrialists.

After independence, there felt a need for labourers to be self-reliant along with an equally forceful view to prefer reliance on the government which directed India towards adopting a new approach of labour policy known as 'Tripartism' representing the workers, employers and the government altogether. In this kind of approach, the representative's main role is advisory rather than a decision maker. Their function to be performed are the commencement of the meeting, sharing views on important dispute matters, reaching a consensus and making recommendations as they consider accordingly. Here the more important role is given to the government for constituting crucial and constructive steps towards the development of labour by organizing annual labour conferences and making permanent standing labour committees a major instrument of Tripartism. (The Factory Act 1948, 2021)

A code of discipline was adopted in the industry at the sixteenth conference held in 1958. The code persuades the parties to avoid strikes and lock-outs without notice and to adopt such measures of dispute settlement as provided by the law like arbitration or mediation methods. It also pledged them to avoid coercion, victimization, partial strikes and lock-outs and to adopt grievance procedures.

Both labour and capital are important factors in building a national economy. The labour policy lays stress on the community as a whole as well the individual employees to work under the obligation to protect the welfare of workers and to secure their due

shares in the gains of economic development. (The Factory Act 1948, 2021)

The constitutional aspect of Labour Laws

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislation. As a result, a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, 'beedi' workers etc.

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include the right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redressal of grievances,



right to organize and form trade unions, collective bargaining and participation in management. Our labour laws have also been significantly influenced by the deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference. Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as the First National Commission on Labour (1969) under the Chairmanship of Justice Gajendra Gadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma (Labour.Gov.in) and the National Commission for Enterprises in the Unorganised Sector (NCEUS) (2009) under the Chairman of Dr Arjun Sengupta. In addition, there have been several judicial pronouncements on labour laws which have helped to arrive at a better interpretation of these laws and at times given a new direction to their implementation. (Report of the working group on Labour Laws & other regulations for the Twelfth Five Year Plan, 2012-17)

What necessitates the situation for the formation of Law?

Labour law is an essential component of labour policy in India which aim at giving some basic rights to workers as enshrined in our constitution. Labour law reforms are in a nascent stage and the government has been introducing new laws and revising the existing ones instead of the emerging needs of the workers in a constantly dynamic economic environment. Hence it becomes crucial to examine the lacunas before making any further reforms in the concerned areas. The deliberate actions, the existing labour

laws and the urge for the review of these laws to protect the interest of these workers more constructively while at the same time enhancing the growth of the industry, employment and productivity of the workers in a healthy and harmonious work environment. (The contents of the Labour Law Journal of India, which has been in publication for more than sixty years, are)

For instance, firstly the *Factory Act, 1883* was enacted pledging certain rules and working conditions like 8 hours of working hours, the prohibition of women in night employment, the abolition of child labour and also introduced the provisions of overtime wages which all seemed and were in benefit of the labour community as whole but the real intention behind it was to make Indian labour costlier to win the competition with the Indian textile Industry.

Secondly, the *Trade Disputes Act, 1929* was enacted to regulate the relationship between the union of employees and the employers. It introduced the provision of collective bargaining but then eradicated the labour union rights to strike or lockout so that the industrial progress did not get halted and their gains were to remain unaffected.

But after Independence, the scenario gained a drastic change as India with the idea of social justice made a proper socialistic approach toward the labour policy which was not for any gain like that in the colonial period but the actual benefit and welfare of the labours of the country.

It brings forth many laws and acts enactment under different codes of discipline. This Research Paper will be going to elucidate some of the important Acts which safeguard



the right of Labour: *The Factories Act, 1948*, *The Industrial Disputes Act, 1947*, *The Bonded Labour System (Abolition) Act, 1976*, *The Payment of Gratuity Act, 1972*, etc.

THE FACTORIES ACT, 1948

Why does there arise a need for it?

In 1872-73, after a report by Bombay cotton department's inspector-in-chief, Major Moore, a need for legislative provisions was felt for the working conditions of factories. Later, the first ever factory law, the Factories Act, 1881 was enacted during the time of Lord Ripon, which is then followed by the appointment of a factory commission in 1885. The act is basically to provide protection to the exploited workers and improve the working conditions in the industries and factories. The act further provides machinery of instructions and their strict observance and direction for the owners, and the machinery created in the act. Over time as society progressed further, the act was amended accordingly. In 1891 another factories act was enacted following an appointment of a royal commission on labour in 1892. On the recommendations of this commission further, a new act was drafted, that was, Factories Act, 1934. Still the act consists of many defects and further revision of the act was realized. Later, on August 28, 1948 the Factories Act, 1948 was passed by the constituent assembly which came into force on April 1, 1949.

It consists of eleven chapters with 120 sections in total including provisions for health, safety, working hours, some special provisions, penalties and procedures. As this act was a revised version of the previous one,

it brought some important changes to the working conditions as follows:

- 1) The state government now have the authority to extend the provisions of this act to any establishment with the only exception of the establishment being operated by family members solely. Previously its authority was limited based on workers limit of 10 and establishment being operated using power
- 2) chapter III of the 1934 act is now distinct into 3 parts dealing with the health, safety and welfare of the workers in chapters III, IV and V respectively in the new act of 1948. The provisions of the same were also extended and previous limitations were removed with the only exception being the establishments operated solely by family.
- 3) Child workers' age limitation increased from 12 years to 14 years with a reduction in their working hours from 5 hrs/day to four and a half hours a day.
- 4) New provisions for licensing, registration and factory building specifications were also introduced. The state government has to keep surveillance over these procedures to be followed properly, and its prior approval is also mandatory for new factories to be established or extended.
- 5) Provisions for overtime wages and restriction of working time for women and children from 6 a.m. to 7 p.m. introduced.
- 6) The state government is further empowered to make regulations for the worker associations in the management of the welfare arrangements. It also has to keep surveillance of the same.
- 7) The term "factory" has broadened its meaning including all the establishments with 10 or more workers with power and 20 or more workers where power is not used in its definition. However, mines and railway running sheds are excluded from this



definition. And the difference between seasonal and non-seasonal factories is also removed.

Main Features of Act

- 1) Chapter I describes the basic definition of adult, adolescent, child, hazardous process, day, etc. and power of state during a public emergency, approval, licensing, etc.
- 2) Chapter II describes the establishment of the inspecting staff whose definition and powers are mentioned in sections 8 to 10.
- 3) Chapter III deals with the health conditions including sanitization and related provisions for a better working environment for the workers as mentioned in sections 11 to 20.
- 4) Chapter IV deals with the safety of workers with the provisions for fencing of machinery, employment of young persons on dangerous machines, hoists & lifts, prohibition of women and children near cotton openers, excessive weights, protection to eyes, explosive and inflammable substances, and lifting machines, chains and lifting tackles etc. in sections 21 to 41.
- 5) Chapter IV-A deals with provisions relating to hazardous processes including the constitution of the site appraisal committee, compulsory disclosure of information by the occupier, emergency standards, etc. in sections 41-A to 41-H.
- 6) Chapter V consists of provisions for the welfare of the workers such as washing facilities, facilities of sitting, canteens facility, the appointment of a welfare officer, etc. in sections 42 to 50.
- 7) Chapter VI mentions provisions regarding working hours of adults including weekly holidays, compensatory holidays, etc. in sections 51 to 66.
- 8) Chapter VII includes the provisions of employment of young persons like a

certificate of fitness, prohibition of employment of young children, working hours for children, register of child workers, powers to make rules and to require a medical examination, etc. in sections 67 to 77.

- 9) Chapter VIII deals with the provisions of annual leave with wages with regulations regarding payment in advance in certain cases, power to make rules and to exempt factories by the state government, etc. in sections 78 to 84.
- 10) Chapter IX consists of special provisions including the power to state government to exempt public institutions, dangerous operations, etc. in sections 85 to 91-A.
- 11) Chapter X mentions the provisions of penalties and procedures including a general penalty of offences in section 92 to limitation of prosecution in section 106.
- 12) Chapter XI is about supplemental which includes provisions regarding appeals, display of notices, service of notices, repeal & savings, etc. in sections 107 to 120. (The Factory Act 1948, 2021)

THE INDUSTRIAL DISPUTES ACT, 1947

Why does there arise a need for it?

After independence, India witnessed the industrial revolution which introduced the factory system and hence paved a way for the development of new jurisprudence that is known as Industrial laws. The growth of this law was gradual but nowadays there is growth in cases regarding industrial laws. Along with the establishment of industries, arise of disputes was natural and to deal with such industrial disputes the Industrial Disputes Act, 1947 was introduced. A country's progress is dependent upon its economic development that is pushed by the



industries which also boost the service sectors, and industrial laws help to maintain this growth unaltered and consistent by trying to smooth the industrial functions legally.

The Industrial Disputes Act, 1947 to the whole of India. It came into force on April 1, 1947. The objective of this act is to make important provisions for the investigation and settlement of industrial disputes. The act consists of 12 chapters and 40 sections in total.

Some crucial objectives of the act analyzed by the Supreme court are as follows:

- 1) To promote the measures establishing good relations between the employer and the employee.
- 2) Settlement of disputes between employers and employees, employers and workmen, or workmen and workmen with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of association of employers.
- 3) Prevention of illegal strikes and lock-outs.
- 4) Relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking.
- 5) Collective bargaining

Main features of the Act

As mentioned in section 1 of this act there are some distinguishing features of the Industrial Disputes Act, 1947 which are summarized as follows: -

- 1) Provisions to present an industrial dispute before the industrial tribunal if the parties agree or if the government deems it expedient to do.

2) An award shall be binding on both the parties to the dispute for the specified period not exceeding one year. It shall be normally enforced by the government.

3) Strikes and lock-outs are prohibited:

- During the pendency of conciliation and adjudication proceedings.
- During the pendency of settlements reached in the course of conciliation proceedings.
- During the pendency of awards of Industrial Tribunal declared binding by the appropriate government.

4) In public interest or emergency situations the appropriate Government has the power to declare the transport (other than railways), coal, cotton textiles, foodstuffs and iron and steel industries to be a public utility service for this Act for a maximum period of six months.

5) In case of layoff or retrenchment of workmen the employer is required to pay compensation to them.

6) Provision has also been made for payment of compensation to workmen in case of transfer or closure of an undertaking.

7) Several authorities such as Works Committee, Conciliation Officers, Board of Conciliation, Courts of Inquiry, Labour Courts, Tribunal and National Tribunal are provided for settlement of industrial disputes. The nature of powers, functions and duties of these authorities differ from each other but each one of them plays an important role in ensuring industrial peace.

In this way, we can understand clearly how this act aims to resolve industrial disputes. The general index of the twelve chapters under this act is a chapter I (Preliminary), chapter II Authorities under this act), chapter III (notice of change), chapter IV (grievance redressal machinery), chapter V (references of disputes to boards, courts or tribunals),



chapter VI (procedures, powers and duties of authorities), chapter VII (strikes and lock-outs), chapter VIII (lay-off and retrenchment), chapter IX (special provision relating to lay-off, retrenchment and closure in certain establishments), chapter X (unfair labour practices), chapter XI (penalties), and chapter XII (miscellaneous). (Mishra, 2021)

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Why does there arise a need for it?

With the industrial revolution, India's labour-intensive methods of working and craftsmen of Indian origin had to migrate towards the factory system. This change brought a variety of problems with itself, of which one of the arising one became the problem of the bonded labour system. In this system, the workers or their descendants endowed with high-interest loans were made to work in undesired conditions with unreasonable or no wages to pay off the debt. With time, this system became a customary practice which laid huge distress on the working class. To overcome this problem, and making article 23(1) and Article 35 as a basis the Bonded Labour System (Abolition) Ordinance, 1975 was put into effect by the president on October 24, 1975. This abolished the bonded labour system, the debtors in this bonded labour debt trap were freed, their bond debts were finished off, they were allotted protection from being evicted from their houses by the lenders and also a contravention of this ordinance became punishable & provisions of the measures for the economic rehabilitation of the freed debtors (bonded labours) were made. Later, this ordinance was replaced by The Bonded Labour System (Abolition) Act, 1976.

Main features of the Act

This act consists of a total of 7 chapters and 27 sections wherein provisions are provided regarding the bonded labour system. All the chapters and their provisions are as follows in brief:

- 1) Chapter I (*Preliminary*) consists of the objects, aims, operation, and important definitions related to this act in *sections 1 to 3*. Chapter II (*Abolition of Bonded Labour System*) in *sections 4 and 5* provides us with the provisions for the freedom of all those trapped in this bonded system and guarantees the rights vested to them for their freedom & protection against being again pushed into all this.
- 2) Chapter III (*Extinguishment of Liability to Repay Bonded Debt*) in *sections 6 to 9* under which all the remaining debts, etc. are extinguished or can be said suspended (*section 6*); any property or attachments confiscated by the lenders or mortgaged to them would be recovered & returned (*section 7*); any premises or residence where the bonded labours residing before the enactment of this act would be restored to the labourers by an executive magistrate (*section 8*), and the lender or creditor is restricted strictly from accepting any payment of the suspended debt following penal punishment of 3 years & fine on violation of this provision (*section 9*).
- 3) Chapter IV (*implementing authorities*) in *sections 10 to 12* under which provisions for conferring a district magistrate to safeguard and implement the provisions of the act (*section 10*); promoting welfare schemes & measures for the labour class so that they don't fall into the same situation again (*section 11*); and other duties of



magistrate & the authorized officers to maintain the act provisions (*section 12*).

- 4) Chapter V (*Vigilance Committee*) in *sections 13 to 15* under which provisions of appointing of a vigilante committee and their functioning at district & sub-division level, and the role of a magistrate regarding the same (*section 13 & 14*); and regarding the burden of proof on the creditor of whether a debt is bonded debt or not (*section 15*).
- 5) Chapter VI (*Offences and Procedure for Trial*) in *sections 16 to 23* provided for the punishments for enforcing the bonded labour (*section 16*); punishments for advancing bonded debt (*section 17*); punishment for extraction of bonded labour (*section 18*); punishment of failure to restore the possessed property of any bonded labourer within 30 days of commencement of this act (*section 19*); abetment is to be a punishable offence (*section 20*); offences will be tried by the executive magistrates (*section 21*); cognizance of offences (*section 22*); and offences by companies (*section 23*).
- 6) Chapter VII (*Miscellaneous*) in *sections 24 to 27* covers the provisions of protection to the central-state government or the vigilante committee for all the actions taken in good faith for the betterment of this act (*section 24*); barring the jurisdiction of the civil courts on the matters of this act (*section 25*); power to make rules or laws under the act (*section 26*), and repeal and saving provision (*section 27*) are included. (Prasanth)

THE PAYMENT OF GRATUITY ACT, 1972

Why does there arise a need for it?

Gratuity can be defined as the amount paid to employees by their employers as a sign of gratitude for the services provided. The rights

of receiving gratuity were recognized by the tribunals and even the supreme court laid down the principles for grant of gratuity but many controversies regarding this were consistently continuing. To overcome all these the gratuity rules are mandated under the Payment of Gratuity Act, 1972 which was passed by the Parliament on August 21, 1972, and came into force on September 16, 1972. This act extends whole over India. It aims to provide schemes for the payment of gratuity to employees engaged in all central and state departments, defence and local governing bodies. It also includes private organizations under its purview to fulfil certain conditions. This act consists of 16 sections in total is about different rules of gratuity for its applicability and other provisions.

The main feature of the Act

- 1) Applicability based on the numbers of employees: An organization consisting of 10 or more working individuals in the last 12 months on a single day, is liable to pay gratuity. Although the number diminishes under 10, the gratuity would be applicable as per the regulations of the act.
- 2) Continuity and 5-year service tenure: Any employee who wants to claim gratuity from his employer has to work for at least 5 years in a continuous tenure wherein one year for an employee working underground in a mine or where work is for less than 6 days a week is 190 days and 240 days for employments other than this. However, situations of demise or disablement of an employee are exceptions for this condition.
- 3) Controlling Authority: Section 3 empowers the government to appoint any officer to be a controlling authority using a notification. This officer shall be responsible for the proper administration of this act and different



controlling authorities may also be appointed for different areas.

- 4) Payment of gratuity: The gratuity is payable after the termination of his employment, condition, the employee must have rendered his services for a continuous period of 5 years or more. It may be after his superannuation, retirement, resignation, or on his death or disablement due to some accident or disease accordingly to section 4 of this act. Rs. 10 lakh is the limit of the amount of gratuity and certain condition in which this right can be curtailed is also mentioned.
- 5) Compulsory Insurance and Power to Exempt: Provisions for compulsory insurance to every employer except for those belonging to central or state government through life insurance corporations are mentioned in section 4-A. Although, section 5 provides employers with an established and registered gratuity fund in their company an exemption from this provision by the appropriate government, conditioned, such authority is of opinion that the establishment has favourable benefits equal to what is provided by the act. Violation of this rule is followed by penalties as per the act accordingly.
- 6) Section 6 has provisions made necessary for the employee to prescribe a name of the nominee after completion of one year of service accordingly, and section 7 describes the provisions and procedures for the determination of the amount of gratuity.
- 7) Other provisions of penalties, cognizance of offences, recovery of gratuity, protection of gratuity, provision for the government to make rules, etc are also mentioned in this act. (MODI, 2019) (Mishra, 2021)

LABOUR LAWS: SPECIALIZED FOR FEMALE WORKERS

Dynamism of women

Indian history buries a past of dynamic status of women which is an amalgamation of both good and bad factors. Since the post-Vedic period, they were confined within the four walls of the house and their role remained restricted to household works and proper nurturing of children. A long hierarchy of paternalized society was present, males were the heads of the family who were solely responsible for earning a livelihood and no focus was given to the poor conditions of women. (Kulshrestha)

Industrialization and urbanization brought social reforms where new social norms and values emerged providing Job opportunities, economic hardship and favourable cultural and social situations encouraged cultural and social situation for encouraging women to be able to seek employment outside the home. Although it raised their economic and social status, many problems and difficulties including exploitation, discrimination and dismal working conditions were always there to downgrade them. The peculiar social, biological and psychological conditions and their illiteracy and ignorance played a catalyst in these problems.

To overcome the obstacles, some security and protection through legal means i.e., the Constitution of India under Chapter III of IPC under Articles 14, 15, 16, 23, 39, 43 and 46 protection and security to women workers are provided. The protective measures taken by the Government such as separate toilets and washing facilities, drinking water,



sanitization etc., and surveillance of the same are included. (Basu, 2021)

The problem faced by women in the industry

In India, in the contemporary world of the industrial sector full of competition, women are facing problems related to rights and privileges. Since time immemorial women are struggling for their social status and a respectable place in society. For serving this purpose and providing them with helping hands the Indian government has enacted some laws concerning the issues arising to them in the industrial world where they are playing their roles as a worker and employee. Some of these important laws are described below:

The Maternity Benefit Act, 1961

The enactment of this act was for the regulation of women's employment in certain establishments during certain periods before or after a child's birth and to provide maternity benefits & other benefits to doing social justice to women workers. The act is applicable whole over India except in the State of Jammu and Kashmir. Recently in the case of Anshu Rani v. State of UP (2019) the Allahabad High Court held that a woman employee is entitled to maternity leave for a full period of six months. (5170)

The act consists of 30 sections in total consisting of its application (section 2), important definitions (section 3), etc. of which some crucial ones are:

- 1) Prohibition of work by a woman during certain periods: As section 4 mentions, neither an employer can appoint nor a women

employee can work during the 6 weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. Some other provisions of prohibition of work of period being earlier to her pregnancy are also mentioned.

- 2) Right to payment of maternity benefit: Under section 5 every woman is entitled to maternity benefit and the employer is liable for providing the same. Maternity benefit is defined under this section as a payment to a worker at the rate of average daily wages go for the period of her actual absence immediately preceding and including the day of her delivery and for 6 weeks immediately following that day.
- 3) Leave for miscarriage or leave with wages for tubectomy operation: Section 9 mentions the leave for miscarriage or medical termination of pregnancy whereas section 9-A lays provisions for paid leaves in a case where the reason is the operation of tubectomy, just need to show a proof of the same.
- 4) Section 11 and 11-A provide for nursing breaks and creche facilities in the establishment respectively.
- 5) Sections from 14 to 17 have provisions regarding appointment, nature and powers of inspectors for the implementation of this act properly.
- 6) Penal provisions are also included in sections 21 to 23 under this act. The government also have the power to further enhance its scope and make necessary changes or amendments under section 28 of this act. (Mishra, The Maternity Benefit Act 1961)

The Equal Remuneration Act, 1976

Even after the continuous advancing participation of women as workers and employees, gender discrimination was prevalent. The discrimination took its form in



wages paid to the employees where male and female employees were paid differently that raising controversies among them. Article 39 clause (d) lays the principle of equal pay for equal work and on this basis The Equal Remuneration Act, 1976 was enacted. The act consists of important definitions regarding the act. Section 3 of this act has overriding effects under which provisions of this act shall have the effect notwithstanding anything inconsistent therewith contained in any other law or terms of any award, agreement or contract of service, whether made before or after the commencement of this act, or in any instrument having effect under any law for the time being in force.

Sexual Harassment of Female Workers in the Workplace

Harassment and exploitation have always been an issue for females since always. Sexual harassment is a problem which in the whole world as it is in India and made its roots deepened that is putting more obstacles in the way of women to get engaged in work to become self-dependent or as a helping hand to their family. It is shameful to mention but even the cities, villages or workplaces therein are not safe for women posing a constant threat and fear of getting sexually harassed by some friend, colleague or senior. Even though complete eradication of any crime is not possible but at least curbing it lower or diminishing its possibilities by making relevant provisions is crucial. Sexual harassment violates the fundamental right of a woman under articles 14 and 15, and her right to live with dignity & right to work in a safe environment under article 21.

The Vishaka judgement of the Supreme Court in the year 1997 defined the meaning

of sexual harassment and also laid the foundation of guidelines for safer working conditions and a healthy environment for women. After the horrible tragedy of the Nirbhaya case on December 16, 2012, resulted in huge public outrage and resulted in the formation and enactment of an act named Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 was passed.

The act consists of a total of 8 chapters and 30 sections. All the chapters as a glimpse in brief are as follows:

- 1) Chapter I consists of sections 1 to 3 including short title, extent and commencement of the act, important definitions and provisions for the prevention of sexual harassment.
- 2) Chapter II includes only section 4 which provides provisions for constituting an internal complaints committee.
- 3) Chapter III is the sum of 4 sections from 5 to 8 with provisions of the local complaints committee.
- 4) Chapter IV includes the provisions of complaint of sexual harassment (section 9), conciliation (section 10) and inquiry into the complaint (section 11).
- 5) Chapter V consists of sections 12 to 18 dealing with measures to proceed with the inquiry into a complaint, and provisions of penalties, punishment and compensation are mentioned.
- 6) Chapter VI narrates the duties of the employer under the provision of this act under section 19.
- 7) Chapter VII includes only section 20 which describes the duties and power of the district officer regarding the act's provisions.
- 8) Chapter VIII consists of sections 21 to 30 which have miscellaneous provisions such as



committee to submit an annual report, cognizance of offence by courts, etc.

There are virtually no medical facilities and maternity benefits. The laws, policies and welfare system that are proposed for women workers cannot be effective unless they are conscious of the law and acquire the strength to ensure that laws are brought into force and the organs of public opinion and movement and organisations mount vigil and intercede to ensure that the provisions of the laws and welfare system are acted upon.

LABOUR LAWS: SPECIAL EMPHASIS ON CHILD LABOUR

According to ILO (International Labour Organization), the term 'child labour' can be defined as the work that affects the potential and dignity of children, and that is harmful to their physical or mental development. It deprives them of the opportunity of attending school; obliges them to leave school prematurely, or requires them to work hard along with their school life ongoing.

It's a global issue that forces children into this arrangement of paid or unpaid work depriving millions of them of proper education, a happy & joyce childhood, and a prosperous-planned future. India is also not remained untouched as the ILO statistics present around 12.9 million Indian children engaged in work ages between 7 to 17 years old. Children's engagement in work (paid or unpaid) diminishes their opportunities of educating themselves, with their further being trapped in the cycle of poverty. Millions of boys and girls working are in majority of age 12 and 17 years old, and work up to 16 hours a day to support their families.

Many child labourers in India are working for starvation wages in various establishments including shops, factories or as street vendors selling cigarettes, newspapers, etc. and are also used for cheap labour in industries such as iron mines, gem polishing or blanket manufacturing. Girls' child sexual exploitation, commercial sexual exploitation and other atrocities on these child labours are on a rise. In India for instance, there are around 1.2 million children involved in prostitution according to a survey. The national census of India, 2011, depicts a total number of 10.1 million child labours in the country of age 5 to 14 years old. However, the Indian government trying to control the situation by enacting laws regarding this issue.

In 1924, *under the Geneva Declaration of Human Rights*, the need for protection and safeguards for children has been firstly realised. Later, the *Universal Declaration of Human Rights, 1948* recognized the issue. The specialized statutes of UNO in article 25 of the *Universal Declaration of Human Rights* state that "*motherhood and childhood are entitled to special care and assistance*" along with section 26 of it assures the rights of free and compulsory elementary education for children.

Following all this, *The Declaration of the Rights of Child, 1959* aimed for the mental, physical, moral, educational and other prospective betterment of children provided some rights. These rights were recognized and implemented by the *General Assembly of the United Nations* with the help of *National Governments* following ten principles which are as follows:



- 1) The child shall enjoy and shall be entitled to the rights outlined in these principles without any distinction or discrimination.
- 2) It also ensures special protection and facilities for the proper and integrated development of human personality.
- 3) The child shall be entitled from his birth to a name and nationality.
- 4) Special care and protection shall be provided to the child and his mother so that the child can grow and develop in health. For this purpose, he shall have the right to adequate nutrition, housing, recreation and medical services.
- 5) A child handicapped in any manner deserves special treatment, education and care suiting to his condition.
- 6) For proper development of his personality, a child shall be ensured of love, an atmosphere of affection and material security.
- 7) The child shall also be entitled to free and compulsory education to promote his general culture and enable him to develop his abilities on a basis of equal opportunity.
- 8) The child shall in all circumstances be among the first to receive protection and relief.
- 9) He shall be protected against all forms of neglect, cruelty and exploitation. He shall not be subjected to traffic in any form and shall not be admitted to employment before an appropriate age. He shall not be engaged in any employment which would prejudice his health or education or interfere with his physical, mental or moral development.
- 10) The child shall also be protected from practices which may foster racial, religious and any other form of discrimination.

An International Convention on the Rights of Child, 1989 was also held which discussed some crucial points in relevance with the children's welfare such as defining the term 'child' as any person below age 18; rights

vested with children regarding freedom of expression, thought & conscience; for the protection of children from economic exploitation and hazardous work, for mental or disable children to be able to live a free life, protection of children from exploitation or cruelty, and duties of State parties concerning children welfare, etc. there were in total 35 articles in the convention of which these mentioned are some salient features.

Indian constitution for the rights of children

The Indian Constitution is influenced by the concept of *Human Rights* which is why enforceable and non-enforceable rights are there in parts III and Part IV respectively for the same. Part IV includes the DPSP (Directive Principles of State Policy) which imposes duties on the State government to form such laws which are for the welfare and betterment of children, and creates opportunities for their personality development. For instance, articles 23 & 24 ensure the prohibition of human trafficking, forced labour etc. and child labour of children below 14 years of age in any hazardous establishment (factory, mines, etc.). ILO adopted many international standards set forth by the U.N. conventions and covenants. Contribution from various labour acts by Parliament acts for state legislatures, or other rules, regulations and guidelines for the local authorities and public agencies were also made by the Indian government.

Some acts in India related to child labour

There are some provisions under some acts in India which deals with the child labour issues, and try to control and regulate this particular industrial sector by implementing



some crucial guidelines on such industries or establishments practising child labour. These acts are made to secure children's future and open up various opportunities for them also. Just for an overview, a brief of the same is provided below:

1) *The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986:*

The act was previously named *The Child Labour (Prohibition and Regulation) Act, 1986* but was renamed after an amendment in 2016. It consists of 4 parts and 26 sections in total which provide provisions for prohibiting child labour of children under 14 years of age (part II of this act), regulating working conditions of adolescents who are not prohibited (part III of this act), to lay down penalties who violates the provisions of this act (part IV of this act), and to lay down new provisions and procedures as per the requirement (power to amend the schedule in section 4).

2) *The Beedi and Cigar Workers (Conditions of Employment) Act, 1966:*

Section 24 of this Act prohibits children to be able to work in any industry premises that come under its provisions.

3) *Plantation Labour Act, 1951:* Section 25 of the Act specifies Women and children's working hours are restricted or limited between 6 a.m. and 7 p.m. Prior permission from the State Government is required to employ them beyond these hours.

CONCLUSION

The analysis in this Research Paper makes it abundantly evident that the employer has the highest responsibility for protecting the health and safety of the workforce. The Indian government's actions to protect workers' fundamental rights are discussed in

the paper. The later part of Paper explain how equality forms the fundamental framework of the Indian Constitution and the parliament and state legislatures are given the authority to enact laws and oversee their application in order to protect society's weakest groups, particularly women and children. The legislature has passed a number of laws, particularly in the area of labour regulations, to ensure that men and women enjoy financial equality by giving female employees additional benefits. It also protects the life of Children by making laws that safeguard their health, education and childhood.

References

Text Books:

1. Mamta Rao, Law Relating to Women and Children, Eastern Book Company, 3rd Edition, 2012. Lalit Dhar Parihar, Women and Law, Eastern Book Company, 2011.
2. G. B. Reddy, Female workers and the Law, 9th Edition rep., Hyderabad: Gogia Law Agency, 2018.
3. R. Hunter, "Representing Gender in Legal Analysis: A Case/Book Study" (1991) 18 Melbourne University Law Review 305, 305.
4. C. K. Johri, Labour law in India, KNS1220 J71, Kluwer Law International, 2012.
5. S. Routh, Enhancing Capabilities through Labour Law: Informal Workers in India, New York, Routledge, 2014.
6. P. L. Malik, Labour Law (Covering Labour Law in India, 2 Volumes, Eastern Book Company, 2015. pp. 1–3656.



7. Central law publication, Labour and Industrial laws with latest amendments 29th edition by S.N. Mishra.
8. SC Tripathi and Vibha Arora, Law relating to Women and Children, Central Law Publication, 2006.
9. DK Tiwari & Mahmood Zaidi, Commentaries on Family Courts Act, 1984, Allahabad Law Agency, 1997.
10. BN Chattoraj, Crime against Women: A Search for Peaceful Solution, LNJNI-NICFS, 2007.
11. Nomita Agarwal, Women and Law, New Century Publishing House, 2005.
12. Manjula Batra, Women and Law & Law Relating to Children in India, Allahabad Law Agency, 2001.

Reports:

- Reports: Government of India Planning Commission, Report of the Working Group on Labour Laws and other Labour Regulations, 2007.

