
LEGAL STATUTES SECURING WOMEN AT WORKPLACE IN INDIA

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ABSTRACT

Today, Gender diversity is a crucial phenomenon along with Gender equality, especially at the workplace. But unfortunately, this has not been achieved yet. Women at workplace have still not achieved equality, both in terms of money and status. Women are still not provided with equal pay for equal work, safety measures while doing work nor any maternity benefits. But it is the need of the hour that the businesses realise that in order to prosper, give something back to the society, and develop the nation it is necessary to provide the female employees with basic work rights like these. The provision of rights will not only reduce the opt out ratio among female employees but also level up the auto-motivation level of the organisation which will in turn increase the produce, leading to an increase in the business profits.

Keywords: Women and Work, Equality, Legal Safeguards, Pay Gap Reduction, Motherhood, Career Growth, National Development

INTRODUCTION

There have been significant changes in women's positions at workplace in India since the provisions of the International Labour Organisation came out almost a century ago, but these are still not up to the mark. What was expected after 20 years has shot up after almost 100 years.

In India, women have started making a living, moving out of their houses, being independent and reaching the highest possible levels. Mainly, they have started to rule their own lives and careers without anybody making them puppets. This was all possible because of the evolution of various legal statutes in India, the primary being:

- (i) Factories Act 1948
- (ii) Minimum Wages Act 1948
- (iii) Maternity Benefit Act 1961
- (iv) Equal Remunerations Act 1976

RESEARCH METHODOLOGY

This research is solely conducted through qualitative data via secondary data collection means, using descriptions and theories released before.

Some Search Engine Oriented articles, thesis and research papers published on the internet were used for the research purpose.

Bare Acts of the provisions available on <https://www.indiacode.nic.in/> were also used:

- (i) Factories Act 1948
- (ii) Minimum Wages Act 1948
- (iii) Maternity Benefit Act 1961
- (iv) Equal Remunerations Act 1976

Factories Act 1948

Section 19 of the act first and foremost takes care of the hygiene and sanitation and makes it compulsory for all the factory owners to build separate latrines and urinals for all the female

workers.¹

“(1) In every factory— (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory; (b) separate enclosed accommodation shall be provided for male and female workers; (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage; (d) all such accommodation shall be maintained in a clean and sanitary condition at all times; (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places. (2) In every factory wherein more than two hundred and fifty workers are ordinarily employed— (a) all latrine and urinal accommodation shall be of prescribed sanitary types; (b) the floors and internal walls, up to a height of 1 [ninety centimeters], of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface; (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, portions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both. (3) The State Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.”

Section 22(2) safeguards a woman from cleaning, lubricating, or adjusting any part of a prime mover or transmission machinery while it is in motion, or to clean, lubricate, or adjust any part of any machine if the cleaning, lubrication, or adjustment would expose the woman to risk of injury from any moving part of that machine or adjacent machinery.²

“(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning,

¹ <https://labour.gov.in/womenlabour/about-women-labour> (Sep 10 5:00 GMT)

² *ibid*

lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.”

While Section 27 prohibits women from entering a factor to press cotton wherein the cotton opener is running.³

“No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work: Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.”

Talking about, Section 66(1)(b), it gives specific working hours for women in factories which are fixed from 6 in the morning to 7 in the evening.⁴

“(1) The provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions, namely: —

(b) no woman shall be 2 [required or allowed to work in any factory] except between the hours of 6 A.M. and 7 P.M.”

Initially, these provisions were not completely acceptable and this attitude from the citizens was quite expectable as these legislations were launched just after the independence and during that time, women were not understood as valuable assets both for the private sector and the nation.

MINIMUM WAGES ACT 1948

Section 3 of the act fixes the minimum rate of wages for a particular kind of work described in Part I and Part II of the act and to revise these rates from time to time as per the inflation rates. This had to be done by the prevailing government. The government can fix these rates from any one of the four broad categories:

- (i) Work done based on time
- (ii) Work done based on quantity

³ ibid

⁴ ibid

- (iii) Payment based on guaranteed time
- (iv) Payment based on regular working hours plus overtime

“The appropriate Government shall, in the manner hereinafter provided, —

4 [(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27. The appropriate Government may fix,— (a) a minimum rate of wages for time work (hereinafter referred to as “a minimum time rate”); (b) a minimum rate of wages for piece work (hereinafter referred to as “a minimum piece rate”); (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as “a guaranteed time rate”); (d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as “overtime rate”).”

Section 11 of the act provides for payment mechanism to be used by the employer to make the payment of the wage rates which is fixed by the government as:

- (i) Payment in cash
- (ii) Partly in cash and partly in kind
- (iii) Payment via supply of essential commodities at concession rates

“(1) Minimum wages payable under this Act shall be paid in cash. (2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind. (3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates. (4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.”

Section 12 prohibits the employer from paying less wages than the fixed rates but can however pay more than the limit.

“(1) Where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.”

Section 13 asks the employer to fix the working hours of the day for all the employees and these should be same throughout.

“ [(1)] In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may— (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals; (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; (c) provide for payment for work on a day of rest at a rate not less than the overtime rate. 2 [(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:— (a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented; (b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; (c) employees whose employment is essentially intermittent; (d) employees engaged in any work which for technical reasons has to be completed before the duty is over; (e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.”

Section 14 gives regulations for payment method to be used to calculate wages for overtime off every employee.

“(1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

Section 15 says that if for any given day any worker works for less hours he/she shall be paid for the full working day only.”

Although, all these provisions under this act directs to increase gender equality on the basis of work done there are still certain disparities in the provisions itself. As in if a worker is paid extra for overtime than a worker must also be paid less for undertime but this is not provided. The government does not revise the rates from time to time and the existing rates are also not up to the inflation rate.

Hence, the Honourable Supreme Court of India must amend the provisions and ask the government to compulsorily adhere to the rules.

MATERNITY BENEFIT ACT 1961

Section 4 of the act suggests that the pregnant mother and delivered mother until 6 weeks from delivery must not work on tedious activities that may lead to miscarriage or for that matter affect her health.

“(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery 1 [, miscarriage or medical termination of pregnancy]. (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery 1 [, miscarriage or medical termination of pregnancy]. (3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health. (4) The period referred to in sub-section (3) shall be— (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery; (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.”

Section 5 ensures payment of maternity to a woman by her employer if she has worked for 160 days in twelve months before her delivery as per the average wage rates.

“(1) Subject to the provisions of this Act, every woman shall be entitled to, and her

employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than 4 [eighty days] in the twelve months immediately preceding the date of her expected delivery.”

Section 9, 10 and 11 provide for leaves for other than the delivery of the child that is

- (i) Miscarriage
- (ii) Tubectomy operations
- (iii) Any other illness
- (iv) Nursing Breaks for each day respectively.

“In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination of pregnancy. In case of tubectomy operation, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectomy operation.”

“A woman suffering from illness arising out of pregnancy, delivery, premature birth of child [, miscarriage, medical termination of pregnancy or tubectomy operation] shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.”

“Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.”

The act was launched keeping in mind the requirement of the future assets of the nation for their healthy growth and also to nurture the existing assets. The women taking over advantage

of this type of statute are equally liable for legal suits and may even lose the compulsory benefits due to unscrupulous practices.

EQUAL REMUNERATIONS ACT 1976

Section 4 of the act makes it compulsory for the employers to pay both men and women equal wages and salary for the same amount of work that they do and should also adhere to the minimum wages and not provide anything less than that in order to not change the profit margin.

*“(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.
(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.”*

Men and women employees should be recruited through same recruitment process and the prerequisites must also be same for them. This is provided in Section 5 of the act.

“On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, 1 [or in any condition of service subsequent to recruitment such as promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force: Provided that the provisions of this section shall not affect any priority or reservation for Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.”

Statutes like this empowers women and boosts their confidence to become independent. It may take them to the highest positions possible in all the spheres of life.

CONCLUSION

There are many aspects where women are lagging behind, and in some other they are participating with flying colours. For instance:

- (i) Women's Participation in the Labour Force is Declining: The Indian economy is expanding. Despite this progress, fewer than a quarter of women aged 15 and older (20.3 percent) will be employed by 2020. (compared to 76.0 percent of men). In India, women account for just 19.9% of the overall labour force. The gender wage disparity, a rise in time spent for women finishing their education, the Covid-19 epidemic, and a lack of safety rules and flexible work offers are all contributing to India's low labour force participation rate for women.
- (ii) In India's Parliament, a record number of women were elected: Women were elected to 78 of the 542 seats in India's lower house of parliament in 2019, a new high. The country, however, is still far from parity, with only 14.4 percent.
- (iii) Recently, three women Justices sworn in as the Justices of Honourable Supreme Court of India under Chief Justice of India N V Ramanna. This is the highest till now where women together sworn in.

Hence, it is still vague about the status of women at workplace in spite of so many legislations passed day in and day out. But surely, it is observed that the position is getting better each day and hopefully by 2030 women in India would be equally empowered as women in India in the Trade and Commerce sphere.