

Right and Constitutional Protection of Women Workers

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Abstract

Woman is not merely a passionate, charming, delicate creature who can love sing and dance and dress and serve; it is not just a loveable, decorable, compatible and pleasurable asset, it is a being who can comfort and counsel; one can reason and reflect, since and judge, create and educate, one who can assist and share; one who can ably aid and strengthen the menfolk in the act of development. Women can play a more creative, positive and challenging role in nation building. It is imperative to note that men alone cannot break the shackles of poverty, unemployment, inequality and population explosion. Active and equal participation of women in accomplishment of this mercurian task is indispensable. The study must be in depth to appreciate what one has done for women and shorn of all clichés and mistakes of the past, what still remains to be done. The idea that pervades through this exercise is emphasizing that the state cannot profess faith in the cherished constitutional various on one hand and remain unconcerned of the millions of women on the other. The study is concerned with women workers and their problems and prospects in industry. Suggestions to improve the status and working of women were made. Discussions with the academicians, labour law practitioners and some selected Union leaders were streamlined to collect information as to the oretical and practical problems of the women workers. Moreover the dailies as legal journals are also extracted and utilize as valuable information for this study. Various recommendations made by the law commissions have been referred to for eliciting the views for legislative reformations. Finally the study is partly a result of the oretical research and more reliance is placed on the opinion of the text book writers and other authorities.

Key Words: *Woman, Constitution, Cultural, educational rights, Employment and Occupation,*



1. Introduction

“Woman is the Real Architects of Society”- Harriet Beecher Stowe

In our country, the right of women to public employment is recognized under the constitution. The preamble of the constitution of India stated that the people of India resolve to dedicate themselves to the ideals of justice-social, economic and political liberty of thought, expression and belief, equality of status and opportunity of the individual. Certain rights of a particularly individual character, primarily meant to protect the citizens against arbitrary state action and therefore designed to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule, are made fundamental rights, justifiable in the court of law. Several of the fundamental Rights are capable of enjoyment only by persons who are already free from want and necessity, but are of little meaning and less value to the hungry and homeless.

Not being content with these abstract democratic ideas, it is thought fit to secure to the people economic and social freedom in addition to the political freedom. Curiously enough, both neither the right to work, nor the right to an adequate means of livelihood to just and human conditions of work, to a living wage and a decent standard of living, nor the right to education are made Fundamental Rights. Everything that has a semblance of socialism is relegated to the category of the Directive principles of state policy which the constitution itself announced shall not be enforceable in the court of law. However, such of directive principles as are mere boneless wonders without sanction behind them require to be transformed into “bone and marrow rights”.

The aim of having a declaration of fundamental rights is that certain elementary rights, such as right to life liberty, freedom of speech, freedom of faith and so on should be regarded as inviolable under all conditions that the shifting majority in legislatures of the country should not have a free hand in interfering with these fundamental rights.

Fundamental rights in Indian constitution are to establish “a government of law and not of man” a governmental system where the tyranny of majority does not oppress the minority.

Our constitution problems equality before the law but to the large millions of our people, equality before law has remained a myth or an illusion. There can be no real equality before law unless it is based on social and economic equality but, unfortunately, in our rural areas, paternalism and not egalitarianism is the dominant attitude and a poor man is either one’s dependent or one’s enemy but never an independent, conscious and assertive individual. The fundamental rights are

1. Right to equality (article 14-18)
2. Right to freedom (article 19-22)
3. Right against exploitation (article 23-24)
4. Right to freedom of religion (articles 25-28)
5. Cultural & educational rights (article 29-30)
6. Right to property (article 31)
7. Right to constitutional remedies (article 32)

2. Purpose of the Study

Welfare programme has been brought out for the welfare of women and children. It has been found in the first five-year plan of the country and in the sixth and seventh plans separate chapters have been provide on women’s development. In 1971, government of India appointed a committee on the status of women in India (CSWI) to comprehend the extent of change in the women’s status and rights and to suggest measures which would enable women to play their full and proper role in the building up of the nation. On the basis of the report of the committee on the status of women in India, parliament urged the Prime Minister to “initiate a comprehensive programme of legislative and administrative

measures aimed at removing as far as possible the economic and social injustices disabilities and discrimination to which Indian women continue to be subjected". Again, the declaration of International women's Decade in 1975 brought into focus the importance of bringing women as part of development. With the women of rural India constituting 77% of the total women in the country, the need to integrate these women into development as an essential pre-requisite for overall development has been highlighted by policymakers and development planners.

The study must be in depth to appreciate what one has done for women and shorn of all clichés and mistakes of the past, what still remains to be done. The idea that pervades through this exercise is emphasizing that the state cannot profess faith in the cherished constitutional various on one hand and remain unconcerned of the millions of women on the other. Enumeration of suggestions in this study is projected towards the prospects of women labour. While promoting the prospects working women from undesirable conditions of work. The state is to be impressed upon the need to promote statutory control of this work, introduce measures to ameliorate the working and living conditions and equal remuneration for equal work.

The study comprehends within its sweep also the suggestion for the comprehensive legislation on women labour and this has occupies pivotal position in the study. The legislation should comprehend within itself adequate provisions as to health, safety and welfare of working women by providing for working hours and conditions, rest pause, wages line, education, health, prevention of hazards to and exploitation of women in employment.

3. Methodology

The study is concerned with women workers and their problems and prospects in industry. Suggestions to improve the status and working of women were made. Discussions with the academicians, labour law practitioners and some selected Union leaders were streamlined to collect information as to theoretical and practical problems of the women workers. Moreover, the dailies as legal journals are also extracted and utilize as valuable information for this study. Various recommendations made by the law commissions have been referred to for eliciting the views for legislative reformations. Finally, the study is partly a result of theoretical research and more reliance is placed on the opinion of the experts and authorities.

International Labour Organisation's Conventions and Recommendations Protecting the Interests of Women Workers

The International Labour Organisation (ILO) owes much of its vigor and vitality and a large measure of its success to the balanced cooperation of Government, employers and labour in developing its policies and programmer. The main task of the ILO at the outset was to improve conditions of life and work by building up a comprehensive code of law and practice. The ILO is an agency for the betterment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of worker against sickness, disease and injury arising out of his employment, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association and the organization of vocational and technical education. The preamble to the

Constitution of the ILO mentions about the protection of children, women and young persons has been a special responsibility of the ILO ever since it came into existence. ILO'S International Labour Code is concerned about women workers like man workers as it has made 140 conventions and 148 recommendations. The standards range over wide subject area health, hours of work, vocational guidance and training, employment policy and freedom of association. However, the International Labour Conference has adopted

number promotional and protective. The promotional instruments are aimed primarily at overcoming economic and social discriminations against women in matters of work. The protective standards are concerned with providing them the special protection they require because of the biological and social function of maternity. In addition there are some conventions and recommendations which apply generally to all workers but contain special provisions concerning women workers.

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4. Non – Discrimination in Employment and Occupation

The principle of non-discrimination has been accepted by the number of ILO instruments. The Discrimination (employment& occupation) Convention No.111 which was adopted by the conference in 1958, lays down the principle of non-discrimination in employment and occupation on the ground of sex.

4.1 The equal remuneration for work of equal value has been recognized by the Equal Remuneration Convention, 1951 regardless sex etc. The principle of equal pay may be applied by national laws of regulations by, legally established or recognized machinery for fixing wages, by collective agreements, or by a combination of these methods.

4.2 Maternity protection for women

ILO instruments recognized the maternity protection for women workers. The protection of working women in connection with their function of maternity is dealt with in two conventions the Maternity protection conventions 1919(n3 and the Maternity protection Convention(revised), 1952(No. 103) and two recommendations-the Maternity Protection (agriculture) Recommendation 1952(No.95)

4.3 Night Work

The night work of women workers is regulated by 3 instruments: (a) the night work women vonvention,1919(NO.4) (b) the night work women convention (revised 1934(No,41) and (c) the Night work (women) convention (revised)1948(NO.89) as well as the night work women (Agriculture) recommendation, 1921(no.13). All these3 conventions are in force. The three conventions are applicable to employment in industrial undertaking.

4.4 Employments which are Likely to Cause Ill-Health or Sickness

An underground work of the women employment is regulated by the underground work (women) convention, 1935(No.45). the convention lays down the principle that no female, whatever her age , shall be employed on underground work at any time. National laws of regulations may exempt from the prohibition of women holding positions of management, women employed in health and welfare service, women who spend a period of training in

the underground parts of mine and any other women who may occasionally have to enter the underground parts of a mine for the purpose or a non-occupation.

4.5 Underground work

4.6 Protection for Women against Chemicals

The employment of women on painting work involving the use of white lead is dealt with in the white Lead (painting) Convention, 1921, (no.13). The Convention prohibits the employment of women in any painting work of an industrial character involving the use of white lead pigments. Further, the Lead poisoning (women children) Recommendation, 1919(No.4) recommended that in view of the danger involved to the function of maternity, women should be excluded from employment in a number of specified processes involving the use of zinc or lead and be permitted to engage in processes involving the use of lead compounds only where certain safety and health measures are complied with.

4.7 Radiation Risks

The radiation protection Recommendation, 1960, (No.11A) provides that in view of the medical problem involved in the employment of women of child-bearing age in radiation work every care should be taken to ensure that they are not exposed to high radiation risks. No provision concerning the employment of women of child-bearing age in radiation work was included in the Radiation protection Convention 1960(No.115) in view of the fact that scientific knowledge in this field had not yet permitted the competent international organization to arrive at sufficiently precise practical conclusions. However, the International labour Conference adopted a Resolution inviting member states to keep this problem under review and requesting the governing body of the International labour Office to continue the study of the question, and to consider the possibility of placing on the agenda of an early session of the Conference the question of the action to be taken.

4.8 Protection against Benzene

The pregnant women and nursing mothers shall not be employed in work processes involving exposure to benzene or products containing benzene as per the Benzene Convention 1971(No, 136). The Convention is supplemented by a recommendation (No.144) which contains the same provision.

4.9 Permitted Loads

The maximum weight Convention, 1967(No.127) provides that the loads shall be limited and that where women and young workers are engaged in the manual transport of loads, the maximum weight of such loads shall be substantially less than permitted for adult male workers. The Convention is supplemented by the Recommendation (No.128) containing a section women worker.

4.10 Welfare and Health Measures

The welfare facilities recommendation, 1956(No.102) which lays down principles and standards concerning feeding facilities for all workers, contains 2 special provisions relating to women workers. First it recommends that in undertakings where any workers, especially women and young workers, have in the course of their work, reasonable opportunities for getting without detriment to their work, seats should be provided and maintained for their use. Secondly, it provides that rest rooms should be provided to meet the needs of women workers. The Occupational Health Service Recommendation 1959(No. 112) lists among the functions of occupational health services the “pre-employment, periodic and special medical examinations... prescribed by national laws or regulation... or considered advisable for preventive purposes by the industrial physician” and specifies that such

examinations should ensure particular surveillance over certain classes of workers including women.

4.11 Women with Family Responsibility

The employment (women with Family responsibilities) Recommendation, 1965(No.1230 urges governments a) to pursue a policy which will enable women with family responsibilities who work outside their homes to exercise their right to do so without being subject to discrimination and in the Discrimination convention and in other ILO instruments, and b)to encourage, facilitate or undertake the development of services to enable women to fulfill their various responsibilities at home and at work harmoniously.

4.12 Labour Inspection

The labour Inspection Convention, 1947(No.81) provides that both men and women should be eligible for appointment to the inspection staff. Where necessary, special duties may be assigned to men and women inspectors. A similar provision is included in the labour Inspection 9Agriculture) Convention, 1969, (No.129).

4.13 Influence of International organisation's conventions and recommendations on Indian women labour

4.13.1 No. 4- Night work women Conventions 1919

4.13.2 No. 91 – Night work (women) Convention (revised)1934

4.13.3 No. 45 – Underground work 9women) Convention, 1935

4.13.4 No. 81- labour Inspection Convention (Revised) 1948.

4.13.5 No. 89- Night work (women) Conversion, 1947.

4.13.6 No.100- Equal Remuneration Conversion, 1951and

4.13.7 No.111- Discrimination in respect of employment and occupation Convention, 1958.

The state guarantees provision for securing just and humane conditions of work and maternity relief and the fundamental right to a living wage. As regards the 18 Recommendations mentioned in the various sections, only three Recommendations are being fully implemented. They are:

4.13.8 No.90 Equal recommendation, 1951

4.13.9 No.102 welfare facilities for workers Recommendation 1956 and

4.13.10 No.111 discrimination in respect of Employment and occupation recommendation, 1958.Implementation and the remaining recommendation (NO.12) contain provisions of an advanced nature the implementation of which is not practicable at the present stage of the country's development.

5. Recent Trends

A number of special conventions applying to women workers were adopted in circumstances where it appeared necessary to promote special protection to them or to ensure them equality of opportunity and treatment.

Recently, the Governments “and employer” organization in some of the developed countries have been demanding that conventions of this type should be re-examined with a view to finding out whether they continued to be of real relevance in view of the rapidly changing structures and conditions of work and in line with the current world needs the International Labour office also seems to be coming round to this view point.

India has already ratified convention No.100 relating to equal remuneration for men and women workers for work of equal value. There are still industrial units where men and women doing identical jobs paid different wage rates.

6. Conclusion

The problems of women a worker in industry is one of the problems remaining still under solved even after Independence. India has achieved a lot in the national and international level. It is very simple to draw conclusion from available data of facts collected, but more complicated to give concrete suggestions to bypass the problem. However, the outcome of the study gave way to the following suggestions for solving the problem at least to a limited extent and thereby setting the problem. These suggestions are only to be experimented and not the final solutions. These suggestions may be much interest as it might have already been thought of many times, but the idea behind these suggestions is mainly to boost the working women in industry.

7. Suggestions

- Batter infra-structural facilities need to be provided for encouraging self-employment among the educated unemployed women. Special entrepreneurship course should be run women unemployed.
- There is need for proper manpower planning. A significant proportion of technically and professionally trained women workers are unemployed. Therefore, efforts have to be made to bring the development of different skills I line with social needs.
- Fuller utilization of plant capacities both in the public as well as private sector will help in generating lakhs of jobs in the organized sector without further investment on fixed capital. Larger variety of vocational courses particularly for girls who do not intend to continue their general education beyond elementary or secondary stage, should be introduced.
- Educated women should be encouraged to form co-operative societies to be controlled and run exclusively by them for which they should get the necessary help and guidance from the co-operative sector of the state Governments.
- There is need for the change of attitude on the part of male members of our society. Men and women both must share the burden of housekeeping equally. This will help our educated, skilled and professionally trained female population to participants in the nation building activities of the country on a larger scale. Thus, the scarce productive resources which are spent on imparting technical and professional training to the thus ensure adequate private social retunes on the investment made on educating the women. If may be pointed out here that in case of the industrialised countries the women's share in the labour force ranges between 30 and 48% being the highest in the planned economies. Thus, social outlook has to be radically changed same institutional, structural and attitudinal barriers smashed to incorporate new value judgment into the development policies. Women have to be given due participation in the developmental activities of the country.

Over and above all these measures more and special educational facilities have to be provided for the women population there seems to be a direct correlation between education will have an indirect advantage of helping social transformation. As Gandhiji has said "the education of a man is the education of an individual, the education of women is the education of the family".

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Biosketch



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