

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

## Gender Justice in Indian Labor Laws

Stephen P Wilson<sup>1</sup>

---

### Abstract

Since the beginning gender inequality is very prevalent in every aspect of the society. Society always considered women as inferior to men and given specific gender roles for men and women, since the ancient times this specific gender roles for men and women resulted in denial of many rights and privileges to women. At the same time men used the gender roles as a tool for development in social aspects. But the developments in the society widened the gap between the two sexes in the society and further this led to gender inequalities in the society. India as a developing country took various measures to bring gender equality in the society. Most important step to this regard is enactment of various laws to ensure gender justice in India. This research paper mainly focuses on the Labour laws in India and trying to make a study on How Indian labour laws bringing gender justice in India? The specific research question is aiming to look into the effectiveness of Indian labour laws in bringing gender justice. To answering this question the researcher went through some labour legislations that enacted for bring gender equality, important case laws in this field and the contemporary status of the implementation of the legislation and going to draw a possible conclusion. This research done by doctrinal research method. The researcher is made a critical analysis of the topic. As a conclusion the researcher found that to an extent in organised sector labour laws are effective to bring gender equality. But in unorganised sector this labour laws are not properly implemented.

---

<sup>1</sup> 03<sup>rd</sup> Year LL.B., School of Law, Christ University (Deemed), [1999StephinWilson@gmail.com](mailto:1999StephinWilson@gmail.com)

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

## Introduction

The concept of gender justice means giving equal footing to women as the same as men. In a modern world and under the influence of modern democratic principles the literal meaning of the term changed. In modern days all the studies related to gender justice focusing on women empowerment and ensuring the protection of women's rights through legal change. Anyway, the framers of our law of the land given predominant concerns to the matter of gender justice as a result of this constitution guarantees gender justice through various articles. Article 15 provides right against discrimination, article 15(3) talks about special protection for women, article 16 provides for equality of opportunity irrespective of the sex of the person this made women to participate in elections and decision-making process. Article 74 is another important article which ensuring gender justice in the country.

But this constitutional provision is not enough to guarantee gender equality in every aspect of the society. The main area of gender inequality is economic side of the society. To ensuring gender equality in the economic side of the society or in the work place the government enacted certain labour laws in India.<sup>2</sup>

## Gender Justice in Indian Labor Laws

In India we have several labour laws, the common goal of them is to ensure social welfare. On the other hand, they are also enacted for give equal status India to women workers as men workers in India. As a part of this this Industrial law in India fixes the working time of the employees, providing and ensuring measures to protect the health and safety of women workers and guarantees equality before law. Many of the enacted laws are inspired by international conventions and also enacted with respect to the guidelines of International labour organization. The main aim of the enactments is to increase the participation and efficiency of

---

<sup>2</sup> IRWIN CHEEMA, GENDER JUSTICE AND INDIAN LABOUR, LEGAL SERVICES INDIA,( 30, JUN,2015).  
<http://www.legalservicesindia.com/article/763/Gender-Justice-and-Indian-Labour.html>

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

women's in the labour force of India.<sup>3</sup> Some of the labour laws that focusing on gender justice are

## 1. The Factories Act, 1948

This act is mainly enacted for the total welfare and safety of the workers. This act fixed the working hours, the law also has provisions related to leave and employment of young person. This Act also have provisions related to welfare of women such as prohibition of employment of women at night, prohibition of hazardous occupation of women, fixing of working hours. If the factory has more than 30 workers there shall be a special room for the children of such women workers under the age of six. The factory should also have to maintain all the infrastructure facilities for such women workers.<sup>4</sup>

## 2. The Employees State Insurance Act 1948

This Act is another important labour legislation enacted for provide various benefits in different contingencies. Under this Act the insured employee will get sickness benefit, disability benefits. The employee will also get insurance coverage for other occupational hazards. Other than this the women employees will also get maternity benefit in some contingencies in pregnancy. Especially in cases of miscarriage, premature birth of the child and in the case of confinement. The maternity benefit available for the women in case of confinement is 12 weeks. This benefit is payable on the condition that the insured women do not work for remuneration with respect to which the benefit is payed. In case of death of an insured woman the benefit is payable to her nominee or to her legal representative. To avail the insurance scheme under the Act the employer and employee should pay a certain percentage of his or her monthly salary to the insurance corporations.<sup>5</sup>

---

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

### 3. The Maternity benefit Act 1961

Main aim of this Act is to ensure economic equality to women workers. Mostly women in work place facing wage discrimination due to the biological differences and childbearing. To avoid this wage discrimination and protect women's economic rights government enacted Maternity benefit Act. Every woman is eligible to get maternity benefit and the employer is bound to provide that for certain period before and after the child birth. This act will apply every were except factories and where the employees state insurance Act is applicable. Every woman worked in an establishment at least 80 days is eligible to get protection of this Act. Dismissal of the employee during her absence is unlawful under this Act.<sup>6</sup>

### 4. Equal Remuneration Act, 1976

This Act enacted for ensure equal pay for equal work for both men and women. In developing country like India there are wage discrimination facing by women in rural areas particularly in un organized sector. The reason for this is excess amount of men workers in the labour market. As per this act there should be no wage discrimination between men and women for the same work. Because of this Act to an extend women getting equal wage as the men getting in India.<sup>7</sup>

### 5. The workmen's compensation Act 1923

This is a kind of social insurance for the work men to deal with the losses or accident suffered by the employee during the course of employment. As per this Act the injured workman will get compensation prepotanate to the injury, loss of earning capacity and the average wage of the employee. The younger the employee and the injury and his average salary is high, then the compensation will be high.<sup>8</sup>

---

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

## 6. The Minimum Wages Act, 1948

This Act enacted as a welfare legislation for the employees. As per this Act the central government has to give minimum wage to the employees who is doing certain job under the schedule of the Act and under the authority of central government. The minimum wage under this Act not just simply mean the wage that satisfy his physical needs, the wage should be helpful to increase the efficiency of the worker. State government also has the duty to ensure minimum wages to the employees who working under the authority of state government.

## 7. National rural employment guarantee Act 2005

This Act enacted to ensure the welfare of the rural employees in India. This Act giving priority women who working in rural un organized sector. As per this Act those who is ready to provide manual unskilled labour can join in this scheme. This Act ensure minimum 100 days of working days in a financial year with a fare wage rate. Now this Act plays key role in ensuring gender and economic equality to Indian rural women working class.<sup>9</sup>

All the above legislation aims to ensure total welfare of the working class of the country, but none of this are looking into the one major barrier to achieve gender equality in work place. That is nothing but the sexual harassment facing by women in the workforce. But by vishaka v. State of Rajasthan SC come out with certain guidelines to ensure protection from sexual harassment to the working women. As a result of this we have Protection of women from sexual harassment in work place Act 2013 in place. As per the Act every employer has to ensure that the workplace is complied with the Act. To an extent, this Act Increased the safety of women in the workplace, this also helped for women empowerment in India.<sup>10</sup>

---

<sup>9</sup> Id.

<sup>10</sup> AMARTTYA BAG, TYPES OF DISCRIMINATION IN WORKPLACE AND THEIR LEGAL PROTECTION INDIA, PLEADER'S LEGAL SOLLUTIONS, (OCT, 21, 2014). <https://blog.ipleaders.in/types-of-discrimination-in-workplace-and-their-legal-protection-in-india/>

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

## **Some important case laws related to above legislations -**

1. Mrs. Neera Mathur vs. Life Insurance Corporation of India<sup>11</sup>

Neera Mathur was a probationer in the Life Insurance Corporation (LIC). During probation she applied and was granted maternity leave. She was simply discharged from service after she returned. Her discharge was defended by the LIC on the ground that she had given false declaration at the stage of entering the service. The court held that 'the particulars to be furnished under columns (iii) to (viii) in the declaration are indeed embarrassing if not humiliating.' These columns were held unreasonable and discharge was set aside.
2. Punjab National Bank by Chairman and another v. Astamija Dash<sup>12</sup>

It was held that as per provision of the maternity benefit Act, 1961 a woman can avail leave during the period of six weeks from the day immediately following the day of her delivery, miscarriage or medical termination of pregnancy. If request is made by herself, she would not be asked to work for the period specified as per section 4(4). She would be entitled to the benefits of section 6 and 9 of the Act.
3. Ashok Kumar v. State of Rajasthan<sup>13</sup>

The Supreme Court criticised the Session Court for ignoring the evidence, merely because it was given by a lady doctor in a case where victim was woman. The court said; 'we consider it necessary to record that the judge was uncharitable in discarding the testimony of Dr. Patrisia and doubting her truthfulness principally because she was a woman.'
4. Air India v. Nargesh Mirza<sup>14</sup>

The first Air Hostess case, apart from other questions, the legality of regulation 46(c) was challenged. This regulation provided superannuation of an Air Hostess at the age

---

<sup>11</sup> 1992 AIR 392; 1992 SCC (1) 286

<sup>12</sup> 2008 III LLJ 58 (SC)

<sup>13</sup> AIR 1990 SC 2134

<sup>14</sup> AIR 1981 SC 1829; 1981 (4) SCC 335

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever is earlier. The court declared the provision for retirement on first pregnancy to be unreasonable and said, 'Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the Air Hostess concerned and the Corporation has nothing to do with the same.

5. State of Rajasthan v. Ram Prasad and Another<sup>15</sup>

The workman died due to natural lightning while working at the site. It was held by the Supreme Court that in order that a workman may succeed in his claim for compensation it is no doubt true that the accident must have casual connection with the employment and arise out of it but if the workman is injured as a result of natural force of lightning though it in itself has no connection with employment of deceased Smt. Gita, the employer can still be held liable if the claimant shows that the employment exposed the deceased to such injury. In the present case the deceased was working on the site and would not have been exposed to such hazard of lightning had she not been working so. Therefore, the appellant was held liable to pay compensation.

6. M/s Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'costa and other.<sup>16</sup>

The Supreme Court applied the Equal Remuneration Act to grant same salary to the lady stenographers. The plea of the employer that only women are appointed as confidential stenographers and are in different class was negated. The court held, 'If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographer nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as

---

<sup>15</sup> [(2001) 1 LLJ 177(SC)]

<sup>16</sup> 1987 AIR 1281; 1987 SCC (2) 469

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

Confidential Stenographer such practice cannot be relied on to deny them equal remuneration due to them under the Act.

7. Tirath Kaur v. Kirpal Singh<sup>17</sup>

At the instances of the husband the wife took up training and succeeded in obtaining a diploma in tailoring. Thereafter she got a job at a place which was at some distance from the husband's house. The parties cohabited, sometimes the husband went to the wife's place and lived with her and sometimes the wife went to husband's place and lived with him. In this manner parties continued to cohabit for some time. Then it seems that differences arose between them on some matter and the husband asked the wife to resign her job and join him at his house. On wife's refusal to do so, the husband filed the petition for restitution. The Court held that the refusal by a spouse to give up his/her job and live with the other does amount to 'withdrawal from the society of the other'.

## Contemporary Situation

In modern scenario, India have a bunch of labour laws in India for the welfare of the workers and ensure gender justice in work place. But one thing is clear from the laws is that all laws are made to ensure gender justice in public sector and organized sector. The protection and benefits of the labour laws are still undesirable for employee who works in unorganized sector. Even in organized sector the labour laws are just theoretically implemented.<sup>18</sup>

## The Unorganized Workers Social Security Act, 2008

This Act is the only one labour legislation that we have India for the welfare and protection of the unorganized sector workers in India. This Act is applicable to the institution where the number of employed in that particular institution is not more than 10. The salient feature of the Act is that the act extended its protection to the domestic workers also. Majority of the

---

<sup>17</sup> 1964 Punj 28

<sup>18</sup> ANSHUL PRAKASH&KRUTHI N. MURTHY, INDIA, EMPLOYMENT AND LABOUR LAWS 2020, ICGL.COM,(MAR,30,2020). <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/india>

# KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

workforce of India belongs to unorganised sector and within that, a huge number of women as domestic workers. The act plays an important role in ensuring gender justice and social welfare of the unorganised sector workers. The Act contains the provisions for the creation of national and the state social security boards, this board is a multimember body includes representatives of employers, employees, government officials and political parties. The board will assist the government in formation and implementation of social security schemes for unorganised workers. This act provides a unique identity card for the workers those who registered as unorganized workers and they can avail the benefits of different social security schemes by both central and state government. Gender justice is important in achieving social welfare. For ensure gender justice this Act extended its protection to the domestic workers also. On the other hands this Act is not free from drawbacks in the aspect of implementation of the policies. One major issue with the Act is that the social security board established for the purpose of this Act is a mere advisory body to the government and they have no powers related to the implementation of social security schemes. The government is free to accept and reject the schemes as per the will of the authorities. Even after the implementation of the Act gender inequality is there in the unorganised sector.

## **Conclusion**

As a part of this research, the researcher went through various labour legislations in India to find out how the concept of gender justice is working out in Indian Labour Laws. As a conclusion, the researcher found out that all the labour laws in India enacted for the welfare of the employees and all of the laws are gender neutral as well. But, in the implementation, many of the employees are not getting benefit out of these laws. By this enactment, to an extent, we achieved gender justice in public sector jobs and many organized sector jobs. Even now, gender justice workplace is just a dream for lower level employees in the rural areas who are working in the factories or in the unorganized manual labour sector. The main issue that persists in rural India is the wage difference between male and female employees. One of the major reasons for the gender inequality in rural India is ignorance about this welfare legislations this can be

# *KnowLaw Journal*

Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 01 Issue 01

KnowLaw

resolved by a proper awareness program to the unorganized workers in rural area. The awareness program can be held by the local bodies. Without ensuring gender justice in rural area we can't say that in India this labour laws brought gender equality in work place. Even though we have an organized workers social security act for the welfare of an organized workers a large number of unorganized workers are not aware about the schemes and the benefit got limited to very a smaller number of an organised sector workers. Proper awareness about the social welfare schemes should be given to the workers and the better implementation policies should be they're by the authorities then only we can achieve social welfare.