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Women's Rights in Labor Law

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Abstract

Gender equality and the protection of women's interests in labor law have been increasingly important in recent years. This paper discusses international and municipal policies that promote the interests of women in labor law. In India, the percentage of women employed is low for a variety of reasons, including safety and a lack of workplace norms in the unorganized sector (domestic work). As a result, they demand special protection - the promotion of equality through positive enforcement. This includes equal pay, the application of anti-sexual harassment regulations, maternity benefits, and so on. There are several statutes with special provisions for the protection of female employees, including the Factories Act of 1948, the Mines Act of 1952, and the Plantation Labor Act of 1951. These restrictions include rules for separate washrooms, the prohibition of hazardous labor, crèches, an upper limit on working hours, an upper limit on the weight that women may lift, the ban on night employment, and so on. There is a tendency in labor legislation toward women's empowerment; all that is required is an understanding of rights and successful implementation.

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Introduction

Social fairness is critical to maintaining long-term peace and supporting long-term economic progress². Gender equality and the protection of women's interests in labor law are critical components of enhancing social justice³. This paper will discuss the various standards established by international treaties and conventions, as well as domestic law, for the promotion and protection of women's interests in labor law, with a particular emphasis on equal employment opportunities, wage disparity, workplace sexual harassment, and maternity benefits.

Special treatment for women in Labor law

While women make up a sizable proportion of the available workforce in India, they continue to face challenges in terms of work participation (the percentage of women employed remains low) and job quality. One cause for this lack of female labor participation is a lack of acceptable occupations available, i.e. a gap between what they can perform and what is available to them. Another cause for poor female employment participation is the problem of safety. Better

² See L. Bhasin, *Labor and Employment Laws of India*, 10-11 (2007), available at: <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan029043.pdf>, last seen on 03/04/ 2014).

³ See A. Rathi, *India's Urban Work Boom Is Leaving Women Behind*, *The Hindu*, (12/02/2014), available at: <http://www.thehindu.com/news/national/indias-urban-work-boom-is-leaving-women-behind/article5681042.ece>, last seen on 03/04/2014. See also J. J. Thomas, *A Woman-Shaped Gap in The Indian Workforce*, *The Hindu*, (09/01/2013), available at: <http://www.thehindu.com/opinion/op-ed/a-womanshaped-gap-in-the-indian-workforce/article4287620.ece>, last seen on 03/04/2014.

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administration and policing are essential if we are to increase women's sense of security and so encourage more women to work. Another issue is that the sectors in which women are employed, such as "domestic work," fall under the "unorganised sector," which is problematic in the sense that there is no strong set of workplace rules in place; this, too, is a factor that contributes to the lack of women in the active workforce, as it is extremely difficult to simply maintain a job, let alone build a career⁴. Women's vulnerability in unfavorable conditions is exacerbated by any abrupt negative impact on the industry, as they are already coping with uneven inherent issues⁵. They must deal with childbirth and related concerns, as well as family duty, which in a patriarchal society is of little concern to men, and so on⁶. To bring women up to pace with their male counterparts, it is critical that they be granted not only equal rights under labor law but also specific protection⁷.

Wage disparities and employment opportunities

Employment and occupation equality is not feasible without equal chances and treatment. While equal opportunity refers to having an equal chance of applying for a specific job - equal access to

⁴ Rathi, supra ii.

⁵ See Trade and Gender Opportunities and Challenges for Developing Countries, U.N. Sales E.04.II.D.28, x (2004), available at: http://unctad.org/en/Docs/edm20042_en.pdf, last seen on 03/03/2014.

⁶ Thomas, supra ii.

⁷ M. Gupta, *Women's Rights Under Indian Labor Laws: A Socio-Legal Study of Aligarh and Agra* 174 (11/11/2013), available at: <http://shodhganga.inflibnet.ac.in/handle/10603/12832>, last seen on 03/0/2014.

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employment, which includes an equal opportunity to acquire training in the field, eligibility for promotions, and eligibility to attain certain qualifications/enter certain cadres; equal treatment refers to having an equal right to equal pay, working conditions, social security, and social protection, as well as the quality of family life (in terms of the opposite sex). The promotion of equality in the workplace is a positive enforcement, as opposed to discrimination prevention, which is a type of negative right or negative equality. This entails dismantling both horizontal and vertical occupational segregation⁸.

The antithesis of wage discrepancy is the principle of equal pay, which is based on the acknowledgement of an objective evaluation of work in order to decide pay and the elimination of "discriminatory systemic gender bias in labor markets." On average, a woman's hourly wage is 75% of that of a man. One of the reasons this practice is still so prominent today is the widespread belief that the expenses of employing women are more than the costs of employing men, because women work less overtime hours, women must be granted maternity leave, and so on. Wage discrepancy is difficult to tackle since it is often difficult to detect. It works through access to promotions and other such indirect measures, as qualifications affect not only compensation but also perquisites. Both the 1919 ILO Constitution and the 1951 ILO Convention on Equal

⁸ *ABC of Women Workers' Rights and Gender Equality*, International Labor Organization, 73 (2000), available at: http://www.ilo.org/wcmsp5/groups/public/-dgreports/-gender/documents/publication/wcms_087314.pdf, last seen on 03/04/2014.

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Remuneration recognise the notion of "equal remuneration for work of equal worth." This is also stated in Articles 14 and 15 of the Indian Constitution, as well as the Equal Remuneration Act of 1976. Despite such acknowledgement, the issue of equal pay for women workers is largely ignored, even by trade unions, because they do not see it as a problem that affects all workers⁹.

One of the most fundamental causes for the gap in employment possibilities and income disparities between men and women is that women are considered as secondary earners while males are viewed as primary breadwinners.¹⁰ This is a vicious cycle, as the low salaries paid to women further entrench them in lower levels of employment, perpetuating the gap¹¹. Furthermore, in order to avoid sitting idle, women choose lower-paying occupations, and this compensation disparity acts as a deterrent to improved performance, reducing opportunities for professional progression¹². Another source of income disparity is that the majority of active female laborers work in the informal sector, such as agricultural and domestic work, which has few rules in terms of remuneration and social security.

⁹ *Id.* at 74-75.

¹⁰ L. Walter, M. Desai & C. Caron, *The Greenwood Encyclopedia of Women's Issues Worldwide: Asia and Oceania* 160 (1 ed. 2003).

¹¹ M. I. Siddiqui, *Women Workers* 81 (1 ed. 2004).

¹² *Id.* at 82.

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Sexual Harassment of Women at Workplace

Nearly half of the country's population is female, so almost half of the hypothetical prospective workforce would be female. As the National Commission on Labor correctly stated in 2002, "any social, economic, or industrial structure that ignores the potentials, talents, and particular attitudes of this half will be faulty on many counts." As a result, equal opportunities and protection from humiliation are required¹³.

Sexual harassment in the workplace refers to any unwanted sexual approaches, whether verbal or physical, that are of a sexual character and are either utilised as leverage for preferential treatment at work or are interfering with an individual's performance at work by creating a hostile work environment. Sexual harassment includes¹⁴ the following:

- Inappropriate obscene or sexual remarks, jokes, or insinuations.
- Physical contact that is unwanted, including assault.
- Lewd movements and lecherous looks.
- Invitations that are compromised.

¹³ 2nd National Labor Commission Report, *Report of The National Commission on Labor* 155 (2002), available at: <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>, last seen on 03/04/2014.

¹⁴ *Supra* vii, at 165.

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- Requests or demands for sexual favors, including implicit or explicit threats of dismissal or other unfavorable treatment if such favors are refused, as well as the promise of favorable treatment in exchange for such favors.

Sexual harassment is not just considered as a safety and health issue, but also as a violation of fundamental rights and human rights. It is disrespectful on a very personal level, and it undermines the right of women to equal opportunity and equal treatment in the workplace. The first and most important endeavor should be to prevent such harassment from occurring in the first place, but if such harassment does occur, it should be penalised, and the victims should be protected. Women are frequently unaware of their rights, and they frequently keep things quiet for fear of losing their jobs. Employers must be more aggressive in disseminating awareness and combating sexual harassment in the workplace. Contrary to popular opinion, sexual harassment at work has an influence on the productivity of the industry/company as a whole, not just the victim. It can also damage a company's reputation, resulting in a degraded public image, which can influence sales and profitability. Employers and labor unions should take more proactive measures to prevent and penalise such behaviour. This can be accomplished by industry-wide regulations and practices. A proper reporting procedure, disciplinary guidelines, sexual harassment awareness, defense training, and communication strategy should all be in place. The 71st session of the ILO Conference in 1985 issued a resolution on the subject, stating that "sexual harassment at work is

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harmful to employee working conditions as well as employment and promotion opportunities." As a result, policies promoting equality should include efforts to counteract and prevent sexual harassment."¹⁵ Multiple countries have legal legislation in place to deal with workplace sexual harassment, such as the UK's Employment Equality Regulations 2005, the EU Equal Treatment Directive 2002, Germany's Employees Protect Act 1995, and so on¹⁶.

Women are frequently vulnerable and targets of sexual harassment and sexual violence at work because they are treated as second-class citizens. This is the hard reality, regardless of whether they are unorganized domestic workers or well-paid CEOs in an urban context¹⁷.

There was no such legislation in India until the case of *Vishaka v. State of Rajasthan*. The Supreme Court established criteria for sexual harassment in the workplace in the Vishaka case. Following the Vishakha case, a Bill for the Prevention of Sexual Harassment at Workplace was produced over time - the Protection of Women Against Sexual Harassment at Workplace Bill; from 2000 to 2010, there were 9 distinct attempts by different drafting committees¹⁸. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Bill, prepared by the Women and Child Development (WCD) Ministry in 2012, was proposed and passed by both

¹⁵ Supra vii, at 166.

¹⁶ R. Blanpain et al., *The Global Workplace* 321, 371, 423 (1 ed. 2007).

¹⁷ See R. Mukherjee, *Legal Status And Remedies For Women In India* 30 (1 ed. 1997).

¹⁸ Supra vi, at 93-94.

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chambers in 2013. On December 9, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act went into effect¹⁹.

In the Indian context, the position on sexual harassment at work as introduced through multiple Bills on the subject, and finally the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, following the Vishakha case, is roughly the same as mentioned above, in accordance with ILO guidelines; in fact, touching and extreme behavior amounts to attempted rape or rape.

The present stance in India on sexual harassment at work, as outlined in the Act of 2013, is an updated version of the rules outlined in the Vishaka case. The Act defines sexual harassment and provides a procedure for resolving complaints, as well as precautions against malicious allegations. It defines "aggrieved woman" to include all women, regardless of age or field of work. It encompasses everyone from government employees to domestic helpers. Unlike the Vishaka rules, it encompasses workers who are not employed in a traditional office setting where the limits between employer and employee are not clearly delineated. It encompasses any location that an employee may visit while on the job, including transportation. It mandates the formation of an Internal Complaints Committee in any office or branch with more than ten employees. This

¹⁹ *Law Against Sexual Harassment At Workplace Comes Into Effect*, Times of India, (13/12/ 2013), available at: <http://timesofindia.indiatimes.com/india/Law-against-sexual-harassment-at-workplace-comes-into-effect/articleshow/27308194.cms>, last seen on 03/03/2014.

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committee is obligated to conclude any investigation into a sexual harassment allegation within 90 days and to provide a report to the employer as well as the District Officer, who must take appropriate action within 60 days of receiving the report. If the District Officer believes it necessary, he may establish a Local Complaints Committee at both the district and block levels. These Committees have the same evidence-gathering powers as a Civil Court and are also mandated to provide conciliatory aid before inquiry hearings if requested by the complainant²⁰. The Act also includes criminal sanctions for employers. Failure to comply with the Act's terms will result in a fine of up to Rs.50000, which can be raised if the offence is repeated. Repeat offences may also result in the loss of a business license or registration²¹.

Maternity Benefits

Due to a lack of facilities at their jobs to accommodate both, women with newborns and young children frequently have to choose between their employment and their commitment to their children. This issue originates from the belief that a woman's primary or natural job is to care for her home and raise her children. Although crèches are required, such services are only available in the formal workplace. Such amenities are rarely available in the informal sector, where the

²⁰ See M. D. Singh & G. Pany, *Sexual Victimization of Women in India*, 30 Indian Socio-Legal Journal: An International Journal of Legal Philosophy, Law and Society (2004).

²¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

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majority of the active female population works. As a result, childbearing and rearing have become deterrents to women's employment²².

As a result, it is critical that maternity benefits be made mandatory for women in the workplace in order to encourage more women to actively participate in the industry²³.

Maternity protection is critical to advancing the concept of equal opportunity in the workplace. The goal of giving such benefits is to keep childbirth from being a disincentive to women and to keep women from having to choose between their "reproductive and productive responsibilities." According to the ILO Maternity Protection Convention and Recommendations of 2000, maternity leave is a mother's entitlement to time off to rest and recuperate after childbirth and its repercussions²⁴.

The convention allows for monetary and medical benefits (article 6(3)), as well as the right of a mother to breastfeed her child after returning to work (article 3)²⁵.

The ILO Maternity Protection Convention (2000) expands on the provisions of the ILO Maternity Protection Convention (Revised) 1952 by requiring that maternity leave (defined as leave from

²² Supra vi, at 51.

²³ Supra vii, at 128.

²⁴ Supra vii, at 126-127.

²⁵ *Id.* at 130.

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work granted to a woman for a continuous period before and after giving birth) be provided to all employed women for at least 14 weeks (Article 4.1). This includes not only women working in the formal sector, but also women working in the informal sector. It further states that, unless otherwise allowed by the national government, at least 6 weeks of maternity leave must be taken following the child's birth (Article 4.4). If an adequate medical certificate is supplied, the ILO convention also provides for leave to be extended even after the maternity leave period, either before or after childbirth, in the case of medical difficulties or illness (Article 5). The ILO Maternity Protection Recommendations 1981 also support extending maternity leave to 18 weeks and providing protection from dismissal for a specified period after returning from maternity leave. Article 8 of the ILO Maternity Protection Convention grants the right to return to the same work or post with the same salary following maternity leave. It also makes it illegal to fire such an employee except for reasons unrelated to pregnancy or the consequences thereof, with the employer bearing the burden of proof. Many EU countries and other first-world countries provide monetary incentives to new mothers in order to lessen the strain of having lost income during the period of maternity leave. In addition to the maternity leave, they have legislation in place to offer "parental leave" to either parent. It also makes it illegal to fire such an employee except for reasons unrelated to pregnancy or the consequences thereof, with the employer bearing the burden of proof. Many EU countries and other first-world countries provide monetary incentives to new mothers in order to lessen the strain of having lost income during the period of maternity leave. They also

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have legislation in place that allows either parent to take "parental leave" in addition to the maternity leave offered²⁶.

Furthermore, in 2004, the International Labor Conference adopted a Resolution on Gender Equality, Pay Equity, and Maternity Protection, stating that maternity protection is equivalent to non-discrimination and urging all governments to ratify and apply the 1951 ILO Equal Remuneration Convention in order to eliminate gender-based workplace discrimination.

Maternity leave is granted to every pregnant employee in India under the Maternity Benefit Act 1961 for a period of 6 weeks prior to delivery and 6 weeks after delivery. However, if the employee so desires, she may continue to claim leave after childbirth for as long as the term claimed does not exceed 12 weeks, as per the 1989 Amendment (section 6). According to Section 5(1) of the Act, the employer is required to give the pregnant employee a cash maternity benefit at the rate of average daily wages for the period she was really absent preceding and during the time of her delivery, as well as for the first 6 weeks following her delivery. In addition, pursuant to section 6(5), the employee is entitled to this benefit in advance, i.e. prior to the date of delivery. A woman employee who has missed work due to pregnancy, like the rules of the ILO agreements, cannot be fired (unless for reasons unrelated to pregnancy), as stated in section 12. (1). She is also entitled to leave under section 9 in the event of a miscarriage and under section 9A in the event of

²⁶ *Supra vi*, at 215-228.

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pregnancy-related illness. Similarly to the ILO conventions, a woman is entitled to nursing breaks under section 11, and no pay may be reduced in lieu of these breaks or for the light nature of the task given to her under section 4(3).

Other Special Provisions in Indian Labor Statutes Concerning Women

While there are numerous statutes geared solely at women, such as the Sexual Harassment at Workplace Act and the Maternity Benefits Act, a number of additional statutes intended at the general working populace have special provisions for the welfare of women employees²⁷, namely:-

- The Factories Act, 1948
- The Mines Act, 1952
- The Plantation Labor Act, 1951
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966,
- The Contract Labor (Regulation and Abolition) Act, 1970

²⁷ Supra vi, at 174-228.

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- The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- The Employees' State Insurance Act, 1948
- The Workmen Compensation Act, 1923
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952
- Payment of Gratuity Act, 1972

The aforementioned statutes include special provisions for women's health, safety, and welfare, as well as social security measures and pay protection. The following provisions pertain to the welfare of women in all of these²⁸ acts:-

- 1) Separate latrine and urinal facilities are provided for in the Factories Act of 1948, the Mines Act of 1952, the Plantation Labor Act of 1951, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act of 1996, the Beedi

²⁸ Supra vi, at 174-228.

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and Cigar Workers' (Conditions of Employment) Act of 1966, and the Contract Labor (Regulation and Abolition) Act of 1970.

- 2) Work in Dangerous Occupations is prohibited under the Factories Act of 1948 and the Mines Act of 1952.
- 3) Washing and bathing facilities are mandated under the Factories Act of 1948, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act of 1996, and the Contract Labor (Regulation and Abolition) Act of 1970.
- 4) Crèches - This is covered by the Factories Act of 1948, the Mines Act of 1952, the Plantation Labor Act of 1951, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act of 1996, the Beedi and Cigar Workers' (Conditions of Employment) Act of 1966, the Contract Labor (Regulation and Abolition) Act of 1970, and the Inter-State Migrant Workers' (Regulation of Employment and Conditions of Service) Act of 1979.
- 5) Limiting labor hours to 9 hours per day and further limitations regarding shifts - This is provided for in the Factories Act of 1948.
- 6) Limiting the maximum permitted load that women can lift while taking biological variables into account - This is provided for in the Factories Act of 1948.
- 7) Night work is prohibited under the Factories Act of 1948, the Mines Act of 1952, the Plantation Labor Act of 1951, the Beedi and Cigar Workers (Conditions of Employment)

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Act of 1966, and the Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act of 1979.

- 8) Separate Restrooms and Canteens - Contract Labor (Regulation and Abolition) Act, 1970; Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979.

Conclusion

The numerous particular provisions provided for the welfare of women demonstrate that there has been a tendency towards the empowerment of women in labor law at both the national and international levels. In India, there has been a definite shift toward equal pay, equal access to opportunity, the prevention and redressal of sexual harassment, and the provision of maternity benefits. In fact, the majority of regulations relating to special provisions for women are modeled after ILO conventions²⁹.

India, as a founding member of the ILO, has worked hard to adhere to the ILOs standards, at least in theory. The special rights granted to women under various labor laws (for example, the Factories Act of 1948, the Mines Act of 1952, the Plantation Labor Act of 1951, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act of 1996, the

²⁹ Supra vi, at 520.

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Beedi and Cigar Workers (Conditions of Employment) Act of 1966, the Contract Labor (Regulation and Abolition) Act of 1970, the Contract Labor (Regulation and Abolition) Act of 1970, The Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, the Maternity Benefit Act, 1961, the Employees State Insurance Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972, and the Workmen's Compensation Act, 1923, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, and the Equal Remuneration Act, 1976 are examples.

However, it is crucial to highlight that some of these safeguards have backfired and proven to be harmful. Many laws, for example, have made it illegal for women to work at night, depriving them of the ability to choose whether or not they want to work at that time. In many cases, women workers who are capable and desire to work extra or night shifts are unable to do so due to these rules, resulting in a major denial of women's equal employment opportunities. The only method to resolve such concerns is socially rather than legally, i.e. by making the workplace safer through social involvement, paternalistic legal regulations can be reduced.

The next degree of effort required by India is the development of effective implementation and redressal systems. The best way to ensure the efficient execution of these regulations and the

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resolution of any complaints is to start at the grassroots level, i.e. with individual firms and employers. This ensures that the efforts are more targeted and result in more clear effects³⁰.

³⁰ C. S. V. Ratnam, *India and International Labor Standards*, 35, *Indian Journal of Industrial Relations* 461, 478 (2000). See Gupta, *supra vi*, at 520.