

Gender Equality at work place in Indian Context: legislative and Judicial Perspective

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Abstract

Gender equality is a human right. Women are entitled to live with dignity and with freedom from want and fear. Society can be groomed only in free and fair environment where there will be no place of discrimination between male and female members of society. Indian Society is an example of transition from equality to discrimination and once again from discrimination to equality. Gender equality is also a precondition for advancing development and reducing poverty. Empowered women contribute to the health and productivity of whole families and communities, and they improve the prospects of the next generations. By way of various legislations the interest of Indian women in all fields like Education, Politics, Corporate Sector, Employment, and Domestic Sector has been protected and promoted. In this paper an attempt has been made to evaluate the Gender Equality of Women at workplace.

Keywords: Gender, Women, Workplace

Introduction:

India is one of the countries having ancient, old and distinct culture. In this society there is prevalence of male dominance. In this multi linguistic and multi religious society male dominance is a very common feature. In ancient India, the fact of equal enjoyment of rights and privileges by Women and men gets revealed from the examples of Gargi, Maitreyi, etc. They had all the rights of taking and imparting education as male members had. It was in the medieval period where restrictions were imposed on

enjoyment of Rights and privilege of women. Somehow she came on back foot and became vulnerable. To improve the disadvantageous position of women during 18th century various Social Activists like Mahatma Phule, Gopal Ganesh Agarkar, etc. took initiative for eradicating practices which were derogatory to women.

By one way or other Women are victims of discrimination. It ranges from child marriage, female foeticide, female infanticide, Dowry death, sati practice, sexual offences against her to discrimination at workplace. Both Indian

Parliament and Indian Judiciary are vigilant for protecting the gender equality

of men and women in all respect.

(vii) The Apprentices Act, 1961

Laws for protecting Gender

Equality in India:

Constitution of India is the basic law of land which guarantees gender equality in all aspect. Other legal provisions for protection of Women are as follows:

Non-discrimination and Wage Payment:

- (i) The Equal Remuneration Act, 1976
- (ii) The Maternity Benefit Act, 1961
- (iii) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (iv) Minimum Wages Act, 1936.

Right to Work:

- (i) The Mahatma Gandhi National Rural Employment Guarantee Act, 2005
- (ii) The Factories Act, 1948
- (iii) Mines Act, 1952
- (iv) The Building and Other Construction (Regulation of Employment and Conditions of Service) Workers Act, 1996
- (v) Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- (vi) The Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Social Security Act, 1979

Industrial Relations:

- (i) The Trade Unions Act, 1926.
- (ii) The Industrial Disputes Act, 1947.
- (iii) Industrial Employment (Standing Orders) Act, 1946

Gender Equality at Workplace:

Gender equality at workplace refers to variety of culture, practices and attitudes that promote or attempts to create a gender equal workplace. Workplace is a broad category that comprises a range of work related activities across the formal and informal economy including the organised and unorganised sectors¹⁸.

Constitution of India and Gender Equality:

"I measure the progress of a community by the degree of progress which women have achieved."

— B. R. Ambedkar

Constitution of India guarantees equality to male and female and at the same time considers her as a vulnerable and provides certain privileges to her. Provisions for

Equality between male and female are as follows:

Equality before the law and equal protection of the laws^{xxv}, Prohibition of discrimination on the grounds of sex^{xxvi}; Equality of opportunity in matters relating to public employment and appointments^{xxvii}; Prohibition of discrimination on the grounds of sex in matters of employment under the State^{xxviii}; Equal Justice and free legal aid^{xxix}, Equal pay for equal work for both male and female^{xxx}. Not only the State is required to protect the women from discrimination but it is the fundamental duty of every individual to ensure that the dignity of women is protected. Article 51- A reads as follows:

It shall be the duty of every citizen of India -(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; Thus it forms part of personal obligation to protect the dignity of women and not to resort to any activities which are derogatory to the women^{xxxi}.

The 73rd and 74th Amendments (1993) to the Indian Constitution have enhanced the women's participation in democratic process.

Labour laws and its regulation are listed in the Union List and the Concurrent List in the VIIth Schedule of the Constitution of India. The Parliament of India is thereby empowered to make laws with respect to the matters enumerated in the Union List and both, the Parliament of India, and the Legislature of any State is empowered to make laws with respect to the matters enumerated in the Concurrent List. The entries with regard to labour and its regulation in the VIIth Schedule of the Constitution of India are given below.

- **Union List:**

- Entry No. 55: Regulation of labour and safety in mines & oil feeds.
- Entry No. 61: Industrial disputes concerning union employees.
- Entry No. 65: Union agencies and institutions for professional, technical or vocational training.

- **Concurrent List:**

- Entry No. 22: Trade Unions; Industrial and labour disputes.
- Entry No. 23: Social security and social insurance; employment and unemployment
- Entry No. 24: Welfare of labour including conditions of work, Provident Funds, Employers' Liability, Workmen's Compensation, invalidity and old age person & maternity benefit.

Provisions of Gender Equality in Laws:

(i) Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976, enacted to implement Article 39(d) of the Constitution of India and the Equal Remuneration Convention, 1951 (I.L.O. Convention 100) was designed for the prevention of discrimination based on sex against women in employment. Under the Act, the employer is obliged to pay equal remuneration to men and women workers for same work or work of a similar nature. The Act also prohibits the discrimination against women during and subsequent to the recruitment of women workers for the same work or work of a similar nature. By the Equal Remuneration (Amendment) Act, 1987, discrimination against women during „any condition of service subsequent to recruitment such as promotion, training or transfer was prohibited.

In the case of *People's Union for Democratic Rights and Others v. Union of India*¹⁹, it was alleged before the court that the workers engaged in construction work were being discriminated in matters of payment of wages on the basis of sex, which is violative of the provisions of the Equal Remuneration Act, 1976. It was

contended in the writ petition that the Women Workers were getting paid only Rs. 7 per day whereas the remuneration fixed for the men was Rs. 9.25 (of which Re.1 was being appropriated by the contractors which was also before adjudication by the Court) and that the balance amount was being appropriated by the jamadars and contractors. In this case the Supreme Court held that the non-payment of equal wages was a violation of the Right to Equality under Article 14 of the Constitution of India and directed the Union of India and Delhi Administration to ensure that the provisions of the Equal Remuneration Act, 1976, were not violated.

(ii) The Maternity Benefit Act, 1961:

The Maternity Benefit Act, 1961, is a social legislation whereby every woman employed, whether directly or through an agency, is entitled to the payment of maternity benefits at the rate of the average daily wage.

The Act follows the employer's liability approach, which means that the employer solely bears the full amount of liability for providing maternity protection and the employees are not required to make any contribution for availing of the maternity benefits.

The Act extends to factories, mines, plantations, shops and establishments, and

¹⁹ 982 AIR 1473, 1983 SCR (1) 456

establishments to which the provisions of this Act have been declared to be applicable. The Employees State Insurance Act, 1948 also provides for maternity benefits to specific employment sectors.

Municipal Corporation of Delhi v. Female Workers (Muster Roll)^{xxxii} The Court applying the non-discrimination provisions of the Convention on the Elimination of all forms of Discrimination Against Women, (CEDAW) to the women workers held that the benefits of the Act, was directly applicable to the women employees on the muster roll as much as regularized employees.

iii) The Factories Act, 1948

Following facilities are provided for women under Act:

- The Act provides for separate and adequately screened washing facilities for male and female workers.
- Provisions of (a) facilities for storing of clothes not worn during work hours and for the drying of wet clothing. (b) Shelters, restrooms and lunch rooms (c) women representative on canteen managing committees.
- In every factory where more than 30 women workers are ordinarily employed, there shall be provided and maintained a suitable room or

rooms for the use of children under the age of 6 years of such women.

- Provision of free milk or refreshments or both as well as breast feeding facilities.
- There is no need for a minimum number of workers to be employed in order for a crèche to be set up by an employer. Even if one Woman Worker has a child, it is the duty of the employer to provide child care assistance in the form of crèches.

iv) Equal Remuneration Act, 1976

It is the duty of employer under the Act to pay equal remuneration to men and women workers for same work or work of a similar nature. No employer can, while making recruitment for the same work or work of a similar nature, 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.

(v) Criminal Law (Amendment) Act, 2013

The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report.

This new Act has expressly recognised certain acts as offences which were dealt under related laws. These new offences like, acid attack(Section 326-A, 326-B), sexual harassment(Section 354-A), voyeurism(Section 354-C), stalking (Section 354-D) have been incorporated into the Indian Penal Code in addition to this the Law relating to rape (Section 375) has also been amended.

(vi) The Companies Act, 2013

The Companies Act, 2013: This Act provides that every public listed company has to appoint a Women director on its board.

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

This Act aims to provide protection of women against sexual harassment at workplaces.

It is only through effective processes of implementation of existing laws and through the formulation of new laws and policies equality can be guaranteed.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative Act in India that seeks to protect women from sexual harassment at their place of work. The Act came into force from 9 December 2013. This Statute superseded the

Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

It addresses:

1. Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;
2. The protection against sexual harassment and the right to work with dignity are universally recognised human rights by International Conventions and Instruments such as Convention on the Elimination of all Forms of Discrimination against Women(CEDAW), which has been ratified on the 25th June, 1993 by the Government of India;
3. To make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Role of Judiciary in Gender Equality:

The Supreme Court *in Muthamma v. Union of India*^{xxxiii} and *Air India v Nargesh Mirza*^{xxxiv} struck down

discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed.

In ***Vishaka v. State of Rajasthan***^{xxxv}, the Supreme Court observed that Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. And therefore issued guidelines to ensure women have equal working conditions and are protected from sexual harassment. In consequence of the guidelines given by Supreme Court, Parliament has enacted **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

Hindu Succession Amendment Act 2005 is a piece of Central legislation that was brought into force in all our states. The Act confers equal rights of inheritance to Hindu women along with men, thus achieving the constitutional mandate of equality. Interpretation of the Guardianship law in the light of Article 15 by the Supreme Court in ***Githa Hariharan v. Reserve Bank of India***^{xxxvi} could equate the position of mother to that of father in the matter of guardianship^{xxxvii}.

Conclusion:

There are adequate legislations in India which not only removes the discrimination against women but also empowers the women. The Supreme Court of India however has taken initiatives too and in some cases issued directions to the Government as well. But the implementation of these legislations in actual sense is very much necessary to remove the discrimination in the Society. Women are protected against all types of harassment and exploitation at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

"Achieving gender equality requires the engagement of women and men, girls and boys. It is everyone's responsibility."

— **Ban Ki-moon**

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