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Rights of Women Laborers in the Indian Legal System: A Critical Analysis

By Kirandeep Kaur

Abstract

Women laborers form an important part of the labor workforce in India; however, not all are recognized, not many are protected, and very few are treated equally to men. The Equal Remuneration Act of 1976 clearly states that persons doing “same work or work of a similar nature” are not to be discriminated against on the ground of gender. The Factories Act of 1948 has special provisions for women workers pertaining to washrooms, changing rooms, creches, and work hours. The Maternity Benefit Act of 1961 entitles a woman, inter alia, to twenty-six weeks of paid maternity relief. The protection given to women under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 is also of vital importance for women workers in India. The laws prima-facie seem to be protecting the rights of women workers, but a deeper analysis of their effectiveness is required to take the concerns of women into account. It is to be noted that one of the areas of concern is the amount of unpaid labor put in by women in Indian households and home industries, which remains unrecognized. This paper offers a feminist analysis of labor legislation affecting women laborers in India from the perspective of women and their rights. Also analyzed are the various schemes of the Government of India pertaining to welfare and empowerment of women, various international instruments, and international labor standards. The research methodology used is a combination of analytical and critical research. Pay parity and equality in opportunity, recruitment, promotion, transfer, and facilities at the workplace are a few pertinent steps towards the amelioration of the conditions of women laborers in the country. The ultimate goal is to address the issues which need to be resolved for women workers to exercise their rights at par with the other labor categories. These issues are significant and have far-reaching implications. This research has found that the Indian legal framework with respect to protection of rights of women laborers is quite progressive and in tandem with the changing needs and requirements of the time. However, the implementation of these schemes in true letter and spirit is the real challenge that lies ahead.

Keywords: Indian women, Labor law, Equality, Indian law, Labor legislation

Introduction

Women laborers form an important part of the labor workforce in India; however, not all are recognized, not many are protected, and very few are treated equally to men. The Equal Remuneration Act of 1976 clearly states that persons doing “same work or work of a similar nature” are not to be discriminated against on the ground of gender. The Factories Act of 1948 has special provisions for women workers pertaining to washrooms, changing rooms, creches, and work hours. The Maternity Benefit Act of 1961 entitles a woman inter alia to twenty-six weeks of paid maternity relief. The laws prima-facie seem to be protecting the rights of women workers, but a deeper analysis of their effectiveness is required to take the concerns of women into account.

Dr. Kirandeep Kaur is presently an Assistant Professor of Law at the Army Institute of Law, Mohali, India. She has over a decade’s experience in research and academics and has multiple publications to her credit. Her areas of interest include Labor Law, Health Law, and Gender Studies.
This paper offers a feminist analysis of labor legislation affecting women laborers in India from the perspective of women and their rights. The research methodology used is a combination of analytical and critical research. The ultimate goal is to address the issues which need to be resolved for women workers to exercise their rights at par with men. These issues are significant and have far-reaching implications.

According to a UN Women and ILO Policy Brief (2012) titled “Decent Work and Women’s Economic Empowerment: Good Policy and Practice,” women comprise 40% of the workforce globally. They are contributing substantially to “social and economic development” in various capacities in the labor force as service providers, employers, entrepreneurs, and employees. However, there is a high likelihood of them being the ones who are paid less, who are more likely in part-time jobs, or located in the unorganized/informal sectors. Empowering women workers requires crossing these hurdles along the way. Research has proven that this will lead to increases in productivity, better the well-being of the generations to come, improve living standards in the society, and contribute to improving the nation’s economy.

Why Are We Talking about Women Laborers?

The words “laborers,” “workers,” and “employees” are often used interchangeably and imply the existence of a contract of employment. The terminology “employee” is defined in a myriad of Indian legislations to mean and include any person who is employed with wages to do any skilled, unskilled, manual or operational, technical, or clerical labor, including work done in supervisory, managerial, or administrative capacity. Women laborers are just like other laborers; they are also employed in the capacity to earn money for the labor that they put in. However, the struggles, issues and situations faced by the women laborers are unique among the workforce.

India’s female labor participation has been on the decline in the last 20 years, with the rate dropping from 32% in the year 2005 to 19% in the year 2021 (Chakrabarty, 2023).

Women are home-makers, educators, caregivers, and laborers all at once. They do not cease to carry out a role on the taking up of a new role. The workplace may also expose women to discrimination and hurdles associated with gender. The discrimination at the work-front and the home-front is multi-faceted. The caregiving responsibilities of a woman in an Indian household are more than their men counterparts, and there is no respite for a woman working outside the home either. Many women tend to the household chores and requirements completely on their own and then also go to work, whereas the husbands, fathers, and sons of the house only work at the place of employment. In many such cases, women are over-burdened with responsibilities at home and outside the home and choose to drop out of paid labor if the financial ends of the family can be met without the contribution from her wages. Despite this general truth, there are also many households where the men equally contribute to the household responsibilities thereby facilitating the possibility of women to work outside the home. Law and research can and do venture into the closed doors of a family, but the discussion herein is not specific to any particular household but to working women generally.

It cannot be ignored that there are quite a few pertinent reasons which prevent or discourage women from taking up employment. According to Chakrabarty (2023), an article published in India Today magazine, there are some key reasons which are “holding women back from paid labour” in India, and we have visualized those reasons in Table 1.

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Workers Who Are not Counted as Workers

One of the major areas of concern is the amount of unpaid labor put in by women in Indian households and home industries, which remains unrecognized. At the two extreme ends of the arena are women who go outside of the home to work and those who are absolutely not a part of the labor force, by choice. In between these two extremes are women who fall within the grey zone. Such women might work in the household or outside, seasonally or throughout the year, full time or part time, for example, as a helper in the shop, rearing livestock, or producing crops. In all likelihood, such women are not seen as laborers, neither by the family nor by themselves (Deshpande, 2021).

“Self-employed” workers include women who are own-account workers or employers themselves and unpaid helpers. Own-account workers are those workers who operate their own industries, without the aid of outside labor. According to the Periodic Labour Force Survey (2021-2022), in the case of self-employed women, around 53% worked as unpaid helpers (Dhamija & Chawla, 2023). Working as an unpaid worker in an industry/factory mostly leads to a feeling of inferiority among the women who get no financial advancement from such an employment and also do not get the opportunity to participate in the public sphere. They fall through the cracks of the official statistics and do not find mention in the data pertaining to laborers. It is to be also noted that most of the work done by women in these enterprises happens to be the “bottom-of-the-rung, survivalist livelihood activities” (Deshpande, 2021). It is noteworthy that due to the presence of self-employment, and disguised underemployment, the measurement of “unemployment” as such does not appear to be as high as it really is.

Right to work is recognized within the realm of the fundamental right to life. Right to work would involve equitable payment of wages, timely payment of the same, and wages being paid without undue deductions. It is also pertinent to note that the conditions at the workplace are vital for the physical and mental well-being of the worker. Rights at the workplace also require a bare minimum amount of social security to address issues relating to injury arising out of or in the course of employment and that of occupational diseases. Right to work is considered an inalienable
right of every human being, including women. In this light, it is pertinent to discuss the Convention on Elimination of Discrimination Against Women (CEDAW), which *inter alia* states that the States should protect the women by eliminating any discrimination in the field of employment. Article 11 of CEDAW recognizes that the right to work is “an inalienable right” of everyone, which includes:

- Right to same employment opportunities, including same criteria for selection with respect to employment;
- Right to free choice of profession and employment;
- Right to promotion, job security and all benefits and conditions of service;
- Right to equal remuneration, including benefits;
- Right to equal treatment at work;
- Right to social security, especially with respect to retirement, sickness, etc.;
- Right to paid leave;
- Right to safety and protection of health in working conditions, including safeguarding the function of reproduction.

It further states that there should not be any discrimination against women on the grounds of marriage or maternity. For ensuring the effective right to work of women the State is required to take appropriate measures to prohibit dismissal on the ground of maternity leave or pregnancy, or discrimination on the basis of the marital status of a woman. The measures should also include providing paid maternity leave without loss of former seniority and allowances, and to provide special protection to women during the course of pregnancy from any work which is not physically viable. Elaborating upon the necessity to maintain a balance between work and home, it is further stated that the State should ensure provision of “necessary supporting social services” through establishing and developing a network of child-care facilities. Some of these provisions pertaining to paid maternity leave find place in the Maternity Benefit Act, 1961 in India, which will be discussed in more detail later.

Article 11 of CEDAW lays down the framework for various aspects pertaining to the rights of women at the workplace, each of which is significant and relevant today. The Constitution of India and various relevant legislations of the country incorporate and address the aforementioned issues through various provisions. In the light of CEDAW, the laws and legal framework pertaining to women’s right to work and other ancillary rights are discussed.

**Rights of Women under the Constitution of India**

Rights of women are at par with those of men under the Indian Constitution. Fundamental rights are equally available to one and all citizens of India. There are also certain provisions of the Constitution of India which specifically provide for rights of women as outlined in Table 2.
Table 2. Rights of Women Workers under the Constitution of India

<table>
<thead>
<tr>
<th>Fundamental Rights</th>
<th>Article 14</th>
<th>Equality before law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 15</td>
<td></td>
<td>Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. (It is to be noted that nothing in this Article shall prevent the State from making any special provision for women and children.)</td>
</tr>
<tr>
<td>Article 16</td>
<td></td>
<td>Equality of opportunity in matters of public employment.</td>
</tr>
<tr>
<td>Directive Principles of State Policy</td>
<td>Article 39</td>
<td>The State shall, in particular, direct its policy towards securing that; the citizens, men and women equally, have the right to an adequate means of livelihood; there is equal pay for equal work for both men and women; the health and strength of workers, men, women, and children are not abused; and citizens are not shoved, because of economic necessity, into vocations unsuitable to their age, capability, or strength.</td>
</tr>
<tr>
<td>Article 39A</td>
<td></td>
<td>Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity.</td>
</tr>
<tr>
<td>Article 42</td>
<td></td>
<td>The State shall make provision for securing just and humane conditions of work and for maternity relief.</td>
</tr>
<tr>
<td>Fundamental Duties</td>
<td>Article 51A</td>
<td>It shall be the duty of every citizen of India 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 (Article 51A(e))</td>
</tr>
</tbody>
</table>

The Constitution also provides for reservation of seats for women in Panchayats and Municipalities. The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 has been passed in both the Houses of the Parliament and received the President of India’s assent. The Bill has been notified in the form of the Constitution (106th Amendment) Act, 2023. However, it will be made applicable from the next Lok Sabha elections after a new delimitation exercise is carried out. The Amendment proposes to reserve one-third of the total number of seats in Lok Sabha and various state legislative assemblies for women. The issue at hand is pertaining to the predicaments of the women labor force of the country. There is hope that more representation of women in the legislative bodies will ameliorate the situation of women laborers and the labor force as a whole.

The Legal Rights of Women Laborers in India Compared to National and Global Realities

There exist over forty labor law legislations in India. To consolidate the laws and also to bring about amendments, the laws in these legislations have been incorporated in four concise labor law codes passed by the Parliament. Labor Law in India finds place in List III of the Seventh Schedule, that is the Concurrent List. Therefore, both the Parliament and the State Legislative Assemblies can pass legislation on the subject. The four labor Codes have been passed and notified; their implementation has, however, not seen the light of the day because many State Legislatures have not drafted the Rules under the Code which are necessary for the implementation

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3 India, Constituent Assembly. *The Constitution of India*. Article 15(3).
and enforcement of the Codes. This has been the status quo for several years. In this light, it is pertinent to note that the erstwhile Acts discussed herein below are the law of the land presently applicable. With the incumbent change in the form of the Codes, any relevant changes brought about through the Codes is also delved into during the course of this discussion.

The Indian Labour Laws have specific provisions addressing the concerns of working women. Herein below are a few relevant legislations, namely:

- The Factories Act, 1948;
- The Equal Remuneration Act, 1976;
- The Maternity Benefits Act, 1961;
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

**The Factories Act, 1948**

This act is a welfare legislation which lays down provisions pertaining to the working conditions of the workers in a factory, covering health, safety, welfare, working hours, annual leave, and wages of workers. It enumerates specific provisions for employment of young persons, that is minors, who are further categorized on the basis of age into “child” and “adolescent.” Having comfortable conditions at the workplace are a necessary condition for the welfare of the workers who spend most of the awake hours of their day toiling in these factories.

Health provisions in the Act of 1948 include provisions pertaining to cleanliness, disposal of wastes and effluents, ventilation, temperature, artificial humidification, lighting, overcrowding, drinking water, and spittoons. With respect to latrines and urinals, it is specifically stated that “separate enclosed accommodation should be provided for male and female workers.”

Welfare provisions in the Act of 1948 include provisions pertaining to facilities for washing, storing and drying clothes, for sitting, first-aid appliances, canteens, shelters, rest-rooms and lunch rooms, and creches. Washing facilities and those pertaining to storing and drying clothes are to be “separate and adequately screened” for the use of men and women workers. Section 48 of the Act is pertinent with respect to women workers who are also mothers. It is stated that in every factory where 30 or more workers are ordinarily employed, there shall be provided and maintained separate room/s for the use of those children of such women workers who are below six years of age. The State Government is empowered to make rules with respect to facilities for enabling the women workers to feed their children, to clean or wash their clothing, and also provision of free milk and/or refreshment of such children.

The provisions pertaining to working hours of adults under the Act of 1948 lay down the limits and restrictions pertaining to weekly hours, weekly holidays, daily hours, spread over, night shifts, and extra wages for overtime. Section 66 provides for further restrictions on employment of women in order to mete out protection to women. It is stated *inter alia* that no woman “shall be required or allowed to work” except between 6AM to 7PM. The State Government, may, however, permit variation of the hours but so much so that no woman will be employed between 10PM and

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Exemption from the same can be given by the State Government for women working in fish-curing or fish-canning factories, where the same is required to “prevent damage to, or deterioration in, any raw material.” The provisions of this Section are contentious and have been found to violate the ethos of right to equality. The Andhra Pradesh High Court in Triveni K.S. and Others v. Union of India and others\(^9\) held that the working of women without any restrictions in hours to prevent damage of material in fish-curing and fish-canning is a protection meted out to the fish at the cost of the women workers. The Kerala High Court in Omana Oomen and others v. F.A.C.T. Ltd.\(^11\) held that the exclusion of women candidates under Section 66 violates Articles 14 and 15 of the Constitution of India. If women are willing to work during such hours, it becomes the solemn duty of the employer to facilitate the safe participation of the workers during those hours.

The Factories Act, 1948 is a welfare legislation which caters to the welfare needs of workers of the factory. The health, welfare, and safety provisions pertaining to workers in general and the ones specific to women are of paramount importance for women workers. Basic comfort and safety at the workplace is important for productivity and would contribute to a lesser number of dropouts. The implementation of these provisions in letter and spirit is vital for the purposes of the Act to be fulfilled. This depends to a great extent on the fulfilment by the owner/occupier of the factory of the duties assigned to him/her under the Act and monitoring of the performance of these duties by inspectors. Corruption at the lower quarters often results in the provisions remaining more on paper than materializing in reality (Amirapu & Gechter, 2020).

**Equal Remuneration Act, 1976**

Non-discrimination in employment is a very pertinent criterion for a woman to be able to freely exercise her right to employment. The Act of 1976 introduces the concept of “same work or work of a similar nature” and states that there should be no discrimination in recruitment, transfer, promotion, and payment of remuneration on the ground of gender when the work done is of a similar nature. It is “same work or work of a similar nature” when the “skill,” “effort,” and “responsibility” required are the same when performed under similar circumstances. The Code on Wages, 2019 adds the parameter of “experience” to the list. There are many landmark judgments of the honourable Supreme Court of India wherein the issues pertaining to equal remuneration and non-discrimination on the ground of gender have been deliberated upon and upheld.\(^{12}\) The provisions of the Act of 1976 are very much in consonance with the ethos of the fundamental rights guaranteed under Articles 14, 15, and 16 of the Indian Constitution. However, the reality does not match what is projected by the law. The data pertaining to the gender wage gap in India and also globally shows a substantial difference in earnings between men and women workers (Gomis et al., 2023). According to UN Women, “Worldwide, women only make 77 cents for every dollar earned by men. As a result, there is a lifetime of income inequality between men and women and more women are retiring into poverty” (UN Women, n.d.), and “globally women earn 23% less than men” (UN Women, 2017). The situation is worse in India. According to International Labour Organization (ILO), the wage gap for India was 34% in 2018 (Wagmare, 2018). An article in the

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\(^10\) III LLJ 320 (AP), 2002.

\(^11\) II LLJ 541 (Kerala), 1991.

ILO OpEd written on the occasion of the third International Equal Pay Day, September 18th in 2022, stated that the pandemic “reversed decades of progress” in the country (Walter & Ferguson, 2022). According to the Periodic Labour Force Survey (PLFS) 2020-21 there has been an increase in the wage gap by 7% between 2018-19 and 2020-21. There has been a faster decline in wages of women workers during the pandemic which resulted in this decline, compared to the faster growth in wages of the men workers (Walter & Ferguson, 2022). Women “have been hit harder” as the pandemic has resulted in an increase in gender inequalities in the industry (Dasgupti, 2021).

Even though it is not recorded, there is a general gender bias pertaining to recruitment and employment of women, bearing in mind the general notions about women’s roles being defined by family and procreation. When the woman worker goes for maternity break, the employer bears the financial brunt of the situation and has to pay the full wages for 26 weeks to both the woman worker who is on maternity break and the new worker who is employed for the said period of 26 weeks in the place of the woman worker. There is no documented evidence, but this is a “not talked about” general tendency of employers throughout the industries in the country pertaining to the biases against women as employees. There also have been several representations before the Ministry of Labour on how 26 weeks of paid maternity leave tends to become “a deterrent for female employees” who are asked to quit their job or are retrenched unreasonably before they avail the maternity leave (Ministry of Labor and Employment, 2018). Perhaps the reason for the same is that, in India, the employer alone is responsible to bear the expenses of the maternity leave (“Maternity Leave in India,” 2024). Support from the government, both on the infrastructural and financial front, can be useful for the employers to address this issue of high cost.

In a report published by ILO in March 2023, the issue globally is brought to light in the section titled “The motherhood penalty, a driver of lower participation” (Gomis et al., 2023). According to the report, women who want to work find it much tougher to find a job than men do. According to the recent ILOSTAT data, the major factor which has been lowering the participation of women in the labor force globally is “child-rearing” (Gomis et al., 2023). In 2022:

- Among persons between the age groups of 25 to 54, the “gender gap in labor force participation” was 29.2%, with women’s participation being at 61.4% and men’s participation being at 90.6% (Gomis et al., 2023).
- For those persons between the same age groups of 25 to 54, with at least one child under six, the labor force participation gap further widened from 29.2 to 42.6 percentage points, with women’s participation being at 53.1% and men’s participation being at 95.7% (Gomis et al., 2023).

The Maternity Benefits Act, 1961

The Maternity Benefits Act, 1961 of India is an Act to regulate the employment of women in certain establishments for certain durations, namely, before child-birth and after child-birth, and to provide for maternity benefit. This Act emanates from Article 42 of the Constitution of India, which directs the State to make just and humane conditions at work and to make the provisions pertaining to maternity benefits. It states that “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 time period which immediately precedes the date of her delivery, the actual date of delivery and any period which immediately following that day,

subject to a maximum of 26 weeks. In order to claim this benefit, the concerned woman should have “actually worked” for not less than 80 days (in the 12 months actually preceding her date of delivery) in the establishment of the employer from whom she claims maternity benefit. A woman worker who has over two surviving children is entitled to maternity benefit up to 12 weeks. Maternity benefit of 12 weeks is also available to a woman who legally adopts a baby who is less than three months old. The Act of 1961 also allows working from home when the same is feasible and practical. Every woman worker who returns to work after maternity break is to be allowed in the course of her daily work to avail two breaks for nursing the child until the child attains the age of 15 months. The provisions of the Act of 1961 are very much in consonance with the provisions of Maternity Protection Convention of 2000 of ILO (C183, 2000) which provides inter alia for health protection, maternity leave, and employment protection.

The Act does impose financial burden on the employer who has to pay the employee who is on maternity leave with her wages and also pay the equal amount to the temporary employee appointed in her place. Employers restrain themselves from appointing women who may plan a family in the near future, many employers going on to the extent of asking the prospective employees of their family planning in the future. Other employers refrain from giving employment under the garb of irrelevant factors just to avoid the economic burden which they fear might ensue in the near future because of the maternity break that the concerned female employee may avail. It should, however, not be forgotten that women who choose to become mothers play a vital role in birthing the progeny of humanity and protection given to their employment status is the least that the State can do to facilitate their early motherhood days.

Recruitment, promotion, and transfer policies across various occupations need to be more transparent and the implementing authorities should be vigilant about any kind of discrimination against women, whether explicit or implicit, on the ground of gender. The employer should be considerate about the mother who returns to work after her maternity leave, by facilitating the nursing breaks mandated by law, providing creche facilities, and by not over-burdening her with a workload in the initial few months after the break, so that she is given some incubation time to acclimatize herself to the reentry into the workspace and work pressure. Early days of motherhood are tough and many women quit employment for motherhood and do not return. Having a congenial workplace environment, thereby allowing new mothers to comfortably carry on their role of a mother and employee without in any way compromising her role as the latter, can help in addressing this issue of women dropping out of the labor workforce.

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

Physical and mental comfort at the workplace is a precursor to progress in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 commonly known as the POSH Act, was introduced after the landmark Judgement of the Honourable Supreme Court of India in Vishaka and Others v. State of Rajasthan and Others. This

18 Also discussed in detail in the section covering the Equal Remuneration Act, 1976.
case was the culmination of a brutal rape of a female social worker who was working as a *saathin* (Hindi, meaning friend) for the state government’s Women’s Development Programme (WDP) (Pandey, 2017). She was gang-raped by men of the higher caste in the village because she had tried to stop a child marriage. The District Court dismissed the case. After a series of protests and efforts (Outlook Web Desk, 2023), the case came before the Supreme Court in the form of a Public Interest Litigation in Vishaka and Others v. State of Rajasthan and Others (Outlook Web Desk, 2023). There was no law pertaining to protection of women from sexual harassment at workplace back then. The Supreme Court in this case laid down various guidelines, popularly known as the “Vishakha Guidelines,” to prevent and check sexual harassment at the workplace.

Sixteen years after the Vishakha Guidelines, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013\(^{20}\) came into being. The law prevents sexual harassment, and states that “no woman shall be subject to sexual harassment at any workplace.”\(^{21}\) The Preamble of the Act highlights its purpose in light of the fundamental rights of a woman enshrined under Articles 14, 15, and 21 of the Constitution of India and the provisions contained in CEDAW.\(^{22}\) The Act of 2013 lays down the list of a few circumstances and behaviors that would be considered as sexual harassment at workplace, namely:

- promise of preferential treatment in her employment (implied/explicit);
- threat of detrimental treatment in her employment (implied/explicit);
- threat about her present or future employment status (implied/explicit);
- interference with her work;
- creating an “intimidating or offensive or hostile work environment” for her;
- treatment which is humiliating and may affect her health or safety.\(^{23}\)

The woman who becomes subject to sexual harassment, or an attempt of the same, is referred to as an “aggrieved woman” under the Act of 2013. She is:

- in relation to a workplace: a woman, of any age, whether she is employed or not, who alleges that she has been subjected to any act of sexual harassment by the respondent;
- in relation to dwelling place or house: a woman of any age who is employed in that dwelling place or house.\(^{24}\)

\(^{20}\)“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” is hereinafter referred to as the “Act of 2013.”

\(^{21}\)India, Parliament. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. 2013.* Section 3(1).


The Act explains the term “sexual harassment” to include any one or more of the following “unwelcome” acts and/or behavior (whether direct or through implication), as depicted in Table 3.

Table 3. Unwelcome Acts or Behavior Amounting to Sexual Harassment in the Workplace

- physical contact and advances
- making sexually coloured remarks
- demand/request for sexual favours
- showing pornography
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

The ambit of this Act is wide and inclusive and covers not only the public and private sector but also the unorganized sector, hospitals, and dwelling houses. Workplace under the Act of 2013 has been defined to include:

- any department, undertaking, establishment, organization, enterprise, owned and/or controlled directly or indirectly by the Government;
- any organization in the private sector;
- hospitals, nursing homes;
- institutes associated with sports;
- any place that the employee visits during the course of employment;
- dwelling place/house.

It also includes workplaces which are part of the unorganized or non-unionized sector including domestic workers working within dwelling houses. This is a progressive aspect of this Act which recognizes the dignity of labor of a woman across all sectors of the work force. The Act of 2013 requires every employer covered under this law to constitute an “Internal Complaints Committee” which is to comprise members nominated by the employer, including the Presiding Officer who shall be a woman who is a senior member of the workplace, two other members who are preferably committed to the cause of women, and one member from a non-government

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organization committed to the cause. In every district there shall be constituted a “Local Committee” to receive complaints from establishments which do not have an Internal Committee, due to having less than ten employees or if the complaint of sexual harassment is against the employer himself. Any aggrieved woman can make a complaint in writing, before the Internal Committee or the Local Committee as the case may be. The concerned Committee may, before starting the inquiry and at the request of the aggrieved woman, accommodate the conciliation between her and the respondent. The concerned Committee may proceed to conduct the inquiry in accordance with the service rules of the aggrieved employee, and if no such rules exist, then according to such rules as may be prescribed. In case the aggrieved woman is a domestic worker, the Local Committee may forward the complaint to the police under Section 509 of the Indian Penal Code or such other provisions as may be applicable. The Act of 2013 also lays down the following duties of an employer, explained in Table 4.

Table 4. Duties of an Employer under the Act of 2013

<table>
<thead>
<tr>
<th>Duties of an employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>provide safe working environment at the workplace</td>
</tr>
<tr>
<td>organize workshops and awareness programmes</td>
</tr>
<tr>
<td>provide assistance to the aggrieved woman</td>
</tr>
<tr>
<td>facilitate the concerned Committees, etc.</td>
</tr>
</tbody>
</table>

The protection given to women under this Act are of vital importance for women workers who are stepping out of the home to work. The patriarchal setup in many parts of India, especially rural India, finds woman victims of sexual harassment facing slander and backlash which should be meant for perpetrators of the crime. This stops many such women who may be aggrieved from raising their voices. In this light, the Act of 2017 lays down a shield of protection, physically,

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33 India, Parliament. *Indian Penal Code.* 1860. Section 509: “Word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”
emotionally, and mentally to women laborers to come out to work confidently with the guarantee to some extent of their safety and protection of their dignity.

Despite the positive nature of the Act, it is not free from faulty implementation. Limited awareness and the fear and reluctance to report incidents are the major factors thwarting the implementation process. Fear to report issues can be related to the possibility of breach of confidentiality and thereby the fear of facing discrimination at the workplace. The Internal Complaints Committees sometimes lack the essential expertise to decide the disputes and are also hesitant in conducting the inquiry, especially when the allegation is against a senior member (Vasani et al., 2022). The Supreme Court of India in *Initiatives for Inclusion Foundation and Anr. v. Union of India and Ors.* laid down certain directions to the Union Government and all State/UT Governments to effectuate the proper implementation of the Act. The Supreme Court discussed the important role of the District Officer whose role is pivotal in numerous aspects pertaining to the implementation of the Act by stating “It is where the buck stops, so to say, in terms of coordination and accountability relating to the POSH Act.” The powers of the District Officer include monitoring the timely furnishing of reports by the Local and Internal Committees, and thereafter preparing and submitting reports, and compiling all the reports for the State Government. The members of the Local Committee are also appointed by the District Officer under Section 7 of the Act. Therefore, the States must at all times ensure that the position of the District Officer is not vacant. These Officers need to be trained and oriented about the role they have to play. These Officers should identify various Non-Governmental Organizations in their respective districts that work on matters relating to safety of women and coordinate with them in creating more awareness regarding the provisions of the Act.

A latest development in the law pertaining to prevention of sexual harassment at workplace is Section 75 of the Bhartiya Nyaya Sanhita, 2023 which is the new Penal Code of India. It is to be noted that the Code has been passed but has not yet come into force. Section 75 not only defines the term “sexual harassment” but also makes the same punishable. Even though the scope of this Section is bigger because it is not limited to just sexual harassment at the workplace, nevertheless, it gives a woman worker another forum for redressal of the violation of her rights if she is sexually harassed at her workplace.

After having discussed the various pertinent legislations affecting women laborers, the next section gives a bird’s eye view of the schemes of the Government of India along with the International Guidelines, Goals, and Standards.

Goals and Schemes for Gender Equality and Women’s Empowerment: Global and National Gender Equality (Sustainable Development Goals)

The Sustainable Development Goals of the United Nations recognize the right of gender equality. Goal 5 acknowledges that the best chance we have in addressing and solving some of the pressing problems of our times is through bringing about gender equality (UN Women, Women and the Sustainable Development Goals, n.d.). It also acknowledges that recognizing and valuing

37 India, Supreme Court. *Delhi University and Anr. v. Bidyug Chakraborty and Ors.* SLP(C)No.23060, 2009.
38 INSC 927, 2023.
39 India, Supreme Court. *Initiatives for Inclusion Foundation and Anr. v. Union of India and Ors.* INSC 927, 2023.
41 India, Supreme Court. *Initiatives for Inclusion Foundation and Anr. v. Union of India and Ors.* INSC 927, 2023.
the unpaid care and domestic work that women put into the household is important (United Nations Development Programme, n.d.).

*ILO Declaration on Fundamental Principles and Rights at Work*[^42]

It states *inter alia* that in order to maintain the link between economic growth and social progress, it is of utmost importance that the guarantee of the fundamental principles and rights at work should be protected and maintained. It enables the workers to freely claim on the basis of equal opportunity their fair share of the wealth that they have toiled to generate.

*Government of India, Ministry of Labour and Employment, Grant in Aid on Women Labour*

This scheme is functional via voluntary organizations by giving grant-in-aid to them for administering aid to women by engaging in activities like providing legal aid to working women, and conducting seminars, workshops, and awareness programmes. They are also provided with funding for “action-oriented projects” for the welfare of women laborers.[^43]

*Sakhi Niwas (Working Women Hostel Scheme)*[^44]

Government of India incorporated this scheme in order to provide safe and conveniently located hostels for “working women” with facilities including day care for children. These facilities have been made available in both rural and urban areas.[^45]

*Pradhan Mantri Matru Vandana Yojana (PMMVY)*

PMMVY is a centrally sponsored “Conditional Cash Transfer Scheme.” It is available to all pregnant women and lactating mothers who are regular employees of the Central Government, the State Governments, or Public Sector Undertakings (PSUs) or those who are in receipt of similar benefits under any law for the time being. This is available for the first living child of the family.[^46]

*Mission Shakti (Integrated Women Empowerment Programme)*

The main components of this mission are “Sambal” for safety and security of women, and “Samarthya” for empowerment of women. Mission Shakti claims to be a scheme in the mode of a mission which aims at “strengthening interventions for women safety, security and empowerment.”[^47] Economic empowerment of women would also entail their exercise of free choice in an atmosphere which is free from threat and violence. Among other things, it aims towards increasing participation of women in the labor force by promoting skill development, capacity building, financial literacy, and increasing access to micro-credit.[^48]

[^42]: ILO Declaration on Fundamental Principles and Rights at Work was adopted in 1998, and has been last amended in 2022.

[^43]: India, Government of India, Ministry of Labour and Employment. *Grant in Aid on Women Labour.*


[^45]: India, Government of India, Ministry of Women and Child Development. *Schemes/Programmes for Empowerment of Women.*

[^46]: India, Government of India, Ministry of Women and Child Development. *Schemes/Programmes for Empowerment of Women.*


Hub for Empowerment of Women (HEW)

With the aim of convergence of various schemes at the inter-sectoral level and to facilitate the working women in realizing their full potential, HEW was introduced under the aegis of the “Samarthya” sub-scheme of Mission Shakti of the Government of India. HEW is meant for “guiding, linking and hand holding women to various institutional and schematic set-up for their empowerment and development,” which includes equal access to healthcare, quality education, career and vocational counseling and training, financial inclusion, entrepreneurship, social security, and digital literacy.

Mahila Shakti Kendra (MSK)

This scheme is a centrally sponsored scheme meant to empower rural women through participation in community and involves the inter-sectoral convergence of schemes and initiatives meant for women. It is implemented by the State Governments and UT Administrations in close coordination with the Centre.

Deendayal Antyodaya Yojana–National Urban Livelihood Mission (DAY-NULM)

It is implemented in towns in order to reduce poverty and vulnerability of the poor households in urban areas. The aim is to improve their livelihoods “on a sustainable basis.” The mission involves special protection of the vulnerable sections of the society, including, Scheduled Castes/Tribes, women, and minorities.

The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA)

This Act aims towards ensuring employment in rural households, ensuring that minimum one-third of the jobs generated are given to women. The MGNREGA Guidelines have special provisions to encourage the participation of women, including:

- giving preference to women (especially single women) and older persons for work on worksites near to their residences;
- child care facilities at the worksite whenever five or more children under 6 years of age are present;
- ensuring the adequate representation of women in the MGNREGS staff;
- Making sure that deserted women, widows, and destitute women are provided at least 100 days of work;
- awareness activities to ensure that workers including women workers are able to handle their bank accounts and official documents;
- catering to the special needs of pregnant and lactating mothers and providing work which is suitable to them.

Stand Up India Scheme

This scheme is meant for financing Schedule Caste/Tribes and women entrepreneurs. The aim of the scheme is to provide bank loans worth Rs. 10 lakh to Rs. 1 crore to at least one Scheduled Caste/Tribe woman and women entrepreneurs.

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Caste/Scheduled Tribe borrower and one woman borrower per bank branch of Scheduled Commercial Banks. This loan is given for setting up greenfield enterprises in trading, services, and the manufacturing sector.\textsuperscript{53}

\textit{Pradhan Mantri Kaushal Kendras under the Pradhan Mantri Kaushal Vikas Yojana}\textsuperscript{54}

It lays emphasis on creating infrastructure for training and apprenticeship for women. The training delivery mechanisms are flexible and include mobile training units with flexible afternoon batches, local need-based training which is safe and gender-sensitive, and equal remuneration and an effective complaint redressal mechanism.\textsuperscript{55}

\textbf{Conclusion}

The Indian legal framework with respect to protection of rights of women laborers is quite progressive and in tandem with the changing needs and requirements of contemporary India. However, the implementation of these schemes in true letter and spirit is some distance ahead. Decentralization and reporting at the Central level can go hand-in-hand in addressing many setbacks in the implementation of the laws, coupled with ramping up awareness among women in rural, urban, organized, and unorganized sectors about their rights at the place of employment. The legislations in place do provide for special protection of the rights of women laborers in order to facilitate them in exercising their right to work to the full extent. Labor laws fall within the purview of Concurrent List of Schedule VII of the Constitution of India, thereby making labor legislations fall within the ambit of both the Central Government’s and State Governments’ law-making power. Lack of coordination between the Centre and State/s and among States adversely affect the implementation of the provisions of the labor legislations in the country. Rule-making power under the labor legislations generally vest with the “appropriate government” which in some cases means the State Government, and in some cases, the Central Government. Knowing the exact law applicable to a particular industry or factory is difficult. State Rules and legislations differ, therefore leading to confusion pertaining to the law applicable especially when the labor involved is across more States than one. This is the general problem pertaining to labor laws in India, which can be addressed by more cooperation between the State Governments and the Central Government.

Patriarchal institutions need to be phased out from society to enable women to be able to exercise their rights and liberty. The aim of the feminist legal philosophy of giving women their due equality need not just be legally provided but also must identify the parameters and ambit of equality in letter, spirit, and practice at the ground level. Equality in the law requires reasonableness and equity at the same time. With assistance, women workers become at par with their men counterparts. Pay parity and equity in opportunity, recruitment, promotion, transfer, and facilities at the workplace are a few pertinent steps towards the amelioration of women laborers’ conditions in the country. The issue is not to address small pockets or sections of the society but women across the realms of the country who work both inside and outside of the home and contribute to the economy of this democracy. Equal recognition both in theory and practice is the way forward and perhaps the ultimate solution.

\textsuperscript{53}India, Government of India. \textit{Stand-Up India Scheme}.

\textsuperscript{54}India, Government of India, Ministry of Skill Development and Entrepreneurship. \textit{Pradhan Mantri Kaushal Kendra}.

\textsuperscript{55}India, Government of India, Ministry of Women and Child Development. \textit{Schemes for Welfare of Women}. 

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An important step towards achieving this is filling in the vacancies of the enforcement agencies. Sensitizing the implementing authorities appointed across labor legislations about their role, especially towards the provisions protecting women, is of vital importance. Keeping records at the factory/industry level, proper inspection of the record, implementation at the district level, reporting at the State level, and collating data at the national level, can help in identifying the problems that can be addressed through cohesion at all levels. The situation is complex, but is not impossible to improve. The real progress will lie in the proper implementation of the Indian legislations in letter, spirit, and practice.

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