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Gender Justice and Indian Labour Laws: A Critical Analysis

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Women have long struggled with numerous social barriers that have prevented them from achieving full recognition. Women have been faced with societal, legal, and psychological barriers. Power is derived from socialisation, wealth, professional prestige, education, and exposure. The structure prevents women from using these resources to their full potential and achieving the same level of influence as men. The disparities in power are caused by prejudice against women generally, not by exploitation of these resources or individual incompetence. These resources give men authority as a class, but structural barriers are placed on women as a class, not as individuals. Women's work is frequently limited to home contexts. Women are still the last to be considered and the first to be dismissed, notwithstanding a small improvement brought about by modernity in society as more of them leave their homes and work in industrial settings. Her status has always been low and unrecognised, whether in the family or the workplace. Because women are unskilled and require training, mechanical advancement and the transition from a resource-based to a market economy hurt women's employment. There is a lot of girl child labour and pay disparities for women doing comparable jobs. All societal groups that employ women experience various forms of prejudice. Gender injustice is a significant issue in many industries and has been observed all over the world, the researcher hopes the readers will learn from this research paper on the topic of labour laws. Women will continue to receive a raw deal without significant societal reforms.

Keywords: *gender injustice, women, employment, disparities, barriers.*

INTRODUCTION

"Man for the field and women for the hearth, Man for word and needle she, Man with the head and women with the heart, Man to command and women to obey, all else confusion."

- Alfred Lord Tennyson

It is believed that finding the appropriate course of action is the main challenge in finding "justice." Political philosophers have been attempting to define justice since the dawn of humanity. This fundamental idea has undergone a significant transformation due to the development of the modern world and modern awareness, particularly as a result of the democratic and socialist philosophies' strong influences. It seems like a straightforward question to answer, but how does that work in the modern world? In our culture, a lot of people have different ideas about what justice is. Most people consider behaviour, treatment, fair play, and equity when they think of justice. Justice, in the views of many, is watching the perpetrator make amends for their crimes, typically by receiving a penalty like the death penalty or a jail sentence. Many people believe that justice is the idea of moral correctness based on law, equity, ethics, rationality, religion, and fairness.

However, since justice is very difficult to define in a true sense and everyone has their viewpoint on what it is and how it should be used, this belief is not universally held. The term "gender justice" is frequently used to describe emancipator initiatives that strengthen women's legal rights or advance their interests in social and economic policy. The phrase is frequently used interchangeably with ideas of gender equity, gender equality, women's empowerment, and women's rights, but it is rarely given a clear definition. In the context of social justice, gender justice entails more than just examining the dynamic between men and women. It entails formulating plans of action to change society to make it more just and equitable, and it refers to "a place in which women and men can be treated as completely human."

GENDER JUSTICE AND THE INDIAN CONSTITUTION

India has long been regarded as one of the most unreliable and insensitive countries in the world when it comes to gender issues. This is especially true for women, who are constrained to a submissive position and confronted with a variety of social problems like infanticide, foeticide, child marriage, and biases based on orientation when it comes to the rights associated with coparcenary property, among others. Even in the 21st century, when the entire world has become aware of the appeal of women's rights, our country has not been able to free itself from the bonds of antiquated social norms and conventions.

India will always be a crucial part of the patriarchal belt of the world, where women are still seen as less valuable than men in a kin-ordered social system. The Indian Constitution's drafters, however, believed that Indian women should be treated equally in society and that the state should uphold their rights. As a result, they incorporated measures to safeguard women's interests in society and to achieve gender equality throughout the entire nation. Indian society now has new dimensions thanks to the Indian Constitution. The Constitution does not mention gender. They referred to it as "sex" rather than "gender."

The term "sex" is used in Articles 15 (1), 16 (2), and 325, which forbid discrimination based on sex. Even though the term "sex" has a more restricted meaning than "gender," The constitution forbids discrimination since it violates fundamental rights and is based on sex, colour, creed, caste, race, religion, and other considerations. The Indian Constitution, which is recognised as the supreme law of the land, provides specific protection for women, as Article 15 ensures their right to be free from discrimination. The right to equality and, by extension, the right against discrimination are meant to address the widespread prejudice and bigotry against women. The unique protection for women is discussed in Article 15(3). No matter a person's sex, they have the right to equal opportunity in terms of public work under Article 16.¹ This clause makes it easier for women to start taking part in elections and decision-making.

¹ Constitution of India, art. 16

The 74th Amendment, which created a reservation for women in panchayats, must be mentioned in this context. The freedoms outlined in Article 19 include the right to free speech, the right to assemble peacefully and without weapons, the right to form associations and unions, the freedom to move around India's territory at will, the right to live and establish oneself anywhere on the country's territory, and the right to engage in any occupation or business. Giving people the freedoms they need to function in society, promotes the right to equality. Gender justice cannot be accomplished without the right to equality.

According to Article 39,² the state must uphold specific policy principles, including ensuring that men and women have equal access to appropriate means of subsistence, paying men and women equally for doing the same labour, and protecting the well-being and strength of workers. The state must provide for the security of humane working conditions and maternity leave, according to Article 42.

*In C.B. Muthamma v Union of India*³, the legality of the 1961 Indian Foreign Service (Conduct and Discipline) Rules, which required female employees to obtain written government permission before getting married and that they may be required to resign from their positions at any point after getting married, was contested. According to the Supreme Court, this measure discriminates against women and is therefore illegal. The Supreme Court ruled in *Vishakha and others v State of Rajasthan*⁴ that sexual harassment of working women at their place of employment constitutes a violation of their rights to gender equality and to life and liberty, which is obviously in violation of Articles 14, 15, and 21 of the Indian Constitution. The Court additionally noted that the scope of the fundamental rights protected by the Indian Constitution's meaning and content is sufficient to cover all aspects of gender equality, including the elimination of sexual harassment and abuse.

² Constitution of India, art. 39

³ *CB Muthamma v Union of India* 1979 AIR 1868

⁴ *Vishakha & Ors v State of Rajasthan* 1997 (6) SCC 241

GENDER JUSTICE AND LABOUR LAWS

Under industrial laws, women have been bestowed a special position given their unique characteristics, physically, mentally, and biologically. Some of the Acts related to employment were enacted during the British period as well as after independence. These Acts not only regulated the hours of work but also contained provisions for the health, safety, and welfare of women workers and guaranteed equality before the law and equal treatment to women workers. Most of these laws have been inspired by the conventions and recommendations adopted by the International Labour Organization. The main objectives for passing these laws are to enable women to increase their efficiency, increase their participation in useful services, ensure their infants' welfare, and provide equal pay for equal work. The important labour laws covering women are:

1. The Factories Act, of 1948
2. The Employees State Insurance Act, 1948
3. The maternity Benefit Act, 1961
4. The Equal Remuneration Act, 1976
5. The Workmen Compensation Act, 1923
6. The Minimum Wages Act, of 1948
7. National Rural Employment Guarantee Act, 2005

EMPIRICAL EVIDENCE RELATED TO FEMALE WORK PARTICIPATION

The country has 494.82 million women overall, out of a total population of 1, 025, 25 million, according to the 2001 census. This indicates that women made up 48.26% of the overall population. In 2001, the percentage of women who participated in the labour force out of all women in the nation was only 25.67%, compared to 51.93% for men. However, the proportion of women employed has increased over time. Another poll indicates that in 2004, there were

49.34 lakh people working in both the public and private sectors combined. Only 10% of women work in the organised sector, while 90% do so in the unorganised sector. Women made up 7.51 percent of the central government workforce in 2003. From 68.7% of the Indian population, educated women seeking a job have increased in percentage. Ninety percent of women are listed as non-workers in the census report of Indian states since the 2001 Census of India defined work as an economically beneficial activity. In rural areas, 80% of the women are physically active, but because they are illiterate and underprivileged, they have a very difficult time finding work.

GENDER JUSTICE AND EMPLOYMENT

The division of labour based on gender is very common in society. The sexual distribution of labour, however, is not "natural." It has little to do with biology because men and women conduct various types of work both inside the home and outside it. Only the actual pregnancy process is biological; all other domestic tasks performed by women, such as cooking, cleaning, watching children, etc., may equally be performed by men. This labour is, regrettably, "women's work." This division of labour between the sexes is not only present in the home; it is also present in the "public" setting of paid employment. More significant than the distinction between "women's work" and "men's work" is the reality that whatever work women perform, are paid less and are viewed as less valuable. For instance, nursing and teaching, especially at lower levels, are primarily held by women, and they are also relatively poorly compensated in comparison to other white-collar occupations that the middle classes have chosen. Women who work in the unorganised sector are still not guaranteed access to support services like child care, health care, equal pay, or most importantly, promotion opportunities. The lower levels of the job hierarchy are dominated by women, who rarely advance to managerial and decision-making roles.

These are cause for worry. Childcare services are glaringly absent, even for women working in the organised sector. In some urban locations, service options are extremely limited. Women are pushed out of the labour market for a significant portion of their prime years due to their reproductive responsibilities and the frequency of births. Their ability to contribute economically is severely hampered by this. Women will feel more empowered as a result of

increased family planning understanding because it will free them up to pursue their interests for a longer period. Women make up around one-third of the working population in India. Rural areas have more women employed in the unorganised sector than urban areas, with the bulk of them working in agriculture. Women labour in a wide range of vocations in metropolitan areas, including as domestic helpers, ironers, vegetable and flower vendors, and construction workers.

An important portion of women employees in India labour in the unorganised sector, which tends to be more traditional in nature and generally less skilled and educated. Over 80% of people in metropolitan areas are employed in the unorganised, informal sector of the economy, which has extremely poor pay, long work hours, no paid time off, and no medical, pension, or other social security benefits. For undernourished women workers, working in the informal market frequently becomes dangerous. Women who work from home in the household, domestic, petty trades, services, construction, etc. greatly contribute to both the welfare of their families and the growth of the national economy. However, neither their contribution nor the issues unique to women's issues are effectively acknowledged. They still mainly lack organisation, voice, compensation, and representation. The fact that women must be present in a panchayat and have the authority to make decisions about village issues has allowed the more eloquent women to engage in the democratic process, even though it is true that many of them are hesitant and serve as alibis for their husbands or brothers. Women's perceptions of their identities, roles, and responsibilities could soon change gradually. The complexity, difficulties, brutality, and additional criteria had persuaded the women that they could never advance through the current nomination procedure and that they required some form of coercion, such as quota and reservation.

LEGAL CASE STUDIES

Neera Mathur was a probationary employee of the Life Insurance Corporation when she filed the lawsuit *Mrs. Neera Mathur v Life Insurance Corporation of India (LIC)*.⁵ She requested and was given maternity leave while on probation. After she returned, her service was merely

⁵ *Mrs Neera Mathur v Life Insurance Corporation of India* 1992 AIR 392

terminated. The LIC justified her firing because she had made a dishonest representation when applying for employment. The details that must be provided in columns (iii) to (viii) of the declaration are, according to the court, "very uncomfortable, if not downright humiliating." The discharge was overturned because these columns were deemed excessive.

In the case of *Punjab National Bank by Chairman and another v Astamija Dash*,⁶ it was determined that under the terms of the Maternity Benefit Act of 1961, a woman may request leave for a period of six weeks beginning on the day immediately after her delivery, miscarriage, or medically assisted pregnancy termination. She wouldn't be required to work for the allotted amount of time under section 4 if she requested her own (4). In *Ashok Kumar v State of Rajasthan*⁷, the Supreme Court criticised the Session Court for dismissing the evidence simply because it was provided by a female doctor in a case where the victim was a woman. She would be entitled to the benefits of sections 6 and 9 of the Act.

The first Air Hostess case, *Air India v Nargesh Mirza*⁸, raised several issues, including the legality of regulation 46(c). The court stated, "We consider it necessary to record that the judge was uncharitable in discarding the testimony of Dr. Patrisia and doubting her truthfulness principally because she was a woman." This rule stipulated that an Air Hostess could retire at the earlier of 35 years old, marry within four years of employment, or have their first pregnancy. "Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her matter and a problem which affects the Air Hostess concerned, and the Corporation has nothing to do with the same," the court declared the provision for retirement on first pregnancy to be unreasonable.

In the *State of Rajasthan v Ram Prasad and Others*⁹, the worker perished at the scene as a result of natural lightning. The Supreme Court ruled that while it is undoubtedly true that an accident must have some connection to and arise from employment for a worker to be successful in his or her claim for compensation, the employer is still liable if the worker is hurt due to a natural force like lightning even though the incident as a whole had nothing to do with Smt. Gita's place

⁶ *Punjab National Bank by Chairman & Anr v Astamija Dash* 2008 III LLJ 58 (SC)

⁷ *Ashok Kumar v State of Rajasthan* AIR 1990 SC 2134

⁸ *Air India v Nargesh Mirza* AIR 1981 SC 1829

⁹ *In State of Rajasthan v Ram Prasad & Anr* (2001) I LLJ 177(SC)

of employment. In this instance, the deceased was on the job site and wouldn't have been exposed to the lightning risk had she not been there.

In *M/s Mackinnon Mackenzie and Co. Ltd. v Audrey D'costa*,¹⁰ the Supreme Court interpreted the Equal Remuneration Act to provide the lady stenographers with the same income, and as a result, the appellant was held responsible for paying compensation. The employer's argument that confidential stenographers are only appointed to different classes and are only given to women was rejected. "*If only women are employed as confidential stenographers, it is because management wants them there,*" the court ruled. Women are neither specifically required to be Confidential Stenographers, nor are they prohibited from performing the duties given to male Stenographers due to their gender. Even if it is common for the organisation to hire women as confidential stenographers, this practice cannot be used to deny them the equal pay they are entitled to under the Act.

In *Tirath Kaur v Kirpal Singh*,¹¹ the wife enrolled in training at the husband's urging and was successful in earning a diploma in tailoring. After that, she obtained employment at a location some distance from her husband's home. The couple shared a home; occasionally the husband moved in with the wife and other times the wife moved in with the husband. The parties lived together in this way for a while. The husband reportedly then urged the wife to quit her work and move in with him after they appeared to disagree over something. The petition for reparation was filed by the husband after the wife refused to comply. According to the court, a spouse's refusal to quit their work and move in with the other counts as "separation from the other's society."

PROBLEMS FACED BY WOMEN

Any logical person must question the nature of society in light of female feticide, infanticide, child marriage, domestic violence, sexual violence, sexual harassment on the job, and the treatment of old women. Women's participation in decision-making bodies, whether at home,

¹⁰ *M/s Mackinnon Mackenzie & Co Ltd v Audrey D'costa & Ors* 1987 AIR 1281

¹¹ *Tirath Kaur v Kirpal Singh* 1964 Punj 28

at work, or in the community, is minimal and has never reached even 25% of India's total female population. 1) Sexual harassment forces women to leave their jobs or ask for promotions. 2) The majority of women's domestic labour goes unappreciated and unpaid. They continue to be underpaid, even outside the family. 3) Women are disproportionately represented in low-paying occupations, including those of a secretary, typists, beauticians, nurses, caretakers, and assembly-line workers. In India's private sector, "equal effort, unequal compensation" is still a frequent practice.

According to statistics from the UN, women make up 50% of the world's population, perform 2/3 of the labour, receive 10% of the total income, and possess 1% of the assets. Although this is a universal truth, India's situation is far worse. Children raised in this atmosphere and exposed to the varied gender roles that men and women play to learn about gender inequity from an early age, and this pattern is destined to be passed down through the generations. In India, women make up a sizable portion of the labour force, although they are less active in the labour market and have lower-quality jobs than men. 90 million women make up the entire workforce of 407 million, according to government data, and 87 percent of them are employed in the agricultural sector as labourers and cultivators. In March 2000, 17.6% of the workforce in metropolitan areas was made up of women working in the organised sector. The existence of discriminatory laws, the fact that these laws fail to recognise the unique circumstances of rural women, and the adoption of paternalistic and male-oriented customs that obstruct the implementation of non-discriminatory legislation or fill in its gaps have all contributed to keeping rural women in a subordinate position.

REMEDIES

- Women's education is now empirically proven to be a single panacea for a myriad of social evils.
- Increasing the role of women in decision-making and ensuring their full engagement in society, from domestic autonomy to active participation in all political processes at local, national, and international levels.

- It has been demonstrated that quotas quickly enhance the presence of women in politics and corporate decision-making.
- Additionally, it is important to implement specific regulations for women's reproductive labour that are targeted at ensuring equitable working conditions for men and women in rural areas.
- It is necessary to pass legislation giving domestic employees access to social security, minimum pay, and other benefits.
- Express provisions for fines as a penalty for breaking the regulations should be provided to ensure that the concept of non-discrimination is upheld. Monitoring and inspection organisations should also be formed to assure compliance.
- It is imperative to develop legislation that specifically requires rural women to participate in organisations and receive technical support and training.
- Women's access to formal and informal education, technical training, and cutting-edge technologies should be guaranteed by the State.
- The tiny businesses of the poor are too trivial in the eyes of large financial institutions to warrant their involvement. Many of their businesses, especially those run by women, are not considered to be profitable enough to be creditworthy.

ANALYSIS

Adopting rules that are gender-just will not put an end to women being exploited and discriminated against. One of the possible solutions to address women's unequal status is to use the law and the legal system. The poor and oppressed conditions of women have not improved; they continue to face various forms of atrocities, and the legislature, judiciary, and society as a whole fall somewhat short of ensuring their respect. This is even though there are numerous laws protecting women and Supreme Court decisions that deal with the issue. The nation's founding fathers were eager to create an egalitarian society after gaining independence and aspired to improve society.

Numerous laws were passed to accomplish this, using the law as a tool to check gender discrimination, but due to a strong patriarchal attitude and an unfavourable social climate, they

were unable to succeed. While some of the rights guaranteed by the enactments were enjoyed and acknowledged by society, most of them remained only on paper because of a lack of public support, meaning that the goal of social engineering through the law was not entirely fulfilled. It is stated that the law is nothing more than a collection of papers without public opinion. Because social engineering laws are different from criminal laws, which are only related to punishment and are deterrent in nature, and because they are progressive in nature and should be supported by the will of the people for whom they are intended, it is not possible to close the gender gap by enacting laws alone without any public support. It is important to keep in mind that simply because a right is protected by law does not mean that it can be exercised.

CONCLUSION

Gender injustice is a significant issue in many industries and has been observed all over the world. Women's status has always been low and unrecognised, whether in the family or the workplace. There is a lot of girl child labour and pay disparities for women doing comparable jobs. It is believed that finding the appropriate course of action is the main challenge in finding "justice". Justice, in the views of many, is watching the perpetrator make amends for their crimes. The term "gender justice" is frequently used to describe emancipator initiatives that strengthen women's legal rights. India has long been regarded as one of the most unreliable and insensitive countries in the world when it comes to gender issues.

The Indian Constitution, which is recognised as the supreme law of the land, provides specific protection for women. Women have the right to equal opportunity in terms of public work under Article 16. Also, Gender equity emphasises that both men and women are free to develop their unique talents and make decisions without being constrained by prejudices such as political, racial, and other prejudices. Their various aspirations ought to be respected equally, and they ought to be handled by their requirements. However, the law is limited in its power. To achieve this transformation, all facets of society must work together, and NGOs, the media, and the people's representatives all have a significant role to play.