

**A STUDY OF CONSTITUTIONAL POSITION AND
LEGISLATIONS FOR WOMEN IN INDIA****CANDIDATE NAME = SUKANYA SHARMA**

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ABSTRACT

The constitutional position and legislations pertaining to women workers in the unorganized sector vary across countries and regions. In India, the Constitution provides various provisions safeguarding the rights of women workers. Article 39(d) emphasizes the principle of equal pay for equal work, aiming to eliminate gender-based wage disparities. It recognizes the importance of ensuring fair compensation for women workers in the unorganized sector who often face low wages and exploitation. Article 42 of the Indian Constitution mandates the state to make provisions for securing just and humane conditions of work and maternity relief. This provision recognizes the unique challenges faced by women workers, particularly during pregnancy and childbirth, and emphasizes the need for maternity benefits, such as paid leave and access to healthcare facilities. Furthermore, Article 15(3) allows for the enactment of special laws and provisions for the benefit of women, giving the government the power to implement measures specifically aimed at addressing the needs and concerns of women workers in the unorganized sector.

KEYWORDS: Constitutional Position, Legislations, Women, unorganized sector, healthcare facilities

INTRODUCTION

The constitutional position and legislations related to women workers in the unorganized sector play a crucial role in ensuring their rights, protections, and well-being. These legal frameworks address issues such as fair wages, working conditions, social security, maternity benefits, and protections against discrimination and harassment. However, it is important to continuously evaluate and strengthen these laws to effectively address the evolving needs and challenges faced by women in the unorganized sector. Additionally, awareness, enforcement, and implementation of these laws are essential to ensure that women workers can exercise their rights and enjoy equal opportunities

and dignified working conditions in the unorganized sector.

Constitutional Aspects

The Preamble contains the essence of the Constitution and reflects the ideals and aims of the people. The Preamble starts by saying that we, the people of India, give to ourselves the Constitution. The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular



goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity. Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and VidhanSabhAs. 73rd and 74th Amendments which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

At hand there has been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas. For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of

law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought of. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres. Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. In spite of these laws, their non- implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth. Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. 2 Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

Constitutional provisions for the Empowerment of Women



The issues and questions revolving around women's condition and position nationally and globally have always been analytical and critical to the human rights issues involved. The Charter of United Nations Organization 1945 and the Universal Declaration of Human Rights, 1945 are the two most basic bodies involved in the various issues regarding the human rights aspects and the emphasis is also on the women empowerment. The ICCPR and the ICESCR are the documents enshrined on the same fundamentals. Referring to the Indian Constitution there are various articles which are women empowerment centric. Article 14 which ensure equality before law for women followed by articles 15 and 16 which prohibits discrimination on various grounds one of the grounds being sex in matters of any sorts of opportunity of employment. Article 15 clause (3) is ahead to mention that there may be special provisions in favor of women and that shall not be termed as a violation of equality as enshrined in Article 14. Articles 39(a) and 39(d) directs the State to make its policies to secure both men and women right to livelihood and guarantees equal pay for equal work respectively.

Since just and humane conditions is a very important facet of working labourers according to the various Labour Laws standards (ILO). It is mentioned in Article 42. Article 46 and 47 seeks to promote and protect the educational and economic interest of the people and to raise the level of nutrition and standard of living of the people. Article 51(A)(e) talks about the spirit of brotherhood amongst all the people of the Country and vehemently obliterates any practices which are outrageous and derogatory to the women.

There are a plethora of other legislations which seek to promote the well-being and welfare of the women of our society. In Indian Penal Code, 1860 there are serious punishments committed against the women and their modesty there has been an enactment of special legislation in our Nation to confer the highest regard and status to women which is a practice and custom in India since time immemorial. Special commissions such as National Commission for women 1992 and National Plan of Action for the Girl Child are a few examples where the Nation has taken an active step.

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Women's Safety, Protection and Empowerment

Despite some recent positive momentum, the pace of progress in realizing women's safety, protection and empowerment has not been adequate. This is reflected in the National Crime Records Bureau data, which highlighted that 3,09,546 incidents of crime against women (both under Indian Penal Code and other laws) were reported during the year 2013, as against the



2,44,270 cases reported during 2012, showing an increase of 26.7% (despite the fact that not all crimes against women are reported). The policy commitment to ensuring the safety, security and dignity of women NAVDISHA- National Thematic Workshop on Best Practices for Women and Child Development 20-21 January 2015 Panipat, Haryana Organised by Ministry of Women and Child Development Government of India and Government of Haryana.

Ministry of Women and Child Development and girls in public and private spaces was reaffirmed – including through the Twelfth Plan provisions, the Criminal Law (Amendment) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

Ensuring women's social, economic and political empowerment, fulfillment of their rights, promoting their participation and leadership requires comprehensive gender-responsive measures at different levels, including through legal, policy and institutional frameworks. The 73rd Constitutional Amendment Act has given a new dimension to the process of women's empowerment, with women panchayat members emerging in many settings as change leaders. Now progressively, many states are earmarking 50% reservation for women in panchayati raj institutions. A major thrust for economic empowerment has been through the formation of thrift and credit based self-help groups (SHGs) formed by women – with states such as Andhra Pradesh demonstrating effective ways of making this a mass movement. Increased support for women SHGs in the National Rural Livelihood Mission and in MGNREGA with women having a share

of 115.54 (53%) crore person days in 2013-14 have been positive developments. Successful linkages between SHGs and Micro-Finance institutions such as RMK, NABARD, and SIDBI besides private microfinance institutions have helped in generating additional income, jobs and in creating small enterprises for women.

Unorganized Social Security Act, 2008

The unorganised worker's social security Act was enacted by the parliament of India in 2008 by president's assent. It is implemented by the Ministry of Labour and Employment. worker's sector. Recently, the honorary Supreme Court dismissed the PIL filed by Shri R Subramanian which was seeking directions to compensate the financial loss of the workers employed in the unorganised sector. The persistence of Covid-19 pandemic has expedited the misery of India's working population. It came to light that more than 90% of the Indian population is employed in the unorganised sector and they neither have access to social security nor minimum wages despite them contributing an approximate of 60% to the Indian GDP.

In India, the social security laws have derived their basis from Part IV of the Directive Principles of State Policy (DPSP). The Social security and Labour Laws form a part of the concurrent list therefore both, the Central and the State Governments are approved to make laws for the same. It is the obligation of the state to lay down provisions which grant social security to organised as well as unorganised sector workers.

The Maternity Benefits Acts

The Act regulates employment of women in certain establishments for a certain period before and after child birth and



provides for maternity and other benefits. The Act applies to mines, factories, circus, industry, plantation and shops and establishments employing ten or more persons, except employees covered under the Employees State Insurance act, 1948. It can be extended to other establishments by the state governments. There is no wage limit for coverage under the Act. The Central Government is Appropriate Government in respect of the Circus Industry and Mines.

Facilities for Contract Labour

The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same.

The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971.

Penal Provisions

For contravention of the provisions of the Act or any rules made there under, the punishment is imprisonment for a

maximum term upto 3 months and a fine upto a maximum of Rs.1000/-

The Act makes provisions for the appointment of Inspecting staff, for maintenance of registers and records and making of Rules for carrying out the purpose of the Act. In the central sphere, officers of the Central Industrial Relation Machinery (CIRM) have been appointed as Inspectors.

Prohibition

Apart from the regulatory measures provided under the Act for the benefit of contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work. Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are: - - Conditions of work and benefits provided to the contract labour. - Whether the work is of a perennial nature. - Whether the work is incidental or necessary for the work of an establishment. - Whether the work is sufficient to employ a considerable number of whole-time workmen. - Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

The Central Government on the recommendations of the Central Advisory Contract Labour Board has prohibited employment of contract labour in various operations/category of jobs in various establishments. So far 76 notifications



have been issued since inception of the Act.

Exemption

The 'appropriate government' is empowered to grant exemption to any establishment or class of establishment or any class of contractors from applicability of the provisions of the Act or the rules made thereunder on such conditions and restrictions as may be prescribed. Fifteen notifications granting exemption to establishments in exercise of this power in the Central sphere have been issued.

Enforcement

In the Central sphere, the Central Industrial Relations Machinery (CIRM) has been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

Regular inspections are being conducted by the Field Officers of the CIRM and prosecutions are launched against the establishments, whenever violations of the Act/Rules/notifications prohibiting employment of contract labour are detected. In order to ensure compliance with the labour laws from time to time, instructions/directions have been issued to the field officers of CIRM and State Government for proper implementation of the Act.

Complaints alleging violation of Contract Labour Act are investigated and remedial action taken in accordance with the provisions of the law by launching prosecutions if considered necessary. References are received for regularisation of the contract labour or abolition of the contract labour system on the ground of perennial nature of work/ ordinarily done

through regular workmen etc. Writ Petitions are also being filed by Union/Workers seeking absorption where the contract labour system has been abolished or pleading that the contract is sham. The requests for abolition of contract labour system are examined in consultation with the Central Advisory Contract Labour Board and notifications abolishing contract labour system in various establishments in different jobs have been issued. So far as the regularisation of the workers is concerned, no such provision, either express or implied, exists in the Act. This has also been affirmed by the Constitution Bench of the Supreme Court in the matter of Steel Authority of India Limited Versus Water Front Worker's Union on 30th August, 2001.

CONCLUSION

The study of women workers in the unorganized sector in India has shed light on the challenges and issues they face, as well as the need for comprehensive measures to improve their working conditions and promote their well-being. Throughout this research, we have explored various aspects of women's employment in the unorganized sector, including their demographic characteristics, the factors influencing their entry into this sector, the challenges and discrimination they face, and the existing legal frameworks and protections available to them. By analyzing these aspects, we have gained valuable insights into the plight of women workers in this sector and the steps that can be taken to address their concerns.

The findings of this study underscore the importance of studying women workers in the unorganized sector. It has highlighted



the significant role they play in the economy, their contribution to household income, and the unique challenges they face due to their gender and socio-economic status. Women in the unorganized sector often work in low-paid and precarious jobs, with limited access to social security benefits and legal protections. They are vulnerable to exploitation, discrimination, and unsafe working conditions.

One of the key findings of this study is the impact of economic constraints and lack of formal education on women's entry into the unorganized sector. Many women are forced to work in this sector due to financial constraints, lack of alternative opportunities, and limited educational qualifications. This highlights the need for targeted interventions that focus on improving access to education and skill development programs for women in marginalized communities. By empowering women with education and skills, we can enhance their employability and provide them with better opportunities for economic advancement.

The study also emphasizes the significance of social norms and cultural factors that contribute to the challenges faced by women workers. Gender-based discrimination and stereotypes prevalent in society often limit women's access to employment, promotion, and decision-making roles. There is a need for concerted efforts to challenge these norms, promote gender equality, and create a more inclusive work environment where women can thrive. Sensitization programs and awareness campaigns can play a crucial role in changing societal attitudes and fostering a culture of respect and equal opportunities.

REFERENCES

- Tiwari, R., & Tiwari, S. (2016). Women employment in unorganised sector in India: an empirical analysis. *Journal of Rural Development*, 35(4), 645-664.
- Singh, S. (2022). Women Workers In Unorganized Sector: A Study Of Patiala City. *Journal of Women Empowerment and Studies (JWES)* ISSN: 2799-1253, 2(01), 14-20.
- Eapen, M. (2001). Women in informal sector in Kerala: need for re-examination. *Economic and Political Weekly*, 2390-2392.
- Chakraborty, S. (2020). COVID-19 and women informal sector workers in India. *Economic & Political Weekly*, 55(35), 17.
- Rao, N. (1996). Empowerment through organisation: Women workers in the informal sector. *Indian Journal of Gender Studies*, 3(2), 171-197.
- Agarwal, B. 1988. 'Who sows? Who reaps? Women and land rights in India', *Journal of Peasant Studies*, 15: (3) 531-81.
- Banerjee, N. 1989. 'Fruits of Development: Prickly Pears for Women', in K. Young (eds.), *Serving Two Masters: Third World Women in Development.*, pp. 129-47. New Delhi: Allied Publishers.
- Batliwala, S. 1993. 'Empowerment of Women in South Asia: Concepts and Practices.' Sponsored by Asian-South Pacific Bureau of Adult Education and FAO's Freedom from Hunger Campaign. Bangalore: Action for Development.
- Baud, I.S.A. 1992. *Forms of Production and Women's Labour*. New Delhi: SAGE Publications.
- Berger, M. and M. Buvinic. 1989. *Women's Ventures: Assistance to the Informal Sector in Latin America*. Connecticut: Kumarian Press.



Bhatt, E. 1987. 'The Invisibility of Home-based Work: The Case of Piece-rate Workers in India', in A.M Singh and A. Viitanen (eds.), *Invisible Hands*, pp. 29-33. New Delhi: SAGE Publications.

Bhatty, Z. 1980. *Economic Roles and Status of Women: A Case Study of Women in the Beedi Industry in Allahabad*, ILO Working Paper. Geneva: ILO.