

should be made to suffer. Finally, things stated above may need time to take shape. Till such time, Courts should continue to encourage public-spirited individuals to confront the State and its instrumentalities on

the issue of environmental protection. To make his job easy, the State should share necessary information within him. In this direction, pursuit of policy of transparency will do the needful.

HUMAN RIGHTS OF WORKING WOMEN UNDER VARIOUS LEGISLATIONS IN INDIA - A PERSPECTIVE

By

—P. JAGANMOHAN RAO, M.A., LL.M.,
ADVOCATE,
KHAMMAM, A.P.

Introduction

The term *Human Rights* denotes all those rights which are inherent in our nature and without which we cannot live as human beings. According to Section 2 of the Protection of Human Rights Act, 1993 Human Rights means the rights relating to life, liberty, equality and dignity of an individual guaranteed by the Constitution,¹ or bodied in the International Covenants and enforceable by the courts in India. The majority of people in India are not aware of their Human Rights. These rights are the rights of all human beings, be it men or women, old or young, working or non – working. But, there is a gap between the theory and the practice, particularly when it comes to the equality of sexes.

It is felt that increased participation of women in income-earning activities would reduce gender inequalities. Women are absorbing themselves at present in various occupations and enjoying equal status more or less at par with men. Women are working in almost all types of jobs, such as technical, professional and non-professional in both private as well as in public sectors, residing in rural and urban areas with or without their kith and kin. In addition to these almost all the females, particularly from the lower strata, are getting engaged in agricultural operations

for daily wages and also for domestic work in the houses of their landlords. These are some of the important occupations of the working women, educated or uneducated, in our country. But unfortunately, their participation in economic activities outside home is very limited.

It is not easy for women to stand head above in male dominated work places. In this background, it is positive development that the world community at large is now more aware of the *Human Rights* of working women. Advancement in the right of women has been the concern of world community since the end of Second World War about half a century ago (*i.e.*, October 24, 1945) the Preamble to the Charter of the United Nations mentions the determination of the peoples of the United Nations:

“To reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women” and “to employ international machinery for the promotion of the economic and social advancement of the people.”

The Constitution of India as well as other laws enacted from time to time reaffirms faith in the “Equality of Status and Opportunity without discrimination against any citizen on grounds of religion, rare caste or sex. It is however distressing to note that majority of working women in India are either not aware of such Constitutional and legal safeguards or consciously choose not to raise voice against violation their *Human Rights*.

1. J.N. Pandey – Constitutional Law of India – 2008.

Constitution of India, which is supreme law of land and all legislations get their validity from it. It guarantees human rights under Fundamental Rights. The Directive Principles of State Policy supply necessary guidelines for their effective implementation. Articles 14 to 18 of the Indian Constitution are dealt with right to equality. These Articles deny the discrimination and promote the instinct for the equality in all matters. Article 14 read with Article 39(d) of the Constitution provides right of equal paid by the employers for the work as men, it means it secured women from wage discrimination. Article 15 of the Constitution prohibits discrimination and made special provisions for the welfare of women and children. It means State can enact special provisions and may provide security to women and children. Article 16 provides equality in job opportunities. Article 21 also provides security to working women through judicial legislation because Judiciary elaborates meaning of liberty. Article 39(a) and 39(b) specifically states provisions for the women welfare and gives direction to State Governments for making welfare legislation in the interest of women.

There are some labour legislations also to protect the working women which are as follows:

(a) *The Factories Act, 1948*: Under this Act, employment of women is prohibited during night and at dangerous operations. No woman is required to work in factory for more than 9 hours. Separate bathing and washing facilities are to be provided. Factory employing more than 50 women workers shall provide a crèche for their children below 6 years of age.

(b) *Maternity Benefit Act, 1961*: Section 4 of the Act, prohibits employment or work by women under certain circumstance. Section 5, defines the payment of maternity benefit for a maximum period of 12 weeks. Under Section 8 every women entitled to maternity benefit shall also be entitled to receive a medical bonus of 250 rupees. If no pre-natal and postnatal case is provided by the employer free of charge. She is also entitled to leave with wages for miscarriage. Under

Section 10 leave for one month is available in case a woman who is suffering from illness arising out of pregnancy, delivery and premature birth of child *etc.*, in addition to maternity leave under Section 11 every woman who returns to duty after delivery shall be allowed two nursing breaks, until the child attains the age of 15 months. These provisions are applicable to the casual women employees also as it was opined by the Supreme Court².

(c) *Equal Remuneration Act, 1976*: As per Preamble of the Act, it is intended to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment and for the matters connected therewith or incidental thereto the terms and conditions of employment. This enactment imposes statutory obligation on the employer to prevent discrimination against women in terms of payment of remuneration to them and to ensure equality in respect of terms and conditions of employment in comparison to their male counterparts.

Securities from Sexual Harassment:

According to a recent study carried out by the National Commission for Women, about half of working women have suffered one or the other kind of harassment at work place – mental and physical. But till date we have no direct law on sexual harassment. The following inadequate provisions in the Indian Penal Code and Labour Laws continue to be used:

Section 209 of the Indian Penal Code deals with obscene acts and songs. It prescribes imprisonment of either description for a term which may extend to three months or with fine or both.

Section 354 prescribes penalty of imprisonment of either description upto two years or fine or both for assault or use of criminal force to woman with intent to outrage her modesty.

2. *Municipal Corporation of Delhi v. Female Mother and another*, 2000 Lab IC 1033 (SC)

Section 509 prescribes penalty of simple imprisonment upto one year or fine or both for word, gesture or an act intended to insult the modesty of a woman.

Under Rule 5 Schedule 5 of Industrial Disputes Act, 1947 cases can (and have been) argued on the basis of unfair labour practices listed in this schedule. Such cases can be filed if any employee suffers unaffair dismissal or denial of employment benefits as a consequence of the rejection of sexual advances³. *Shehnaz* was subjected to sexual harassment by her boss in 1985, and dismissed when she complained to higher authorities. Her case was won in 1996 when the Bombay Labour Court judged it to have been a case of unfair dismissal under the Industrial Disputes Act. It ordered her reinstatement with full back payment, perks and promotions.

The Indecent Representation of Women (Prohibition) Act, (1987)

Although it is not known to have been used in cases of sexual harassment, the provisions of this Act have the potential to be used in two ways. Firstly, if an individual harass another with books, photographs, paintings, pamphlets, packages, *etc.*, containing indecent representation of women, they are liable for a minimum sentence of 2 years. Secondly, a “hostile working environment” type of argument can be made punishable under this Act. Section 7 (Offences by Companies) – holds companies where there has been “incident representation of women” (such as the display of pornography) on the premises are guilty of offences under this Act and punishable with a minimum sentence of two years.

Judicial Activism

In another popular case of Sexual harassment,⁴ Supreme Court observed that there is indirect Constitutional and legal protection to women workers.

The next landmark judgment on the point is,⁵ In this case also issue of sexual harassment

was disused by the Court at length and said that the contents of the Fundamental Rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse.

Conclusion

Working women form a major thick peace of society. Their presume, aspirations and problems cannot be ignored. It is imperative that they are looked upon as individuals engaged in gainful employment. They should be given due respect and status in society.

Though development policies have improved the status of working women in the society, still women are facing many problems and difficulties at home and at work place. Working women perform double role in the society relating to production and reproduction that they are overburdened. To decrease the burden, attitude of the family members should be changed. Husband should come forward to share her burden.

Women are suffering from the problem of sexual harassment at work place. So, the authority should implement the measures strictly described by the Court in the *Vishaka*'s case. State Government should enact effective legislation to check the problem of harassment. More of this women should be aware about their legal and Constitutional rights. Women faced problems of adjustment in private sector because of non-application of Maternity Benefit Schemes. They also have problem of care of their children. Maternity Benefit Schemes should be extended and enhanced in private sectors.

Although there is no discrimination on papers against women in plans and programmes, but the poor women have been largely below the stairs of development. They are getting lower income and lower status.

3. *Shehnaz Mudhatkai v. Saudi Arabian Airline*.

4. *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011

5. *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625