

**GENDER JUSTICE AND INDIAN LABOUR LAWS: A CRITICAL ANALYSIS***By***—BANOTH LINGANNA****Department of Law,  
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Women constitute half the population of the society and it is presumed that best creation belong to the women. But it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. From tribal to agricultural to industrial societies to organised States, the division of labour has primarily stemmed from physiological differences between the sexes, leading to the power resting with the men, resulting in the established gender hierarchies. We have been gifted with a history of discrimination, subjugation and suppression

In India, it is believed that women enjoyed an equal status as men in the Vedic Period. The Upanishads and the Vedas have cited women sages and seers. But the condition declined considerably afterwards. Historical practices such as Sati and child marriage are a few traditions reflective of the gender imbalance in Indian Society. Though these practices are largely defunct now, due to legal reform, the essence of the dysfunctional gender equity still is rampant and manifested today through domestic violence, trafficking, dowry deaths, female infanticide, female feticide, sexual objectification, violence and sexual harassment at work place.

Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but have to shoulder the double responsibility. Moreover, she is last to be considered and first to be fired

as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized.

Technological progress in agriculture and the shift from subsistence to a market economy have had a dramatic negative impact on women, cutting them out of employment as many women are unskilled and lack education. Child labour among girls and unequal wages for women for similar work are common. Working women of all segments of society face various forms of discrimination.

From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions, violence, within the family, at the work places and in the society. In order to ameliorate the condition of women in India, Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period like: Abolition of Sati Act, 1829; Widow Remarriage Act, 1856; Child Marriage Restraint Act, 1929; Dowry Prohibition Act, 1961; *etc.*

Apart from these laws there are some enactments pertaining to industry or work which contain special provisions for women such as: The Workmen Compensation Act, 1923; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum Wages Act, 1948; Employees State Insurance Act 1948 and Pensions Act, 1987; *etc.*

***Meaning of Gender Justice:***

Gender injustice is a problem that is seen all over the world. But unless there are certain

attitudinal changes, women will continue to get a raw deal. It is said that “justice” is primarily a problem of discovering the right course of action. Since ancient times, political thinkers have been trying to formulate the concept of justice. With the rise and growth of modern world and modern consciousness, especially under the effective influence of the principles of democracy and socialism, this very concept has been thoroughly transformed.

“Gender justice” is often used with reference to emancipator projects that advance women’s rights through legal change, or promote women’s interests in social and economic policy. However, the term is rarely given a precise definition and is often used interchangeably with notions of gender equality, gender equity, women’s empowerment, and women’s rights. Gender justice in the spirit of social justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action towards transforming society as a whole to make it more just and equal and it means “a place in which women and men can be treated as fully human”.

### ***Gender Justice and Constitution:***

The framers of the Constitution bestowed sufficient thought on the position of women in Indian social order, which is quite evident from the provisions of the Constitution. The Constitution of India which is regarded as the supreme law of the land, gives special protection to women’s such as Article 15 guarantees the right against discrimination. The prejudice and bias against women is rampant an issue to be countered by the right to equality, hence the right against discrimination. Article 15(3) talks about the special protection for women. Article 16 provides the right to equal opportunity in terms of public employment irrespective of the sex of the person. This provision aids

women to start participating in elections and the decision making process. Occupation, trade or business. This fosters the right to equality, by providing the necessary freedoms needed to live in society. Without the right to equality, the purpose of gender justice cannot be achieved. Article 39 talks about the certain principles of policy that need to be followed by the State which are securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, and the health and in this regard it is important to mention the 74th amendment, made for the reservation for women in Panchayats. Article 19 guarantees freedom of speech and expression, to assemble peaceably and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India; to practise any profession, or to carry on any strength of workers, men and women are not abused. Article 42 requires the State to make provision for securing humane conditions of work and maternity relief.

In *C.B. Muthamma v. Union of India*, AIR 1979 SC 1868; (1979) 4 SCC 260, the validity of the Indian Foreign Service (Conduct and discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional.

In *Vishakha and others v. State of Rajasthan*, (1997) 6 SCC 241, the Supreme Court held that sexual harassment of working women at her place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Articles 14, 15 and 21 of the Indian

Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse.

### ***Gender Justice and Labour Law:***

Under the industrial laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and biologically. Some of the Acts related to employment were enacted during British period as well as after independence. These Acts not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before 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 the women to increase their efficiency, to increase their participation in useful services, to ensure their infant welfare and to provide equal pay for equal work. The important labour legislations covering the women are:

### ***The Factories Act, 1948:***

The Factories Act is a part of labour welfare legislations wherein measures have been laid down to be adopted for the health, safety, welfare, working hours, leave and employment of young persons and women. Exclusive provisions for women have also been incorporated in the Act keeping in view their soft and tender personalities.

#### ***Provisions for welfare***

- Prohibition of employment of women during night hours of women:
- Prohibition of work in hazardous occupations.

- Prohibition of employment of women in pressing cotton where a cotton opener is at work
- Fixation of daily hours of work at nine.
- Fixation of maximum permissible load
- Provision for crèche

In every factory where more than 30 women workers are ordinarily employed, there shall be a suitable room for the use of children under the age of six years of such women.

- Provision for washing and bathing facilities. The Act provides for separate and adequately screened washing and bathing facilities for women.
- Provisions for toilets. The Factories Act must make it obligatory for any factory owner to maintain an adequate number of latrine and urinals separate for women.
- Provisions for rest rooms and canteens.
- Provisions for mandatory benefits.

All the above provisions are simultaneously provided under The Plantations Labour Act 1951, The Mines Act 1952, The Beedi and Cigar Workers (Conditions of Employment) Act 1966, The Contract Labour (Regulation and Abolition) Act 1970 and The Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act 1979.

### ***The Maternity Benefit Act, 1961:***

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and lay the foundation of equality women too must be made economically independent and must take an active role in all sectors of business today. Problem faced by women in the economic sphere of life are mostly

relating to unequal wages and discrimination resulting from their biological role in nature of childbearing. To curb such problems and protect the economic rights of women the Legislature introduced the Equal Remuneration Act, 1976 and Maternity Benefit Act, 1961.

A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of average daily wages for the period of her actual absence. The Maternity Benefit Act aims to regulate of employment of women in certain establishment for certain periods before and after childbirth and provides for maternity and certain benefits.

Women can claim benefits under the Act everywhere except in factories and the other establishment where the Employee's State Insurance Act is applicable. Women who are employed, whether directly or through a contractor, have actually worked in the establishment for a period of at least 80 days during the 12 months are eligible to claim the benefits under this Act. Cash benefits to women who are absent from work during the maternity leave, are not be less than two-thirds of her previous earnings.

Discharge or dismissal during maternity leave is considered to be void. When pregnant women absents herself from work in accordance with the provision of this Act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that notice will expire during such absence or vary to her disadvantage any of the conditions of her services. Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the Act except if it was on some other ground.

Failure to pay maternity benefits or discharge or unemployment of woman due to maternity will result in imprisonment of the employer for not less than three months which may extend to one year and a fine of rupees two hundred which may extend to five thousand.

In the *B. Shah v. P.O.*, AIR 1978 SC 12; (1977) 4 SCC 334, case it was held that 100% wages were to be provided for all days of leave as well as benefits such as Sundays and rest days as wages were being for actual number of working days missed.

In *Air India v. Nargesh Mirza*, AIR 1981 SC 1829; 1981 (4) SCC 335, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society.

The ongoing argument in some circles is that the wage differential between women and men is caused by the need to compensate the higher labour costs employers incur by hiring women, in accordance with special laws to protect maternity. Employers prefer to hire a male instead of female, without the burden of these additional monetary costs. This is however not enough as many employers do not hire married women or dismiss them before pregnancy. The Act provides some protection to women economically especially today in an age where single mothers are becoming more prevalent it gives them stability in their lives to have their wages and the security of returning to a steady job. My personal views are that this Act is not enough to guarantee women equality and economic security but it is definitely a starting step and though there are several bridges to cross.

### ***The Equal Remuneration Act, 1976:***

Equal pay for equal work for women and men is a vital subject of great concern

to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counter-parts for the same piece of work. Women all over the world, had till recently been very much in articulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and poverty, recruited women on a large scale at lower wages and made them work under inhuman condition. International Labour Organization has evolved several conventions to provide protection to employed women. A number of ILO conventions have been ratified by India and some of these though not ratified have been accepted in principle. The principle of ILO has been incorporated in the Constitution of India in the form of Article 39, which directs the States to secure equal pay for equal work for both men and women. To give effect to this constitutional provision the Parliament enacted the Equal Remuneration Act, 1975.

### ***Empirical Evidence Related to Female Work Participation:***

According to 2001 census, the total number of women in the country is 494.82 million out of the total population of 1,025,25 million. This means that women accounted for 48.26% of the total population. Out of the total women in the country, the work participation rate was only 25.67% while the work participation rate of men was 51.93% in the year 2001. However there is rise in the percentage of women workers through the years.

According to another survey, in the year 2004, the total employed force in the public

and private sector was 49.34 lakhs. Women working in organized sector constitute only 10 per cent whereas 90 per cent are in unorganized sector.

In 2003, the number of women in Central Government Employment was 7.51 per cent. The percentage of educated women seeking employment has shown an upward trend from 68.7 percent of Indian population. Census of India, 2001 defined work as an economically gainful activity, and as a result of this, ninety per cent of women are recorded as non-worker in the census report of Indian States. Eighty per cent women population in rural areas is physically active but being poor and literate they face enormous problems in labour market.

### ***Global view of Gender Justice:***

Gender Justice, simply put refers to equality between the sexes. Gender justice is a correlation of social, economic, political, environmental, cultural and educational factors; these preconditions need to be satisfied for achieving gender justice. In these days of globalization, the global picture of women is most ignorable and inequitable. Women constitute 50 per cent of the world's population, and account for 66 per cent of the work done, but they have only a share of 10 per cent in the world's income and own one per cent of the world's property. Globally, gender justice as a cause has gained in strength over the years, as it has been realised that no State can truly progress if half of its population is held back.

Globally, the United Nations has established a strong mandate for gender justice. The focus on gender equality and gender justice has been there since the inception of the UN. In 1946, a separate body was formed to work on the "advancement of women". The Commission on the Status of Women worked from its inception to collect and compile data on

women's situation around the world, to promote women's human rights and raise awareness of, and support for, their contribution to development. The Decade for Women (1976-1985) and four world conferences on women (between 1975 and 1995) contributed significantly to raising awareness and commitment to gender equality and gender justice. In 1995, the Beijing Declaration and Platform for Action had been framed for guiding work at national level. The human rights treaty on gender equality – The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by 185 States and the optional protocol by 90 States. Since 1995 and the adoption of gender mainstreaming as a critical strategy for achieving gender equality, inter Governmental bodies such as the General Assembly, the ECOSOC and the Commission on the Status of Women have worked to mainstream gender perspectives as an integral part of all policy areas.

At the 2005 World Summit, world leaders reiterated that “progress for women is progress for all”. The UNIFEM is another agency of the UN. It is the development fund for women at the United Nations. It provides technical and financial assistance to innovative programmes and strategies to foster women's empowerment and gender equality. The United Nations Development Programme (UNDP) also has the Gender Development Index (GDI). It is an indication of the standard of living in a country, developed by the UN. It aims to show the inequalities between men and women: long and healthy life, knowledge and decent standard of living. India is ranked 128th in the Gender Development Index, while USA is 12th and UK is 16th. The nineteenth amendment to the United States Constitution in 1920 giving women equal rights as men with respect to voting was the first constitutional recognition of gender rights.

### *Problems Faced By Women:*

- Female feticide, infanticide, child marriage, domestic violence, sexual violence, and sexual harassment at the work place to the treatment meted out to elderly women makes any thinking person to wonder at the nature of the society. Participation of women in the decision making bodies be they within the home, workplace or community is marginal, never reaching even 25% of the total population of women in India.
- Women are forced to change their jobs or seek transfers on account of Sexual Harassment.
- Most of the women's work, inside the house goes unnoticed and unremunerated. Even outside the family they remain underpaid.
- In terms of horizontal segregation, women are concentrated in low – paying positions such as secretary, typist, beautician, nurse, caregiver and assembly – line worker. “Equal work but unequal pay” is still a common practice in India's private sector.
- According to statistics from the United Nations “Women constitute 50% of the world population, do two third of the work, get 10% of the total income and own 1% of the total assets”. While this is a global fact, the picture is much more pathetic in India.
- Children living in this environment and witnessing the differential role pattern of the man and the woman learn the lessons of gender inequality right from their childhood and the pattern is bound to continue generation after generation
- Women constitute a significant part of the workforce in India but they lag

behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 per cent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 per cent of the total organised sector.

- The existence of discriminatory laws, the fact that the laws fail to take account of rural women's special situation, and the adherence to paternalistic and male-oriented customs which hinder the implementation of, or fill the gaps in, non-discriminatory legislation, have helped to keep rural women in a subordinate position.

#### *Remedies:*

- It is now empirically established that women's education is a single cure for a thousand societal ills.
- Increasing women's voice in decision-making; full participation of women in society, starting from autonomy in the household, to voice in all political processes at community, national and international levels.
- Quotas have been shown to rapidly increase female representation in corporate decision-making, as well as politics.
- Special rules governing women's reproductive work and aimed, in any event, at achieving equal working conditions for rural men and women should also be established.
- Legislation should be passed entitling domestic workers to a minimum wage, social security and social services.

- To ensure that the principle of non-discrimination is observed, express provision should be made for fines as a penalty for contravention of the rules, and monitoring and inspection bodies should be established to ensure compliance.
- Legislation expressly stipulating that rural women be included in organizations and provided technical assistance and training should be introduced.
- The State should guarantee women's access to formal and informal education, technical training and new technologies.
- The big financial institutions find the small business of the poor to be too petty to justify their involvement. Many of their enterprises (particularly by women) are not recognised as productive enough to be creditworthy.

#### *Analysis:*

Enacting gender just laws will not mean an end to the exploitation of and discrimination against women. Using law and the legal system can only be one of the many remedies to be used to change the unequal status of women. In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor conditions of women has not been improved and she still faces all types of atrocities and Legislature and Judiciary somewhat fails to provide respect to women in society.

After independence the founder fathers of the nation, wanted to reform the society and were keen to establish an egalitarian society. To achieve this end they used law as an instrument to check the gender discrimination, number of laws, were enacted to meet this end but due to strong

patriarchal mentality and unfavourable social environment they failed to accomplish their goal. The social engineering through law was not fully achieved, while some rights enshrined under the enactments were enjoyed and accepted by the society most of them remained only in papers due to lack of public support.

As it rightly said; by Wendell Phillips: "Law is nothing unless close behind it stands a warm living public opinion"

It is said that the law without the public opinion is nothing but a bundle of papers. The gap between the men and women cannot be bridged by just enacting laws without any public support as social engineering laws are different from penal laws which are just related to punishment and are deterrent in nature but social engineering laws enacted to uplift the norms of the society are progressive in nature and therefore it should be backed by the will of the people for whom it is enacted. It must be remembered that guaranteeing a right in law does not ensure the ability to access the right in reality.

### **Conclusion :**

"Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind." -  
*Swami Vivekananda*

Gender equity emphasizes that all human beings be it men or women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, political and other prejudices. Their different aspirations should be valued equally and they would be treated fairly according to their respective needs. But the law alone cannot do much. All sections of society have to work for this transformation and this is where NGOs, the media and the people's representatives have to play a major role. Gender justice is genuine equality among human beings where neither man is superior nor is a woman inferior.

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## **COMPARATIVE ANALYSIS OF FOOD SAFETY IN VARIOUS COUNTRIES<sup>1</sup>**

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Food Safety has become a global phenomenon. The food industry is responsible for producing safe food. In a country, Government agencies are responsible

for setting food safety standards, conducting inspections, ensuring that standards are met, and maintaining a strong enforcement program to deal with those who do not comply with standards. In world, every country is concentrating on food safety laws. The author focuses a comparative analysis of food safety existing in various countries.

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