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Topic- Right to Employment; A Study on challenges faced by Indian women employees at work place

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Introduction

Women have been treated a second class citizen from past. Women are meant for household works rather other paid employment. Women faces a lot of discrimination in the society in matters of education, sports, arts etc. Discrimination faced by women in employment sector includes wage gap issues, lack of sanitation and health care facilities provided to women, sexual harassment faced by women in workplace, gender based discrimination, less chance of getting promotion these are the main areas of challenges faced by women at work place.

Patriarchal society have set out certain norms for women what they must do's and don'ts women are designed for reproduction and taking care of the family. But the situation had change many women have come forward for building their career. The workplace has never been same for women even in 21st century, women are paid less than men, and they are treated vulnerably even after holding best educational background. Still there is a stigma persist in the society that women are not allowed to come out of the family they are meant to be looking after the household activities.

Problems and challenges confronted by women at work place-

1) Wage gap

Women labour contributions have been valued since time immemorial but their worth has never been recognised. India ranked 135 out of 146 in Global Gender Gap Report 2022, which means that India ranked lowest on gender pay parity. Under the constitutional mandate of equality and inhibition against discrimination under Article 14 and 16 the doctrine of equal pay for equal work assumed the status of fundamental right.¹ Globally, women on average,

¹ State of Kerala v. B. Renjith Kumar(2008) 12 SCC 219.

are paid about 20 per cent less than men.² Due to this financial insecurity threatens women in Global level. Gender differences in employment are important factor which lead to the gender differences in earning.

2) Sanitation facilities

Lack of sanitation facilities provided to women in workplace lead raise of health concern to women. Inadequate usage of toilets cause internal injuries such as acute kidney injuries, menstruating women faces high risk of urogenital infections. The lack of basic sanitation facilities, such as toilets, coupled with social and cultural norms, makes it difficult for women to perform their daily sanitation routine with dignity and safety. They are prone to several risks such as reproductive tract infections, psychosocial stress and gender-based violence.

3) Sexual harassment

Sexual harassment at workplace is outright unacceptable criminal. No women should be subjected to sexual harassment at any workplace³. It is a violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. Incident of sexual harassment of a female at the place of work amounts to violation of her fundamental right to gender equality under Article 16(2).⁴

4) Social security

In spite of several Government sponsored schemes Social Security threats for women still persist. According to World Social Protection Report 2020-22: Regional companion report for Asia and the Pacific, the status of India is only at 24.4% on social protection worldwide for both men and women in this women lacks way behind for social protection and still gender disparity exist in employment as well.

5) Gender based discrimination,

As per the Global Gap Report 2022 published by World Economic Forum, India is ranked at 140 out of 156 countries. Mind-set of Indian society discriminates women from employment sector women are considered primarily responsible for smooth running of family welfare rather than job matters. Root cause of gender discrimination is the patriarchal setup in our Indian society. Early marriage, less access to educational facilities, sexual abuse are the most form of gender discrimination prevalent in India. Most economies give women only ¾ right of men in employment sector

6) Promotion disparity

Even though equally skilled and educated men and women are eligible for promotions

² International Equal Pay Day 2022: Can pay transparency measures help reduce the gender pay gap?, International Labour Organisation https://www.ilo.org/global/topics/equality-and-discrimination/WCMS_856125/lang--pt/index.htm#:~:text=Globally%2C%20women%20on%20average%2C%20are,per%20cent%20less%20than%20men

³ Section 3(1) Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴ Apparel Export Promotion Council v. A.K. Chopra AIR1999 SC 625.

employer would choose men rather than women. It's a usual practice in some institutions that women are not chosen for managerial promotion. All persons in similar circumstances shall be treated equally both in privileges and liabilities imposed.⁵

Constitutional safeguards

The Constitution have protected equality as a fundamental right⁶ which embodies the principle of non-discrimination. Equality is the basic feature of the Constitution of India, doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution.⁷ Article 15(3) of the Constitution mandates State to enact special legislation for protection of women and children which means that legislations such as Sexual Harassment of women at workplace act, 2003, Domestic Violence Act, 2005, The Amendment to the Hindu Succession Act and other legislations secure women's right under Article 15(3). Article 16 of the Constitution of India guarantees equal opportunity in matters of public employment, no citizen can be discriminated or ineligible for any employment under the state on the grounds only of sex and other matters.⁸

The Constitution also mandates under Article 39(a) the State to direct its policy to secure that the men and women to be treated equally and have right to adequate means to livelihood⁹ and under Article 39(d) equal pay for equal work for both men and women. In Grih Kalyan Kendra v. Union of India¹⁰ the Supreme Court held that Equal pay for equal work may not be expressly declared as a fundamental right but the principle of equal pay for equal work has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Article 14 and 16 of the Constitution. Article 42 mandates the state to provide humane working conditions and maternity leave and court has conceded the demand of female workers of maternity leave under the concept of social justice under the Article 42.¹¹ The 73rd Amendment Act of the Constitution guarantees women one-third seats in the Panchayats, and the 74th Amendment Act guarantees women one-third seats in Municipalities.

Statutory provisions protecting Women employees

1. Equal Remuneration Act, 1976

Parliament has enacted Equal Remuneration Act to secure the principle enshrined under Article 39(d) of the Constitution. In People's Union for Democratic Rights v. Union of India¹² the Supreme Court held that Article 14 of the Constitution finds expression in the provisions of Equal Remuneration Act. The act seeks to provide for equal payment for equal work to men and women for prevention of discrimination¹³. Discrimination in matters of recruitment of men and women is also prohibited under the Act.¹⁴

⁵ John Vallamattom v. Union of India(2003) 6SCC 611:AIR 2003 SC 2902.

⁶ Article 14 of the Constitution of India.

⁷ Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34: AIR 2002SC 1533.

⁸ Article 16(2) of the Constitution of India.

⁹ Madhu Kishwar v. State of Bihar, AIR 1996 SC 1870.

¹⁰ Grih Kalyan Kendra v. Union of India, AIR 1991 SC 1173.

¹¹ Municipal Corporation of Delhi v. Female Workers (Muster Roll) AIR 2000 SC 1274.

¹² People's Union for Democratic Rights v. Union of India (1982) 2 LLJ 454 (SC).

¹³ Section 4 of Equal Remuneration Act, 1976.

¹⁴ Section 5 of Equal Remuneration Act, 1976.

2. National Commission for Women Act, 1990

Section 10 of the Act investigate and examine all matters relating to safeguards provided for women under the Constitution and any other laws also recommend effective implementation of safeguard of women through amendments or other special legislations and in cases of violation in provisions of Constitution and any other laws which shall be taken up to the appropriate authority. The main objective of the act is to curb disparity and safeguard women right. The commission has the powers that are vested upon a civil court.

3. Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Act seeks to protect women against sexual harassment at workplace also act provides for prevention of sexual harassment at work place and even a redressal mechanism within and outside the employment. The framework of this act was laid down in the landmark Judgement of Vishaka v. State of Rajasthan¹⁵ the Supreme Court mandated guidelines to check evil of sexual harassment at work place and court stated that sexual harassment of women at work place violates fundamental rights of women equality and right to life and right to live with dignity under Article 14, 15 and 21 of the Constitution.

4. The Maternity Benefits Act, 1961

The Act protects the employment of women during the time of her maternity and entitles for a maternity benefit so that she can overcome the state of motherhood honourably. As per 2017 Amendment maternity leave duration was extended from 12 weeks to 26 weeks in case of women who have less than two surviving children and in case of third child entitlement is for 12 weeks, establishment having 50 or more employees shall have creche facility.

5. Factories Act, 1948

Section 66(1) (b) states that no women shall be allowed to work in factory between the hours 6am and 7pm, for ensuring occupational safety to women workers. Under Section 27 the Act prohibits employment of women and children near cotton openers.

6. Plantations Labour Act, 1951

Section 25 prohibits women worker working during time of 6am and 7pm. Section 32 provide maternity benefit, Section 12 provides crèche facility in an establishment where 50 or more than employees are working.

7. Employee's State Insurance Act, 1948

Section 50 of the Act envisages the qualification of an insured person to claim maternity benefits.

¹⁵ Vishaka v. State of Rajasthan AIR 1997 SC 3011.

Protection of women employees at International Scenario

1. International Labour Organisation

Millions of women around the globe denied their basic right of livelihood without regard to their capabilities and skills. In a number of developed countries, for example, women workers still earn between 20 and 25 per cent less than male colleagues performing equal work or work of equal value, which shows how slow progress has been over recent years in this regard.¹⁶ International Labour Organisation have set out certain conventions to safeguard women rights Violence and Harassment Convention, 2019 (No. 190), Maternity Protection Convention, 2000 (No. 183), Equal Remuneration Convention, 1951 (No. 100) etc. Preamble of International Labour Organisation Constitution of 1919 emphasised the importance of equal remuneration for equal value.

2. Universal Declaration of Human Rights, 1948

Article 23 of UDHR envisages that everyone has free choice of employment without any discrimination and principle of equal pay for equal work is enshrined in this Article. Under Article 25 motherhood and childhood are protected with special care and assistance.

3. Convention on the Elimination of All Forms of Discrimination against Women, 1979

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities. Article 11 of the Convention provided that state parties to take appropriate measures to eliminate discrimination against women in right to work, right to same employment opportunities, right to free choice of profession and employment, right to equal remuneration including benefits and equal treatment in evaluation in quality of work. In *Madhu Kishwar v. State of Bihar*¹⁷ the Supreme Court held that Convention on the Elimination of All Forms of Discrimination against Women, 1979 is an integral scheme of Fundamental Rights and the Directive Principles.

Conclusion

Despite several legislations, constitutional rights, international protections given to women still we can see gender inequality persist in the society. Most employers appoint men rather than equally talented women, they have to work double of men to prove their talent in the organisation. Women face through most vulnerable situation sexual harassment from men which cannot give a peaceful environment to work. Many women are deprived of their right of maternity benefits.

Minimum living wage must be given to all low paid workers irrespective of discrimination

¹⁶ International Labour Standards on Equality of opportunity and treatment, International Labour Organisation <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/equality-of-opportunity-and-treatment/lang--en/index.htm>

¹⁷ *Madhu Kishwar v. State of Bihar* AIR 1996 S.C.W.

between men and women. Men and women must get equal pay for their work, skill of the worker must be calculated in a rational manner. Skilled and qualified worker must be given promotion rather than discriminating in manner of gender. Maternity benefit are provided to protect the right of women and enjoy their motherhood in honourable manner, despite of this most of the women are deprived of maternity benefits. Awareness must be given to women about their rights in rural areas. Sexual harassment in work place must be strictly monitored and punishment must be given to the wrongdoer. CCTV must be installed in every organisations to ensure security. Every employee must get positive atmosphere from the workplace which can lead to better output for the organisation as such. Proper sanitation facilities must be there within every organisation.

In this 21st century people must think rationally both men and women are equally qualified and capable of shouldering the responsibilities. Strict application of laws and education can only bring changes in the society. The society must endeavour right treatment to women only then gender disparity in the society can be washed away.

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