Chapter 3

Legislative Measures for the Protection of Women at Work Place

The progress and all round development of a country depends on the creation, harnessing and utilizations of the talents and energies of all sections of society. The backwardness of any sections of society hampers not only their own development but obstructs the overall development of the country. The participation of women in the country’s social and economic development has been widely recognised. Odeyar D. Hegarde in his pioneering works ‘women and economic development’ probably for the first time emphasized the significance of women’s participation in the economic development of the country. But the women labour is underrepresented both in private and public sectors. What is further revealed is that the roles performed by women in India are different from men.

In the beginning of the nineteenth century, spinning, weaving, making clothes, baking bread, preserving fruits and many other processes now usually carried out in factories, as well as good deal of teaching and nursing were part of woman’s household routine. Milestone changes occurred in the social, economic and political status of women during nineteenth century in India. All the social reform movements of the 19th century focused on ameliorating the miserable conditions of Indian women. Social reformer raised their voice against the inhuman and social evils prevailing in Indian culture in the name of religion and custom. Initially, Social reform movements in India were helpful in granting women right to education, gradually it resulted in abolishing all regressive customs. Soon it was realized that education is helpful for women only when they were given equal opportunity in work place.

The modern industrial world is thus the first to provide opportunity to women to occupy independent jobs and allow them to become independent of other family members. By coming out of their homes in the gainful employment, women have broken the traditional notion that working outside is derogatory to them or that only under gross economic necessity they work
outside homes Although entering of the women into workforce raised their economic and social status yet it gave rise to many problems and difficulties to them.

Entering the work place was also not free from some evils, woman’s enter into workplace also enhanced various problems like double responsibilities, enlarge working hour, dismissal from employment due to pregnancy, lower wages etc. These problems and difficulties got multiplied due to their peculiar features, initially women work in all establishment, perform all the process without regret, even though the environment was dangerous to their health. Primarily there was privatization all the industries were carried by private owners. The industrial functions were carried on as per the rules lay down by the owners, such rules were beneficial for the owners women became an important feature of the labour market. Employers took full advantage of the prevailing conditions and the weaknesses of the women and therefore, women workers were subjected to long hours of work, not only this they work during the night without any security to dignity, what they are going to perform at their own risk. In the early day employment of the women worker was beneficial for the employers, because women perform the same work as performed by their male counterpart with fewer wage, secondly they were easily removed from their work on the basis of not possessing the same skill as male workers, and thirdly they were discharge on the sign of pregnancy. Some of the women continue to work by not disclosing to their employer that they were pregnant, it was only due to insecurity to leave the jobs, they perform all the process without paying attention to their health, due to this dismal working condition, the life of woman’s workers became more miserable, it was resulted into increase in female mortality. It was realised that some sort of protection and security should be provided to them because they are facing these problems due to their unique features.

However the alarming growth of women’s economic independence made lot of changes in the living pattern of society. The problem of management of home and work place attracted attention of visionary. They realised from the beginning the hurdle faced by woman due to employment. The increase in number of woman workers necessitated framing of policies for the protection of woman at workplace, as there was apprehension about the advantage taken by employer of woman in different way, and woman exploitation in the name of weak, unskilled and less productive.
To stop the derogatory practice adopted by the employer towards working women different measures were undertaken from time to time to provide security and protection to them. It is in this context that an effort is made in this chapter to discuss the protective measures provided to female workers in employment, over a period of time. Nearly all industrialized countries provided some form of legal recourse against protection of women’s rights. However, as pointed out by an ILO and various NGO, the extent to which protection are available depends on the legal system where the women are working, the nature of their work, working place where they are located.

In India, women freedom and unity movement took momentum only after the nineteenth century and during freedom struggle in India, the idea that there can be no national awakening without the awakening of the women began to gain importance gradually in the minds of the well-wishers of the country. In the second half of the 19th century new challenges before the educated Indian elite were new ideas, new technology, new development processes and new concept of society. Within these new ideas working women issue were also new. Women’s participation in the freedom struggle heralded a new era for the nation as well as for the women themselves. Participation in freedom struggle improved confidence among women; they felt that after Independence they had a role as equal citizens in the free-nation. Some of the women members in constituent Assembly did not favour reservation of seats for the women, they never asked for privileges, but they demanded social justice, political justice and economic justice. The struggle for independence was over by 15th August, 1947. But attainment of independence was not an end itself.1

**Constitutional protection:**

The First task undertaken by Independent India was framing of the Constitution.2 The framer of the Constitution of India were aware of the national aim to eliminate poverty and squalor abolish distinction and exploitation and to ensure decent conditions of living.3 Special attention towards women was paid by Constitutional framing bodies while framing Indian

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3 Graville Austin, The Indian Constitution Cornerstone of a Nation, p26-27.
Constitution. Prior to the enactment of the Constitution, equality of opportunity in matters of public employment was guaranteed under Section 275 and 298(1) of the Government of India Act, 1935. Section 275 laid down that “A person shall not be disqualified by sex for being appointed by any civil service of or civil post under the crown in India…” Section 298(1) further provided that “no subject of his majesty domiciled in India shall on grounds of religion, place of birth, decent, colour or any of them be ineligible for office under the crown in India.”

Preamble to the Constitution of India contains the goal of equality of status and opportunity to all citizens. The Constitution of India, in its attempt to build an egalitarian and secular ideology engrafted into it equality, liberty and justice proclaimed in the Declaration of Human Rights. Equality in Indian Constitution was the outcome of United Nation Charter which contain in its Preamble” Equal rights of men and women”, Principle of Equality of mankind without any discrimination is further seen in the Article 1 and 7 of the Universal Declaration of Human Rights. Article 14 of the Constitution ensures equality among

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6 The Charter of the United Nation in its Preamble reaffirmed faith in the Equal Rights of men and women. One of the purpose of the United Nation is “encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”
7 Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world.

Whereas the people of the United Nations have in the charter reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Article 1; All human beings are born free and equal in the dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2; Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or the status.

Article 6: Everyone has the right to recognitions everywhere as a person before the law.

Article 17(1); Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 23(1); Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.
equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.

Man, woman and children who are the entitlement of fundamental rights because they are human being and have the right to live with dignity enjoy in India their rights as Constitutional and fundamental rights. These Fundamental rights reflect the idea cherished in Indian society from the Vedic time. Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 46 directs the State to protect the poor and weaker from social injustice and all form of exploitation. Article 39(e) charges that the policy of the State shall be to secure “the health and strength of the workers” Article 42 mandates that the States shall make provision, statutory or executive “to secure just and human conditions of work and for maternity leave”. Article 43 directs that the State shall “endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers.” Article 46, enjoins the State to promote with special care the education and economic interest of weaker sections of the people, and to protect them from social injustice and all from of exploitation. Article 48 enjoins the State to protect and improve the environment.

Further, in a modern welfare state a law which places the State in a special category with a view to empowering it to discharge some special functions it cannot be regarded as the violation of equality before the law. A classification based on treating someone inferior, weak unable to perform some public duties from the past time is also justified and thus the State can confer special benefit on the bonafide residents through suitable legislation.

(3) Everyone who works has the right to just and favourable remuneration enduring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
As human resources are valuable national assets for peace, industrial or material production, national wealth, progress, social stability, decent standard of life of worker is an output. Article 25(2) of the Universal Declaration of Human Rights ensures right to standard of adequate living for health and well being of the individual including medical care, sickness and disability, Article 2(b) of the International Convention on political, Social and Cultural Rights protects the right of worker to enjoy just and favorable conditions of work ensuring safe and health working conditions.

The commitment of equality for men and women is clearly stated in number of International standards, proclaimed by the United Nations documents, but the natural difference cannot be modified and altered. The Constitution confers a catena of rights upon women, special privilege are given to the women due their long standing subordination and conscious efforts were made for improving the entire situation in favour of women.

Besides the principles of justice, liberty, equality and fraternity, the Constitution assures the dignity of the individuals irrespective of their sex, community or place of birth. Women inferior status and continuous suppression from the time immoral awakened the mind of high intellect, who started framing special protection of women, protection for women at workplace, their protection at the time of birth, with emphasis of importance on women education, need of women participation in the social, economic and political sphere. The fundamental concept of equality has undergone a transformation from beginning to present day.

The jurisprudence of personhood or the philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his/ her livelihood to sustain dignity and to live a life with dignity and equality. The expression ‘life’ assured in Article 21 of the Constitution does not cannote mere animal existence or continued drudgery through life. It has a

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8 Preamble to the Constitution of India.
9 Ibid.
10 Ibid.
11 Ibid.
12 Article 21, Constitution of India.
13 Consumer Education and Research Centre v. Union of India A.I.R 1995 S.C 939
The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. Similarly it was held by Supreme Court that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the constitution.

Conferring political, social equality does not means person acquire equality according to the wishes of intellectual of the society, education and economic independence is equally important for one’s empowerment. It has been realised that economic dependence of women is the root cause of women’s suppression in earlier Indian society. Economic dependence of women was removed by conferring on women equality of opportunity in public employment. Article 16 (1) of the Constitution of India guarantees Equality of opportunity for all citizens in matters of “employment” or “appointment” to any post under State. Women cannot be treated as ineligible for or discriminated against in respect of any employment or office under the State. These Constitutional provisions opened the doors for women employment in public and private sector.

The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor and weaker etc. are languishing to secure dignity of their person. The Constitution, therefore, mandates the state to accord justice to all members of the

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14 (1985)3 SCC: (A.I.R 1986 S.C 180)

15 Article 16(2) of The Constitution of India says that no citizen shall, on the grounds only of religion, race, caste, sex, decent, place of birth, residence or any of them, be ineligible for or discriminated in respect of, any employment or office under the state.
society in all facets of human activity. The concept of social justice\textsuperscript{16} imbeds equality to flavour and enliven practical content of ‘life’. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

The reality of present socio-economic conditions is that to lower down the burden of male member to feed the family, present society demand both partner in work place, and both are responsible for the development of the economic condition of family. Lowering the mental pressure from the men’s mind to find the means of livelihood for the maintenance of family, and for the fulfilling the basic necessity of life, is yet another reason for the women employment\textsuperscript{17}. The expansion of protection to women at workplace has been comparatively rapid in areas where women are working in large number. Challenging jobs were given to women to enhance their capabilities; rules are framed for their protection at work. A restriction came in working mother’s life, as performance of biological role of childbearing resulted in withdrawal from workplace for some time. Such new challenging restriction in women’s life was once again not left unnoticed from the eyes of vibrant thinker, as such within the Constitution of India a provision was added as maternity benefit in Directive Principles of State policy.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and place where they work; they must be provided with all facilities to which they were entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up child after birth\textsuperscript{18}.

\textsuperscript{17} Kathy Davis Manj Evan and Judith Lorber (Sage Publications) New Delhi 2006,292( Blending into Equality, Family Diversity and Gender Convergence) Molly Monahan Lang and Babara J.Risman.
\textsuperscript{18} Municipal Corporation of Delhi v. Female workers (Muster Roll) A.I.R 2000 S.C 1281.
Women’s capacity to work once again was enhanced by public policies to secure motherhood with job security along with maternity leave. Protection of women’s rights can be seen in term of expansions of women opportunities in appointment, from the safety measures provided to them and are from the dropout rate of women from employment. Career paths that lead to top-echelon positions generally required long working hours and uninterrupted work histories\(^{19}\). As women were unable to fulfill these responsibilities in the absence of some provisions ensuring care for children as such many of them were compelled to leave their jobs. As such by the concept of maternity benefit was evolved to mitigate the problem of expecting mothers. This essential requirement has also been recognised and protected in various International Human Rights Instruments such as Universal Declaration of Human Rights (herein after UDHR) 1948, Covenant on Economic, Social and Cultural rights, 1996 and various International Labour Convention (herein after ILO) Conventions. The conferring of various rights on women are meaningless, unless the status of women improves; similarly, legislative enactment may be sub optimal and shall be ultimately rendered of no use if equality in appointment is not secured by the social and economic security. Various hardships of working women were removed by many positive enactments.

**Global framework on maternity protection:**

The International Labour Organisation is the United Nation specialised agency which was founded in 1919 that seeks the promotion of social justice and internationally recognised human and labour rights. Maternity protection for women workers has been a core issue for the ILO since its foundation in 1919. The ILO brings together governments, employers and workers of its member states in common action to promote decent work throughout the world (ILO, 2008). A principal focus of the International Labour Organisation over the course of the last decade has been on maternity protection, in fact one of the first instruments adopted by the International Labour Organisation was the Maternity Protection Convention 1919. The adopted convention decided upon certain proposals with regard to women’s employment, before and after childbirth, including the maternity benefit (ILO, 2004), while the Convention has

\(^{19}\) Shashi Bala “Implementation of Maternity Benefit Act” P.2. NLIR Studies Series No. 099/2012.
undergone various revisions from 1952 to 2000 since its inception, even from the outset the Convention sought for sufficient benefit to be paid for the full and healthy maintenance of mother and child’ (ILO. 2004). According to the ILO Maternity Protection Convention, 2000(183), maternity protection provisions cover the following main aspects; maternity leave and leave in case of illness or complication; cash and medical benefits, health protection at work, employment protection and non discrimination; and breastfeeding arrangement. In addition, the ILO works with Family Responsibilities Convention, 1981(No.156) also provides for family friendly working conditions, labour force, reintegration measures, child care and other family services and facilities, among others.20

Nevertheless, despite the diversity of the policies there are some general trends across countries. Entitlements to paid leave after the birth of children are granted in most of the countries, for different lengths of time, paid at different rates depending on the hours of work, and the period for which they work before the entitlement of maternity leave with different objectives, including health and safety, enhancing infant and maternal health and children’s well being, promoting labour supply, and furthering gender equality in labour market outcomes, as well as budget constraints. There is also a trend in some advanced economies to support, to varying degrees, the right for mothers and fathers to share parental leave entitlement after child birth. Many developing nations have attempted to align their laws and policies on maternity protection to ILO requirements where maternity leave is paid it may be funded by the state, by employers or by a combination of the two.

**Women Protection under Employees State Insurance Act:**

Maternity protection is an important dimension of work quality and gender equality. It is also necessary for sustaining social reproduction and economic production. The aim of maternity protection is to protect the mother and to protect the health of helpless new born who need cared by someone in the beginning of life. These rights and privileges are secured in Article 42, of Constitution as a Directive Principle of State policy21.

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21 Article 42 of Constitution; direct the State to make provision for securing just human condition of work and for maternity relief.
In India first maternity benefit legislation was enacted in province of Bombay in 1929 and was followed by other provinces. Before and after Independence there were acts for women workers, i.e., Mines Maternity Benefit Act, 1941, the Employees State Insurance Act, 1948 and the plantations Labour Act, 1951. The condition for payment the rate and period of maternity benefit was not uniform under these Acts, therefore the Maternity Benefit Act, 1961 was enacted to remove these disparities and apply uniformly upon, every establishment being a factory, mines or plantation including establishment belonging to government and to every shop or establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The enactment of a central legislation on maternity benefit was the result of second Five Year Plan (1956-1961). The plan persisted in welfare approach so far as women issues are concerned. It recognised the need for organisation of women as workers, that women should be protected against injurious work, should receive maternity benefit and creches should be established for children in work places. Thus the document frequently uses the term ‘working mothers’ and need of working mother for child – care services. The Maternity Benefit Act, 1961 was enacted keeping in view all the pre Constitutional legislations and revised ILO Maternity Protection Convention. The Maternity Benefit has been provided under various enactments for the safety of women workers and Employee State Insurance is one among them. In India there is a law i.e. The Employees State Insurance Act, 1948 evolves a scheme of socio-economic welfare, and makes elaborate provision in respect of it. The Act, provides for certain benefits to employees in cases of sickness, maternity and employment injury and to make provisions, for certain other matters like funeral expenses, dependents benefit, medical benefit and disablement benefit. The Employees State Insurance Scheme or Act also enjoins upon the employer to make

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23 Section 2; Maternity Benefit Act, 1961, deals with the application of the Act has been substituted in 1989 with a view it extend coverage of the Act. It provide that-(i) It applies on the first instance
(a) to every establishment being a factory, mines or plantation including ant such establishment belonging to Government and every establishment wherein person employed for the exhibition of equestrian, acrobatic and other performances;
(b) to every shop, establishment within the meaning of any law for the time being in force in relation to shop and establishment in State, in which 10 or more person are employed, many day of the persuading twelve months.

payment of contribution and deduction of the contribution of the employees from their wages at the rates specified in the first schedule of the Act, and to credit the same to their accounts. The employees covered under the Act in return would receive treatment for sickness, maternity, payment for employment injury etc.

The provision of the ESI schemes impose duty upon both employers and employees to contribute to the payment, the provision of the schemes is followed by various private employers in India. With respect to Jammu and Kashmir State the ESI scheme with similar provision is followed by private establishment, there is a practice adopted by the employer to deduct ten percent from the salary of employees and some amount is paid by the employer in furtherance of Employee Insurance Scheme, to registered their employees, under the scheme and they are entitle to have recourse to these benefit from the named government hospital and dispensaries, where employees are provided with free medical facilities, cost free medicine, if any medicines is purchased by employees from private chemist shop (the medicine recommended by the doctor of the Hospital, dispensaries’ after medical checkup, if the same is not available in the hospital), the employee is entitle to the cost of medicines purchased by him/her after the production of bill before the employer. With respect to Government employees the benefit under the service rule are available, if any working women want to seek the benefit under the Maternity Benefit Act, they are entitle to the benefit with job security.

Economic security and social welfare of the citizens are required to be reordered under rule of law. In C.E.S.C Limited v. Subash Chandra Bose 25 it was held that the term “health” implies more than an absence of sickness. A medical care and health facility not only protects against sickness but also ensures stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the worker’s best, physically as well as mentally in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life. It was held that medical facilities are therefore, part of social security and like gilt edged security; it would yield immediate return to the employer in the increased production and would reduce absenteeism on the grounds of sickness etc. It would thus save valuable man power and conserve

25 (1992)1 SCC 441.
human resources. Just and favorable condition of work implies to ensure safe and healthy working conditions to the workmen, but benefit like medical facilities, sickness leave with wages, maternity leave with wages and job security generate among workmen devotion and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and national production to the State, while interpreting the provision of the Act, the Supreme Court held that the Act aims at relieving the employees from health and occupational hazards. This interpretation is to ensure social order and human relation, accordingly it was laid down that health of the workman enables him/her to enjoy the fruits of labour, to keep them physically and mentally alert. Medical facilities, therefore is fundamental, and human right to protect health strengthen those facilities. Health insurance while in service and after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workman.

Women safeguards under Maternity Benefit Act, 1961:

In India, Article 42 of the Indian Constitution contains the directives that the State shall make effective provision for securing just and humane conditions of work and maternity benefits. Under the Act, women employment for certain period regulated before and after child birth. The provision of 1961 Act shall apply to any factory or other establishment to which the provision of Employees Insurance Act, 1948 applied. Women, who are ineligible to claim maternity benefit under the E.S.I. Scheme, shall be entitled to claim under the Maternity Benefit Act, 1961.

The Maternity Benefit Act, 1961 extend to whole of India including the State of Jammu and Kashmir at the end of the year 1972, This Act was brought into force in mines with effect from 1-11-1973 after repealing the Mines Maternity Benefit Act, 1941.

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27 Ibid.
29 Ibid.
30 Section 2(2); of Maternity Benefit Act, 1961.
The State, be it Union or State government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigor of the workman during the period of employment. Various states including the State of Jammu and Kashmir have adopted the Central Act after repealing the State Acts. The Maternity Benefit Act provides certain benefits in the event of child birth, \(^{31}\) Miscarriage, \(^{32}\) illness arising out of pregnancy, delivery, premature birth of child or miscarriage. \(^{33}\) The Act was amended by Maternity Benefit (Amendment) Act, 1995 wherein a new clause was added in Section 3 to include extension of benefit in case of medical termination of pregnancy, to mean the termination of pregnancy permissible under the provision of the Medical Termination of the Pregnancy Act, 1971.

Therefore, we hold that right to health, medical aid with maternity benefit are fundamental human rights to make the life of working woman safe, secure and protect them against any kind of humiliation. The provision of the Act was liberally interpreted. It depends on the State Governments to extend the benefits of the Act upon any establishment or undertaking. The Act prohibited the employer to employ women under certain circumstances when it comes to his knowledge that women working in the establishment is pregnant, \(^{34}\) that pregnant women was paid Maternity Benefit at the rate of the average daily wage for the period of her actual

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\(^{31}\) Section 5; Maternity Benefit Act, 1961.
\(^{32}\) Section 9; Maternity Benefit Act, 1961.
\(^{33}\) Section 10; Maternity Benefit Act, 1961
\(^{34}\) Section 4; of Maternity Benefit Act, prohibit employment or work by the women under certain circumstances. It provides that:-

(i) no employer shall knowingly employ a women in any establishment during six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy;
(ii) no woman shall work in any establishment during six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy;
(iii) no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period as specified in Section 4(4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or likely to cause her miscarriage or otherwise to adversely affect her health;
(iv) the period referred to above shall be:
(a) the period one month immediately preceding the period of six weeks, before the date of her expected delivery.
(b) any period during the said period of six weeks for which the pregnant women does not avail of leave of absence under Section 6 of this Act.
absence. A duty imposed upon the employer to pay women workers medical bonus\textsuperscript{35}, leave for miscarriage\textsuperscript{36}, leave with wages for tubectomy operation\textsuperscript{37}, leave for illness arising out of pregnancy, premature birth of child, medical termination of pregnancy are given a leave with wages at the rate of maternity benefit for a maximum period of one month. The Act secure the sanctity attached to the motherhood, as it was realised that maternity benefit is not sufficient enough for proper care of the child, the provision of the Act, were extended further to child care during working hour in the form of nursing break for children.

Section 11 of the Maternity Benefit Act, 1961 provides that every woman delivered of the child who returns to duty after such delivery shall in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attain the age of fifteen months.

The Maternity Benefit Act, 1961 has a significant effect on the status of working women because the Act, prohibit the employer from dismissal of the women workers during pregnancy, it restrict the employers from deducting women’s salary on the ground of pregnancy or the leave taken by women on any of the ground mention in the Act. The provision of the Act makes it clear that the employer cannot play any mischief by allowing her light work during pregnancy and breaks for nursing the child when she returns to duty after delivery and making deduction from her wages in lieu of such statutory concessions.\textsuperscript{38}

Not only these provision, the Act also lays down that any agreement between the employer and woman at the time of appointment, if it is less beneficial to the women workers or it confer on the woman less favorable benefits, such agreement is rejected, if under the agreement woman is entitled to more favorable benefits than those provided under this Act, that

\textsuperscript{35} Section 8; of the Maternity Benefit Act, 1961 every woman entitled to maternity benefit or other amount under this Act, shall also be entitled to receive from her employer a medical bonus of two hundred and fifty rupees, if no pre-natal confinement and postnatal care is provided for by the employer free of charge.

\textsuperscript{36} Section 9; subs by the Maternity Benefit(Amendment) Act, 1995 (w.e.f.1.2.1996).as per section 9 of this Act in case of miscarriage or medical termination of pregnancy, a woman shall, on the production of such proof as may be prescribed, be entitled to leave with wages at the rate of six weeks immediately following the day of her miscarriage or, as the case may be her medical termination of pregnancy.

\textsuperscript{37} Section 9 (A); also laid the same benefit should be given to the women worker for tubectomy operation.

\textsuperscript{38} Section 13 Maternity Benefit Act, 1961.
agreement is valid. Thus the employers, are prohibited from discharging or dismissing a woman worker on account of her absence due to pregnancy, delivery, miscarriage or tubectomy operation. the Maternity Benefit Act, 1961 aims to provide facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period. The Act with similar provision has been applied to women workers in Jammu and Kashmir State. The Maternity Benefit Act, 1961 while imposing the duty and prohibition on employer a penalties and punishment in cases of contravention of the provisions of Act. The Jammu and Kashmir State Constitution incorporate in its Constitution include the provision of maternity leave.

The service rules in Jammu and Kashmir i.e., The Jammu and Kashmir Civil Service (leave) Rules 1979 were came into force on 1st January, 1979. These rules apply to all government servants appointed to the civil services and post in connection with the affairs of the State, they are entitled to various leaves; one among such leaves is maternity leave, with all benefits and privileges available under Maternity Benefit Act, 1961. The Maternity Benefit Act 1961 is helpful to provide support to a women worker and enabled them to play productive and reproductive role without any discriminations faced by her due to reproduction.

Under the Jammu and Kashmir Civil Services Leave) Rule, 1979, a female Government servant with less two surviving children may be granted maternity leave by authority competent to grant leave for a period which may extend up to 135 days from the date of its commencement. During such period she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. Maternity leave not exceeding six weeks may also be granted to female

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39 Section 27, the Maternity Benefit Act, 1961.
40 Section 18, of the Act, deals with penalty for the contravention of Act by employer, Section 21 of the Act.
42 Section 22, (b) with respect to the right of women the state constitution lay that, State shall endeavor to secure to all women, the right to maternity benefits as well as adequate medical care in all employment.
Government servant (irrespective of number of surviving children) in case of miscarriage including abortion on production of medical certificate.\textsuperscript{45}

Women’s reproductive role is strengthened by the legislators, the basic intentions behind such legislative enactment is to remove the new evil practice that prevailed in independent India where women were denied job due to their biological functions. It also remove the practice adopted by employers treating married women less beneficial as compared to unmarried women, and removing the attitude prevailed amongst the employers not to employee the married women because they were bound to pay maternity leaves to the married women as it impose burden upon them.

There has been a constant rise of women in work sphere, in rural area women work in agriculture, household chores, in maintaining the family and are not entitle to maternity or any remuneration equal to male worker, they are constantly enjoying equality in decision making. They are respected and are allowed to give her view in the maintenance of family member, the manner of using, disposing property either ancestral or personal property. Within the house women in rural area feel economic security due to the family responsibility. The family responsibility is the main reason which gives them an opportunity to claim maintenance from her husband for the maintenance of children and for purchasing the goods for family.

Unemployed house wife does not mean that they have no money in her pocket, time to time her husband pay money for the maintenance of children or other family member, for medical purpose, after spending money for the maintenance of family, if anything is left the same is kept by them as their own property. Only in exceptional cases they returned back the same, to her husband. During the course of research it has been analyse that women in Jammu And Kashmir State are well educated, they are holding responsibility like caring child, looking after the aged and infirm parents and also to provide proper hygienic environment at house. All the women responsibilities are recognised and respected by male member, the education play important role in opening various sphere for woman, woman within their respected sphere perform various income generating activities, such as tailoring, home tutors, cultivating vegetables, mushroom cultivation, making gifts and by keeping animals. It has been seen during

research that a large number of women whose husbands have less source of income, they help their husband in saving their income by involving themselves in cultivating the land of big land owners. By cultivating the land of big owner they acquire equal share in agriculture, some are working in different houses to maintain their family, some are working in shellers (rice mills) for weaving, and for picking and cleaning pulses.

The particular contingency for which the maternity benefits should be paid is the loss of earning resulting from women’s absence from work during prescribed periods before and after child birth. The benefit should be ensured for self-employed women, provided they meet certain conditions regarding the regularity of their contribution payment, it is one of the branch of social security. Due to delivery or pregnancy the employer feel they suffer loss in two ways one the employer is bound to pay maternity benefits to the women worker within their establishment, second the period of women absence due to pregnancy forces the employer to hire a new person for performing her job which leads to extra financial burden to the employer. Another enactment to protect the women productive and reproductive role is The Employees State Insurance Act, 1948 basically the act is to provide certain benefits to employees in cases of sickness, maternity and employment injury. The application of Maternity Benefit Act, 1961 and the Employees State Insurance Act, 1948 are of direct relevance for the development, protection and safeguarding the rights of women in State.

Facilities and opportunity, as enjoined in Article 21, read with Articles, 39(e), 42, 43 are fundamental to make the life of the woman worker meaningful and purposeful with dignity of person. The woman workers in sector like domestic workers, agricultural workers, are away from the legislative protection because they never know that they are entitled to any rights from their employer. So far as domestic worker are concerned, when a sign of pregnancy is noticed by them. They leave their job voluntary. Continue absence from domestic work restrained them from claiming any rights. During the course of her absence her employer appoints a new worker from the performance of same duty. Employer are also not interested to provide her the job due to child, it has been seen domestic worker stay at home for a long time, they suffer loss of wages, Legislative measures are uncertain with respect to woman workers in this area.
In a developing society like ours steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is catalyst, rubican to the poor etc. to reach the ladder of social justice. Justice K Subba Rao, the former Chief Justice of Supreme Court, in his “Social Justice and Law” at page 2, had stated that “Social Justice is one of the disciplines of justice and the disciplines of justice relates to the society.”

The Jammu and Kashmir Civil Service Regulations 1956 in its Section 157 contain provision on Maternity leave. A competent authority may grant to a female government servant maternity leave on full pay for a period which may be extended upto the end of two months from the date of its commencement or to the end of one month from the date of confinement whichever be earlier.

Note-1 Maternity leave may also be granted in the case of miscarriage including abortion subject to the conditions that-

- Leave does not exceed six weeks, and
- The application for leave is supported by a certificate from an authorised medical attendant.

Note-2. Such leave will not be debited against the leave earned otherwise.

Note-3. Temporary regular female servants paid for contingencies or engaged on daily or monthly wages system may be granted maternity leave for three week during the period of confinement. No extra expenditure will however be admissible during such leave.

**Penalties under the Maternity Benefit Act, 1961**

Maternity Benefit Act, 1961, as the object of the Act, to provide maternity benefit to the working women. It prescribed the period for which working women should enjoy the benefit the

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46 Consumer Education and Research Center v. Union of India, A.I.R 1995 S.C 938.


48 Government instructions (Inserted vid F.D.Notificication SRO-7 dated 14-1-1964). Temporary female government servants other than those referred to in note-3 shall be entitled to maternity leave like permanent female government servants.
same was initially calculated to be for 12 weeks period leave with wages. The Act stipulates appointment of inspectors. The inspector can be appointed by the appropriate government which will define the local limits of jurisdiction of each inspector,\(^{49}\) for the proper enforcement of laws an inspector can be appointed by the appropriate Government which will define the limits of his jurisdiction. As a public servant inspector is authorized to enter at all reasonable times with such assistants, if any, as he think fit, any premises or place where women are working or work is given to them in establishment, for the purposes of examining any registers, records and notices required to be kept or exhibited by or under this Act and require their production for inspector.\(^{50}\)

On a complaint being made before the inspector by any women employee that her maternity benefit has been improperly withheld or her employer has discharged or dismissed her due to her absence from work in accordance with the provision of this act, An inspector may of his own motion or on receipt of complaint make an inquiry or cause an inquiry to be made is authorized to direct payment to be made to the women workers.\(^{51}\)

Order passed by inspector is final if not appealed within thirty day from the date on which decision is communicated to such person. Further the Act imposed penalties on the employer for contravention of Act. Any employer who dismiss any women from his establishment shall be punishable with imprisonment which shall not be less than three months and with fine which shall not be less than two thousand rupees but both the penalties may extended. The amount so recovered by the court shall, in addition, to the maternity benefit or include as fine, to be paid to the women workers in addition to amount of maternity benefit. Within the Act, penalties are imposed for obstructing inspector from performing his duty, who was appointed for the purpose of carrying out the provision of the Act. Further the benefit is extended to the women worker of any registered trade union or any organisation.\(^{52}\)

**Women rights under The Factories Act, 1948:**

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49 Section 14 of the Maternity Benefit Act, 1961.  
50 Section 15(a); Maternity Benefit Act, 1961.  
51 Section 17 (1) (2) of Maternity Benefit Act, 1961, subs by the Act 61 of 1988.  
52 *Thomas Eapen v. Assistant Labour Officer*, 1993 LLR 800(Ker).
The rise of factory industry in India in large scale form latter half of the 19th century, brought with it many malpractice, like long and excessive hours of work, employment of women and children, night work, work in unhygienic condition.

Substantial secular increase in the labour force participation of women is a striking feature of the labour market in most developed economies in the twentieth century. Growth in participation began at different times and has proceeded at different rate. The concept of social security is a novel concept in the field of industrial administration; in covers various welfare measures like labour welfare, economic protection of workers, development of weaker classes the so called backward and schedule castes, scheduled tribes and the welfare of children, women and handicapped. There are many organisations working for women’s development, like the UN, Food and Agriculture Organisation (FAO), United Nation Industrial Development Organisation (UNIDO), United Nations Development Programme (UNDP), United Nations Research and Training Institute for the Advancement of Women (INSTRAW), United Nations Women’s Fund (UNIFEM), Division for the Advancement of Women (DAW) etc. There were calls for greater equity between men and women, specially related to education, employment and other materials benefits. Investment in women’s health and training would increase women’s effectiveness and efficiency at work, as well as reduce job insecurity, thus providing a healthy working condition make the worker mind fresh and full of creativity, they do a lot good for their employer.

Condition like job insecurity (loss of job) on the happening of certain events, make the worker less productive. Less benefits, long working hours, without rest and leisure are other cause for showing disinterest in performing duties with efficiency. The ILO has so far adopted the following conventions and Recommendations concerning women labour. 53 Enlarging the work facilities, benefits, choice in employment increase the productivity. These Conventions are Night work (women) Convention, 1919 (no.4), 54 lays down the principle that women shall not be employed during night in any public or private industrial undertaking. Further, there was a

54 Night work (women) Convention revised 1934, no.41) Once again the convention relating to night work was revised in 1948;
convention prohibiting the employment of woman to perform under ground work, 1935.\textsuperscript{55} Welfare Facilities Recommendation, 1956 (no.102) provides for special provisions for women to provide sitting arrangements for them while at work and rest rooms to meet their needs The Labour legislation in India was initiated by the British rulers, The Indian Factories Act, 1948 was initially based on British model. The new Factories (Amendment) Act, include in itself as many of the provision of the I.L.O. Code of Industrial Hygiene as were practicable under Indians conditions.

The technological and scientific development in the present day has not left India and its States untouched. Due to new technology employment opportunity get increased, woman’s employment in those areas automatically get increased. For the sake of convenience, the provision relating to women workers contained in labour legislations, like Factories Act, 1948, Equal Remuneration Act, 1976, Maternity Benefit Act, 1961 and in the Employees State Insurance Act, 1948 also get amended from time to time.

The main purpose of the Act was to ameliorate working conditions in the factories and to take proper steps for the safety, health and welfare of the workers, to regulate working hours and to provide effective machinery for the administration of the Act. The assumption that women are solely responsible for running home was an important reason for employer’s preference for male workers and discrimination against women in recruitment So far as women workers are concerned women work for long hours, there was no fixation of working hours of male and female worker. In the early days employers took full advantage of the prevailing conditions and the weakness of the women and therefore, women workers were subjected to long hours of work. They were paid low in spite of doing the same as their male counterpart; they were required to work in all parts of the factory i.e. loading, unloading, manufacturing, and packing and to work near running machinery. No differentiation was made in men and women work performance, not only this, they were required to use the same washroom, sometime they toil insanitary condition, and to work in unhygienic environment and were paid low. For unmarried women workers problem are less as compare to married one. Married women were terminated on the first sign of pregnancy.

\textsuperscript{55} Herein after called as Under-Ground work (women) Convention, 1935.
The pathetic conditions prevailing in the factories, excessive working hours, and household responsibilities make women life worse; it resulted into increase in drop out of women from workplace. Excessive working hours, without any safety measures like medical leave, maternity leave, and sickness benefit attracted the intention of public spirited person as such in 1875 public attention was drawn to the subject, to agitate against the inhumane attitude of the factories owners which was resulted into the appointment of Bombay Factory Commission. On the basis of Commission’s recommendation the first Indian Factories Act was passed in 1881, some improvement was made in working conditions, but it did not come up to the expectations of labour. It also failed to provide any protection to women. But nothing was done with regard to proper sanitation, even the issue of special protection of female workers during working hours was left untouched. In 1884 new factory Commission was appointed by the Government of India due to Trade Union movement. Some recommendation relating to improvement of working condition of women and children were forwarded by commission, but the same was not implemented.

In 1890, the First International Labour Conference was held at Berlin. Thereafter it was emphasized that women work in factory equal to men worker, at the time they also perform some other unaccountable duties like cooking, washing, taking care of children resulting into degradation of their health. In 1891, The Indian Factory Act was passed to regulate the working conditions of women workers. Women workers were not allowed to work before 5 a.m and after 8p.m. Women working hours were limited to 11 in one day with an hour and a half rest. From this onward step by step provision were added in the factories to improve women working condition. The Factories Act, 1911 prohibit the employment of women in certain dangerous work, like, cleaning, lubricate or adjust any part of the prime mover or of transmission machinery is in motion.

Due to first world war a new way came in the industrial development, in the meantime the I.L.O was inaugurated as part of the League of Nations under the Treaty of Versailles of 1919. Under its auspices the first International Conference was held at Washington in 1919, and

56 Labour Gazette, vol 1, , p41, September 1921-August 1922, p41.
among other things, draft conventions were adopted an hours of work, and night work of women and children.

The International Conference on Labour held in 1919 adopted six International labors Convention dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry. These Conventions were ratified by Government of India in 1921. The Convention provision was seen adopted in Indian Factories Act, 1922, further in order to make it in accordance of socio-economic changes further amendment was made to reduce the working hours and women were permitted to work only for 10 hours a day in factories. According to the Factories Act, 1934 women and children may not be employed before 6a.m and after 7 p.m but the state government extend this working hour limits from 5a.m to 7.30 p.m along with one hour of rest.

Once again Factories Act, 1934 was set for revision within which night work of women was totally prohibited keeping in view the social custom of India. In 1939 second World War (ww2) a Global war started and it came to an end in 1945. The War effected all fields of activity resulted in increased workers in Factories. After Indian Independence of India labour welfare movement acquired new dimensions. An entirely new Act to consolidate and to amend the law relating to factories was therefore passed by the Constituent Assembly on 28 August, 1948 which came into force with new hope to fulfill the expectation of labour on 1st April, 1949. The Government of India included as many of the provision of the International Labour Organisation (I.L.O). The Act extends to whole of India including the State of Jammu and Kashmir.

The Factory Act, 1948, contains various measures for efficient working i.e.

- Measures in regard to health
- Measures in regard to safety
- Measures in regard to welfare
- Measures in regard to working hours of Adults
- Measures in regards to Employment of Young Person
• Measures in regard to Annual Leave and Wages
• Measures in regard to miscellaneous matters.\textsuperscript{58}

The Factory Act, 1948 makes detailed provisions regarding health, safety and welfare of workers. Separate provisions are made for employment of young persons. Exclusive provisions have been made for employment of women in factories. The Factories Act is one among the social welfare legislation enacted to regulate working conditions in factories and to provide health safety and welfare measures. The Act also protects workers from being subjected to unduly long hours of strenuous or manual labour. It applies to all factories, the special provision for women workers are:-

(i) Prohibition of employment of women and children near cotton openers.\textsuperscript{59}

(ii) Separate latrines and urinals facilities have been provided for male and female workers.\textsuperscript{60}

The Act extended its provision to the facilities like proper ventilation, maintenance of factory in sanitary condition, employment of sweeper with the prime duty to keep latrines,  

\textsuperscript{57} Gazette of India, 7\textsuperscript{th} September, 1935, Part V.
\textsuperscript{59} Section 27; of the Factories Act, 1948, lays down that no women or children shall be employed to any part of a factory for pressing cotton in which a cotton opener is at work. But if the feed end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed end is situated.

To look after welfare of the female workers, Lady Inspector of Factories has also been appointed under the Factories Act, 1948. All Inspectors have been declared as assistant public prosecutors for purpose of Factories Act.

\textsuperscript{60} Section 19(i); Factories Act, 1948 provides that
(a) Sufficient latrines and urinals accommodation of prescribed type shall be provided conveniently situated and accessible to workers at all times while they are at the factory;
(b) Separate enclosed accommodation shall be provided for male and female workers;
urinals and work-place neat and clean.\textsuperscript{61} Respecting motherhood, in Factory Act, 1948; facilities for crèches for working mother is provided to women with new born babies.\textsuperscript{62}

The Factories Act, 1948 and Mines Act, 1952 prohibits employment of women in dangerous occupation reflect the notion of compensatory or protective discrimination, these discriminatory notion takes into account women’s physical structure, their social, economic and educational background and seeks to eliminate the existing inequalities by positive measures. The concept of equality and equally valued is that “equal must be treated equally” Unequal’s must be treated unequally, not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality.\textsuperscript{63} Women are not allowed to work near moving machine like to clean, lubricate or adjust any part of prime mover, women safety measured further expanded, they are not allowed to clean stationary part of a machine if a machine as a whole is in motion.\textsuperscript{64}

The State Government has been given wide powers to make rules for the benefit and welfare of children of working women and to provide facilities to mother in this regard. Rules

\begin{itemize}
\item \textsuperscript{61} Section 19(1) (c) ; such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any work room except through an intervening open space or ventilated passage;
\item \textsuperscript{62} Section 48 (i) ; of The Factory Act, 1948 In every factory wherein more than thirty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of women. The word crèches means public nursery where babies are looked after while their mother’s at work.
\item \textsuperscript{64} Person v. Belgium co.Ltd., (1896).
\end{itemize}
framed under The Factory Act, by several State Governments impose duties upon factories to implement the provision of Factories Act within their establishment, children should be given milk or nourishment and that working mothers should be granted additional rest intervals to enable them to feed their babies. Women welfare measures are seen in various Acts, such as The Plantations Labour Act, 1951, The Mines Act, 1952, The Beedi and Cigar Workers (Conditions of Employment and Conditions of Service,) Central Rules, 1980. If in the manufacturing process or operation carried on in a factory, any person employed in it is exposed to any risk of bodily injury, poisoning or diseases, the State Government vide Section 87(b) can make rules relating to prohibiting or restricting the employment of women, adolescents or children. Certain rights are guaranteed to workers within the factory i.e. the workers either male or female shall have the right to:

1. obtain from the occupier information relating to workers' health and safety at work,
2. get trained within the factory whenever possible, or, to get himself or herself sponsored by the occupier for getting trained at training centre or institute duly approved by the Chief Inspector, where training is imparted for worker’s health and safety at work,
3. represent to the inspector directly or through his or her representative in the matter of inadequate provision for the protection of his/ her employment, health or safety in the factory.

Factory Act and Employees State Insurance Act, 1948 are two side of the same coin one protect the employment of women near running machine with facilities for crèches while other impose duty upon the employers to insured the workers and to compensate the workers, in case of occupational hazards, women are given a paid maternity leave. Both Acts protect the women’s motherhood character at the time of birth of child and after that period. The Employees State Insurance Act, states that Every insured Women worker are required to give notice to her

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65 Section 111-A Of The Factory Act, 1948
66 Section 48(b) of The Employees State Insurance Act, 1948; states that the periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such women being certified to be eligible for such payment by an authority specified in this behalf by the regulations, is herein after specified as Maternity Benefits.
employer about her pregnancy and expected day of delivery, the maternity is also given in case of confinement, premature birth of child or miscarriage\footnote{Supra note 146}.

The Innocenti Declaration on Breastfeeding and Infant and Young Child Feeding in 1990 and 2005 declared breastfeeding is an irrevocable right of all mothers and is a fundamental component in assuring a child’s right to food, health and care. The Innocenti Declaration has successfully spurred attention and action around the world on these fronts including working women’s right to breastfeed.

The meeting co-sponsored by UNICEF, WHO, USAID, and Swedish International Development Authority (SIDA), was held in Florence, on 30\textsuperscript{th} July-1\textsuperscript{st} August 1990. The declaration, endorsed by the 45\textsuperscript{th} world health assembly, states that by the year 1995 governments should have reached the following four operational target i.e. breastfeeding, committee to monitor and supervise the proper breastfeeding opportunity given to women workers.

Due to special status conferred on the State of Jammu and Kashmir by Article 370 of the Constitution of India. Although the State of Jammu and Kashmir is a part of Indian Union but the State status is different than other States in following respects:-

(a) The State of Jammu and Kashmir has its own constitution and its administration is carried on in accordance with the provision of that Constitution.

(b) The provision of the Article 238 shall not apply to State of Jammu and Kashmir

(c) The power of Parliament to make laws for the State of Jammu and Kashmir is limited,

The Central laws on Union list’ and in Concurrent list’ are applied in State by Parliament after State Government consultation. The matters in State list are fully subject to State discretion. Slowly Central welfare measure extended and adopted in State. With the passage of time the order 1954, has been amended and several provision of Indian Constitution have been extended to the State of Jammu and Kashmir. The State of Jammu and Kashmir within the limits of its economic capacity and development make effective provision for securing;
(a) that all permanent residents, men and women equally, have the right to work, that is the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law;

(b) the health and strength of workers, men and women and the tender age of children are not abused and that permanent residents are not forced by the economic necessity to enter avocations unsuited to their sex, age or strength;

(c) that all workers, agricultural, industrial or otherwise, have reasonable, just and humane conditions of work with full enjoyment of leisure and social and cultural opportunities; these protective measures were initially covered by few State legislation before the application of Central Labour (Extension to Jammu and Kashmir) Act, 1970.

The Central Labour (Extension to Jammu and Kashmir) Act, 1970, has extended certain central labour laws to the State. “The Factories Act, 1948, Maternity Benefit Act, 1961 and Employees State Insurance Act, 1956 and Equal Remuneration Act, 1976 are amongst such legislation. At present there are various labour legislations and State provisions Labour Acts in operation in the State, many of which provide specific provision relating to women workers and some of them are exclusively devoted to women labour.\(^68\)

At present within Jammu province there are number of Industries are existing, these Industries employee both male and female workers, the labour legislation are strictly applied upon them. The State Industrial complex is bound to notify in their notification board the nature of work carried out by the Industries, rules and regulation of employment with health hazards, whether it is suitable for the women or not, if women are employed there, they are informed about the work performed by them with the protective measures in the course of any injury.

The Factories Act, Employees State Insurance Act, and Maternity Benefit Act, are passed to improve employees conditions and to make it in conformity with human rights and with the rights to dignity. All the important enactments relating to women’s welfare have been passed in

Jammu and Kashmir also. It may be observed that some of the provisions\textsuperscript{69} deals specifically with women welfare under State Constitution and various enactments\textsuperscript{70} are to some extent helpful in improvement of women status within the State.

**Penalties under Factories Act, 1948:**

As a matter of fact labour laws give special protection to women, these protection indirectly provide safety to the child within the womb of his/her mother. Within the Factory there is a labour welfare officer is appointed for carrying out the provision of the Act. Section 92 of the Act provides that save as is otherwise expressly provided in this Act and subject to the provisions of Section 93 governing liability of the owner of the premises in certain circumstances, if in, or in respect of, any factory there is any contravention of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention continue better conviction, with further fine which may extend to one thousand rupees for each day on which the contravention is so continue.

**Women rights under Equal Remuneration Act, 1975:**

Right to life is a fundamental right which is recognized in all International Instruments like Universal Declaration and both the covenant; International Covenant on Economic, Social and Cultural Rights, 1966, International Covenant on Civil and Political Rights, 1966 and Convention on the Elimination of All Forms of Discrimination Against Women, 1979. Similarly, the right is also recognised in the regional as well as in the national documents like Constitution. The right to life includes all amenities and commodities which make the right of life meaningful which can be enjoyed with the positive implication of women’s protective measures. The international concern for equality of men and women, equal means of livelihood is evident from the Article 1 of the Charter of United Nations:

\textsuperscript{69} Sections 79; and Section 11; of the Maternity Benefit Act, 1961.

\textsuperscript{70} Supra note 148.
Article 1 (3) of United Nations Charter, 1945; to achieve international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The UN Charter includes various human rights provisions; the same is seen in International Conventions. As a result, on 10 December 1948 Universal Declaration of Human Rights was adopted by the UN General Assembly. The Declaration was established as a “common standard of achievement for people and all nations.” The UDHR sets out various human rights which the United Nations member States are required to respect and secure.

Though the UDHR provides for member States to respect and rights and freedom and by progressive measures, national and international, to secure their universal and effective recognition and observance, it was not intended to be legally binding and, therefore, it did not impose any legal obligation on the states to give effect to its provisions. However, it has been adopted by number of States within their Constitution as a fundamental source to protect and to promote human rights and fundamental freedoms. The UDHR while including various rights one among such rights was the right to work, free choice of employment and the right to equal pay for equal work. Then there begin the period of women equal employment opportunity and same remuneration for work of similar nature.

It has set the direction for all the subsequent Convention in the field of human rights. Later on, the International Covenants on Economic, Social and Cultural rights, 1966 include fair wages and equal remuneration for work of equal value without distinction of any kind. In

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72 Universal Declaration of Human Rights, 1948 (UDHR).
73 Hereinafter called as United Nations General Assembly (UNGA).
74 Article 23; UDHR (i) everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against employment. (ii) Everyone, without discrimination, has the right to equal pay for equal work. (iii) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
75 Article 7; (A(i)) of ICESCR, 1966.
particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. The UDHR and ICESCR together are helpful in recognising the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in The Equal Remuneration of men and women Convention set by International Labour Organisation, 

Constitution of India has shown profound concern for woman equality and has given them a pride of place in new socio-economic order as envisage in the preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of the peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all the institution of national life and there will be equality of status and opportunity for all and the endeavour shall be made to improve weaker section, including women.

The International Labour Organisation is one of twelve Specialised Agencies brought into relationship with the United Nations, as a governing body I.L.O has identified four rights as being fundamental to the rights of human beings at work, irrespective of the level of development of individual member States. Equal pay for equal work for women is the subject of great concern to society in general and for the employees in particular. Even after independence the belief that women are physically weak and should be paid less than their male counterparts for the same piece of work continued. The equality in wages was initially found in the Article 39(d) of the Constitution, as a part of Directive Principles of state policy, the principle of equal pay for equal work for both men and women was not strictly enforced.

Equality of remuneration has been proved a difficult target to achieve, the fight for equal pay started many years ago by International Labour Organisation Convention of Equal Remuneration for men and women 1951, became the source of Equal Remuneration Act, 1976.

Among all the rights, the women right to equality and equal wages is one which was attracted the intention of I.L.O to such extent a special convention was adopted by the organization. Women’s economic dependence is the root cause of her subordination was
mentioned by various studies, this cause of women subordination was try to be removed by I.L.O in its convention, and wage differentiation affects almost every women in every country.

Later, on the I.L.O adopted a Convention i.e. The Equal Remuneration Convention, 1951.\(^76\) The Convention recognized the equality as between sex’s in the matter of wages and salaries measures of the International Labour Organization’s for equal remuneration influenced various national Constitutions. Indian Constitution can quote such example in Part IV of the Constitution dealing with the Directive Principles of State Policy in the Article 39(d), in which it ensure that there should be equal pay for equal work for both men and women.

To give effect to this Constitution provision and to the Equal Remuneration Convention, 1951 of the I.L.O, the government of India, on 26\(^{th}\) September, 1975, in the International Women’s year promulgated the Equal Remuneration Ordinance 1975 The Ordinance was replaced by Equal Remuneration Act, 1976 which received the assent of the President of India on 11\(^{th}\) February, 1976. The Act, extend to whole of India including the State of Jammu and Kashmir; the aim of the Act is to remove the wage differentiation between male and female worker It is a gender sensitive legislation with a view to implement the Constitutional guarantee of Equality.\(^77\)

The question of equal work depends on various factors like responsibility, skill, effort and condition of work. The persons who fulfilled all these conditions are required under the Act, to be treated equally and paid equally. A clear cut provision is incorporated in the Act, of 1976 that the equality of work may vary from institution to institution. The expression “same work or work of similar nature “lay stress upon the similarity in all respect.

Section 4, of the impugned Act imposes duty on the employer to pay equal remuneration to men and women workers for same work or work of a similar nature\(^78\) With a view to further

\(^{76}\) The convention fully named as Equal Remuneration For Men And Women Workers For Work Of equal Value,1951.

\(^{77}\) Article 14; of the Constitution of India i.e. the State shall not deny to any person equality before the law o the equal protection of the laws within the territory of India.

\(^{78}\) Section 4; Equal Remuneration Act, 1976 states, “(i) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rate less favorable than
strengthen this principle, the Act further says that the employer, shall not reduce the salary of any employee for the purpose of complying with the provision of equal remuneration it has been further emphasised that where in an establishment or employment, the rate of remuneration payable before the commencement of the Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement to such men and women workers;79

The Act has been applied to all establishment/ employments but is subject to the notifications by the Government. Under this Act, no employer Governmental or Non-Governmental can pay to any worker, employed by him in an establishment or employment remuneration, whether payable in cash or kind, at rates less favorable than those at which remuneration is paid by him to the workers of the other sex in such establishment or employment performing the same work or work of a similar nature.

Furthermore the Act imposes duty on the employer, not to discriminate between men and women while making recruitment,80 The Jammu and Kashmir Constitution also guaranteed women the right to equality in all matters-economic, political, social justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity. The Constitutional guarantee of equality was helpful for reservation of seats for women in the representative’s bodies, free education upto upper level, fifty percent reservation in professional courses. Women employment in organised and unorganised sector is secured by adaptation of welfare measure.

For the purpose of administration, the state has been divided into two divisions; Jammu and Kashmir. Divisional commissioner heads each division. Employment opportunity for women in the state i.e. total female workers which include main workers, and marginal workers (cultivators, agricultural labourers, worker in household, industry and other workers)are just those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature”.

79 Section 4(3); The Equal remuneration Act, 1976
80 Ins. by Act 49 of 1987, Section.2; (w.e.f 16-12-1987)
18.6% of the working population in Jammu District. According to 2001 Census, in the non-workers categories female have 60.3% share. Most of the women of the state are dependent and performing household duties of cooking, washing and taking care of other family members.

The State Government of Jammu and Kashmir incorporated these provisions in its State Constitution. Part IV of the Jammu and Kashmir Constitution lays that the State shall endeavour to secure to all women, right to equal pay for equal work. The I.L.O Convention also formed the basis for the service scheme at the time of employment of men and women in any public service. The recruitment policy of Jammu and Kashmir State is based upon entrance/ written test and interview of the candidates applied for the post. At the time of appointment sex is not a criterion for selection of candidate for different post. Woman like man apply for the post notified in the news, according to the education qualification and other requirement mentioned in the advertised post. The notification for employment does not mention that the women who are applying for the advertised post will be paid less for the same job. Neither the mentioning of such requirement had been seen there nor has any such practice been adopted by the Government of State. It has already mentioned in the advertisement whether the post is of State cadre or of District cadre. From this type of declaration it has been clearly mentioned that the women applying for State cadre make up their mind before appointment, that they can be appointed at any area of the State. Family and family responsibilities are not taken as a cause for their appointment near home.

The District level appointment made by Government mentions in advance that employed women will work in any corner of District. The District level appointment also include to work in far flung area, because the Jammu State have some villages where transport facilities are not yet, improved. A district is comprised of many villages, in every district the State government opened education and health centre to provide facilities to the permanent residence. So far as remuneration of woman for public duties is concerned they are not given less wages for the work of similar nature performed by their male counterpart.

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81 The Constitution of Jammu and Kashmir, Section 22 (a); The State shall endeavour to secure to all women, the right to equal pay for equal work.
The Jammu and Kashmir State policy of recruitment uphold the constitutional provision of equality, that male and female were equal and they were entitled to enjoy wage for work of similar nature equally, among other things the Act, is enforced upon all (public and private) establishment within the State territory without distinction on the basis of sex. The application of Equal Remuneration Act, 1976 was evaluated by the researcher through interview schedule and also by analysing State recruitment policies. All the new appointee male and female are getting same salary for the same performance, their salary (basic) and other allowances are also same, they get higher when they gain experience by their work, if they are senior they are equally paid according to seniority, without any discrimination on the basis of sex. In private sector women of the State are working in private education institution, health clinic, automobiles factory, private banks etc, they are getting same salary for their performance as their male counterpart.

Therefore, the women belonging to various occupational groups worked with men, both within and outside their homes, for earning a livelihood, but they were caught in a paradoxical situation wherein they were economically active, yet suffered social disabilities. Due to the non spread of information regarding their rights at workplace, and also due to their busy schedule, make it difficult for them to aware themselves about their rights. Like elsewhere, women in Jammu and Kashmir are less in employment, with more responsibilities of family, looking after the children and parents. It has been realised that women support a large part of the State economy by free services’ in the home and community.

The Act, declared void all those agreement between the employer and women worker, where women agree to accept less wages for work, if for the same work male worker are paid more. Women are entitled to special protection under various Acts, the same is respected and protected by Equal Remuneration Act, 1976. The Act was amended in 1987, amendment made it

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82 Section 15; Nothing in this Act, shall apply
(a) to cases affecting the terms and conditions of a woman’s employment in complying with the requirements of any law giving special treatment to women, or
(b) to any special treatment accorded to women in connection with:
(i) the birth, expected birth of a child, or
(ii) the terms and conditions relating to retirement, marriage or death or to any provisions made in connection with the retirement, marriage or death.
mandatory for the employer to pay equal wages to men and women workers and prohibit discrimination of women on the ground of sex in matter of recruitment, training, promotion and transfer. The amended Act also provides for stricter punishment for the violation of statutory provisions.

**Penalties under Equal Remuneration Act, 1976:**

The employer who have acted in contravention of the provision of the Act, the Government may, by notification, appoint such persons as it may think fit to the Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made there under, are being complied with by employers, and may define the local limits within which an inspector may make such investigation. if any employer violate the rights of any worker, make any employment against the statute shall be punished with fine, which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall not less than three months but which may extend to one year of with both for the first offence, and with imprisonment which may extend to two years for second and subsequent offences.

Under Section 6 of the Act, the appropriate Government is empowered to constitute one or more Advisory Committees to advise it for providing increasing employment opportunities for women and to advise it with regard to the extent to which the women may be employed in such establishment or employments as the central Government may, by notification specify in this behalf. The advisory committee is to consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women and shall tender advice, having

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83 Section 10. (2); Equal Remuneration Act, 1976If, after the commencement of this Act, any employer-

a. makes any recruitment in contravention of the provisions of this Act, or

b. makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or

c. makes any discrimination between men and women workers in contravention of the provisions of this Act, or

d. Omits or fails to carry out any direction made by the appropriate Government under sub-section(5) of Section 6.
regard to the number of women employed in the concerned establishment or employment, nature of work, hour of work, suitability of women for employment, the need for providing increasing employment opportunities for women, including part-time employment. The Advisory Committee can regulate its own procedure.

The appropriate Government may after taking into consideration advice of the Advisory Committee and furnishing an opportunity to make representation to the concerned persons in the establishment or employment, issue directions in respect of employment of the women workers as it might be expedient. Section 6 clearly lays down that a vast power has been conferred on the Advisory Committee in order to promote equality between men and women.\(^{84}\) For hearing and deciding claims and complaint a complaint authority is appointed by the appropriate government. These complaint officer should not be below the rank of labour officer. The Complaint Officer has the power to hear and decide-

a. complaint with regard to the contravention of any provision of this Act,

b. claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature,

The Complaint Officer will also decide the question as to whether two or more works are of the same nature or of similar nature. The Complaint Officer will decide all matters after giving the parties opportunity of being heard. After holding due inquiry and giving opportunity of being heard to all parties, the Complaint Officer has power to direct:-

(i) in the case of a claim arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;

(ii) in the case of complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

\(^{84}\) Section 6(1) (2) (3) (4)(5) of Equal Remuneration Act, 1976.
The Complaint Officer shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purposes of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.85

Beside the Advisory Committee and Complaint Officer, the inspector is appointed by the Government to enter, at any reasonable time, with such assistance as he think fit, any building, factory, premises or vessel; for the purpose of examining document, muster-roll, take on spot or otherwise evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;86

Section 10 imposes a penalties in the form of imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both in case of employer omits or fail to maintain any register or other document in relation to workers employed by him, or omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or omits or refuse to give any evidence or prevents his agents, servants or any other person in charge of the establishment, or any worker, from giving evidence, or omits or refuse to give any information.87

Section 10 (1) If after the commencement of this Act, any employer, being required by or under the Act, so to do-

a. Omits or fail to maintain any register or other document in relation to workers employed by him, or

b. Omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

c. Omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

85 Section 7(1) (2) (3) (4) (5) of Equal Remuneration Act, 1976.
86 Section 9 {3 (a) (b) (c) } The Equal Remuneration Act, 1976.
d. Omits or refuses to give any information,

he shall be punishable\(^{88}\) with simple imprisonment for a term which may extend to month or with fine which may extend to ten thousand rupees or with both. he shall be punishable with fine which shall be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall not be less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second offence. Likewise, if any person being required so to do, omits or refuses to produce to an inspector any register or other document or to give any information, he shall be punishable with fine which may extend to five hundred rupees\(^{89}\). Similar action can be taken against any company committed similar offences as committed by employer\(^{90}\).

Other measure are taken by the Central Government under the Act is modification or the annulment of the act, without prejudice to the validity of anything previously done under that rule. Central Government gives direction to the State Government for execution of this Act. The Equal Remuneration Act is one among the social welfare legislation that helps in economic empowerment of women.

**Protection of women from sexual harassment at work place (legislative measures):**

Constitution of India an important document completely prohibits the discrimination and women subordination in its preamble, fundamental rights and in Directive Principle of state policy. The Supreme Court has upheld gender equality and right to work with human dignity as enshrined in Constitutional provision and the safeguards against gender equality.\(^{91}\) The concept of sexual harassment of women at workplace gain moment when a class action was brought by some social activist in brutal gang rape of social worker in a village of Rajasthan. In the Bhanwari Devi’s rape case difficulties became more when the victim of gang rape was segregated by society, the police and doctors all refused to provide her any sort of help, decision

\(^{87}\) Section 10 {1 (a) (b) (c) (d)} The Equal Remuneration Act, 1976.

\(^{88}\) Subs. By Act 49 of 1987, Sec3, for “with fine which may extend to one thousand rupees”.

\(^{89}\) Id., Section 10(3).

\(^{90}\) Id , Section 11.

of the trial Court acquitting the accused; all combined to make her life more miserable. An attempt by social activist to find the reliable solution of such problem and assisting in finding suitable methods for realization of the true concept of gender equality; and to prevent sexual harassment of working women in all workplaces through judicial process and to fill the vacuum in existing legislation was a great reform. Taking the help of Constitutional provision the Solicitor General and the counsel appearing for Union of India render needed assistance to the court to deal with the matter.

**Legal framework dealing with Sexual Harassment before the Vishaka’s case are:-**

Indian Penal Code 1860 does contain certain provisions that prescribe punishment for the offence of assault or use of force on women with the intent to outrage her modesty as well as for words, gestures or acts intended to insult the modesty of women. However, such antiquated terms of ‘outraging the modesty’ bring in mind ‘Good and Bad’ women and it cover only a limited aspect of sexual harassment as an offence.

**Meaning of sexual Harassment:**

After taking note of the fact that there was no specific law protecting women from sexual harassment at the place of work, Apex Court, relying on International Conventions and norms, particularly General Recommendation No. 19 (Jan. 1992) of the Committee on the Elimination of Discrimination Against Women (CEDAW) constituted by the United Nations, defined term

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92 Section 35; “Assault or criminal force to woman with intent to outrage her modesty” “Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine:

Section 509; Word, gesture or act intended to insult the modesty of a woman .Whoever, intended to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.

‘sexual harassment’ for the first time in the year 1997 in *Vishaka’s case*\(^{94}\). The definition is almost pari material with the one proposed by the CEDAW, United Nations and reads as:

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances.
b) a demand or request for sexual favours.
c) sexually coloured remarks.
d) showing pornography.
e) any other unwelcome physical, verbal and non-verbal conduct of sexual nature.

Such conduct can be humiliating and constitute a health and safety problem, it is discriminatory when the women has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion or when it creates a hostile working environment.\(^{95}\) The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.

In view of the above, and in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at the workplace, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose.

The Supreme Court took a serious note of increasing incidence of sexual harassment at workplace and emphasised that the employees in work places as well as other responsible persons or institutions must observe such guidelines to ensure the prevention of sexual harassment of woman. This is done by the Supreme Court in exercise of the power available under Article 32 for the enforcement of the Fundamental Right and it was further emphasised


that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.

**Certain guidelines laid down by the Court are as follows**

A duty was imposed upon the employer and any other responsible person to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all appropriate steps. The Supreme Court’s guidelines concerning prevention of Sexual harassment imposed a duty on the employer to notified, published and circulate among employee that the act of such nature are not tolerated within the establishment, person shall be prosecuted and punished if his act covered under penal law, service rules or any other employment rules in private establishment. A duty imposed on employer to develop the mechanism of complaint committee to redress the acts covered under sexual harassment and the employee should be allowed to raise issue of sexual harassment in employer-employee meeting. The Apex judiciary has played a creative role in this regard and has upheld the basic principle of equality of sexes and tried to maintain the dignity and honour of women.96 It has been projected in a number of landmark judgments.

The Supreme Court of India in the celebrated verdict of *Rupeon Deol Bajaj v. Kanwar Pal Singh*,97 laid down that the ingredient of intention or knowledge for convicting the accused is not essential. M.K.Mukherjee, J reminded that ‘those ingredients being states of mind may not be proved by the direct evidence and may have to be inferred from the attending circumstances of a given case’. This case being only at the incipient stage, the Court had to ascertain, only prima facie, whether the accused by slapping the complainant on her posterior, in the background, intended to outrage or knew that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC from the sequence of events detailed earlier, the Supreme Court concluded that the slapping was the finale to the earlier overtures of the accused, which considered together, showed that he had committed the offence, even though he defended that he had no such intention. Yet in another case the Court had held that when any act done to or

in the presence of a woman is clearly suggestive of sex according to the notions of mankind that must fall within the definition of Section 354 IPC.98

The obligation of the Supreme Court under Article 32 of the Constitution for the enforcement of fundamental rights in the absence of specific legislation on the subject must be viewed along with the role envisaged to the judiciary in the LAWASIA region lay down minimum standard necessary to be observed in order to maintain the independence and effective functioning of the judiciary. Beijing statement mentioned some of the following objectives of the judiciary:

a) to ensure that all persons are able to live securely under the rule of law;

b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

c) to administer the law impartially among persons and between persons and the State

In a case involving charge of sexual harassment or attempt to sexually molest, the Court’s are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning of expression ‘molestation’. In 2004 the National Commission for Women (NCW) submitted a draft of the sexual harassment at the workplace (Prevention and Redressal) Bill, 2004 to the Human Right Development Ministry (HRDM), for consideration. The same could not be passed due to some discrepancies.99

Thereafter, Lok Sabha passed “The Protection of Women against Sexual Harassment at Work Place Bill, 2010” which defines the term sexual harassment at the work place and creates a mechanism for redressal of complaints. It provides to adopt such measures at work places and other institutions to prevent or deter the commission of acts of sexual harassment and to provide procedures for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. The Bill defines term work place to include all organisations, any place visited by an employee during course of work. It covers every woman at work place (whether employed or

99 Government proposed various Bills on Sexual Harassment from year 2000 onwards namely. Sexual harassment of women at their work place (Prevention) Bill 2000.
not) except a domestic workers at home. It defines employer as the person responsible for the management, supervision and control of the work place.

Recently the government of India passed law on prevention of Sexual Harassment i.e., The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“herein after Sexual Harassment Act”) that has been made effective on April 23, 2013. The Act extends to whole India including the State of Jammu and Kashmir. An Act provides protection against sexual harassment of women at work place and for the prevention and redressal of complaint of sexual harassment and for matters connected therewith or incidental thereto. The Act have come into existence sixteen years after the Supreme Court verdict in Vishaka’s case.

Before, the Act came into existence the Supreme Court’s guidelines operate as mandatory for every employer to provide a mechanism to redress grievance pertaining to sexual harassment at workplace and enforce the right to gender equality of working women. The Act, applied on government bodies, private and public sector organisations, non government organisation, organisations carrying on commercial, vocational, educational, industrial, financial and sports activities. It includes the place visited by employees during the course of employment or for reason arising out of employment- including transportation provided by the employer for the purpose of commuting to and from the place of employment.\(^{100}\)

\(^{100}\) Section 2(o); Sexual Harassment Act, 2013”.Workplace” includes:-

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or co-operative society;

(ii) any private sector, organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing home;

(iv) any sports institute, stadium, sport complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;
Sexual Harassment Act, 2013 has widened the meaning of establishment, women employee and provision relating to penalty. An adequate mechanism was laid for the enforcement of these rights.

**Penalties under Sexual Harassment Act, 2013:**

Presently, under the Sexual Harassment Act, proper mechanism, like, internal complaints committee is constituted for the implementation of Sexual harassment at work place. Similarly there is a committee called Local Complaints Committee, which must necessarily have an external member with appropriate skills and requisite number of women members. Several remedies are provided under the Act, 2013. Disciplinary action, withholding of promotions any increase, awarding of compensation is expressly permitted. After inquiry, if it appear to the Internal Committee or the Local Committee that the offence of sexual harassment has been

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(p) “unorganised sector” in relation to a work place means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

101 Section 4(i); Every employer of a work place shall, by an order in writing, constitute a committee to be known as the “Internal Complaints Committee”;
Provided that where the offices or the administrative units of the work place are located at the different places or divisional or sub-divisional level, the internal committee shall be constituted at all administrative units or offices.

(ii) The Internal Committee shall consist of the following members to be nominated by the employer, namely;

a. a Presiding Officer who shall be a women employed at a senior level at work place from amongst the employees;
   
   ′ provided that in case a senior level women employee is not available, the Presiding Officer shall be nominated from other offices and other administrative units of the work place referred to in sub- section(i);
   
   ′ Provided further that in case of other offices or administrative units of the work place do not have a senior level of women employee, the Presiding Officer shall be nominated from any other work place of the same employer or other department or organisation;

b. not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

c. one member from amongst non–governmental organisation or association committed to the cause of women or a person familiar with the issues relating to sexual harassment; Provided that at least one – half of the total Members so nominated shall be women
committee, the committee recommend to the employer to take appropriate action against the harasser, i.e., to take action under the service rules\textsuperscript{103}, to deduct from the salary, to recover the sum as an arrear of land revenue\textsuperscript{104}. The Act allows settlement of the complaint through conciliation\textsuperscript{105} facilitated by the complaint committee. It also imposes a punishment of fine up to INR 50,000 for non-compliance with the law. For any subsequent conviction, the employer may have to pay double the fine amount and also be liable for cancellation of business licence.

Section 26(1) lays that where an employer fails to-

\begin{enumerate}
\item constitute an Internal Committee under sub-section(1) of section 4;
\item take action under Sections 13, 14 and 22; and
\item contravenes or attempts to contravene or abets contravention of other provisions of this Act or rules made there under’
\end{enumerate}

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-

\begin{enumerate}[label=(i)]
\item twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence; provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;
\end{enumerate}

\textsuperscript{102} Section 5: Sexual Harassment Act, 2013; The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge function under this Act.

\textsuperscript{103} Section 13(3) (i); to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondents or where no such service rule have been made as may be prescribed;

\textsuperscript{104} Section (3) (ii); to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15;

\textsuperscript{105} Section 10(1); The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman takes steps to settle the matter between her and the respondent through conciliation;
cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the government or local authority required for carrying on his business or activity.

**Conclusion:**

From the above discussion it is clear the laws are made for safeguarding the rights of the working women in different ways. These protections are important for economic empowerment of women and also for securing the womanhood. Legislation gives enough protection to women both in domestic and public front. Moreover much is depends upon the women awareness about the rights. Lack of awareness about the rights is to some extent responsible for the forfeiture of these beneficial legislations. Therefore, the need of the time is consciousness on the part of women and claiming the rights fearlessly.

It emerges from the foregoing discussion that women in the world enjoying considerable rights at workplace, throughout the world, as the United Nations has prescribed “common minimum standard” to be adopted by member’s countries for eradicating gender discrimination. Due to the rights set forth in human rights treaties, covenants, declaration and women specify international convention which addresses many rights are necessary to women protection at domestic and at public sphere as a right to life with dignity; right to be treated equally, rights against violence, the right to wok and , to free choice of employment, including right to equal pay for equal work, right to rest and leisure, special care of the motherhood are the list of achievement of the UN in the field of women’s rights since 1945.

International Labour Organisation 1919, is the first body to lay down international standard of labours CEDAW, The convention of Equal remuneration for men and women, 1951, Maternity benefit convention which is lay down by ILO, for the achievement of International Standard of Labour for improvement of working condition of labour and also for women empowerment in particular are comprehensive treaty for the economic empowerment of women and for their social welfare Pursuant to International standard of human rights in UDHR, the Equal remuneration Convention, 1951 in Article 1, define the term “equal remuneration” for men and women workers for equal value, refers to the rate of remuneration established without discrimination based on sex. Global framework on Maternity protection, ILO convention on
maternity protection, convention on the elimination of all form of discrimination against women (CEDAW), 1979, Human Rights Treaties on Maternity Protection, Article 25(2) of UDHR, Article 18(2) Convention on the Right of Child, 1989 (CRC), make the states parties to the present convention, implementation of the international convention.

It is worthwhile to mention here that, India is a participant in various international commitments, made every effort to confer such rights on women in India. Constitutional various articles, women specific legislation required from the states to make ensure that such protective measures are properly implement within their States with necessary action against violators. Now it is time when woman’s work in every sphere, a social welfare, approach to protect woman within their economic sphere by applying working legislation, protecting their motherhood by conferring maternity leave, facilities for child care i.e. crèches, an approach to recognised their right to property within the domestic sphere are the important for economic empowerment of women and for their social security.