Women, which constitute half of the population belong to the weaker section of the society. They need equal treatment and special protection under the Law. The constitution of India guarantees equality before law and prohibits any discrimination on the basis of sex. It also empowers the state to make special provisions in favour of women. Different legislations including labour legislation have been passed from time to time both during pre-constitution and post-constitution period, which provides special protection to women in general and women workers in particular. This special treatment to women workers is due to the special and psychological reasons, such as their physical build up, poor health due to repeated pregnancies, home drudgery and due to the nature of occupation in which they are engaged. The National Commission on Labour has also justified the protective discriminatory legislations in favour of women labour by recommending that all such legislations are necessary for women workers:
A number of reasons have been advanced for providing protection to women workers. Some of them are as follows:

a) To recognize woman as woman - a tender sex and not as a commodity for production;

b) To enable them to enjoy equally as men of the same status, a fuller and richer life;

c) To increase their efficiency;

d) To develop a sense of responsibility among them so that they may become self-conscious and may recognize their rights and duties and thus, become equal participants with men in useful services;

e) To ensure their rights of being women, that is ante-natal or pre-natal care, maternity aid and infant welfare; and

f) To provide equal pay for equal work.

Keeping in view these objectives, the Central Government adopted certain measures relating to women workers. Early measures for their protection were simple in Character and were designed only to regulate the hours of work and employment. The establishment of the International Labour Organisation in 1919 influenced considerably the activities of the State in the field. Consequently such laws were passed which not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before law and equal treatment to women workers. Most of these laws have been inspired by the Conventions and Recommendations adopted by the International Labour Organisation. The ILO has so far adopted the following Conventions and Recommendations concerning women labour:
Discrimination (Employment and Occupation) Convention, 1958 (No.111) lays down the principle of non-discrimination in employment and occupation, on the ground among others of sex and calls expressly for the declaration of national policy of non-discrimination.

Equal Remuneration Convention, 1951 (No.100), requires the application of the principle of equal remuneration for work of equal value regardless of sex.

Maternity Protection Convention, 1919 (No.3) and Maternity Protection Convention, (Revised, 1952) No. 103 provided for maternity leave, cash benefits during maternity period, medical care, absolute prohibition of dismissal during maternity leave or extension thereof.

Night work (Women) Convention, 1919 (No.4) Night Work (Women Convention (Revised 1934, No.41) and the Night Work (Women) Convention (Revised 1948, No.89) lays down the principle that women shall not be employed during the night in any public or private industrial undertaking.

Underground work (Women) Convention, 1935 (No.45) lays down that no female whatever her age, shall be employed on underground work at any time.

White lead (Poisoning) Convention, 1921 (No.13) and Benzene Convention, 1971 (No.136) ensures protection against lead poisoning, benzene poisoning, respectively.
Maximum Weight Convention, 1967 (No.127) provides that the maximum weight for the load to be carried by women workers shall be substantially less than that permitted for male workers.

Welfare Facilities Recommendation, 1956 (No.102) provides for special provisions for women for providing sitting arrangements for them while at work and for rest rooms to meet their needs.

Employment (Women with Family Responsibilities) Recommendation, 1965 (No.123) urges governments, among other things to encourage, facilities or undertake the development of services to enable women to fulfill their various responsibilities at home and at work simultaneously.

Besides, measures adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. These labour welfare legislations are of two kinds. The first category contains those statutory enactments which are exclusively for women workers e.g., the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976. In the second category are included those labour statutes which provide measures for the workers at large but contain special provisions for the welfare of women workers. The statutes included in the second category are -(1) The Factories Act, 1948; (2) The Employees State Insurance Act, 1948; (3) The Plantation Labour Act, 1951; (4)

For the sake of convenience, the provisions relating to women workers contained in the above labour legislations can broadly be divided into the following heads viz. (a) Prohibition of night work; (b) Prohibition of work in hazardous occupations; (c) Hours of work; (d) Maximum permissible load; (e) Creches; (f) Washing and bathing facilities; (g) Latrine and urinal facilities; (h) Rest rooms and canteens; (i) Maternity benefits; (j) Equal pay for equal work; (k) other measures.

a) **Prohibition of Night Work:**

The Factories Act, 1948, the plantations labour Act, 1951, the Mines Act, 1952 and the Beedi and Cigar workers Act, 1966 prohibit the employment of women during night hours. It is under special circumstances and in certain industries that this restriction may be relaxed.

According to Section 66(1)(b) of the Factories Act, 1948 no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m. However, the State Government may be notification in the official gazette, in respect of any factory or group or class or description of factories, vary the limits pertaining to night
duties but no such variation shall authorise the employment of any woman between the hours of 10 p.m. and 5 a.m.\textsuperscript{5} Section 66(2) further empowers the State Government to make rules providing for exemption from the restrictions set out in sub-section (1) of Section 66 concerning restrictions on employment of Women to such an extent and subject to such conditions as it may prescribe, of women working in fish curing or fish canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in any raw material. However, such rules made by the Government shall remain in force for not more than three years at a time\textsuperscript{6}.

According to Section 24 of the Factories Act, 1911, the employment of women in a factory was prohibited during night time i.e. before 5\% a.m. and after 7 p.m. However, the owner of the ginning factory was allowed to employ women for night hours provided he gets an opinion from Inspector of Factories that the staff of the women is sufficient\textsuperscript{7}. Accordingly it was held in a case \textit{J.N.Cocals v. Emperor}\textsuperscript{8} that the owner of a factory can employ women for night work if the inspector deems it fit. However, such type of power is not given to the inspector under the Factories Act of 1948 and the employment of women during night is strictly prohibited under this Act.

In a foreign case \textit{Paterson v. Duke}\textsuperscript{9}, some women workers in a textile factory chose to dust of their own accord and to regulate the spinning wheels for their own satisfaction and comfort, sometime before the starting of the work hour,
although arrangements for such had been made by the occupiers of the factory. The question was whether women workers have worked outside the statutory working period. The Court held that it cannot be said that the women had been employed before the statutory hour. But in an Indian case State of M.P. v. Jiwa Bhan\(^1\), Nagpur High Court gave a contrary view. In this case three ladies (one daughter and two wives) of Factory workers brought food to them after 7 p.m. when the workers were taking food, ladies were asked to place 'dhan' in the mill in place of their male relatives. The Court observed that the word 'Employed' does not only connote employed on wages but also being occupied or engaged in some form of activity. The respondents were held liable for contravention of Section 66(1)(b).

It is submitted that the Court in order to protect the interests of women gave a liberal interpretation to the word employed. The Court also reiterated that women should not be permitted to work during night hours at any cost.

The Plantations Labour Act, 1951 also contains provisions for prohibition of employment of women during night. Section 25 of the Act provides that except with the permission of the State Government no woman worker shall be employed in any plantation otherwise than between the hours of 6 a.m. and 7 p.m. However, this prohibition does not apply to midwives and nurses employed as such in any plantation\(^1\).
In the same way the Mines Act, 1952 prohibits employment of women during night hours. According to Section 46(1)(b) of this Act no women shall, notwithstanding anything contained in any other law be employed in any mine above ground except between the hours 6 a.m. and 7 p.m. Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. However, notwithstanding anything contained in sub-section(1), the Central Government may, by notification in the official Gazette, vary the hours of employment above ground of mine or class or description of mines, so that no employment of any women workmen between the hours of 10 p.m. and 5 a.m. is permitted thereby. Section 25 of the Beedi and Cigar workers (Conditions of Employment) Act, 1966 also prohibits employment of women in any industrial premises except between 6 a.m. and 7 p.m.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules 1980 also apply in the area to which the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 applies. Rule 11 of the Inter-State Migrant Workmen (regulation of Employment and conditions of Service) Central Rules, 1980 provides that no female migrant worker shall be employed by any contractor before 6 a.m. or after 7 p.m. But this shall not apply to the employment of female migrant workmen in Pit head Baths, Creches and Canteens and Midwives and
b) **Prohibition of Work in Hazardous Occupations:**

The Factories Act, 1948 and the Mines Act, 1952 prohibits employment of women in dangerous occupations. Section 22(2) of the Factories Act, 1948 provides that no woman shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman to risk of injury from any moving part either of that machine or of any adjacent machinery.

In an English case *Pearson v. Belgium Co. Ltd.*, the question was whether stationary parts of a machine can be cleaned by woman if the machine as a whole is in motion. It was held by the Court that if the machinery as a whole is in motion even stationary parts of the machine cannot be cleaned by woman. But in *Richard Thomas and Baldwins Ltd. v. Cummings*, the Court observed that there would be no breach of statutory duty if an injury occurs while the machinery is unfenced, if the power is cut off and the machinery is under repairs and the parts are not in motion but are moved by hand for purposes of repairs.

The Factories Act also prohibits the employment of women in pressing Cotton where a cotton opener is at work.
There is a proviso which provides that if the feed end of a cotton opener is in a room separated from the delivery end by a partition to the roof or to such height as the inspector may in any particular case specify in writing, women may be employed on the side of the partition where the feed end is situated. In *B.N.Gamadia v. Emperor*, the Bombay High Court observed that the provisions of the Section are not complied with if there is a door made in a partition between the two portions of the room and if it can be opened by a woman employed although the door is shut, yet it is not locked nor other effective means are taken to prevent its being opened by a woman. This shows that both legislative and judiciary have shown concern about the security of women workers and every precaution is being taken to protect them against the risks of employment.

Again, Section 87 of the Factories Act, 1948 empowers the State Government to prohibit employment of women in dangerous operations. According to this section where the State Government is of the opinion that any manufacturing process or operation carried on in any factory exposes any person(s) employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on specifying the manufacturing process, or operation and declaring it to be dangerous and prohibiting or restricting the employment of women in the manufacturing process or operation.
The Mines Act, 1952 also prohibits employment of women in any part of a mine which is below ground. Section 57(j) of the Mines Act, 1952 empowers the Central Government to make regulations for prohibiting, restricting or regulating the employment of women in mines or in any class of mines or on particular kinds of labour which are attended by danger to the life, safety or health of such persons. Also, the Indian Merchant Shipping Act puts a ban on recruitment of women, except as nurses, to take employment on board sea-going ships.

c) **Hours of Work:**

Under the Factories Act, 1948, the daily hours of work of adult workers have been fixed at 9. Though the Act permits men under certain circumstances to work for more than 9 hours on any day, it does not permit women to work beyond this limit. Also in case of women workers there shall be no change of shifts except after a weekly holiday or any other holiday.

The maximum permissible hours of work for men and women are 48 per week in factories and mines and 45 in plantations. The daily spread over of working hours has been limited to 10 1/2 hours in factories and 12 hours for surface work in mines. The Act provides that no adult worker whether man or woman, employed in factories, mines and plantations shall be allowed to work for more than 5 hours at a stretch without a rest pause of at least half an hour.
The Mines Act, 1952 also prescribes that the daily hours of work of adult workers should not exceed 9 hours above ground. No limit of daily hours of work is prescribed under the plantation Labour Act, 1951 except that the spread over should not be for more than 12 hours.

In rice milling, vegetable oil and cement industries the average daily number of hours worked by women are less than 8 hours while in eight other industries a variation from 8 to 9 hours is shown in Table 4.1.

Table 4.2 Shows the average weekly number of hours worked by men and women in various mines:

On the plantations, women generally work for 7 hours in the North and 8 hours in the South. In Assam and West Bengal, women generally work for large hours than men on plantations. While men who are employed mainly in cultivation finish their allotted task in about 4-5 hours, women who work on plucking leaf on piece rates of wages have to work for 7-8 hours a day. In South men and women both work the same hours, namely 8 hours a day.

d) **Maximum Permissible Load:**

To safeguard women against the dangers arising out of lifting of heavy weights both the Factories Act and Mines Act authorise the appropriate Governments to fix the maximum load that may be lifted by women. Rules framed by all the State Governments (Except U.P) have fixed the following maximum weights for women employed in factories:
### TABLE -4.1:

**AVERAGE DAILY NUMBER OF HOURS WORKED**

<table>
<thead>
<tr>
<th>Industry</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cotton</td>
<td>8.3</td>
<td>8.0</td>
</tr>
<tr>
<td>Jute</td>
<td>8.1</td>
<td>8.1</td>
</tr>
<tr>
<td>Rice Milling</td>
<td>8.0</td>
<td>7.9</td>
</tr>
<tr>
<td>Vegetable oil</td>
<td>9.5</td>
<td>7.7</td>
</tr>
<tr>
<td>Cement</td>
<td>7.9</td>
<td>6.3</td>
</tr>
<tr>
<td>Glass</td>
<td>9.0</td>
<td>9.0</td>
</tr>
<tr>
<td>Ceramics</td>
<td>8.6</td>
<td>8.8</td>
</tr>
<tr>
<td>Paper</td>
<td>8.8</td>
<td>8.6</td>
</tr>
<tr>
<td>Matches</td>
<td>8.8</td>
<td>8.3</td>
</tr>
<tr>
<td>Chemicals</td>
<td>8.1</td>
<td>8.6</td>
</tr>
<tr>
<td>General and Electrical Engi-neering</td>
<td>8.1</td>
<td>8.7</td>
</tr>
</tbody>
</table>
TABLE -4.2:

AVERAGE WEEKLY NUMBER OF HOURS WORKED IN MINES

<table>
<thead>
<tr>
<th>Mines</th>
<th>Men</th>
<th>Women</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COAL:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jharia</td>
<td>46</td>
<td>45</td>
<td>46</td>
<td>47</td>
</tr>
<tr>
<td>Raniganj</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td><strong>MICA:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>48</td>
<td>47</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td><strong>MANGANESE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>45</td>
<td>44</td>
<td>45</td>
<td>48</td>
</tr>
<tr>
<td><strong>IRON ORE:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>48</td>
<td>47</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td><strong>GOLD:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karnataka</td>
<td>-</td>
<td>-</td>
<td>48</td>
<td>48</td>
</tr>
</tbody>
</table>
Adult females 65 lbs.
Adolescent females 55 lbs.
Female children 30 lbs.

However, under the U.P. Factories Rules the following weights have been fixed:

<table>
<thead>
<tr>
<th>Category</th>
<th>For intermittent work</th>
<th>For continuous work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Females</td>
<td>66 lbs</td>
<td>44 lbs</td>
</tr>
<tr>
<td>Adolescent Females</td>
<td>50 lbs</td>
<td>38 lbs</td>
</tr>
<tr>
<td>Female Children</td>
<td>30 lbs</td>
<td>20 lbs</td>
</tr>
</tbody>
</table>

e) Creches:

A Creche is a nursery. It is a place where babies of working mothers are taken care of while the mothers are at work. Section 48 of the Factories Act, 1948 provides that in every factory wherein more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women. Such rooms shall provide adequate accommodation, and shall be adequately lighted and ventilated. Such rooms shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants. The State Government is authorised to make rules:

1. Prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be used as creches;

2. Requiring the provision in factories of additional factories for the care of children belonging to women workers, including suita-
ble provision of facilities for washing and changing their clothing;

3. Requiring the provision in any factory of free milk or refreshment or both for such children;

4. Requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

The State Governments have been given wide powers to make rules for the benefit and welfare of children of working mothers and to provide facilities to mothers in this regard. Rules framed under the Factories Act by several State Government require that the children should be given milk or other nourishment and that working mothers should be granted additional rest intervals to enable them to feed babies.²²

Under the Mines Act, 1952, the Central Government is authorised to make rules requiring the mines to maintain creches if women workers are or were employed at one day of the preceding 12 months.³³ Thus, the Mines creche Rules 1966 make it obligatory for the owner, agent or manager of every mine, wherein women are employed or were employed on any day of the preceding 12 months, to provide a creche at his colliery to look after the children of such workers. Each creche is required to have a trained nurse and the prescribed set of equipment. Supply of food to the children attending creche is also obligatory on the part of the management.

Similarly, under the Plantations Labour Act, 1951, every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or
were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers. If, in respect of any plantation wherein less than fifty women workers including women workers employed by any contractor are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such directions. The rooms shall provide adequate accommodation, be adequately lighted and ventilated, be maintained in a clean and sanitary condition and be under the charge of a women trained in the care of children and infants. The State Government may make rules prescribing the location and the standards of the rooms in respect of their construction and the equipment and amenities to be provided therein.

The Beedi and Cigar workers (conditions of Employment) Act, 1966 also provide creche facility. According to section 14 of the Act in every industrial premises wherein more than fifty (now thirty after the Amendment of 1993)
female employees 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 such female em-
ployees. Such rooms shall be provided adequate accommodation,
be adequately lighted and ventilated, be maintained in a
clean and sanitary condition and be under the charge of women
trained in the care of children and infants. The State Gov-
ernment is also empowered to make rules with respect to the
same matters as are provided under the Factories.\textsuperscript{37}

Creche facilities, are also extended to the contract
workers by the Contract labour (Regulation and Abolition)
Central Rules, 1971, Construction and Maintenance of Creches.
It provides that in every establishment where twenty or more
women are ordinarily employed as contract labour there must
be provided a creche located within 50 meters of the estab-
lishment. While the Creche should be conveniently accessible
to the mothers of the children accommodated therein, it shall
not be situated in close proximity to establishment where
obnoxious fumes, dust or ordour are given off or in which
excessively noisy processes are carried on.\textsuperscript{38}

Again, the Inter-State Migrant Workers (Regulation of
Employment and Conditions of Service)Central Rules 1980 also
provide creche facility. Rule 44 says that in every establis-
ment where twenty or more women are ordinarily employed as
migrant workmen and in which employment of migrant workmen is
likely to continue for three months or more, the contractor
shall provide and maintain two rooms of accessible dimensions
for the use of their children under the age of 6 years. One of such rooms shall be used as play room for the children and the other as bedroom for them.

f) **Washing and Bathing facilities:**

Separate facilities of washing and bathing are provided for women workers under the Factories Act and Contract labour (Regulation and Abolition) Central Rules, 1971.

According to section 42 (1) (b) of the Factories Act, 1948, separate and adequately screened washing facilities shall be provided for the use of male and female workers. Such facilities shall be conveniently accessible and shall be kept clean. However, the State Government is empowered to prescribe standards of adequate and suitable facilities for washing.

Under the Contract Labour (Regulation and Abolition) Central Rules, 1971 separate and adequately screened washing facilities be provided for the use of male and female workers. Such facilities shall be conveniently accessible and shall be kept in clean and hygienic conditions.

The same rules apply in case of migrant women workers covered under Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) central Rules, 1980. The Mines Act empowers the central Government to make rules for requiring employers to maintain at or near the pit heads bathing places equipped with shower baths and locker rooms separately for men and women.
g) **Latrine and Urinal facilities:**


The Factories Act, 1948 makes it obligatory for every factory to maintain an adequate number of latrines and urinals of the prescribed type separately for men and women workers. Such facilities are to be conveniently situated and accessible to workers at all times while they are in the factory. Every latrine is required to be under cover and so partitioned off so as to secure privacy and have a proper door and fastenings. Sweepers are required to be employed to keep latrines, urinals and washing places clean. Standard of construction and the scale of the latrine accommodation to be provided for men and women workers are contained in the rules framed by the concerned State Government.

It is left to the State Government to determine and prescribe what is sufficient and suitable accommodation for latrines and urinals. Since the obligation to determine is on the State, the Courts have no jurisdiction to enquire into the question. But where the state fails to make rules, the court may enquire if the question is taken up before it. It is submitted that this is not a sound decision. The Courts, which act as watch dogs should have jurisdiction in this area also otherwise the Government will act arbitrarily.
Section 9 (1) of the Plantations Labour Act, 1951 also provides that in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed shall be provided. These latrines and urinals shall be maintained in a clean and sanitary condition. Mines Act, 1952 also provides a provision for the same. Section 20 says that there shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times. It also provides that the latrines and urinals shall be adequately lighted, ventilated and maintained in a clean and sanitary condition. It also empowers central Government to specify the number of latrines and urinals to be provided in any mine, in proportion to the number of males and females and provide other matters relating to sanitation. Beedi and Cigar workers (Conditions of Employment) Act, 1966 also provides provision for latrines and urinals for women workers more or less on the same pattern. But here the State Government is empowered to specify the number of latrines and urinals provided in proportion to the number of male and female workers.

Similarly Contract Labour (Regulation and Abolition) Central Rules, 1971 also provides provision for separate latrine and urinal facilities for male and female workers. It also provides that there shall be at least one latrine for every 25 females if the number of female workers is 100 and
one for every 50 if the number exceeds 100. Every latrine shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings. Outside these latrines and urinals a notice providing "For Men only" or "For Women Only" as the case may be should be displayed. The notice should also bear the figure of a woman or of a man as the case may be. It is suggested that the same provision should be incorporated in other enactments also.

Again, in case of migrant women workers covered under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 the rules relating to latrines and urinals are the same as provided under contract Labour (Regulation and Abolition) Central Rules, 1971 except that in case of latrines where number of females exceeds 100, one latrine should be provided for every 30 females instead of 50.

h) Rest Rooms and Canteens:

There is no provision for separate rest rooms and canteens for women workers. Only the contract Labour (Regulation and Abolition) Central Rules, 1971 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 contains provision for this. Rule 41 (3) of the contract Labour (Regulation and Abolition) Central Rules, 1971 provides that separate rest rooms shall be provided for women employees. These rooms should be properly ventilated and maintained. Rule 44 of the same provides that in a canteen a portion of the dining hall and service
counter shall be partitioned off and reserved for women workers, in proportion to their number.

Rule 40 of the Inter-State, Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 provides that separate rest rooms shall be provided for female migrant workmen. The rooms should be effective, suitable and adequately ventilated and should be at convenient distance from the establishment. Rule 41 of the same provides that a portion of the dining hall and service counter shall be partitioned off and reserved for women migrant workmen in proportion to their number. Washing places in the dining hall shall be separate and screened to secure privacy.

1) **Maternity Benefits:**

Maternity is a contingency of women relating to pregnancy and child birth. Maternity benefit is provided to women workers as a matter of right and it gives protection to women workers by way of payment of cash, medical bonus and leave with wages for a certain period before and after child birth. A large number of maternity benefit legislations (both state and central) were passed in India from time to time which guaranteed the payment of maternity benefits to women workers for a certain period after fulfilling some prescribed conditions.

In India, the first maternity benefit legislation was passed in the pre-independence period by the state of Bombay in the form of Maternity Benefit Act, 1929. The other states...
also followed suit and passed such legislations one after another. These State legislations provided different benefits and prescribed varying qualifying conditions.

The first Central enactment in this sphere was the Mines Maternity Benefit Act, 1941. Later on, other labour legislations namely E S I Act, 1948 and plantations labour Act, 1951 were passed which contains provisions relating to maternity benefit. In 1961, the central Maternity Benefit Act, 1961 was passed aiming at a uniform maternity benefit all over the country. The provision relating to maternity benefit in the plantations Labour Act, 1951 has been deleted by this Act. The Act has also replaced the Bombay Maternity Benefit Act, the Mines Maternity Benefit Act and the maternity applied in Factories of Delhi.

I) **State Legislations:**

The State Maternity Benefit Acts, which were passed both during pre-Independence and post-independence period varied in scope, qualifying conditions, the period and rates of benefit (Table 4.3).

The broad features of these Acts were as follows:

I) All of them applied only to women working in factories, but the Assam, Kerala and West Bengal Acts applied to women working on plantations as well;

II) The entire cost of the benefit was placed on the employers;

III) The maximum period for which the benefit was available varied from 7 weeks to 12, but in most of the Acts it was prescribed as 8 weeks;
### Table 4.3:

**NAME OF ACTS, QUALIFYING PERIOD AND RATE & DURATION OF BENEFITS UNDER VARIOUS ACTS**

<table>
<thead>
<tr>
<th>Qualifying Period</th>
<th>Period of Benefit (Weeks)</th>
<th>Amount of Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Bombay Maternity Benefit Act, 1929</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 months service preceding the date of notice</td>
<td>8</td>
<td>Annas 8\textsuperscript{55} per day in the cities of Bombay and Ahmedabad and elsewhere at the rate of average daily earnings or annas 8 per day whichever was less.</td>
</tr>
<tr>
<td><strong>2. Central Provinces Maternity Benefit Act, 1930</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 months service preceding the date of notice</td>
<td>8</td>
<td>Average daily earning or annas 8 per day whichever was less.</td>
</tr>
<tr>
<td><strong>3. Madras Maternity Benefit Act, 1934.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>240 days service during the period of one year preceding the date of notice</td>
<td>7</td>
<td>Annas 8 per day</td>
</tr>
<tr>
<td><strong>4. Mysore Maternity Benefit Regulation, 1934.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 months service preceding the date of notice</td>
<td>8</td>
<td>Average daily earning or annas 8 per day whichever was less.</td>
</tr>
<tr>
<td><strong>5. U. P. Maternity Benefit Act, 1938.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 months service preceding the date of notice</td>
<td>8</td>
<td>Average daily earning or annas 8 per day whichever was greater.</td>
</tr>
<tr>
<td></td>
<td>Bengal Maternity Benefit Act, 1939.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------</td>
<td></td>
</tr>
<tr>
<td></td>
<td>9 months service preceding the date of delivery</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Hyderabad Maternity Benefit Act, 1940.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9 months service preceding the date of notice</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Assam Maternity Benefit Act, 1941.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>150 days service during the period of 12 months immediately preceding the date of notice</td>
</tr>
<tr>
<td></td>
<td>12 (plantations)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Bhopal State Maternity Benefit Act, 1943.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9 months service preceding the date of notice</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Punjab Maternity Benefit Act, 1943.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9 months service preceding the date of delivery</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6 months service preceding the date of notice</td>
</tr>
</tbody>
</table>
IV) The amount of benefit was at the average rate of women workers daily earnings or an amount varying from eight to twelve annas\(^{57}\) per day whichever was greater;

V) A qualifying period varying from 150 days to 9 months of service was also prescribed:

VI) Acts like Assam, Bihar and U.P provided some additional benefits in the form of free medical treatment, maternity bonus, provision for creches and additional rest intervals.

The administration of the State Maternity Benefit Acts was the responsibility of the factory Inspectors in all the states. There was also a provision in these Acts for protection of women against dismissal by the employers to avoid liability of payment. A woman worker could not be discharged during the period of maternity leave. The employment of women during maternity leave was a penal offence. But the Assam Act permitted employment of women provided it was on light work during the four weeks preceding the date of the child birth\(^ {58}\).

Almost all the States have now adopted the Central Maternity Benefit Act, 1961 after repealing their own Acts.

II) Central Legislations:

As said earlier, the first central legislation providing maternity protection was the Mines Maternity Benefit Act, 1941. The other legislations, passed subsequently were the Employees State Insurance Act, 1948 and the Plantations Labour Act, 1951\(^ {59}\). The provisions of these Acts differed widely and ultimately the Government of India had to take remedial measures by enacting the Maternity Benefit Act, 1961.

The Act provided that the woman worker with 6 months service record before the day of delivery was entitled to receive maternity benefits at the prescribed rates. The rate was raised to 75 paise (12 annas in the old currency from 50 paise (8 annas in the old currency per day). The employment of a woman worker underground attracted higher benefits at the rate of six rupees per week. Moreover, the duration of benefit for surface workers was to be 8 weeks of which 4 weeks were to follow the day of delivery. The period of benefits was raised to 10 weeks immediately preceding delivery and 6 weeks following delivery. The Act also prohibited the employment of pregnant women workers during the four weeks following the day of delivery for surface work. The prohibition applied for 26 weeks for underground work and during another 10 weeks following next, they should be employed only for four hours a day if no creche facility was made. The Act made a provision for the payment of bonus not exceeding Rs.3 per day to a woman worker, but the obligation to pay this bonus did not arise in the case of those employers who provided free services of a qualified midwife or other trained persons.

The Act was administered by the Inspectorate of mines. The responsibility of paying benefits also rests unilaterally with the employer. The provisions of Mines Maternity Benefit Act, 1941 have now become redundant after the enactment of
the Maternity Benefit Act, 1961 because the latter repeals the former.

II) The Employee's State Insurance Act, 1948:

Maternity Benefit is also provided to women workers who are covered under the Employee's State Insurance Act, 1948. The Act provides for periodical payment to an insured woman at the prescribed rate and for a prescribed period in case of confinement, miscarriage, sickness arising out of pregnancy or premature birth of a child. The term confinement means "labour resulting in the issue of a living child or labour after 25 weeks of pregnancy resulting in the issue of a child whether alive or dead" and the expression miscarriage as defined in the Act means "expulsion of the contents of a pregnant uterus at any period prior to or during twenty-six weeks of pregnancy, but does not include any miscarriage the causing of which is punishable under the Indian Penal code".

Eligibility:

An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than half the number of corresponding contribution period. The insured woman becomes eligible for the benefit after being certified to be eligible for such payment by the medical officer to whom she has been allotted or by an insurance medical officer attached to a dispensary.
hospital, clinic or other institution to which the insured woman is or was allotted if in the opinion of such insurance medical officer the condition of the women so justifies. Any other evidence in lieu of a certificate of pregnancy, expected confinement or confinement from an insurance medical officer may be accepted by the corporation, if in its opinion, the circumstances of any particular case so justify.

The Duration and Quantum of Benefit:

The duration of maternity benefit available to an insured woman in case of confinement is 12 weeks of which not more than 6 weeks shall precede the expected date of confinement. In case of miscarriage insured woman is entitled to maternity benefit for a period of 6 weeks only provided she gives a notice and submits a certificate of miscarriage from the concerned medical officer. For illness arising out of pregnancy, delivery, pre-mature birth of a child or miscarriage she is on production of a certificate from the prescribed medical officer in the prescribed form, entitled to maternity benefit for an additional period of one month.

The rate of maternity benefit is equal to twice the standard benefit rate corresponding to the average daily wages in respect of insured woman during the corresponding contribution period. Table 4.4 shows the standard of benefit rate in respect of the group of employees specified in the first column.
TABLE - 4.4:
STANDARD OF BENEFIT RATE IN RESPECT OF THE EMPLOYEES
SPECIFIED IN THE FIRST COLUMN

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Group of employees whose average daily wages are</th>
<th>Corresponding daily standard benefit rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Below Rs.6</td>
<td>Rs.2.50</td>
</tr>
<tr>
<td>2.</td>
<td>Rs.6 and above but below Rs.8</td>
<td>Rs.3.50</td>
</tr>
<tr>
<td>3.</td>
<td>Rs.8 and above but below Rs.12</td>
<td>Rs.5.00</td>
</tr>
<tr>
<td>4.</td>
<td>Rs.12 and above but below Rs.16</td>
<td>Rs.7.00</td>
</tr>
<tr>
<td>5.</td>
<td>Rs.16 and above but below Rs.24</td>
<td>Rs.10.00</td>
</tr>
<tr>
<td>6.</td>
<td>Rs.24 and above but below Rs.36</td>
<td>Rs.15.00</td>
</tr>
<tr>
<td>7.</td>
<td>Rs.36 and above</td>
<td>Rs.20.00</td>
</tr>
</tbody>
</table>
The maternity benefit is paid subject to the condition that the insured woman does not work for remuneration on the days in respect of which the benefit is paid. In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives, and if the child also dies until the death of the child 67.

An insured woman shall not be entitled to receive for the same period (a) both sickness benefit and maternity benefit or (b) both maternity and disablement benefit for temporary disablement. Where a woman worker is entitled to more than one of the benefits mentioned above she shall have to choose between the two 68.

The Act prohibits dismissal, discharge, reduction in rank or any other punishment of an insured woman employee during the period she is in receipt of maternity benefit. An insured woman may be disqualified from receiving maternity benefit if she fails without good cause to attend for or to submit herself to medical examination when so required and such disqualification shall be for such number of days as may be decided by the authority authorised by the corporation. A woman worker may, however, refuse to be examined by any person other than a female doctor or midwife 69.

III) The Plantations Labour Act, 1951:

The Plantation Labour Act, 1951 at the outset provided for the payment of maternity allowance to women workers in...
plantations but with the passing of the Central Maternity Benefit Act, 1961, these provisions have ceased to exist. As already mentioned the latest central enactment in the area of maternity benefit available to women workers is the Maternity Benefit Act, 1961.

IV) The Maternity Benefit Act, 1961:

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and to bring conformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act, repeals the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provisions of Employee's State Insurance Act 1948 applies, except as otherwise provided in Sections 5A and 5B of the Act.

Object and Scope:

The Act seeks to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide maternity benefit and certain other benefits to women workers.

The Act extends to the whole of India. It applies, in the first instance:

a) to every establishment being a factory, a mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed
for the exhibition of equestrian, acrobatic and other performances;

b) to every shop or establishment within the meaning of any law for the time being in force in relation to shop and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

The State Government is empowered to extend all or any of the provisions of the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of the Central Government giving not less than two month's notice of its intention of so doing.

However, as stated above, the Act excludes the applicability of the provisions of the Act to any factory or other establishment to which the provisions of the employees State Insurance Act, 1948 applies except as otherwise provided in Sections 5A and 5B of the Act. The Act was amended from time to time. The Amendment of 1972 provides that in the event of the application of the Employees State Insurance Act, 1948 to any factory or establishment, maternity benefit under the Maternity Benefit Act would continue to be available to women workers, until they become qualified to claim similar benefit under Employees State Insurance Act. Again, in 1973 the Act was amended so as to bring within its ambit establishments in the circus Industry. The 1976 Amendment, further extends the scope of the Act to the women employed in factories or establishments covered by the ESI Act, 1948 and
in receipt of wages exceeding entitlement specified in that Act.

The Act was again amended in 1988 to incorporate the recommendations of a working group of Economic Administration Reforms Commission. The Act has been extended to shops or establishments employing 100 or more persons. The rate of maternity benefit has been enhanced and some other changes have been introduced. The Amendment of 1995 further extended the coverage of the Act and legalises the medical termination of pregnancy and provides incentives for family planning programme.

The Salient Features of the Act:

*Leave And Benefits:*

Section 4 absolutely prohibits any women from working in an establishment during the six weeks after her delivery or miscarriage. Employees are forbidden to knowingly employ women during this period and employed women are required to take a paid six-weeks leave. Pregnant women have the further option of taking paid leave of absence upto six weeks before their expected date of delivery under Section 6(2). All working women are thus eligible for a total of 12 weeks of paid maternity leave, 6 weeks before and 6 weeks after delivery. In addition women who suffer from illness arising out of pregnancy, delivery, premature birth or miscarriage have the right to take an extra month's paid leave under Section 10, but the illness must be proved to the
employer as prescribed under government rules. Thus four weeks leave can be taken before or after delivery. In case of mis-carriage, a woman shall on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her mis-carriage.

Section 4(3) states that a pregnant woman, upon her request can-not be required to do certain types of work during one month before her expected date of delivery. She can choose not to perform work which is arduous, which requires long hours of standing, which in any way is likely to cause a mis-carriage or otherwise to adversely affect her health. The request not to do certain kinds of work does not affect her right to take maternity leave. This is to protect women from hazards of employment. This provision is an improvement over the Employees State Insurance Act, 1948.

When women return to work after delivery of a child, they have the right to two breaks per day for nursing until the child reaches 15 months. This is an addition to their normal interval for rest. Employers are prohibited from decreasing women's wages on account of the nursing break. Under Section 8, women have also the right to a medical bonus of Rs.250, unless their employer provides free pre-natal confinement and post-natal care.

Section 13(a) prohibits the employer from making deductions from her wages because of the nature of work which may
be re-assigned to her by virtue of provisions contained in sub-section 3 of Section 4.

If a woman dies during the period when the maternity benefit is due to her, she is entitled to benefits up to and including the day of her death. However, if she bears a child that survives her, the employer is obliged to pay benefits up to six weeks after delivery or as long as the child survives whichever is less. In this case, payment is to be made to the person she has nominated or, if no one is nominated, the legal representative.

Maternity Benefit Act has recently been amended and some new provisions have been incorporated to give boost to and to encourage family planning programme. Maternity Benefit (Amendment) Act, 1995 provides that there shall be a six week leave with wages in case of medical termination of pregnancy, two week leave with wages to women employees who undergo tubectomy operation and one month leave with wages in cases of illness arising out of these two.

In case of medical termination of pregnancy, a woman shall, on production of a relevant certificate be entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her medical termination of pregnancy. The wages shall be paid within 48 hours of production of the certificate.
Right to Payment of Maternity Benefit:

Section 5(1) of the Act provides that the maternity benefit to which every woman shall be entitled to and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

For the purposes of payment of the maternity benefit to a woman worker as stated above, the average daily wages shall be the average of woman's wages payable to her for the days on which she has worked during the period of three calender months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed, or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

Section 5(2) provides that no woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of expected delivery. The qualifying period of eighty days as aforesaid shall not apply to a woman who has migrated into the State of Assam and was pregnant at the time of immigration.

For the purpose of calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off or was on holidays declared under
any law for the time being in force to be holiday with wages during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.

Section 5(3) provides that a woman shall be entitled to maternity benefit for a maximum period of twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

Provided that where a woman dies during the period of her expected delivery the maternity benefit shall be payable only for the day and including the day of her death. Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days upto and including the date of the death of the child.

Women shall be entitled to benefit regardless of how many children they already have. The Act does not cover women who adopt a new born child. If a woman works for another employer while on leave, she will forfeit her right to benefits. Maternity benefits must be paid by the employer for the period of time that the woman is actually absent as permitted under the Act. If she takes more leave than allowed, the employer is not obliged to pay her.
It is now clear that a woman worker who expects a child is entitled to maternity benefits for a maximum period of twelve weeks which is split up into two periods, viz., pre-natal and post-natal. The first one, i.e. pre-natal or ante-natal period is limited to the period of woman's actual absence extending up to six weeks immediately preceding (including the day on which her delivery occurs), and the second one, viz. post-natal (compulsory period) consists of six weeks immediately following the day of delivery.

**Calculation of Benefit:**

The benefit has to be calculated for the 12 weeks period on the basis of average daily wages. According to explanation appended to Section 5(1) of the Act, the average daily wage has to be calculated taking into consideration the average of woman's wage payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or the minimum rate of wages fixed or revised under the Minimum Wages Act, 1948 or ten rupees whichever is the highest. For fixing the average daily wage, it has first to be ascertained whether the wages which were paid or were payable to the woman were for 'time work' or for 'piece work'. It has next to be ascertained as to what were the cash wages paid or payable to her in terms of the definition contained in Section 3(n) of the Act for the days on which she has worked during the period of three calendar months immediately preceding the date of delivery, reckoned...
according to the British Calendar month. The total wages thus worked out are to be divided by the number of days in the aforesaid three calendar months in order to arrive at the average daily wage. After finding out the daily average wage, the liability of the employer in respect of maternity benefit has to be calculated in terms of Section 5 of the Act for both pre-natal and post-natal period.

Procedure to Claim Benefits:

For claiming benefits, a woman worker may give notice to the employer under Section 6 of the Act. Any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in such form as may be prescribed, to her employer, stating that her maternity benefit and other amount to which she may be entitled under this Act may be paid to her or to such persons as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit. In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date
of her expected delivery shall be paid in advance by the employer to the woman on production of such proof as may be prescribed that the woman is pregnant and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child. The failure to give notice under this section shall not disentitle a woman to maternity benefit or any other amount under this Act if she is otherwise entitled to such benefit or amount and in any such case as inspector may, either of his own notice or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.

Protection Against Discrimination:

According to Section 12(1) when a woman absents herself from work in accordance with the provisions of the Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

Section 12(2)(a) guarantees that a working woman who is discharged at any time during her pregnancy but who would otherwise have been eligible for benefits will still have a right to maternity benefits and medical bonus. The only exception to this is if she is discharged for 'gross misconduct' as prescribed under rules. In such a case the employ-
er must notify her in writing that her benefits and bonus will be denied. Women who are not eligible for benefits because they have worked less than the required period of time are also not protected against dismissal or discrimination.

Powers of the Inspectors and Remedies:

The Act stipulated appointment of Inspectors. The Inspectors can be appointed by the appropriate Government which will define the local limits of jurisdiction of each inspector. Inspectors are public servants within the meaning of section 21 of Indian Penal Code.

The Inspectors have the following powers:

a) to enter at all reasonable time with such assistants, if any, being persons in the service of the Government or any local or other public authority, as he thinks fit, any premises or place where women are employed or work is given to them in an 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 inspection;

b) to examine any person whom he finds in any premises or place and who, he has reasonable cause to believe, is employed in the establishment. No person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

c) to require the employer to give information regarding the names and addresses of women employed, payments made to them, and applications or notes received from them under this Act; and

d) to take copies of any registers and records or notices or any portions thereof.
Any women, claiming that (a) maternity benefit or any other amount to which she is entitled under this Act and any person claiming that payment due under Section 7 has been improperly withheld or (b) her employer has discharged or dismissed her during or on account of her absence from work may make a complaint to the inspector\(^9\). 

The inspector has the power\(^9\) suo motu on the basis of the complaint to make an inquiry to be made and after such inquiry if he is satisfied that (a) payment has been withheld, may direct the payment to be made in accordance with his orders (b) she has been discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may pass such orders as are just and proper according to the circumstances of the case.

Any person aggrieved by the decision of the inspector may, within thirty days from the date on which such decision is communicated to such person, appeal to the prescribed authority. The decision of the prescribed authority where an appeal has been preferred or of the inspector where no such appeal has been preferred, shall be final. Any amount payable under this section shall be recoverable by the collector on a certificate issued for that amount by the inspector as an arrear of land revenue\(^9\). 

Any woman deprived of maternity benefit or medical bonus or both, or discharged or dismissed during or on account of her absence from work in accordance with the provi-
sions of this Act, may within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal directly to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus or both or discharged or dismissed shall be final. Appeal can be made to the authority designated under Government rules normally the Commissioner of labour. For mine employees, they should be made to the Chief inspector of mines and for circuses, to the Chief Labour Commissioner.

Cognizance of Offences and Penalties:

According to amended Section 23(1), any aggrieved woman, an office-bearer of a trade union registered under the Trade unions Act, 1926 of which such woman is a member or a voluntary organisation registered under the Societies Registration Act, 1860 or an inspector may file a complaint regarding the commission of an offence. Under this Act in any court of competent jurisdiction no such complaint shall be filed after the expiry of one year from the date on which the offence is alleged to have been committed. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

If it is found by the Court that the employer withholds amount due under the Act or discharges a woman in violation of Section 12(1), the employer is punishable with imprisonment from three months to one year and a fine from Rs.2000 to
Rs.5000. It can lessen the sentence if it finds sufficient reasons and records them in writing. The Court can also order recovery of money, improperly withheld and pay the amount to the person entitled. If the Court finds an employer guilty of violating any other provision of the Maternity Benefit Act, it can impose a punishment of imprisonment upto one year or a fine upto Rs.5000 or both.  

The Act also penalises any person obstructing the investigation by any inspector by imprisonment upto three months or a fine upto Rs.5000 or both.

j) Equal Pay for Equal Work:

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief even after independence that women are physically weak and should be paid less than their male counterparts for the same piece of work. It was ensured by enacting Article 39(d) of the constitution that there should be equal pay for equal work for both men and women. To give effect to this constitutional provision and to the Equal Remuneration Convention, 1951 of the ILO, the Government of India, on 26th September, 1975, in the International Women's year promulgated the Equal Remuneration Ordinance, 1975. The Ordinance was replaced by the Equal Remuneration Act, 1976 which received the assent of the President of India on 11th February, 1976.
Object and Scope:

The main object of the Equal Remuneration Act, 1976 is to provide for the payment of equal remuneration to men and women and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental thereto.

The Act extends to the whole of India and has been applied to all establishments/employments but is subject to notifications by the Government. Under this Act, no employer can pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or kind, at rates less favourable 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.

According to Section 3 the provisions of the Act shall have an effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.

However, nothing in this Act shall apply 102:

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:
1. the birth or expected birth of a child, or

II. the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

The Act was amended in 1987. According to this Amendment, courts can take cognisance on the basis of complaints made by recognized organisations notified by the central or State Governments. The Amendment removed certain loopholes and made it 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 Amending Act also provides for stricter punishment for the violation of this statute.

The Salient features of the Act are:

Duty to Pay Equal Remuneration:

Section 4 of the Act imposes a duty on the employer to pay equal remuneration\textsuperscript{103} to men and women workers for the same work or for work of a similar nature\textsuperscript{104}. The Section lays down that employer is to pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than 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. With a view to implement this duty, no employer should reduce the rate of remuneration of any worker. It has further laid down that where in an establishment or employment, the rates 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 are to be paid.

With a view to further strengthen this principle, Section 5 lays down that after the coming into force of the Act, no employer while making recruitment for the same work or work of a similar nature, (or in any condition of service subsequent to recruitment such as promotions, training or transfer) make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force. However, this provision will not effect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment.

The Act also does not apply to those employments where differences in regard to the remuneration, or a particular species of remuneration, of men and women workers in any establishment or employment is based on a factor other than sex. In such a case the Government will make a declaration to that effect.
Advisory Committee:

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 regard to the number of women employed in the concerned establishment or employment, nature of work, hours 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 after 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. The final authority of decision making would remain in the hands of the appropriate Government. From the provisions it is quite evident that Advisory committee is expected to play a vital role and for that purpose vast powers have been conferred upon it in order to promote equality between men and women.
Complaint Authority:

With a view to give teeth to the law, the Act stipulates for the appointment of complaint officer who will not be below the rank of labour officer. The Complaint Officer has the power to hear and decide:

a) complaints 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:

1) in the case of a claim 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;

2) 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 the Act.

The complaint Officer shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:
1) taking evidence;
2) enforcing the attendance of witnesses; and
3) compelling the production of documents.

Every such authority also shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXIV of the Code of Criminal Procedure, 1973.

Every complaint under clause (a) of sub-section (1) of Section 7 shall be made in triplicate, in Form A to the Authority. A complaint may be made by the worker himself or herself or by any legal practitioner, or by any official of a registered trade union, authorised in writing to appear and act on his or her behalf or by any inspector appointed under Section 9 or by any other person acting with the permission of the authority. A single complaint may also be made by or on behalf of, or in relation to, or group of workers, if they are employed in the same establishment and the complaint relates to the same contravention.

Every claim under clause (b) of sub section (1) of Section 7 shall be made by the petition in triplicate in form B to the Authority. A claim may be made by the worker himself or herself or by any legal practitioner, or by any official of a registered trade union, authorised in writing to appear and act on his or her behalf or by any inspector appointed under Section 9 or by any other person acting with the permission of the Authority. A single petition may be made by or on behalf of or in relation to, a group of workers, if they are
employed in the same establishment and their claims are of the same nature.

An employer or worker aggrieved by any order made by an authority appointed under sub-Section (1) of Section 7 or a complaint or claim may, within thirty days from the date of the order prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against. A further appeal shall lie against the order made by the authority. If the appellant is prevented by a sufficient cause from preferring an appeal within the specified period of thirty days, the appellate authority may allow the appeal to be preferred within a further period of thirty days, but not thereafter. The provisions of Section 33 C(1) of the Industrial Disputes Act, 1947 have also been made applicable for the recovery of monies due from an employer arising out of the decision of the authority appointed under the Act.

Inspectors:

According to Section 9 of the Act, the appropriate Government may, by notification, appoint such persons as it may think fit to be inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an inspector may make such investigation. Every Inspector shall be deemed to be a public servant within the meaning of Section 188.
21 of the Indian Penal Code. An Inspector may, at any place within the local limits of his jurisdiction:

a) enter at any reasonable time, with such assistance as he thinks fit, any building, factory, premises or vessel;

b) require any employer to produce any register, muster-roll or other documents relating to the employment of workers, and examine such documents;

c) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act, are being or have been complied with;

d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be, or to have been a worker in the establishment;

e) make copies, or take extracts from, any register or other documents maintained in relation to the establishment under this Act.

Any person required by an inspector to produce any register or other document or to give any information shall comply with such requisition.

Cognizance of Offences and Penalties:

No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. The Court shall take cognizance of an offence punishable under this Act either upon its own or upon a complaint made by the appropriate Government or an officer authorised by it in this behalf or upon a complaint made by a person aggrieved by the offence or by any recognized welfare institution or organisation. The
recognized welfare institution or organisation means a social welfare institution or organisation recognised in this behalf by the Central or State Government.\textsuperscript{114}

If after the commencement of this Act, any employer, being required by or under the Act, so to do:\textsuperscript{115}

\begin{itemize}
  \item[a)] omits or fails to maintain any register or other document in relation to workers employed by him; \textsuperscript{116}
  \item[b)] omits or fails to produce any register, muster-roll or other document relating to the employment of workers; or
  \item[d)] omits or refuses to give evidence or prevents his agent, servant or any other person in-charge of the establishment, or any worker, from giving evidence, or
  \item[e)] omits or refuses to give any information, he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.\textsuperscript{117}
\end{itemize}

If, after the commencement of this Act, any employer:

\begin{itemize}
  \item[a)] makes any recruitment in contravention of the provisions of this Act; or
  \item[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
  \item[c)] makes any discrimination between men and women workers in contravention of the provisions of this Act; or
  \item[d)] omits or fails to carry out any direction made by the appropriate Government under Sub-section (5) of Section 6,
\end{itemize}

he shall be punishable 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 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 and subsequent offences. Also if any person refuses to give required documents or information to an inspector, he shall be punishable with fine which may extend to five hundred rupees. Similar action can also be taken against any company which commits offences of the nature described above.

k) Other Measures:

The Central Government is empowered to constitute Advisory Committees and Central Advisory Committees under Mica Mines Labour Welfare Fund Act, 1946, Lime Stone and Dolomite Labour Welfare Fund Act, 1976 and Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 to advise it on the matters arising out of administration of these Acts. Central Advisory Committees also coordinates the working of Advisory Committees. Each Committee is constituted by equal number of representatives of employees and workers. There is an obligation that at least one member of these Committees should be women. Therefore, these Acts guarantee the representation of women on these Committees.

From the foregoing discussion, it is clear that to provide security against various risks, peculiar to their nature, women workers have been given various benefits, concessions, protection and safeguards under different labour
legislations. But despite this all, much remains to be achieved. Women workers are still made to suffer discrimination in social and economic spheres and continue to be the most exploited lot. It is true that laws are made for the welfare and benefit of people but laws and constitution do not by themselves solve all the problems. It is the sincere and strict implementation which matters. Although, the need for more and more laws is always felt in a welfare state like ours, yet the existing labour laws, with necessary modifications and amendments are sufficient, for the time being. take care of the women workers in the organised sector leaving un-organised sector of employment unattended. Therefore, these laws should be extended to un-organised sector also where women workers are in a large number. Let us try to be honest in the implementation of these labour laws. The employers should be made to change their attitude towards women labour by strengthening the enforcing agencies and by imposing stringent punishment on the guilty.

Moreover, much also depends upon the women workers themselves. Their ignorance and lack of awareness about their rights is also responsible for the evasion of these beneficial legislations. Therefore, the need of the hour is that women should get fully conscious about their rights and should get courageous enough to fight for their rights by participating in the various activities of trade unions.
REFERENCES

1. Article 15(3) of The Constitution of India.


4. Ibid.

5. Proviso to section 66(1)(b) of The Factories Act, 1948.

6. Id., Section 66(3).

7. Section 27 of The Factories Act, 1911.

8. AIR 1921 All. 229.

9. (1904) 6F (Court of Sessions) 55 J. Scot.

10. AIR 1953 Nag. 172(3).


12. Section 46(2) of The Mines Act, 1952.

13. Id., Section 46(3).


15. (1896) 1 Q B 244.

16. (1955) 1 All ER 285.


18. Id., Proviso to Section 27.

19. AIR 1926 Bom. 57.


22. Id., Section 66(1)(a).

23. Id., Section 51.


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26. Id., Section 22.
27. Supra note 3 at P. 138.
28. Ibid.
29. Ibid.
30. This frequently mispronounced word is of French origin and should be pronounced as Krash, a, as in ale or day or Kresh, e as in bed.
32. Rule 87 of the Maharashtra Factories Rules, 1953.
33. Section 58(d) of The Mines Act, 1952.
34. Section 12(1) of The Plantations Labour Act, 1951.
37. Section 48 of the Factories Act, 1948.
39. Section 42(1)(C) of The Factories Act, 1948.
40. Id., Section 42(2).
41. Rule 57(2) of The Contract Labour (Regulation and Abolition) Central Rules, 1971.
42. Id., Rule 57 (3).
43. Rule 43 of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980.
44. Section 19 of The Factories Act, 1948.
45. These were the observations of an English Court in Tracey v. Pretty 1901 IQB 444.
46. Section 9 of The Plantations Labour Act, 1951.
47. Section 12 of The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.


49. Id., Rule 53.

50. Rule 42 of The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980.

51. The States which have passed such maternity benefit legislations are: Central provinces in 1930, Madras and Ajmeer in 1934, Delhi in 1937, U.P. in 1938, Bihar in 1945, Orissa and Rajasthan in 1953, Kerala in 1957, Madhya Pradesh in 1958 and Mysore in 1959.


55. 8 annas are equal to 50 paise in today's currency.

56. 12 annas are equal to 75 paise in today's currency.

57. Ibid and also see Supra note 55.

58. Supra note 54 at P.114.


60. Section 2(3) of the Employees State Insurance Act, 1948.


62. The Act lays down certain contributory conditions for the payment of maternity benefit. The contributions paid by an insured person during a period of 26 consecutive weeks, which shall be called 'contribution period', will determine the eligibility of such person to maternity benefit during a subsequent period of 26 consecutive weeks, which will be called 'Benefit Period'. There will be a gap of 13 weeks between the close of contributions period and the beginning of the corresponding benefit period. As such, an insured person will be able to claim maternity benefit roughly after about 9 months of the date of being employed in a factory covered under the Act.
63. Rule 94 of the Employees State Insurance (General) Regulations, 1950.
64. Id., Proviso 2 to Rule 94.
65. Section 5(2)(3) and (4) of the Employees State Insurance Act, 1948.
66. Id., Schedule First.
67. Id., Proviso to Section 50(2).
68. Id., Section 65.
70. Section 2(2) of the Maternity Benefit Act, 1961.
72. Proviso to Section 2(1) of the Maternity Benefit Act, 1961.
73. Supra note 70.
74. Section 5(a) of the Maternity Benefit Act, 1961.
75. Id., Section 5(b).
76. For further changes see The Maternity Benefit (Amendment) Act, 1988.
77. Under Section 3(c) of the Maternity Benefit Act, 1961 delivery mean birth of a child.
78. Supra note 61.
80. Id., Section 11.
81. Substituted for the words 'twenty five rupees' by the Maternity Benefit (Amendment) Act, 1988.
82. Section 7 of the Maternity Benefit Act, 1961.
84. Substituted for the words 'or one rupee a day whichever is higher', by the Maternity Benefit (Amendment) Act, 1988.
85. Id., Substituted for the words 'one hundred and sixty days'.

86. Id., Substituted for the words 'the days for which she has been laid.

87. Id., Substituted for the second proviso to sub-section (3) of section 5.


89. According to Rule 8 of Maternity Benefit (Mines and Circus) Rules, 1963, the following acts shall constitute gross misconduct- (a) wilful destruction of employer's goods or property; (b) assaulting any superior or co-employee at the place of work; (c) criminal offence involving moral turpitude resulting in conviction in a court of law; (d) theft, fraud or dishonesty in connection with the employer's business or property and (e) wilful non-observance of safety measures or rules on the subject or wilful interference with safety devices or with fire fighting equipment.

90. Section 14 of the Maternity Benefit Act, 1961.

91. Id., Section 15.

92. Id., Section 17(1).

93. Id., Section 17(2).

94. Id., Section 17(3),(4) and (5).


98. Section 23(2) of the Maternity Benefit Act, 1961, substituted by the Maternity Benefit (Amendment) Act, 1988.

99. Id., Section 21.

100. Id., Section 22, substituted for the words 'which may extend to three months or with fine which may extend to five hundred rupees.

101. In its 34th session ILO adopted a Convention concerning equal remuneration for men and women workers for work of equal value, known as Equal Remuneration Convention...
1951. This was complemented by Recommendation No. 90 of ILO 1951.


103. According to section 2(g) of the Equal Remuneration Act, 1976, 'remuneration' means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of contract of employment, express or implied, were fulfilled.

104. According to Section 2(h) 'same work or work of a similar nature' means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.


107. Id., Section 7(1)(a)(b).

108. Id., Section 7(4).

109. Id., Section 7(5).


111. Id., Section 7(6).

112. Id., Section 7(6).

113. Id., Section 9(3).


115. Id., Section 10(1).

116. Section 8 of the Equal Remuneration Act, 1976 imposes a duty on the every employer to maintain such register and other documents in relation to the workers employed by him as may be prescribed.

117. Substituted for 'he shall be punishable with fine which may extend to one thousand rupees' by The Equal Remuneration (Amendment) Act, 1987.

119. Id., Section 10(3).

120. Id., Section 11.