CHAPTER V

A Critical Evaluation Of The Protective Discriminatory Legislations In India
It is now clear that there are a number of laws which make special provisions for the safety, protection and welfare of women workers. The special treatment to women workers is provided due to their social, psychological and physiological reasons such as their physical buildup, their ill health due to repeated pregnancies and home drudgery and due to the nature of occupation in which they are engaged. Unfortunately, the applicability of most of these labour laws is limited to the organised sector only which employs barely 10 per cent of the total female labour force. Women labour force in unorganised sector is still left un-protected and is being exploited.

These labour laws are on the statute book for a pretty long period of time. Although they provide comprehensive protection and security to the women workers yet still the workers and employers are dis-satisfied and are critical of these existing statutory provisions. The employees argue that the welfare provisions provided in the statute are in-adequate and un-satisfactory and are not properly implemented.
The employers oppose the idea of providing more welfare facilities to workers on the ground that the statutory welfare amenities have caused a heavy financial burden on the industry and have either remained under-utilised or improperly utilised by the workers. Let us now analyse and evaluate the working of these different provisions provided under the labour legislations and see how far the grievances of employees and employers are justified.

The provisions relating to safety, welfare, protection and security of women workers are provided under many labour statutes. Let us discuss them one by one.

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.

According to two studies undertaken by Labour Bureau, in different factories, in most of the cases women were found working in day shifts but in some cases they were found working in night shifts also. It was found that employer could not comply with the law because sufficient work was not available for women workers during the day shifts. Similarly, in mines most of the operations except the under-ground work was found being performed between 6 A.M and 7 P.M. Thus the existing prohibition of night work for women should not ordinarily prove an obstacle in their employment. Even then
there are certain people who say that due to the prohibition of night work of women and many other restrictions imposed upon their employment together with the additional facilities which the employers have to provide for them, the industrialists have naturally become non-ehalant in providing employment to women. For example Mr. H. Pais, former Dean of the V.V. Giri NLI New Delhi is of the view that there can be no doubt that prohibitions of women from night work operates as a serious restraint on their employment.

However, the fears that the scope of increased participation of women in industrial and mining occupations tend to be severely curtailed on account of the restrictions placed on employees in regard to provision of certain welfare facilities appear, even if true and substantial in certain instances, to be exaggerated and also to be based on an insufficient appreciation of the circumstances necessitating the introduction, continuance and enforcement of such protective measures. To remove the fears the Committee on the Status of Women in India rightly recommends that the permission to work upto 10 P.M should be granted, provided arrangements for transport and security are made.

b) Prohibition of work in hazardous occupations:

The Factories Act, 1948 and the Mines Act, 1952 impose prohibition on the employment of women in hazardous occupations. These are those occupations which are detrimental and dangerous to the health and safety of the women workers. According to the National Commission on Labour, legal prohi-
bition on engaging women during night and hazardous occupations has restricted women employment. The same view is supported by Labour Bureau in its study. However the safeguards cannot be done away with as they are socially necessary. The difficulty can be removed only by giving training to women workers so that their employment will be of advantage to employers.

c). Hours of Work:

The hours of work are fixed in factories, mines and plantations under the Factories Act, 1948, the Mines Act, 1952 and the plantations Labour Act, 1951, respectively. The maximum permissible work load for both men and women is 9 hours per day and 48 hours per week in Factories and mines and 54 hours per week in plantations.

According to a survey undertaken by Labour Bureau, there was found to be no discrimination between men and women workers in regard to the daily normal hours of work. Men and women workers in most of the sampled factories were normally working for 7 to 8 hours per day (Table 5.1).

In the factories mentioned in the Table 5.1 the study revealed that there was a single shift system for all women workers. Women employment was distributed over two shifts in only three "Tea Processing Factories", two "Coffee Curing Factories", one "Paper and Paper Board Factory", three
## TABLE -5.1

**DISTRIBUTION OF SAMPLED FACTORIES BY NORMAL HOURS OF WORK**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Industrial Category</th>
<th>No of factories studied</th>
<th>Distribution of Sampled Factories by Normal Daily Hours of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>6 - 7 hours</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Men</td>
</tr>
<tr>
<td>1.</td>
<td>Tea Processing</td>
<td>23</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>Coffee Curing</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Manufacture of Match Splints, Veneers &amp; Bobbins</td>
<td>15</td>
<td>-</td>
</tr>
<tr>
<td>4.</td>
<td>Paper and Paper Board factories</td>
<td>9</td>
<td>-</td>
</tr>
<tr>
<td>5.</td>
<td>Manufacture of Rubber &amp; Plastic Products</td>
<td>15</td>
<td>-</td>
</tr>
<tr>
<td>6.</td>
<td>Manufacture of Chinaware &amp; Porcelainware</td>
<td>12</td>
<td>-</td>
</tr>
<tr>
<td>7.</td>
<td>Manufacture of Electrical Machinery, Apparatus &amp; Appliances</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Manufacture of Electronic goods and components (Except Manufacture of Radios T.V.Sets)</td>
<td>15</td>
<td>-</td>
</tr>
</tbody>
</table>
"Chinaware and Porcelainware Factories" and one "Electrical Accessories Factory". Three-shift working for women was noticed in only two "Tea Processing" Factories and one "Electronics" Factory while four-shift working for women was found only in one "Tea Processing" Factory. This is also shown in the table 5.2.

According to another Survey, in Cotton Textile Factories, in 7 out of the total 9 Jute Mills, the spread over of work, including the rest intervals, in the case of both men and women workers was found to be 11 hours as against the statutory maximum of 10¾ hours. While as in 5 Tea Processing Factories, the spread over of work including rest intervals was found to be between 12 to 16 hours. This shows that employers are violating the statutory provisions and make the employees to work against the statutory restrictions.

d) Maximum Permissible Load:

This is a health provision. This protects women against the risks arising from lifting of heavy loads. Both Factories Act and Mines Act, authorise the appropriate Government to fix the maximum load that may be lifted by women to safeguard against the dangers arising from lifting the heavy loads. Therefore, while fixing the maximum loads to be lifted by women workers, the appropriate Government takes their physique into consideration.
TABLE -5.2
DISTRIBUTION OF SAMPLED FACTORIES BY NUMBER OF WORK-SHIFTS PER DAY
SEPARATELY FOR MEN AND WOMEN⁹.

<table>
<thead>
<tr>
<th>S.No</th>
<th>Industrial Category</th>
<th>No of factories studied</th>
<th>One shift</th>
<th>Two shifts</th>
<th>Three shifts</th>
<th>Four shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Men</td>
<td>Women</td>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>1.</td>
<td>Tea Processing</td>
<td>23</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>2.</td>
<td>Coffee Curing</td>
<td>10</td>
<td>3</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Manufacture of Match Splints, Veneers &amp; Bobbins</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>4.</td>
<td>Paper and Paper Board factories</td>
<td>9</td>
<td>3</td>
<td>8</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>5.</td>
<td>Manufacture of Rubber &amp; Plastic Products</td>
<td>15</td>
<td>8</td>
<td>15</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>6.</td>
<td>Manufacture of Chinaware &amp; Porcelainware</td>
<td>12</td>
<td>8</td>
<td>9</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>7.</td>
<td>Manufacture of Electrical Machinery, Apparatus &amp; Appliances</td>
<td>12</td>
<td>6</td>
<td>11</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Manufacture of Electronic goods and components (Except: Manufacture of Radios T.V.Sets)</td>
<td>15</td>
<td>12</td>
<td>14</td>
<td>2</td>
<td>-</td>
</tr>
</tbody>
</table>
It has been found that as per rules framed under the Acts, no woman shall, unaided by another person, lift, carry or move by hand any material, article, tool or appliance exceeding 30 Kg in weight. The regulations made in this regard under these Acts, are very general in certain cases. For instance, the regulations under the Mines Act merely state that no person shall be employed to lift or carry or move a load so heavy as is likely to cause bodily injury. Hence it will be better if a provision made in this regard is made more specific so that its haziness is not misutilized.

Inquiries made from the selected women workers employed in sampled factories revealed that no women worker had to carry or move material weighing more than the prescribed limit. The labour Bureau study in mines has observed that the weight of basket which women workers had to carry varied between 25 to 30 kg, and in the case of some heavy ones, it went up to 35 kg.

e) Creches:

Provision of creches is a statutory obligation under the Factories Act, 1948, the Mines Act, 1952, the plantations Labour Act, 1951 and the Beedi and Cigar workers (conditions of Employment) Act, 1966. Each creche should provide adequate accommodation and should be adequately lighted, ventilated and maintained in a clean and sanitary condition. Creches are required to be under the change of women trained in the care
of children and infants.

A number of studies conducted have revealed that the statutory provisions in this regard are not being strictly implemented. For example, the Report of the survey of Labour conditions in the cotton ginning, cleaning and baling industries observes that about 39 per cent of the factories in Gujarat, 9 per cent in Karnataka, about 43 per cent in Madhya Pradesh, 53 per cent in Maharashtra and about 21 per cent in the Residual Stratum (or about 30 per cent of the units in the industry) were statutorily obliged to provide creches as each of them employed more than 30 women of these only one unit in the Residual Group had actually provided a creche. In addition, 2 units (one each in Gujarat and Residual stratum) though not under any obligation, had provided creches voluntarily. Thus in the industry as a whole, only 3 units or about one per cent of the factories were providing creches.

A Survey in mines revealed that most of the mines were not complying with the statutory provisions contained in the Mines creche Rules. Out of the total 70 sampled units, only 35 i.e. 50 per cent were found actually providing this facility. In most of the cases quality and quantity of milk provided was inadequate and the staff provided for running the creches was not only insufficient but also un-qualified and un-trained.

Similarly, the study in plantations found that although creches were found working in most of the plantations, yet the facilities being provided were found to be deficient,
with no sanitation and cleanliness and construction was found to be below the prescribed standard\textsuperscript{16}.

In yet another study by Labour Bureau, the same deplorable condition with respect to creches was found. The table - 5.3 shows that in all, 37 sampled factories, out of a total of 111 factories covered under the study, were under a legal obligation to provide creche facility. Of these, only 12 sampled factories were found to have actually provided the facility. These creches did not conform to the standards provided under the Rules. The creches were found to be functioning in unenclosed sheds and did not provide effective protection from the vagaries of weather. In some cases, the creches were inadequately lighted and ventilated, were without wash rooms or latrines and were dirty. In some cases the creches were deficient of milk, soap, towels, etc. and were without any trained staff.

In some cases it was found that creche facility was provided only to permanent employees only. In some tea factories unmarried women and those having no small children were preferred to employment. The creche utilization rate was found to be quite low in some factories. The main reason given by the employer was that women workers were having their own satisfactory arrangement for looking after their children and in some cases their houses were near the factory, so they could go to their houses during short breaks and were, thus, not keeping their children in creches. However, the study revealed that the main reasons responsible for
Table - 5.3:
Number of Factories which were providing creches and those in which creches were found deficient in one respect or the other

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Industrial Category</th>
<th>No. of Factories</th>
<th>No. of factories where creches were not</th>
<th>No. of factories where creches were found deficient in</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Studied</td>
<td>Under legal * obligation to provide Creches</td>
<td>Actually providing Creches</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>1</td>
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<td>12</td>
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<td>2</td>
</tr>
<tr>
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<td>Manufacture of Electrical machinery, apparatus &amp; appliances</td>
<td>12</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>Manufacture of Electronic goods and components (Except manufacture of radios TV Sets)</td>
<td>15</td>
<td>6</td>
<td>-</td>
</tr>
</tbody>
</table>

* Employing ordinarily more than 30 women workers.
the low creche utilization rate were the lack of adequate facilities and the inadequate care of children in creches. There was also lack initiative on the part of the employer to run creche in its true spirit. Most of the employers were maintaining creches merely to comply with the legal provisions and were neither concerned about the standard of facilities being provided in creches nor about the attendance therein.

Creche facility for the use of children of working women did not exist in the worksheds of any of the sampled handloom units covered under a recent study. Employers felt that providing creche facility in the common worksheds was not necessary because of the fact that the number of women workers working in the sheds was comparatively low and they were residing in the nearby localities. The study, however, reveals that some women workers were bringing their small kids and children to the place of work as they did not have satisfactory arrangements for their children to be looked after in their houses. In the absence of any creche facility at the workplace, the children were seen lying, sleeping or playing near their working mothers at the workplaces.

Again, a recent study has revealed that many employers statutorily required to set up creches do not comply with the statutory provisions or comply with only in a perfunctory manner. In certain cases, the employers employ women workers in small number so as to avoid being covered by the statutory provision. With a view to overcome these re-
straints, the Ministry of Labour is finalising a scheme to provide support to voluntary organisations to establish creche facilities for women industrial workers in the centres covered by the Acts. The scheme aims to cover all the employers/establishments who are statutorily required to provide the creche facilities for the benefit of their women workers but do not do so for some reason or the other. The scheme also enables the employers/establishments who are not statutorily required to provide the creches to avail of the facilities under it. The scheme would be essentially based on an integrated approach and include additional welfare inputs which may not be specified in the law. It is submitted that this is a welcome measure on the part of Ministry of Labour.

In order to implement the creche scheme in true spirit and to improve the conditions of creches, the following recommendations of National Commission on the Labour and Committee on Labour welfare should be implemented.

The National Commission on Labour has recommended that (a) the standard of creches in majority of factories and mines needs to be improved, (b) the state should provide creches as part of its labour welfare activity in the case of smaller units. It should be possible in such cases for the states to recover a part of the expenditure on running a creche from the employers concerned; (c) the children of women workers employed through the contractors should also be covered by this facility.
The recommendations relating to creches of the Committee on Labour Welfare are also worth consideration.

(a) The creches set up for the first time in new establishments should be well furnished and properly supervised by trained personnel. It is also equally important that the standard prescribed in respect of creches should be strictly maintained even if the number of children decreases;

(b) The smaller establishments, situated in a contiguous compact area and employing 10 or more women workers should arrange for common creche facilities on joint basis;

(c) The provision of nurseries/kindergarten classes in creches is essential for the upbringing and growth of children and they should form an integral part of the creche facilities;

(d) With a view to meet the appropriate needs of the children of the employed women workers, the municipalities, local bodies and state governments should set up community creche near the residential areas, labour colonies or central places in big cities and towns so that the working mothers are able to utilize this amenity to the maximum possible extent.

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(f) **Washing and Bathing facilities**

Separate facilities of bathing and washing are provided for women workers under the Factories Act, 1948 and Contract Labour (Regulation of Employment) central Rules, 1971. Under the Mines Act, 1952 employers are required to maintain at or near pit heads bathing places equipped with shower baths and locker rooms separately for men and woman workers. The scale and extent of washing facilities to be provided are prescribed in the rules framed by the state Governments.

According to a study\textsuperscript{22}, it was found that out of 126 factories, as many as 39 factories had no separate washing arrangement for women workers. In some factories, the existing facility for washing was either not properly screened or had inadequately arranged arrangement of water supply.

According to another study which was undertaken by Labour Bureau\textsuperscript{23}, it was found that out of the total of 111 factories, 25 had no separate washing facilities out of the 86 sampled factories providing the facility, as many as 18 units did not have sufficient number of separate washing arrangements for women. In many cases the separate washing places were either not screened or had no provision for cleansing material, such as soap, towel, etc.

Both of these studies reveal that separate washing facilities were provided in most of the cases but were without an adequate arrangement of screening and were without
water and other facilities.

Again, a recent study in Handloom industry in Karnataka reveals that the employers had not made any special arrangements for providing washing facilities for their workers working in common worksheds. Both male and female workers engaged in the worksheds generally did their washing at the same open places from where water for drinking purposes was available. However, common washing facilities for male and female workers was reported to have been provided in common worksheds of a sampled handloom unit and no separate washing facilities for men and women were found to exist in any of the worksheds of the sampled handloom units.

(g) *Latrine and Urinal facilities:*

Separate conservancy facilities are provided to women workers in the Factories Act, 1948, the Plantations Labour Act, 1951, the Mines Act, 1952, the Beedi and Cigar workers Act, 1966 and Contract Labour (Regulation and Abolition) Central Rules, 1971. The employer has an obligation 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 maintained according to the standards prescribed under rules by the concerned state Governments.

A study in plantations revealed that the latrine facility was provided only in the housing colonies, while as it should have been provided at the place of work also be-
cause as per rules this facility is to be provided at convenient and accessible places while at work.

In another study\(^2^6\), almost all the sampled factories had provided separate toilet facilities for women workers but in some cases the facility provided was either inadequate or its maintenance was highly unsatisfactory. Same was the result in one more study\(^2^7\) also. There also exerted separate latrines for women in most of the sampled factories but their condition was unsatisfactory and maintenance inadequate.

In a recent study separate latrine facilities for men and women workers were found to exist in the worksheds of 9 out of the 33 sampled units and common latrine facility for men and women workers existed in 12 sampled units. No latrine facility had, however, been provided in the common worksheds of the remaining 12 sampled handloom units. The facility provided was mostly in the form of dry latrines, which were not found in sanitary conditions, in most of the cases\(^2^8\).

(h) *Rest rooms and canteens:*

There is no statutory provision for separate rest rooms and canteens for women workers. Only the Contract Labour (Regulation and Abolition) Central Rules 1971 provides rules to this effect. It is suggested that provision for separate rest rooms and canteens for women workers should be made applicable to factories, mines plantations and other industrial establishments also.
However, a study has revealed that although it is not obligatory on the part of employers to provide rest rooms and canteens in factories yet out of the 24 canteens functioning in various sampled factories, 3 had provided separate seating arrangement as well as service counters for women and out of 32 sampled factories 16 had provided separate rest rooms for women or made separate seating arrangement for them in the rest rooms meant for both men and women workers.

Several newspapers have been reporting on the plight of migrant workmen in different states. A committee of Orissa Assembly on Migrant labour while visiting Salal Project in Jammu and Kashmir found that the working conditions of the migrant women was far from satisfactory. The working hours ranged from 10-12 hours per day and the wages were very low. The contractors were found to be violating the provisions of the Inter State Migrant workmen Act.

The law requires that the contractor or the employer should provide various types of amenities at the work place such as canteens restrooms, latrines and urinals etc. The employers have pointed out constraint of space to provide such facilities especially in towns and cities. There was a common complaint that such facilities were not provided in Delhi when the various stadia and other buildings were under construction for the Asiad.

Therefore, it becomes clear that in most of the cases the statutory provisions which have been provided for the
protection, security and welfare of women workers either, are being violated or are not being complied with.

(i) Maternity Benefits:

Maternity benefit was said to be an indemnity for the loss of wages incurred by a woman worker who voluntarily before the birth of a child and compulsorily thereafter abstains from work in the interest of herself and that of her child. Now after the passage of Maternity Benefit legislations, it is recognized as a right of women workers to protection by way of payment of cash, medical bonus and leave with wages for a certain period before and after confinement. It is provided under two central legislations, viz. the Employees State Insurance Act, 1948 and the Maternity Benefit Act, 1961. If both these Acts apply to a particular place, then Maternity Benefits Act, 1961 shall give way to the E.S.I Act, 1948. This is provided under section 2 (2) of the Maternity Benefits Act, 1961 itself which says "noting in this Act shall apply to any factory or other establishment to which the provisions of the ESI Act, 1948 apply for the time being". The only exception of this provision is contained in section 5-A of the Maternity Benefit Act, 1961 which lays down that a woman entitled to the payment of maternity benefit under the Act shall continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of the ESI Act, 1948.

(I) Judicial Response:

Only a few cases have come up arisen before the courts,
so far in the area of maternity benefit. As is clear the
maternity benefit is paid under ESI Act and Maternity Benefit
Acts. Under both the Acts it is paid on the daily average
basis for a maximum period of 12 weeks of which not more than
6 weeks should exceed the actual data of confinement or
delivery. The Maternity Benefit Act like Employees State
Insurance Act does not define the term "week". A question,
therefore, arises whether for the computation of maternity
benefit for the period of twelve weeks [six weeks (including
the day of delivery) preceding the date of delivery and six
weeks following that data] cover wages for non-working days
such as Sundays falling during the period of absence. This
question came up before the Kerala High Court in Malayalam
plantations ltd. v Inspector of Plantations31.

The full Bench of the court while linking the maternity
benefit with the average daily wages of a women worker indi-
cated that such benefit was to be calculated with reference
to the working days only. The Court, accordingly, held that
there was nothing in the Maternity Benefit Act to show that
the duration of maternity benefit covers non-working wage-
less days in the week. Therefore, in calculating the benefit
the number of weeks for which a women worker is entitled to
the benefit must be multiplied by six and not by seven. This
view, however, did not find the approval of the supreme court
in B.Shah v Labour Court Coimbatore32. The supreme court
referred to various dictionary meanings of the word "week"
and observed:
In the context of sub-sections (1) and (3) of section 5 of the Act, the term "week" has to be taken to signify a cycle of seven days including Sundays. The language in which the aforesaid subsections are couched also shows that the legislature intended that computation of maternity benefit is to be made for the entire period of the women workers actual absence, i.e., for all the days including Sundays which may be wage-less holidays, falling within that period and not only for intermittent periods of six days thereby excluding Sundays falling within that period for if it were not so, the legislature instead of using the words "for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day" would have used the words "for the working days falling within the period of her actual absence immediately preceding and including the day of her delivery and the six weeks immediately following that day but excluding the wageless days". Again the word "period" occurring in section 5 (1) of the Act is a strong word. It seems to emphasize, in our Judgment, the continuous running of time and recurrence of the cycle of seven days. It has also to be borne in mind in this connection that in interpreting provisions of beneficial pieces of legislation like the one in hand.
which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely fall within the purview of Article 42 of the constitution, the beneficent rule of construction which would enable the women workers not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output, has to be adopted by the court.

The interpretation placed by the court on the phraseology of sub-sections (1) and (3) of section 5 of the Act appeared to the court as to be in conformity not only with the legislative intendment but also with paras 1 and 2 of Article 4 of convention No-103 concerning Maternity Protection Convention (Revised), 1952, adopted by the General conference of the International Labour Organisation which are extracted below for facility of reference:

1. While absent from work on maternity leave in accordance with the provisions of Article 3 the women shall be entitled to receive cash and medical benefits.

2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefit sufficient for the full and healthy maintenance of herself and her child.
in accordance with a suitable standard of living.

The court therefore, held that the computation of maternity benefit has to be made for all the days including Sundays and rest days which may be wage-less holidays comprised in the actual period of absence of the women extending upto six week preceding and including the day of delivery as also for the days falling within the six weeks immediately followings the day of delivery thereby ensuring that the woman worker gets for the said period not only the amount equally 100 per cent of the wages, which she was previously earning in terms of section 3 (n) of the Act, but also the benefit of the wages for all the Sundays and rest days falling within the aforesaid two periods which would ultimately be conducive to the interest of both the woman worker and her employer.

It is, submitted, that this view is correct and is in consonance with the principles of social justice. It also shows the concern of the Judiciary to provide better security to women workers in cases of confinement, mis-carriage or sickness arising out of pregnancy or premature birth of a child, etc.

(II) AN OVERVIEW:

Despite the fact that the two legislations i.e. ESI Act and Maternity Benefit Act are covering the same
field of maternity benefit, they are not uniform. The benefits under Employees State Insurance Act are based upon the principle of insurance and to become eligible for any benefit including maternity benefit under it, there must be paid some specified contributions by employees and by the employers for the specified period, and this must be continued for availing of benefits in future. As compared to this, there is no requirement of contribution either on the part of employees or employers under the Maternity Benefit Act and a women is entitled to derive maternity benefits without any contribution whatsoever provided she is otherwise entitled for it. This shows that the coverage of the two Acts is not identical. It is, therefore, suggested that insurance principle should be applied to Maternity Benefit Act also.

The common ground covered by the Employees State Insurance Act is factory. But the definition of the term "factory" is not the same in both the Acts. A scrutiny of the two definitions of the term "factory" reveal that the Employees State Insurance Act, 1948 does not cover the following establishments though they are covered by the Maternity Benefit Act, 1961.

(a) establishments which employ or had employed on any day in the preceding twelve months ten or more persons and carried on manufacturing process with the aid of power;

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(b) establishments which employ or had employed on any day in the preceding twelve months twenty or more persons but which carried on manufacturing process without the aid of powers;

(c) factories which are exclusively engaged in one or more of the following processes with or without the aid of power, namely, cotton ginning, cotton or jute pressing, decontication of ground nuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea;

(d) factories where any manufacturing process is incidental to or is connected with any of the processes described in (c) above;

(e) factories carrying on any process of blending, packing or re-packing of tea or coffee, if engaged for a period not exceeding seven months in a year.

The requirement with regard to eligibility of women getting maternity benefit is also not identical in the two Acts. In order to be eligible for maternity benefit under the Maternity Benefit Act, 1961 a woman must have worked for not less than 80 days in the establishment during the twelve months preceding the date of her expected delivery. But under
the ESI Act, 1948, to be entitled to maternity benefit weekly contributions in respect of her must have been paid for not less than 13 weeks in the contribution period.

Another difference between the provisions of the two Acts is with regard to nursing breaks. Under the provisions of the Maternity Benefit Act, 1961 every woman returning to her duties after child birth is granted two additional nursing breaks of prescribed duration in the course of her daily work until the child attains the age of fifteen months. This is a measure for the care of the new born child and a step to improve the health of the said child. A similar measure is not contained in the ESI Act, 1948.

One more benefit which is not available to woman worker under the E.S I Act 1948, but is provided under the Maternity Benefit Act, pertains to arduous nature of work to be done by a pregnant women worker. Under, Maternity Benefit Act, 1961, a pregnant woman worker can choose not to perform work which is of arduous nature, which requires long hours of standing, which is likely to affect her health or interfere with her pregnancy or which is likely to cause a mis-carriage. This provision is apt for improving the health of the un-born child and her mother. This shows that Maternity Benefit Act has an improvement over the ESI Act in certain respects.

However, the virtue of both Maternity Benefit and Employees state Insurance Act is that they recognize the needs of pregnant women workers and guarantee paid leave for
them on a national level, a step that many other countries have not had the realism and foresight to do. But both the Acts have some common defects. They do not cover the cases of adoption of new born children. If a woman worker is issueless and wants to adopt a new born child it needs some leave and monetary help to look after the baby. Therefore, both these Acts should cover adoptive mothers also.

Again, the maternity benefit under there Acts is available to women workers regardless of the number of children. It is said that grant of maternity benefit unrelated to the number of birth is inconsistent with our drive for family planning. Therefore, maternity benefit should be restricted to only two children by making necessary changes in the law.

It will not be out of place to mention over here, that to give boost to the family planning programme and to check the menace of population growth, the Maternity Benefit Act was recently amended in 1995, by providing, six weeks leave with wages in case of medical termination of pregnancy, two weeks leave with wages to women employees who undergo tubectomy operations and one month leave with wages in case of illness arising out of the two. This is a welcome amendment but with one reservation relating to medical termination of pregnancy, which may lead to immorality in the society.

The amendment of 1988 of the Maternity Benefit Act has made several much needed reforms. By permitting individual
woman, Union representatives and voluntary organisations to bring court complaints, it is far more likely that the Act will actually be enforced against employers. The inclusion of Unions and organisations is especially important, since women often do not have the knowledge or resources to bring suits themselves. Despite such changes however, the Maternity Benefit Act still suffers from serious shortcomings. Under the Act, the entire burden for payment of maternity benefit to women workers is that of the employers. This has inculcated a tendency in the employers to evade the payment of maternity benefit. The employment of women has also been effected by this because employers have shown preference for male workers. On the other hand, under the Employees State Insurance Act, the benefit is payable to women workers by the ESI Corporation. So there is no question of evasion of payment of benefit by the employers. Therefore, under the ESI Act women workers enjoy greater security and protection. The Maternity Benefit Act has an extremely limited application and is rarely applied in the agricultural sector. Even though state governments are empowered under the Act to extend provisions to the agricultural sector, no step has yet been taken to do so. The Amendment of 1988 of the M B Act has extended its coverage to shops and establishments, but this is still far too narrow. It is difficult to understand why women working on construction jobs, or as sweepers, should not be eligible for maternity benefits while women working in plantations or circuses are. Home based workers and other independent contractors who are not considered 'employees'
also remain ineligible for benefits, but are in as much need for coverage as 'employed' women.

The medical bonus provided has been raised from petty Rs 2 to a still miserly Rs 250. This may cover minimal requirements, but for women who suffer any complications the bonus is meaningless. What is needed is insurance that will cover the actual medical needs of pregnant women.

The greatest weakness of the Act lies in its extremely limited response to the problem of widespread discrimination that women workers face during and after their pregnancy. It is a common practice among employers to refuse to hire pregnant women, to demote or terminate women if they become pregnant, and to deny them promotion and pay hikes. The Maternity Benefit Act provides only minimal protection against these practices. In fact, the Act itself discriminates against un-employed pregnant women by prohibiting them from accepting employment within six weeks regardless of their condition. Women returning to work after childbirth also face discrimination because they are mothers. For example, it has been the policy of government corporations to terminate the services of women with one or more children. The Act does not address this problem at all. Instead, by requiring employers to pay maternity benefits without extending extra protection to women the Act actually encourages employers to discriminate against them.
Although, the Maternity Benefit (Amendment) Act, 1988 revised the penalties, yet still they are not high enough to deter many employers from temptation of trying to evade the Act. So penalties should be raised further and made more stringent.

The Maternity Benefit Act limits the situations in India through which women can obtain relief by making complaints to government inspectors. This means that in many cases the Act will not provide them adequate relief. For example when employers have violated the requirement that women be permitted nursing breaks, women are not permitted to make complaints to inspectors. Again, if employers make unfavourable changes in the terms of a woman's employment, such as re-instating her to a less responsible position after she returns from leave, the woman can only make a court complaint. This is a move that they may be un-likely to make given the time and expense involved. These violations may go un-challenged. Although, there is more at stake in this kind of situation, yet ironically the courts are only allowed to impose prison terms or fines and are not permitted to grant equitable relief to the women harmed. Women can take recourse to the Industrial Disputes Act, which governs disputes over unfair labour practices, but it does not expressly cover discrimination during or because of maternity leave.

Various studies were conducted by Labour Bureau from time to time to look into the condition of women workers in mines, plantations and in factories. All the studies
revealed that no maternity benefit was paid to temporary and casual women workers as they fail to fulfil the necessary condition of having worked for a specific period of time as prescribed under Maternity Benefit Act in the twelve months period immediately preceding the date of the expected delivery. It was found that the tendency on the part of employers was to keep their services temporary deliberately so as to evade the payment of maternity benefit. Therefore, this qualifying condition must be relaxed in case of casual and temporary women workers. The other difficulty reported was the delay in making the payment of the maternity benefit.

Although, majority of the sampled women workers in the selected factories were satisfied with the benefits provided under the E.S.I scheme, yet some expressed dissatisfaction over the standard of pre-natal and post-natal medical facilities being made available to them in the ESI hospitals/dispensaries. It was reported that the medicines of good quality were not supplied to them.

In another study of women workers engaged in stone breaking it was found that women workers bringing their small children to the work place, were turned out of work and therefore, were not paid maternity benefit at all.

A recent study reveals that women working in the sampled handloom units were generally not aware that such a facility was to be made available to them under the Maternity Benefits Act. Although many women workers in the sampled
handloom units had been continuously employed with the same employers for periods exceeding six months, yet none of them reported to have been paid any maternity benefit. Some of the employers of the handloom units did not consider the female winders as their employees and rather regarded them as self-employed persons. Further, some employers also asserted that with poor profit margins, they were not in a position to incur heavy expenditure involved in providing the required maternity benefits to the eligible female workers.

Thus it is clear that the provisions of maternity benefit legislations are not being implemented in letter and spirit in most of the cases. The employers are evading the provisions on one pretext or another. It is the women workers who ultimately suffer. This speaks of slackness on the part of implementation machinery and the lacuna in the Employees State Insurance and Maternity Benefit Acts. Therefore, it is submitted that the suggestions given above should be incorporated in the maternity benefit law along with the recommendations given by the Committee on the Status of Women in India. The recommendations of the Committee on the Status of Women in India are as follows.

1) The Maternity Benefits Act should be extended to all industries not covered by the Act at present and the provision of maternity relief ensured by the creation of a Central Fund by levying contributions from employers and employees. The administration of the Fund...
Should follow the pattern already established by the Employees state Insurance Corporation;

II) The Act should also cover agricultural labourers in the same manner as suggested for other industries. To facilitate its implementation, the Central Fund should also include a levy on agriculture farms employing hired labour;

III) The anti-retrenchment clause already included in the ESI Act, 1948, should be incorporated in the Maternity Benefit Act.

IV) For women retrenched for short periods and re-employed on the same job, the period of unemployment should not be treated as discontinuation of service for their eligibility of this benefit. For casual labour, a minimum of 3 months of service should be considered as qualifying service for this benefit;

V) As decided by the supreme Court in the case of Bidi workers, the provision of maternity benefit should be extended to home workers in all other industries;

VI) In order to eliminate unjust denial of maternity benefits scrutinising of applications should
be done by a committee of the management and trade union representatives. The later should preferably include a woman. This will provide greater incentive to women workers to participate in Trade union activities;

VII) The penalties for evasion of this law should be made more stringent;

VIII) The system of paying cash benefits in a lump sum sometimes gives rise to inadequate attention to the nutritional need of the mother and the child. Payments of maternity benefits should be made in two instalments before and after confinement, as already prevalent in many industries.

It was reported that a decrease in the number of women employment in factories etc was due to statutory obligation to pay maternity benefit. This was challenged by a number of authorities. As reported by NCL51, a study conducted by ILO (India Branch) says that this is not borne out by any fact. According to it the percentage of women employees in larger establishments, employing 50 or more workers was higher than those in smaller ones. Benefits or no benefits, where women were more useful, they continued to be employed. Plantation is an instance in point. Mr H.Pais also says:

It is difficult to accept that maternity benefit is standing in the way of employment of women. We
have seen from E S I C records that confinement rate has come down and at 16 per thousand women employed means less than two confinements in a normal service span of 30 years. Six months leave on this account in a women's total service should not be considered as a deterrent factor.

However, despite these statements the fact remains that maternity benefit like other statutory obligations is considered as a burden by the employer and affects the employment of women. It is therefore, submitted that the maternity benefit should be paid on the pattern of insurance like E S I benefits.

J) Equal Pay for Equal work

The constitution of India declares that equal pay for equal work for both men and women is an ideal to be translated into practice by the state. Article 39 (d) enunciates the fundamental principle of "equal pay for equal work", which not only means equal pay for men and women engaged on similar work or the same work, but also implies that persons holding jobs with similar duties and responsibilities should not be treated differently in the matter of pay merely because they belong to different departments or have different status, such as permanent, temporary or casual.

Article 14 of the constitution guarantees to the citizens equality before law and equal protection of law irrespective of sex. It follows that women doing similar work as
men cannot be given lesser wages, as this would violate their fundamental right to equality.

Keeping in mind the requirements of articles 14 and 39 of the constitution, the Government of India promulgated the Equal Remuneration Ordinance 1975, in the International women's year. The Ordinance was replaced by the Equal Remuneration Act, 1976. The main object of the Act is to provide for the payment of equal wage to men and women wage earners and for the prevention of discrimination on the ground of sex, against women in the matter of employment and for matters connected there with or incidental thereto.

I) Judicial Response

Though the Equal Remuneration Act was passed in 1976, it is one of the least invoked legislations by the intended beneficiaries. There have been a few cases where women have challenged the lower salaries paid to them. In Air India v Nergesh Meerza and others, the Central Government had made a declaration by virtue of a notification that the differences in the remuneration of air hostesses and flight stewards were not based on sex because section clearly authorises restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate Government. An air hostess challenged the discriminatory employment conditions for air hostesses and stewards along with other things. The supreme court held that the benefit
conferred on the female under the Act is not absolute and unconditional. From a comparison of the mode of recruitment, the classification, promotional avenues and other matters, it is clear that Air Hostesses form an absolutely separate category from the Assistant pursers in many respects such as different grades, different promotional avenues and different service conditions. No hostile discrimination is therefore, involved. The declaration made by the Government of India is presumptive proof of the fact that in the matter of allowances, conditions of service and other types of remuneration, no discrimination has been made only on the grounds of sex.

Thus equal pay for equal work has been denied to the air hostesses which resulted as tremendous set back to the working women. Secondly, this case has also shown that even during their period in service, discrimination against women was practiced. This situation was remedied by the passing of Equal Remuneration (Amendment) Act 1987, which specifically mentions that there should not be discrimination during employment between men and women.

Thirdly, it is also proved beyond doubt in this case that section 16 is defective and can work against the interests of women employees. Under this section government can declare that the difference in wages in a particular post is not based on sex and the courts have to accept it without any inquiry. This rule could be used arbitrarily not only in public sector undertakings but also in private employment to shut out an enquiry by the courts. Therefore, section 16
needs amendment so that equal pay for equal work cannot be denied.

However, after the Air India Case the judiciary has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work".

A milestone in the area of implementation of Equal Remuneration Act was reached with the pronouncement of the supreme court decision in People's Union for Democratic Rights v Union of India. In this case the supreme court ruled:

*it is the principle of equality embodied in Article 14 of the constitution which finds expression in the provision of the Equal Remuneration Act, 1976.*

In other words if the provisions of the Act are not observed the principle of equality before the law enshrined in Article 14 is violated. In Randhir Singh v Union of India while construing Article 14 and 16 in the light of the preamble and Article 39 (d), the Supreme Court held that the principle of "equal pay for equal work" is deducible from them and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer. This case is a harbinger of
a new judicial trend of reading directive principles into fundamental rights. The Supreme Court in this case further observed:

equal pay for equal work is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by the enforcement of constitutional rights.

In Sanjit Roy v State of Rajasthan, the Supreme Court directed the state Government not only to pay minimum wages but also to pay wages in accordance with the principle of equal pay for equal work to men and women workers engaged in famine relief work.

Again in Bhagwan Dass v State of Haryana, the Supreme Court was of the view that, (I) persons doing similar work cannot be denied equal pay on the ground that mode of recruitment was different; and (II) a temporary or casual employee performing the same or similar duties and functions is entitled to the same pay as that of a regular or permanent employee.

The Supreme Court again reiterated in a plethora of cases that "equal pay for equal work" enshrined in Article 19 (d) is implicit in Articles 14 and 16 and hence becomes enforceable in the court of law. It is a "constitutional goal" capable of being achieved through constitutional remedies. Article 39 (d) and other like provisions in the directive principles are "conscience of our constitution". They
are rooted in social justice. They were intended to bring about a socio-economic transformation in our society.

A survey of the aforesaid decisions reveals the creative role of Judiciary in securing equal pay for equal work to both the sexes. Further, the court has brought the equal remuneration within the contours of the fundamental right of equality.

The question of discrimination on account of sex in the matter of payment of remuneration to men and women workers doing "same or similar work" came up before the supreme court of India in 1987 in the famous case of Macklinon Mackenzie & Co Ltd v Audrey D'costa. This is the most significant judicial pronouncement on equal remuneration. It has not only made a distinct contribution in formulating the test for determining "same work or work of a similar nature" under section 4 of the Equal Remuneration Act, but also reflected the role of judiciary in law making in the arena of equal remuneration. In this case the respondent, confidential lady stenographer alleged that while in the service of the petitioner company, she was paid remuneration less than that was being paid to the male stenographers for doing "same or similar work". The Supreme Court held that the lady stenographer is entitled to relief though, she was doing the same work, she was paid a remuneration less than that was paid to the male stenographer for the work. The Court laid down the
following tests to determine whether the work is "same or of a similar nature".

In deciding whether the work is the same or broadly similar, the Authority should take a broad view, next in ascertaining whether any differences are of practical importance, the Authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible. In making comparison the Authority should look at the duties generally performed by men and women. Where however both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus, a woman who works days cannot claim equality with a man on a higher basic rate for working nights if in fact there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed shifts.64

The court further added:

We, do not suggest that there can be no discrimination at all between men and women in the matter of remuneration. There are some kinds of work
which women may not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women cannot do. In such cases there cannot be any discrimination on the ground of sex. Discrimination arises only where men and women doing the same or similar kind of work are paid differently. Wherever sex discrimination is alleged, there should be a proper job evaluation before any further inquiry is made. If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non discriminatory (i.e. those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demand and it is found that a man and woman employed on these two jobs are paid differently, then sex discrimination clearly arises.

It was also pointed out that the fact that difference in pay scale was due to settlement between company and Union was no answer. To hold otherwise, will be violative of section 4 of the Equal Renumeration Act, 1976 as well as Article 39(d) of the constitution. The most significant aspect of this case is that the supreme court held that the applicability of the ER Act, 1976 does not depend upon the financial

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ability of the management to pay equal remuneration as provided by it.

The Supreme Court has played a significant and appreciable role in the above case by highlighting the discrimination with regard to remuneration payable to male and female workers. Therefore, the judiciary can play a positive role in preventing such discrimination not only in those cases wherein the employer violated relevant provisions of the ER Act but it can prevent such discrimination in those cases also where the Act is silent. But at the same time a balanced approach has to be adopted for declaring certain types of work which could be done only by the male employees as the female employees could not do such work. In such cases the discrimination should be held to be valid and permissible one. Therefore, only in such cases wherein the male and female workers are doing same or similar type of work, any discrimination in remuneration payable to female workers should be declared to be void. In all other cases wherein nature of job done by the male and female workers entails some distinction viz, working in night shift or doing arduous jobs, the discrimination pertaining to remuneration payable by the employer to male and female workers should be held to be valid and justified one.

Despite the tests laid down by the Supreme Court for determining the "same work or work of a similar nature", the major lacuna with the ER Act is in the operative provision i.e section 4 (1) which reads as:
No employer shall pay to any worker employed by him in an establishment or employment, whether payable in cash or kind, at rates less favourable than 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 similar nature.

The above provision is being reportedly interpreted so as to make equal wage for work of equal value relevant only within the same establishment, thus giving rise to contentious that equal remuneration need not be paid if the work is performed in different establishments even though it may be of equal value. The definition of the term "same work or work of similar nature", leaves much to be desired and can defeat the object of the Act. In India, as in most other countries, there are many jobs which are sex based. For example, a study carried out in the Textile Industry revealed that, out of 27 job categories, women were wholly concentrated in only one category, i.e reeling. The wages fixed for reeling are substantially lower than those for other categories in which women are simply not employed. Since there are no men employed in reeling, the question of discrimination against women for the same work would not arise. Further, such a situation would not be covered under the Act as women would not be doing the "same work or work of a similar nature". And, yet, the value of work of the women reellers to
the employer may be the same or higher than any other job of the male workers.

'Same or similar work' leaves the door wide open for employers to continue merrily with the practice of paying less to women workers as men and women seldom do the same work. The National commission on self Employed Women and Women in the Informal Sector in their Report, Shram shakti, mentions that there is a tendency "to categorize tasks gener­ally done by women as being of slightly inferior nature warranting lower rates of wages." The members of the commis­sion however, had their reservation about accepting 'work of equal value' as being a better test. The reason given by them for this was "conforming to the concept of equal pay for equal work measuring value of work and equating them is a far more difficult task than identifying same work or work of a similar nature." To deal with such a situation the concept of "equal pay for comparable worth" has come to replace "same work or work of a similar nature". It is not the similarity or identity of work alone that will entitle women to equal pay but also work which is comparable in terms of skill required and its value to the employer that will entitle them to equal pay. By this method, a reeler can demand as much pay as a weaver, though they are not doing the same work. It is therefore, submitted that "equal pay for comparable worth" should be incorporated in E R Act by an amendment and given legal recognition. Needless to mention that in the U.S.A, the
concept of "comparable worth has found legislative and judicial recognition.

There were found many more loopholes in the R Act is not applicable to all the employment automatically and is subject to extension by notification in the official Gazette by the Government. The Act also did not ban retrenchment of women workers and thus large number of women did in fact, lose their jobs in the wake of the Act.

II. AN OVERVIEW

Wage discrimination is a problem all over the world, especially in the third world countries, where the process of industrialization is still going on. A double standard on pay still plague women workers everywhere according to ILO report. In India, over 87 per cent women work on farmlands, construction sites, tea and coffee plantations, in rural industries and jute and rice fields they are paid less than men for the same amount of work. It is therefore said that the concept of equal wages for equal work is illusory.

The Labour Bureau, conducted a study on the socioeconomic conditions of women workers in mines. The study observed that although in 77 out of 87 mining units, the wage rates of men and women engaged on similar work were the same even before the promulgation of the Equal Remuneration Act, yet in the remaining 10 units, the wage rates of women workers were lower than their male counterparts engaged identical work. The Bureau conducted a similar study in plantations.
which revealed that though in many states the rates of wages were brought at par with those of men after 1977, yet there were still some areas in which women were getting less wages than men. The Committee on the Status of Women in India also confirmed the existence of wage differentials between male and female workers in some industries especially in plantations.

In an another study of Labour Bureau, it was found that in a few sampled factories the Equal Remuneration Act had not been enforced and women workers were found being paid less than their male counterparts. The main factor responsible for such a situation was that as compared to men, relatively higher proportion of women workers were engaged in low paid occupations which helped in lowering down their weighted average wage rate.

A study done by an officer in the Labour Ministry has brought to light the fact that there are organisations which were violating the Act by not paying equal wages to women workers. But there have been only few cases brought to court protesting against this discrimination.

In a recent report, it is found that in the un-organised sector women workers are paid less and are denied their legitimate rights. If they protest against this with their employer or approach the labour department for redressal, they lose their jobs. According to this report the Regional Labour Commission Madras at a public hearing organised by
National Commission for women, said that his department carried out inspection of over 300 construction sites in Tamil Nadu. But it could come up with evidence against only 18 labour contractors. The court proceedings normally took 18 months and less than half of those prosecuted got convicted. He further conceded that the evidence of under-payment could be more widespread than the official figures reflected because the victims rarely voiced their grievances during inspection. Irregularity of employment often forced the women workers into silence.

This shows that women workers due to fear of losing the job do not register their complaint against the employers which proves that the law enforcing agencies are not performing their duties effectively. Secondly, the court procedures are also cumbersome which deters the women workers from approaching the courts. The consequence of this is that the E R Act is violated. This state of affairs is also acknowledged by the government itself in the statement of objects and Reasons, while amending the E R Act in 1987 as follows:

In spite of known prevalence of disparity in wages between men and women, there have not been many reports of violations of the Act.

The E R Act was passed many years before but the number of violations detected, prosecutions launched and convictions obtained have been extremely small. In fact, almost all the cases have been in the central sector, though most of the
Employments covered are in the state sectors. The figures relating to central sector are available from 1982 to 1986 in table 5.4.

Very few state governments, viz., Uttar Pradesh, Orissa, Madhya Pradesh and Himachal Pradesh have reported cases of violations under the ER Act. One of the reasons appears to be the inadequacy of the inspecting staff. The enforcement staff in the field is burdened with the task of implementing a very large number of Acts, and laws relating to women and children are generally considered to be of low priority.

A women labour cell, which has been established under the Ministry of Labour, is responsible for monitoring the administration of the ER Act, 1976. The cell is responsible for the formulation of policies that seek to remove the handicaps under which women work, to strengthen their bargaining position, to improve their wages and working conditions, to enhance their skills and to open up better employment opportunities for them. These women's cells have also been set up in many states and Union territories. A committee has been set up at the centre under the Act to advise the Government in providing increasing employment opportunities for women. Similar Committees have also been set up by all state Governments/Union territories except Mizoram, Nagaland and Daman & DIU.

Annual returns are called for by the special cell from the state Governments in order to monitor implementation of
Table 5.4:
POSITION OF IMPLEMENTATION OF EQUAL RENUMERATION ACT, 1976.

<table>
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<tr>
<th>Year</th>
<th>No. of prosecutions</th>
<th>No. of cases disposed of</th>
<th>No. of convictions</th>
<th>No. of acquittals</th>
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<td>8</td>
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<td>305</td>
<td>203</td>
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</table>
the Act. In most cases the response from the state Governments has not been encouraging. However the available data as reported by them from 1985 onwards has been compiled along-with the data on enforcement of the Act in the central sphere through the central Labour Commissioner. Five states, namely, Bihar, J&K, Mizoram, Nagaland and Sikkim and 3 Union Territories, namely, Andaman & Nicobar, Daman & DIU and Dadar & Nagar Haveli have not been reporting at all. There are gaps in case of others as well. In respect of 1991, returns have been furnished only by 2 states. Many returns indicate no action.

However, official information regarding enforcement position, as available from 1985-1993, is incomplete and it shows that the ER Act is not being strictly complied with. This enforcement data is presented in the table 5.5.

The administration of many states and union territories has appointed competent authorities and has also set up Advisory Committee under the Act. But in some states/union territories Advisory Committees are yet to be constituted. The first and second meetings of the Advisory Committee at centre reconstituted under the ER Act, 1976, were held on August 8, 1983 and April 19, 1984 respectively. It was agreed to identify traditional professions employing substantial number of women, so that further measures could be taken up for upgradation of productive skills in these vocations. Two Sub-Committees were also set up one to study and report on the statistics regarding employment of women, and the other
Table 5.5:

POSITION OF IMPLEMENTATION OF EQUAL REMUNERATION ACT (SINCE 1985)

<table>
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<td>(2)</td>
<td>No of violations</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(a) Detected</td>
<td>13,889</td>
<td>25,705</td>
</tr>
<tr>
<td></td>
<td>(b) Rectified</td>
<td>9,870</td>
<td>18,865</td>
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<tr>
<td>(3)</td>
<td>No of prosecutions</td>
<td>996</td>
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<td>(4)</td>
<td>No of convictions</td>
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<td>3,274</td>
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<tr>
<td>(5)</td>
<td>No of Acquitals</td>
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<td>(6)</td>
<td>No of cases disposed of</td>
<td>422</td>
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<tr>
<td>(7)</td>
<td>No of cases withdrawn</td>
<td>03</td>
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</tr>
<tr>
<td>(8)</td>
<td>No of claims certificate cases filed</td>
<td>287</td>
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</table>

Source: Women's cell, Ministry of Labour and Chief Labour Commissioner (Central)\textsuperscript{31}.  

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on employment of women in handloom, power loom and construction industries. The Committee has further recommended the setting up of a cadre of inspectors from among prominent women social workers to ensure implementation of the ER Act and to look into the complaints of harassment of women workers in offices and in other white collar jobs. The Committee also suggested that the inspectors should be given the status of honorary magistrates.

However, it has been revealed by a study that the meetings of most of these Committees are not held regularly. It was also noticed that some of the members of these Committees did not attend the meetings and the same had to be postponed for lack of quorum.

Review meetings have been held during 1992 with Labour Departments of eight states and two UTs. Need for regular information as well as a better implementation of the Act has been impressed upon the states as also the need for activating the State Advisory Committees set up under the Act.

The following social welfare organisations have also been recognized under the ER Act for the purpose of filing complaints in the courts against employers for violation of the provisions of the Act.

1) The centre for Women's Development studies, New Delhi.

2) The self employed Women's Association, Ahmedabad.

4) The Institute of Social Studies Trust, New Delhi.

Some state governments have also recognized certain voluntary organizations, under the Act for the same purpose in the state sphere. Under the Act, any person aggrieved by an order can also file a complaint in the court.

However, despite all this the fact remains that women are still discriminated at work and get less than their male counterparts. This is clear from Table 5.6, which indicates the status of daily average earnings of men and women in rural and urban areas in standardized industrial categories of employment.

The Table 5.6 clearly points out that the daily average wages for women workers, whether in rural or in urban areas are significantly lesser than men workers. Even in rural areas women get less than in urban areas for the same work. Many reasons are given for this disparity in wages. One is on account of nature of work. Secondly, due to ineffectiveness of enforcement officials. Thirdly, due to non-deterrent effect of penalties. It is, therefore, submitted that penalties should be made more stringent so that Equal Remuneration law will seem penal and not merely socio-economic. Fourthly, due to number of problems faced by enforcement officials particularly in the un-organized sector. Due to scattered nature of un-organized sector, enforcement machinery is not
<table>
<thead>
<tr>
<th>S.No</th>
<th>Industry Division</th>
<th>Average Wage/Salary Earnings Per day Received by Regular Wage/Salaried Employees.</th>
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<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
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<tr>
<td></td>
<td>Rural</td>
<td>Urban</td>
</tr>
<tr>
<td>1</td>
<td>14.58</td>
<td>10.65</td>
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<tr>
<td>2</td>
<td>38.70</td>
<td>23.81</td>
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<td>3</td>
<td>22.77</td>
<td>9.42</td>
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<td>4</td>
<td>28.69</td>
<td>13.78</td>
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<td>36.16</td>
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<td>17.99</td>
<td>18.42</td>
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<td>8</td>
<td>32.08</td>
<td>26.80</td>
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<tr>
<td>9</td>
<td>46.25</td>
<td>38.75</td>
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<tr>
<td>10</td>
<td>38.39</td>
<td>28.39</td>
</tr>
<tr>
<td>All</td>
<td>30.14</td>
<td>21.56</td>
</tr>
</tbody>
</table>

Source: SARVEKSHANA (Special Number), Results of the Fourth Quinquennial Survey on Employment and Unemployment (All India), National Sample Survey Organisation (NSSO), Department of Statistics, Government of India, New Delhi.
capable of reaching to all these places. For purposes of resource allocation, labour law enforcement is generally treated as "non plan". Enforcement, involving as it does, law creation within the Governments, Considerations of minimising public expenditure stand in the way of providing adequate inspecting staff.

Again, demand for statutorily regulated wages in such circumstances often result in denial of jobs. Job seekers faced with having to opt between distressful employment on meagre wages and jobless destitution, acquiesce in the former. Having so acquiesced, they do not always readily come forward to give evidence in legal proceedings that may be launched by enforcement officials before courts of law or other competent authorities. In consequence, the enforcement fails. Therefore, it is submitted that in addition to keeping an eye on labour market regulation, the policy makers should concentrate as well on job market orientation of the workers side by side with enforcement to the maximum possible extent. Workers, on their side should organise themselves exercising their freedom of associations and enhance their collective bargaining strength. Trade Union leaders would need to meaningfully expand their organizational activities to informal and un-organised sectors. In this context, it is worthy of notice that only 10% of the workers in India are Unionised. Unionisation amongst women workers in India is much less. Women constitute only around 14% of the total membership of such Unions.
For the effective implementation of the Act, some of the views and suggestions of the enforcement officials and personnel executive should also be taken into consideration in addition to the opinion and submissions made above. The views and submissions of these officials are:

1) Labour officers and assistant commissioners are of the view that strict enforcement of the Act is very essential for achieving its objective. They also felt that there should be sufficient and frequent visits for due compliance of the Act;

2) As regards penal action, it is quite possible that employees are not making complaints owing to their unawareness of the Act, fear of retaliation from employers or losing jobs;

3) The various obstacles preventing effective enforcement of the Act are: (a) the enforcement machinery is not able to cover all the establishments under its jurisdiction because of insufficiency of staff and (b) the establishments are widely scattered and there are no conveyance facilities;

4) Indian women are not career oriented and they usually work for a few years after university
educational then get married and leave job.

5) Some firms particularly in the private sector have stopped recruiting females and

6) Any act to be more effective requires a change in the outlook of planners, the enforcement machinery, the implementors and the society at large regarding women at work. Their outlook of women as housekeeper and mother rather than an employee needs to be changed.

From the foregoing discussion it is clear that there are a number of labour enactments providing various welfare and security measures for the women workers. We find a positive and effective contribution of the legislature in protecting the interest of women workers through these enactments. More importantly the role of judiciary has been quite significant. There seems to be a new trend in the judiciary to interpret laws liberally so as to provide better protection to women in respect of their rights.

The labour legislations not only prohibit employment of women in under-ground mine, ports and docks, in certain dangerous occupations, near cotton openers or on or near machinery in motion but also makes special provisions for working hours, lifting heavy weight, health, safety and welfare and maternity benefit. However, these labour legislations do not apply, to regulate the working conditions of
women workers in un-organised sector, domestic services and small and cottage industries.

In the organised sector where these legislations apply, the statutory provisions are not being strictly complied with. In many cases it has been found that the protective measures are not provided and the women workers do not get the benefits to which they are entitled to. It seems that the present penal provisions of these labour enactments are not deterrent to prevent the employers from making violations of these provisions. The machinery for inspection and enforcement is inadequate. The women workers due to their ignorance and lack of education do not approach the enforcing agencies for the enforcement of their rights and redressal of grievances. Therefore, penalties should be made stringent and the law enforcement should be made more effective.

Even under Maternity Benefit and ER Acts instances are not lacking where women do not assert their rights due to fear of losing their jobs. Thus both these Acts should be effectively implemented and lady inspectors be appointed.

Humane conditions of work and benefits like maternity benefits should be available in reality and not just on paper. The greatest weakness of the MB Act lies in its extremely limited response to the problem of widespread discrimination that women workers face during and after the pregnancy. The Act imposes the entire burden for providing maternity benefit on the employer. This has led to a tendency
among many employers either not to employ women workers or to evade the payment of maternity benefit. There is, therefore, a need that the benefit under MB Act should also be given on the pattern of ESI Act by creating an Insurance Fund. The Fund should also be administered by E.S.I Corporation. The MB Act should then be made applicable to all establishments irrespective of size and without any qualifying condition. With the passage of time the maternity benefit should than be covered wholly by MB Act and should be deleted from ESI Act. This will create uniformity and avoid duplication in providing maternity benefit to the women workers.

Neither ESI nor MB Act covers the cases of adoption of new born children. If a new born child is adopted, the mother needs leave and monetary help to nourish the child. Therefore, cases of adoptive mothers should also be covered by MB Act. Again, both there Acts provide maternity benefit regardless of the number of children. Therefore, maternity benefit should be restricted to only two children by making necessary changes in the law.

To avoid violation of the MB Act, all the loopholes in the Act should be removed and MB Act should be further strengthened by making the enforcing agencies effective and by enhancing the punishments.

The ER Act, which prohibits discrimination between men and women in regard to wages, is not being effectively implemented. Women continue to occupy 'low status' jobs and the
effectiveness of this well oriented social legislation has been extremely limited. Although this is in right direction, it does not go very far. The judiciary has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work" for both men and women and has brought equal remuneration with in the contours of fundamental rights guaranteed under the constitution. However, the differentials in wage rates of men and women are still continuing.

The ER Act is observed more in breach than in observance. The Advisory Committees have not been constituted in some states and in states where they are constituted, they do not function effectively. There are hardly any significant cases of complaints being successfully argued under the Act. Therefore, the help of trade Unions and all social organisations should be procured to pursue cases of violations of the Act. It will be necessary to ensure that the Authorities and Advisory Committees envisaged under the Act, start functioning and issue regular reports and information. As the procedures under the Act are cumbersome and labour officers unresponsive remedial measures under the Act should be thought of for the smooth and purposeful functioning of the Act.

To translate the socially just and economically sound principle of equal remuneration for men and women into practice, it is absolutely essential to remove prejudices and bottle necks against the employment of women. There is also a need to do everything possible to increase women's employment.
opportunities and to raise their productive efficiency. The relatively lower degree of unionization amongst women explains their inferior bargaining position. The encouragement of Unionization of the female labour force can be an effective device for raising the wages of female workers by bringing the wages at par with male workers and by narrowing wage differentials. This would be especially effective in raising the wages of low paid female employees. Hence, proper climate has to be created for active participation of women in trade unions and in other professional bodies to improve their earnings and quality of life. Also educational and training programmes should be taken up for working women which may remove their fear in a male dominated society and give them a feeling that they are not inferior to men.

Lastly, there is a need to ensure that the protective discrimination restored to in favour of women workers should not be have an adverse impact on the scope or the avenues of their employment in various types of employment, which is bound to have an adverse effect on the service prospectus of the female employees. In such situations instead of doing favour to the women workers it will certainly amount to creating injurious impact due to resultant reduction in employment opportunities for them. Hence, it becomes imperative that a balanced and reasonable approach may be adopted in order to achieve the desired objectives.
REFERENCES


8. Id. P. 42.

9. Supra note 7.


11. Supra note 7.

12. Ibid.


14. Report on Survey of Labour conditions in cotton Gin-
thing, cleaning and Baling Industries, 1977, P.101 and 102.

15. Supra note 13 at P.64.


17. See supra note 7.


22. Supra note 10.

23. Supra note 7.

24. Supra note 18.

25. Supra note 16 at P.58.


27. Supra note 7 at P.46.

28. Supra note 18.


31. AIR 1975 Ker. 86.

32. AIR 1978 SC 12.

33. Id. at P.16.

34. Section 3 (n) of the Maternity Benefit Act, 1961 defines wages to mean:

"all remuneration paid or payable in cash to a workman, if the terms of the contract of employment express or
Implied, were fulfilled and includes -

1. Such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus;

(3) the money value of the concessional supply of food grains and other articles;

(4) but does not include-

   I any bonus other than incentive bonus;

   II over time earning and any deduction or payment made on account of fines;

   III any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the women under any law for the time being in force; and

   IV any gratuity payable on the termination of service”.

35. In this items (a) and (b) are included in the definition of factory under the Factories Act, 1948, to which the ESI Act does not apply and items (c) (d) and (e) as provided in the definition of "seasonal factory" under section 2 (12) of the ESI Act to which also the ESI Act does not apply.


37. Section 11 of the Maternity Benefit Act, 1961. This facility is not limited to only those women workers who are getting maternity benefit.


40. This was observed by Assistant Commissioner of Labour Labour for Maharashtra state, reported in the Lawyers, February, 1989, P.15.


42. Ibid.

43. Supra note 13 at P.42.
44. Supra note 16 at P.36.
45. Supra note 7 at P.40.
46. Ibid.
48. Supra note 18.
49. Supra note 4 at P.193.
50. It is submitted that for casual workers any sort of qualifying condition should be dispensed with.
52. Supra note 3 at P.543.
54. According to section 16 of the Equal Remuneration Act, Act, 1976, "where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the 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, it may, by notification, make a declaration to that effect, and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act.
55. Air India v Nergesh Meerza and others AIR 1981 SC 1929.
56. 1982 Lab. IC 1646 at 1658.
57. Ibid.
58. AIR 1982 SC 879.
59. Id. at P.879.
60. AIR 1988 SC 328.
61. AIR 1987 SC 2040.
62. These cases are - D.S. Nakara v. Union of India AIR 1983 SC 130 at 139; P.K.Rama Chandra Iyer v Union of India AIR 1984 SC 541; Delhi Veterinary Association

63. AIR 1987 SC 1281.
64. Id. at P.1286.
65. Ibid.
68. Ibid.
70. Supra note 13 at P.42.
71. Supra note 16 at P.36.
72. Supra note 4 at P.193.
73. Supra note 10 at P.307.
75. The Times of India, New Delhi, December 13, 1994, P.11.
79. Supra note 19 at P.59.
80. Ibid.


82. The Indian Worker, August 29, 1983, P.7.

83. The Indian Worker, December 21, 1987, P.3.


85. Supra note 19 at page 60.

86. Ibid.


88. Supra note 66 at P.427.