CHAPTER - 7

CONCLUSION AND SUGGESTIONS
In every civil society the dignity of labour is of paramount importance. Unfortunately in India, workmen are denied this dignity. Even after more than half a century of independence, the position of labour as a class in India has not changed for the better. The gap between 'haves' and 'have-nots' has widened; the poor have become poorer; they are now at the mercy of those enjoying power and luxuries of life. Lack of awareness about labour rights, weak laws that promote violation of labour rights, unorganised sectors in labour as a class and lack of will on the part of government, employers, trade unions and labourers – all of them are responsible for this situation. The policy of liberalisation and globalisation has worsened the situation in that labour has been reduced to a cheap commodity to be bought and sold in the market.

The condition of women labourers is worse. The women in globalised economy face new kind of problems and challenges. They are exploited for the reason that they find it difficult to raise their voices against exploitation in a male dominated society. They are paid low wages, sexually harassed at workplace and have to bear the double burden of work at home. They are traditionally being placed in the lower jobs or traditional jobs and are being paid less wages. Sexual harassment at the place of work is yet another consequences of inherent patriarchal notions existing in the society since generations. The global economy denies a woman equal rights to her male counterpart. Everywhere in the world women are always treated as subordinate to men in every walk of life.¹

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Contradiction is innate in the perception of the status of woman in Indian society. She has "de jure" equality under the constitution and many of the laws. "De facto" equality as well as independence still appears a long way off, even after 57 years of Independence. On a hypothetical and rational plane, society is vocal in favour of granting equality to woman. On a personal, psychological level it is unwilling to let go of the upper hand enjoyed by man in a masculine oriented society.

Women have multiple identities and they have many roles which they play and several of these identities are at times contradictory and not always complementary. They have to divide their time between domestic work and wage work. This division takes place over the course of a woman's life time and results in a heavy penalties as she loses her place in the labour market hierarchy. Biologically, the two sexes are different but as far as the qualities of work are concerned, it has never been proved that women are in anyway inferior.

The marginalization of women is not a phenomenon confined to India or even to the developing countries. The invisibility of women's work and its exploitation are as rampant in the most progressive nations as in the least developed. The world economy as it stands today is built on the unpaid labour and misappropriated and ruthlessly exploited natural and human resources. Of these, women's labour forms a major portion. The definitions of 'work' and 'production' as they exist today, whether in the census or in

other surveys on work are such that subsistence production and services provided by women are either ignored or taken into account only marginally. Consequently, the results of these surveys tend to reinforce the traditionally held view that women, more often than not, are non-workers, whose primary responsibilities are household work and caring for children.

The government does not seem to have a clear-cut policy as to what should be the priority legislations relating to women's rights at the workplace and how they should be implemented. What the government has been doing is ad hoc: depending on the demands of the public, the ILO recommendations and at times, depending on what the courts say and sometimes also depending on the convenience of the government.3

According to Eliane Vogel, four factors are chiefly responsible for discrimination against women: i) Socio-cultural attitudes and prejudices ii) The double exploitation of women in the family, iii) The exclusion of women from productive work as full and equal partners and iv) The exclusion of women from political and social life.4 Women form nearly half of the world's population, yet their voices are not heard in the corridors of power. They have been affected by lack of opportunities and facilities arising from the innate discrimination prevalent in most societies. Lack of awareness is, in fact, one of the fundamental reasons behind the powerlessness, bias and exploitation that women face in their work.

An important feature of the various labour laws, relating to social security, welfare, safety and working conditions, employment or dispute resolution, is the existence of employer-employee relations and the consequent need to define an employer and employee. This is for the reason that for the purpose of employment or provisions of benefits, the law places the responsibility on the employer who for that purpose will have to be identified precisely. But in respect of the large mass women workers in the unorganised sector, either the employer keeps on changing frequently, or there is no direct relationship with the ultimate employer as in the case of occupations where the only point of contract for the workman is only a lower level intermediary - be it in beedi rolling or agarbatti making in the homes, or construction work. In respect of all such categories, where the normal pattern of labour laws may not be applicable, it will be necessary to evolve patterns and systems - by which the desired results are enabled to be achieved. Coming back to the labour laws, the basic criticism validly levelled against the labour legislation in the country is that while there may be scope or need for improving the contents of the law, these laws are ineffective in so far as there is inadequate or more often no enforcement of these laws. The enforcement machinery is inadequate. Penalties are inadequate — and participation of the workers in the enforcement of the law is totally absent. In the case of women workers in the unorganised sector, these difficulties are even more acute. For amending the relevant acts suitably - a separate wing in the Labour Department may be created which will have exclusive responsibility for dealing with problems of unorganised labour. Powers of inspection, and
consequently of filing complaints, must be given to women’s organisations, 
trade union functionaries and workers representatives.

For ensuring that the benefits intended for the workers, more particu-
larly women workers, under the various labour laws actually accrue to them, 
it becomes necessary for the women workers to seek redress through the 
established authorities like claims authorities. To help them in this effort, it 
will be essential that adequate assistance by way of Legal Aid is made 
available. The Legal Services Authorities Act 1987 and the agencies estab-
lished under the Act will have to be pressed into service for the benefit of 
the women workers.

In most States, the minimum wage is fixed differently for men and 
women, the women's work is considered 'light' hence wages would be lower 
than man's work which is considered 'heavy'. Violation of minimum wages 
is to be treated as a cognisable offence. The worker should be protected 
against victimisation for making complaints. There should also be a time 
limit for disposal of claim petitions.

There should be a registry which registers all women workers of the 
organised as well as unorganised sectors. In the case of home-based work-
ers, registration could be for a particular occupation. Once a worker regis-
ters for a particular occupation, many more employers could employ her, so 
that possibility of getting regular employment everyday, is increased. There 
could be some kind of employment guarantee scheme for home based work-
ers. There should be equal rights and protection for all workers irrespective
of their patterns of work or status. Part-timers, contract labourers and domestic workers should also be entitled to legal protection. There should be a provision of social security benefits which assures a woman, a minimal survival and livelihood even when she is working in a job that is threatened. India should ratify the ILO Convention on home based workers.

Trade Unions have a crucial role to play in promoting women worker’s interests. As organisations representing workers’ interests, trade unions are able to exert pressure and wield power, be key actors in terms of bargaining and as an important mouth piece with a decisive role to play in social change, and wield considerable influence in furthering scenario of globalisation, modernisation and privatisation has brought in a decline in the influence of trade unions. But a comparison of the working conditions in the organised and unorganised sectors makes it apparent that they continue to work as potential force not only to make workers aware of their rights but also to transforms society into a more just one.

Here it is pertinent to note that like USA and U.K., the Government of India should set up an Equal Opportunities Commission to be set-up under a Central Law which must have wide powers of investigations, direction, advise and monitoring. Such a Commission would be a watch-dog organisation, with teeth, to oversee the implementation of laws and policies in all

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5. In Britain, the Equal Opportunities Commission was set up under the Sex Discrimination Act. It works towards the elimination of sex discrimination and to promote equal opportunities between men and women generally. In the United States of America, the Equal Employment Opportunity Commission (EEOC) was created in 1965 as a Federal Agency to administer and enforce the Title VII of the 1964 Civil Rights Act.
areas involving women, including employment, conditions of work, provision of maternity and child care facilities, educational opportunities and training opportunities. The Commission would be a forum whose door would always be open to anyone, more particularly women, who have not received a fair and equal deal at someone's hands.

The enforcement machinery under the various legislations need to be reviewed. There has to be greater sensitisation and understanding of the problems of working women.

Article 21 of the Constitution of India entails the right to personal liberty. Obviously, it comprises the right to be or not to be a parent; the right to use or not to use contraceptives; the right to or not to sterilise oneself. It also includes the right to terminate pregnancy. The Medical Termination of Pregnancy Act liberalised the conditions for induced abortion since 1972 but it still has far to travel on the path of liberalising the policy. To make the abortion law more effective there is a need to give the woman the absolute legal right to decide about the number of children she wishes to have. The scope of the Maternity Benefit Act, 1961, needs to be extended to several other establishments. The penalties under this Act need to be revised.

Certain organisations like Self Employed Women’s Association (SEWA) have made attempts to mobilise and organise self-employed and home-based women workers in the informal sector. These Organisations focus on developmental interventions and are worthy of emulation.
Thus, we do need legislative measures and other measures to implement the return to labour market of women who have left for family reasons and provisions for part-time work.

A glaring omission in the labour legislations are provisions for sexual harassment. Sexual harassment is a growing menace and includes many forms of unwanted sexual attention that occur in the workplace. At present it is the criminal laws which have to be involved to combat sexual harassment. The labour legislations need to be reviewed to include this form of practice. Though not often brought to light, this is a growing problem in India. In a recent instance, Rupen Deol Bajaj, an Indian Administrative Services Officer, challenged the molestation and sexual harassment meted to her by a high ranking, 'much feared’ police officer Mr. K.P.S. Gill in July 1988. The High Court had said that the act complained of was so trivial that no reasonable person would complain about it. The Supreme Court found this absolutely erroneous. The judgement of the Supreme Court was a triumphant outcome in the absence of a law dealing with sexual harassment.6 In January 1992, the UN Committee on the Elimination of Discrimination Against Women adopted the recommendation that "Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the workplace."6a

6. In the case Vishaka vs. State of Rajasthan (AIR 1992 S.C.) laid down a number of guidelines to remedy the existing legislative vacuum. In this case the Supreme Court referred to the CEDAW and also the resultant violation of gender equality under Article 14 & 15 and right to life & personal liberty of women under Article 21 of the constitution.

The relatively low degree of unionisation amongst women explains their low bargaining positions. There is a lack of trade union consciousness among women workers. The percentage of women trade union members has remained low.

Women’s unpaid household work is usually not valued or considered a contribution to the economy. The economic value for household work will greatly enhance women’s status in the household and also the ability to participate outside the home.

The legal provisions for women relating to equal pay maternity benefits, night work, and so on, have resulted in discrimination in employing women labour altogether. The working conditions of the export-oriented industries earning tremendous foreign exchange for the country, need to be regulated.

Though law alone cannot bring about social change, it is an instrument to facilitate this change. India is still a society predominantly based on norms of patriarchy and women workers face the ideology of patriarchy in labour. In fact, several of these legislations perpetuate patriarchy. Besides, the proliferation of multilateral trade agreements, the globalisation of the capital markets and the emergence of borderless business operations, are shifting the very basis of the employment scenario in India.

The principle of integrating women into all phases of the development process and the importance of women’s contribution to achievement of na-
tional economic and social goals have now become widely accepted throughout the world.

The empowerment of women at the workplace is intended to eliminate their subordination and establish gender equality. Law can create such empowerment through conferring rights to the women workers and by imposing liabilities on the employers and by strengthening the implementation and enforcement machinery and facilitating access to legal services.

Another method of empowerment is by legal literacy. Women can assert their rights only if they are aware of them. Therefore, educating them of their legal rights at the workplace can go a long way in ensuring justice at the workplace. Basically, what is required is that women workers should involve themselves in the discussions regarding their working conditions, their rights and the responsibilities. For this, they should be encouraged to participate in workers' associations, clubs, discussion forums etc. Trade Unions, the Government, NGOs and social workers should join hands in providing an enhancing environment to them.

The need of the hour is to look not only at the sustainable development but at a just equitable and balanced development. The debate on women's rights at the workplace is thus, not only a legal, social or an economic issue, but an issue with very deep political and cultural dimension.

The Constitution guarantees equality of opportunity in matters relating to employment and directs the State to secure equal rights to an adequate means of livelihood, equal pay for equal work and just and humane condi-
tions of work. The impact of transition to a modern economy has resulted in the exclusion of an increasing number of women from active participation in the productive process and only a limited recognition of their contribution and ability to contribute. The factors which have caused such an exclusion need to be examined and corrective action and supportive measures initiated to ensure equal opportunity in the economic process "which would enable women to play their full and proper role in building up the nation".

Fuller economic participation has to be understood then, in the context of human rights and social justice, utilization of human resources, bridging economic disparities and providing the impetus for social and economic change towards an equality of 'status'.

Here it is important to note that the Second National Commission on Labour (NCL), which was appointed in 1999, was, interalia, mandated to suggest an umbrella legislation for the workers in the unorganised sector. The Commission, in its report, which was submitted to the Government in July 2002, has recommended umbrella legislation for ensuring a minimum level of protection to such workers. In the year 2001 - the Government of India has adopted a National Policy for the Empowerment of Women.

10. Ibid, pp.6-7.
The goal of this Policy is to bring about the advancement, development and empowerment of women. The Policy will be widely disseminated so as to encourage active participation of all stakeholders for achieving its goals. Specifically, the objectives of this Policy include:

(i) Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential;

(ii) The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres -political, economic, social, cultural and civil;

(iii) Equal access to participation and decision making of women in social, political and economic life of the nation;

(iv) Equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.;

(v) Strengthening legal systems aimed at elimination of all forms of discrimination against women;

(vi) Changing societal attitudes and community practices by active participation and involvement of both men and women;

(vii) Mainstreaming a gender perspective in the development process;

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(viii) Elimination of discrimination and all forms of violence against women and the girl child; and

(ix) Building and strengthening partnership with civil society, particularly women's organizations.

It is indeed true that the importance of labour in the development of any nation or any society cannot be denied but at the same time it is the responsibility of any civil society or any nation to protect and promote the interest of labour as a class. There is a need to recognise that labour rights are human rights. The foregoing is an attempt to suggest some of the ways in which social policy could be used to promote the human rights of working women. Policy, however, is nothing without people. In the last resort it is they who must create the material condition for the economic, social and political liberation of women.