CHAPTER - IV

RIGHTS OF WORKING WOMEN
UNDER INDIAN LAWS
4. Introduction:

The role of women, which constitute half of the population, has greatly changed after industrialization and independence of the country. Nobody can now afford to ignore their contribution in different walks of life. In the industrial areas, they are working both in the organised and un-organised sectors of employment.

After the process of economic reform was initiated in India, a great deal of concern has been expressed about the extent of impact of such reform measures on employment of women and on the extent of participation of women in the process of socio-economic development of the country in the future. One of the indicators or determinants of conformance to the principle of equality of women is access of women to all types of economic activities without any discrimination and with equal pay for equal work. It is a matter of considerable interest to analyse the situation of women workers in India to review the policies adopted by the Government of India towards the implementation of the standards set in this regard and to assess the extent to which women have been integrated into the overall development.

A number of studies have been carried out on the situation of women work force in India on occupation pattern. A common conclusion emerging out of these studies is that over the years there has been a preceptible positive change in the attitude of the society in general towards consideration
of women workers issues. They now form an integral part in the process of national development and special attention has been given to deal with the problems of women and to address the issues of women's equality. It is true that in India women are no longer taken as passive members of the society, but are viewed as an important segment of the total work force, contributing in varying degrees to the socio-economic development. In fact, new economic, legal and social norms are beginning to evolve to give the women a better deal in the sphere of work.

However, it is an admitted fact that despite formal policy declarations and legislative reforms, there are still grey areas between legislation and enforcement, between policy and practice, and between the enunciation of the principle of equality and its actual implementation. The reasons are fairly simple. Women, in general, are at a disadvantaged position in the labour market, particularly in the developing countries, owing to a complexity of factors such as low literacy level, absence of adequate skills and lack of mobility. Women are therefore employed in a restricted range of jobs requiring only low levels of skills and education. The de-facto inequality in the status of men and women originating from social, economic, political and culture factors has been further accentuated by the job segregation over a period of time. The situation is much the same in India, which is characterised by a complex pattern of social stratification. Women's status is governed by the norms of religion, caste and class and by their place in the family. However, historically, India has had progressive legislation with re-
gard to women's issues. During the struggle for independence, the women's movement pressed for complete equality and indeed in the Constitution, women were guaranteed equality under Article 14. Any discrimination on grounds of sex was also prohibited under Article 15. These Articles empowered the State to make special provisions for women and children, particularly in the field of labour legislation. As a result, there has developed a substantial body of specific laws aiming to protect women against unfair and discriminatory practices. Most of these legislation's have, however, proven to be difficult to implement in the field realities. There have been evident difficulties in achieving social change through the legislation because of the very fabric of socio-political and economic framework. This has led to the intervention by a number of women's groups, formed mainly by social workers, political activists or lawyers. These groups have started the process of sensitisation of different sections of society. It has been recognised that the change of long-standing customs and norms will obviously be slow and that women have to fight to gain their rights. Acceptance of women's role in the developing economies has also got reflected in a number of changes brought about over time to move away from separate women's programmes to the systematic incorporation of a "gender perspective" into the entire spectrum of developmental programmes.

The national planners and the policy makers have felt that the Constitutional safeguards for equality were not adequate and served no purpose unless women's rights to economic independence was recognised, women were
treated as equal members of the society and they were accepted as equal participants, agents and beneficiaries in the development process. Thus the principles of equality of women in employment opportunities and elimination of all forms of discrimination against women were sought to be translated into practice through formal policies, legislation's and affirmative or positive actions by way of integrating women in the developmental process. Special institutions and machineries have also been created to deal with the women-specific problems effectively. "It is important to recognise the inevitable restraints on what can be achieved by legislation, so that it is seen in proper perspective, without arousing false expectations or encouraging a sense of complacency".1

4.1. Welfare Measures for Working Women Under the Five Year Plans:

Welfare measures for women were provided in the very first Five Year Plan launched in 1951. The Plan also emphasised the community development approach and highlighted the need for organising women. The approach gained momentum in the Second Five Year Plan (1956-61) which gave due recognition to women as workers. It attempted to protect the women against unsafe work, stressed for maternity benefits and crèches for children. It also suggested speedy implementation of the principle of "equal pay for equal work" and provided for training to enable women to compete for higher level jobs.

It was in the Third Plan (1961-66) that women's education was focussed as a major welfare strategy. A significant share of the plan outlay was allotted for expanding rural welfare services. The thrust on women's education was continued in the Fourth Plan (1969-74).

The Fifth Plan (1974-79) elaborated upon some of the reasons for fewer employment opportunities for women and pointed out that the labour market as it was operating was far from being neutral regarding gender. It also admitted the existence of certain amount of bias against recruitment of women in various occupations which further got accentuated by the existing power structure within the traditional families and the communities which prevented women from seeking adequate education and outside employment. The Plan also recognised that a relatively smaller proportion of women were in a position to join the labour market for regular full-time employment and that most women needed part-time employment. To improve the situation, the Plan came out with a comprehensive policy for women's employment emphasising the need to expand and diversify education and training opportunities available to women. It provided for special steps for admission of women to educational institutions on a strictly non-discriminatory basis and recommended a programme of functional literacy. The Plan period coincided with the International Women's Decade. The Report of the Committee on the Status of Women in India was also submitted during this period. The Commission analysed various issues relating to the rights and status of women in the context of changing social and economic conditions in the country and pointed out the problems relating to the advancement of
women. A major outcome was the recognition of women as a group adversely affected by the social and economic transformation. In 1976, a National Plan of Action was evolved based on the United Nations World Plan of Action for Women. A Women's Welfare and Development Bureau under the Ministry of Social Welfare was established to serve as nodal point to coordinate programmes of other Ministries and to collect relevant data.

It was in the Sixth Plan that a shift was perceived from the welfare approach to the development approach of women. It was recognised that lack of access to resources was a critical factor impeding women's development. It was for the first time in the history of planning that a separate chapter on "Women and Development" was incorporated in the Plan document. The document stressed the need for greater attention to the economic emancipation of women along with access to health care and family planning services. It further stipulated that women were to form at least one third of the beneficiaries under the scheme of Training of Rural Youth for Self-employment (TRYSEM). A special women's income generating programme was also introduced in 1982 (DWCRA). The Plan emphasised that the women workers would require new skills and that the existing skills need to be upgraded.

The Seventh Plan envisaged to instill confidence and to generate awareness amongst women and to open up new avenues of work by expanding access of women to critical resources such as land, credit, training, etc. Women's Development Corporations was set up and training and employ-
ment programmes were started to promote self-employment and wage employment.

The Eighth Five Year Plan (1990-95) continues to identify certain thrust areas for women’s development. The Plan reiterates that the women must be equal participants at par with men in the national development process. In order to increase the visibility and to acknowledge women’s contribution, the plan states that steps will be initiated for identification and registration of women workers. Obstacles will also be removed to expand women’s access and control over resources, better wages and improved access to social security.

The Ninth Plan (1997-2002) : The main objective of the Ninth Plan is to improve the living conditions of poor and the various disadvantaged sections of the society including women. A good number of programmes for empowerment of women are being undertaken during this plan period. A women's cell under the Directorate General of Employment and Training coordinates with States in the matter of vocational training of women. The employment exchanges took special care to cater to the job needs of women registered with them. During this plan period the hostel facilities for working women were enhanced.

From the foregoing discussion, it is clear that in order to protect and safeguard the interests of women in general and women workers in particular, different measures have been undertaken from time to time. These measures ameliorated the conditions of women workers and protected them from
exploitation and discrimination. Free India provided a basic framework for possible improvement of women's status. There have been conscious effort to change the position of women from inequality to equality during this period through different legislations and open plans.²

The number of women workers in the organised sector is comparatively insignificant as a large number of them are engaged either in informal sector of employment or are in self-employment. Female labour force engaged in organised sector of employment hardly constitute 10 percent of the total women workers and they are mainly engaged to do low-paid and unskilled jobs. It has been observed in the report of the core group that women are discriminated in comparison to men in terms of wages and working conditions admissible to them. In this context it has been highlighted that the wages earned by women workers come to half of the wages payable by the employer to male workers for the whole day work inspite of the fact that productivity by them is in no respect less than that of male workers. It has been pointed out by the National Commission on Employed Women that the 94 per cent of the total female workforce has been employed in the unorganised sector where their exploitation is maximum in terms of long hours of work, low skills, low productivity and lack of job security. It was highlighted by the ‘Committee on the Status of Women in India’ in its

² Unfortunately, in spite of all the awareness and developments, the results are not satisfactory and the struggle of women continues. There is a big gap between policy, legislation and practice, between good intentions, rhetoric and reality. What appears on paper does not some how get translated into practice with the result that women still suffer from the same problem of inequality.
report that 94 per cent of the women workers were engaged in the unorganised sector of employment out of which 81.4 per cent were engaged in agriculture and rest in non-agricultural occupation.

4.2. The Constitutional Policy:

The preamble to the constitution of India resolves to secure to all its citizens including women, justice, social, economic and political; liberty of thought, expression, belief, faith and working; equality of status and opportunity and to promote among them all fraternity assuming the dignity of the individual and the unity and integrity of the nation. Social justice would be a myth in a society wherein one half of the population consisting of women constitutes to bear the burden of inferior status. Thus, the constitution of India has given special attention to the needs of women to enable them to exercise their rights on an equal footing with men and participate in national development.

For achieving the socio-economic emancipation of women, the constitution has formulated the following principles. First, the discrimination is prohibited on the ground of sex and every individual is treated equally. Secondly, it empowers the state to make special provisions for women with a view to enable it to take special care of women in the light of their peculiar physiological, psychological and social position. These principles which constitute constitutional philosophy are incorporated in the constitution in the form of Fundamental Rights and Directive Principles, while the Funda-
mental Rights are justiciable, and enforceable in the courts of law, the Di-
rective principles are non-justiciable and non-enforceable in courts.

4.2.1. Fundamental Rights:

The Constitution of India guarantees Fundamental Rights to people in-
cluding women under various provisions contained in Part IIIrd of the Con-
stitution. The relevant provisions concerning women are as follows:

Article 14 provides that the state shall not deny to any person (includ-
ing women) equality before the law or the equal protection of the laws
within the territory of India.

Article 15(1) provides that the state shall not discriminate against any
citizen on grounds only of religion, race, caste, sex, place of birth or any
of them.

Article 15(2) provides that no citizen shall, on grounds only of religion,
race, caste, sex, place of birth or any of them, be subject to any disability,
liability, restriction or condition with regard to:

a) access to shops, public restaurants, hotels and places of public enter-
tainment; or

b) the use of wells, tanks, bathing ghats, roads and places of public
resort maintained wholly or partly out of state funds or dedicated to the use
of general public.
Article 15(3) provides that nothing in this article shall prevent the state from making any special provision for women and children.

Article 16(1) provides equality of opportunity in matters of public employment. While as article 16(2) says that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discrimination against in respect of, any employment or office under the state. 3

Article 23 guarantees right against exploitation. This Article provides that traffic in human beings (including women) and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Constitutional commitment recognizing right to equality has been explicitly laid down under Article 14 of the Constitution of India which provides that the state shall not deny to any person equality before the law or the equal protection of law. This provision guarantees to all persons, including women, the right to equality in law. The equality guarantee does not require that the law treats all individuals exactly the same, but it permits discrimination on the basis of reasonable classification. The classification should not be arbitrary and discriminatory.

Article 15(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any

3. Article 16 guarantees equality of opportunity in public employment only.
of them. The phrase "equality before law" contained in Article 14 have been elaborated under Article 15(1) of the constitution. Article 15(1) is paramount in appropriating to women socio-economic equality through the protection of their rights and it does not prevent the state from making any special provision for women. Again Article 15(2) ensures social equality to women because it protects the women from being subject to any disability or restriction on the grounds of sex with respect to access or use of any public place. The need for inclusion of Article 15(1) in the Constitution arose because the framers of the Constitution knew the fact that the 14th Amendment guaranteeing equal protection of law for preventing social discrimination in various segments of American social and political life was not found sufficient in America. The Framers keeping this factor in mind feared that in spite of the prohibition in Article 14, discrimination on the basis of sex might be legitimated by the court on the basis of reasonable classification. It was with a view to forestalling such an eventuality that the clause (1) was incorporated in Article 15 of the Constitution. 4

Article 15(3) acts as an exception to Article 15(1) which authorises the state for making special provision for women. It enables the state to enact laws protecting women. In other words it enables the state to discriminate in favour of women, which is therefore, called protective discrimination by constitutional experts. This provision is called compensatory provision for women because according to constitution makers this provision might com-

pensate the loss of opportunities suffered by women during the last several centuries. Since women were suppressed for a very long period, they lost their initiative, confidence in their capacity to face problems and opportunity to equip themselves for various types of employments. It is because of these facts that the constitution makers considered them weaker sections of the people who required some help and they took a pragmatic decision in incorporating clause (3) of Article 15 in the Constitution.

The welfare of women is of vital significance in a welfare state. Consequently any special provision for their protection or upliftment would not offend or operate against the subject of non-discrimination provided in Article 15(1). Therefore, Article 15(3) is intended to give advantage to women so that they could compete with men in various fields. The provision has been used to enact special laws for the protection of women workers in factories, mines, plantations and establishments. However, it is unfortunate that this provision has not been so far used to make reservations in favour of women in employments by recognizing them as socially and economically vulnerable class. Therefore, much more remains to be done under this provision.

The banner of equality, the hallmark of our Constitution is foisted in the realm of public employment. This obligation not to discriminate in matters relating to employment or appointment to any office under the state has thus ensured a significant position and status for Indian women. This

5. Article 15.
provision, no doubt, ensures equality of opportunity to women in matters relating to government employment. Women, like the other backward classes of citizens, have been considered weaker sections by the Constitution because of suppression in society for a long period with the result their position has become so weak that they are not in a position to compete with men. Although, they constitute half of the population, they are not adequately represented in the services under the state. A special provision in Article 16 for reservation of appointments or posts in favour of women would have helped to mitigate this situation. Therefore, it is submitted that in order to render the right to equality of opportunity in government employment more meaningful to women a suitable amendment must be carried out to Article 16 to incorporate in it a special provision for reservation of appointments or posts in government service in favour of women.

This can be justified under Article 15(3). Thus articles 14, 15 and 16 underline the significance which our constitution makers attached to the principle of equality. The three provisions are the part of the same constitutional code of guarantee. These Articles are so interwoven that one Article can be invoked to construe the scope of other. Article 14 could be considered as genus and Articles 15 and 16 as the species. Article 14 guarantees the general right of equality. Articles 15 and 16 are instances of the same right in favour of citizens in some specific circumstances.6

4.2.2. Directive Principles:

Directive principles of state policy are contained in Part IVth of the Constitution. Those Directive principles, which are concerning women and have a special bearing on their status, are given as follows:

Article 39(a) directs the state to frame its policy for ensuring that the citizens, men and women equally have the right to an adequate means of livelihood;

Article 39(d) directs the state to ensure that there is an equal pay for equal work for both men and women;

Article 39(e) directs the state to ensure that the health and strength of workers, men and women and the tender age of children are not abused;

Article 42 directs the state to make provision for ensuring just and humane conditions of work and maternity relief;

Article 43 provides that the state shall endeavour to secure to all workers, both men and women, a living wage and a decent standard of life, and

Article 46 directs the state to promote with special care the educational and economic interests of the weaker sections of the people. It is regarded to aim at improving the employment opportunities and conditions, inter-alia, of the working women.

These Articles at a glance show that the framers of the Constitution were aware of the fact that women required not only equality with men but
some special protection. Various labour laws have been passed on the above lines protecting the interests of women. These labour legislations provide for prohibition of night work, prohibition of work near dangerous machinery, prohibition on carrying of heavy loads, creche facility, maternity relief, equal pay for equal work and other welfare measures.

Although on the one hand the Constitution prohibits the state from taking any sex based discriminatory action, yet on the other hand it imposes a positive duty on the state to strive to secure equality and guarantee equal opportunities of employment and equal pay for equal work. Despite these constitutional provisions and guarantees, in practice our women folk remain backward and are discriminated against in every sphere of life. When the kind of work is different then it does not matter. However, if men are given a differential treatment if the work is of same nature then both should be paid equally and without any discrimination. Factories discriminate against women by invariably referring to them as unskilled labourers. Despite the constitutional guarantee of equal pay for equal work, it is a matter of regret that we have not been able to achieve this goal.

In addition to the rights and privileges provided to women under Fundamental Rights and Directive Principles, a new chapter IV A dealing with Fundamental Duties has been incorporated in the Constitution. In this chapter one of the duties imposed on every citizen is to renounce practices derogatory to the dignity of women.7

7. [Article 51-A(e) of the constitution of India]
Women's Employment and Judicial Response:

It is true that Indian Judiciary has no longer indifferent to the problems of women workers. The judiciary has become very active. The higher judiciary is not merely confined to the limited role of administration of justice, rather it is actively participating in the socio-economic reconstruction of the society. The Supreme Court has, with remarkable courage embarked upon areas which were denied to the weaker sections. A great relief has been given to the labourers through the doctrine of Public Interest Litigation. In the famous case "Olge Tellis V. Bombay Municipal Corporation", (AIR 1986, SC. 180) the Supreme Court has ruled that the word 'life' in Article 21 includes the 'right to livelihood' also.

In Radha Charan Patnaik V. State of Orissa the issue was whether a Government Rule disqualifying married women from being selected as district judges violates Article 16. The petitioner challenged rule 6 which specified –

"No married women shall be entitled to be appointed to the judicial service and where a women appointed to the services subsequently varries, the State Government may, if the maintenance of the service not requires, call upon her to resign".

8. AIR 1969 Orissa 237.
The defendants argued that women were excluded from posts because marriage creates disabilities and obligations which adversely affect the efficiency in government service. The court held that while the maintenance of efficiency must be considered, disqualification of married women from eligibility amounted to sex discrimination violating rights guaranteed under Art.16.

Another important case which highlights discrimination against women in government employment is C.B. Muthama V. Union of India. The petitioner, a successful candidate in the Indian Foreign Service, was refused appointment because she was married. The rules of the Indian Foreign service, prohibiting the appointment of married women and requiring that unmarried women in the employment of the Foreign Service obtain permission before marrying were challenged. Justice Krishna Iyer, speaking for the court held that the rules were utterly discriminatory against married women and hence violative of Art.16 of the constitution.

The Muthamma judgement also stressed the point that men and women cannot be treated equally in all occupations and situations. The most radical approach came in the case of Air India v. Nergesh Meerza, which also involved the issue of equality between men and women. In this case, the court considered the validity of service regulations governing the air hostesses in Air India and the Indian Airlines. According to the Regulations 46

and 47 an air hostess in Air-India would be retired on the following contingencies: (1) on attaining the age of 35 years (2) on marriage if it took place within four years of service; and (3) on first pregnancy. An air hostess had to retire at the age of 35 years whereas a male steward could work up to 58 years of age. An air hostess, however, could be continued by the Managing Director up to 45 years of age.

Regarding the retiring age of the air hostesses, it was argued that a young and attractive air hostess is able to cope up with difficult and awkward situations more easily than an older person. The court rejected this argument on the ground that it was based on pure speculation and artificial understanding of the qualities of the fair sex. The court also held that the Regulation conferred a wide and uncontrolled discretion on the Managing Director to extend the retiring age by ten years and hence violated Art.14 of the Constitution on the ground of excessive delegation of powers. Thus this Regulation was struck down. On the question of bar of marriage within first four years of employment, it was argued that such a bar constituted an outrage on the dignity of the fair sex and is therefore unconstitutional. The Supreme Court did not agree with this argument and upheld the Regulation.

The anxiety of the judiciary to protect the interest of women workers against sex discrimination and arbitrary action of the management is also evident from the decision in Omana Oommen v F.A.C. T. Ltd.13 Certain

women operators were denied the opportunity to write an internal examina-
tion on the basis of restrictions imposed on the working hours of women
by S.66 of the Factories Act. The petitioners contended that they would
have been accommodated in the day shift in which there were several male
technicians and that women technicians had been absorbed in other divi-
sions of the company. The court held that the refusal to admit women work-
ers for internal examination was entirely on the basis of sex and was
violative of Articles 14 and 15.

The Supreme Court has recently in Vishaka v. State of Rajasthan14 en-
larged the gamut of Fundamental Rights of women by pronouncing that the
right to life for working women includes an environment free from sexual
harassment. The Court recognized the right to gender equality and the right
to work with dignity as a Fundamental Right and pleaded for a legislation
in this regard. The Court observed:

"The sexual harassment of working women amounts to violation of gen-
der equality and right to life and liberty which is a clear violation of rights
under Articles 14,15 and 21 of the Constitution. One of the logical conse-
quences of such an incident is also the violation of the victim’s Fundamen-
tal Right under Article 19(1) (g) to practice any profession or to carry out
any occupation, trade and business." The Court further observes: "Gender
equality includes protection from sexual harassment and right to work with
dignity, which is a universally recognized basic human right."

The Supreme Court in Apparel Export Promotion Council v. A.K Chopra by upholding its ruling in Vishaka’s Case observed:

"The incident of sexual harassment, at the place of work, remits in violation of the Fundamental Right to Gender Equality and the Right to life and Liberty- the two most precious Fundamental Rights guaranteed by the Constitution of India. The contents of the Fundamental Rights guaranteed in our Constitution are of sufficient amplitude to encompass all facet of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those Fundamental Rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate."

It is submitted that the Supreme Court, through these Judgements, has uplifted the position and status of women. It has not only recognized the Fundamental Right of women to work without any discrimination but also recognized the right to work with dignity and honour.

According to the Supreme Court of India, labour laws may constitute 'fundamental rights' as the term is employed in the constitution. The laws relating to the minimum wage, equal remuneration and minimum age of employment concern fundamental rights which ensure the basic dignity of workmen or prohibit forced labour. Where a person provides labour or serv-

15. AIR 1999 Sc.625.
ices to another for remuneration which is less than the minimum, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour'.

However, eradication of discrimination and change of treatment of women cannot be achieved by law alone. The problems of women which are primarily on account of social prejudice and conventional and traditional approach inherent in the system, can be solved only by creating the right public opinion against such conservative and discriminatory approach.

4.4. Working Women and Statutory Safeguards :

As evident from the above discussion - the constitution of India guarantees equality before law and prohibits any discrimination on the basis of sex. It also empowers the state to make special provisions in favour of women. Different labour legislations have been passed from time to time both during pre-constitution and post-constitution period for the purpose of protection of rights of the women workers in various sectors.

Most of these laws have been inspired by the conventions and Recommendation adopted by the International Labour Organisation. As an active member of the United Nations and of the ILO, India has subscribed to most of these proposals and ideas, although it has not ratified all of them. The ILO has adopted some important conventions and recommendations concerning women labour. In Chapter-III these were discussed in details.

Besides, measure adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. These labour welfare legislations are of two kinds. The first category contains those statutory enactments which are exclusively for women workers e.g., the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976. In the second category are included those labour statutes which provide measures for the workers at large but contain special provisions for the welfare of women workers. The statutes included in the second category are - (1) The Factories Act, 1948; (2) The Employee's State Insurance Act, 1948; (3) The Plantations Labour Act, 1951; (4) The Mines Act, 1952; (5) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; (6) The Contract Labour (Regulation and Abolition) Act, 1970; and (7) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979.

In fact, all the constitutional provisions as well as the social laws were launched with mainly two objectives. The first one is to club the inhuman social practices against the women and the second one is to open the new avenues for women to bargain for a better position in their work place.

For the sake of convenience, the provisions relating to women workers contained in the above labour legislations can broadly be divided into the following heads viz. (a) Wages (b) Social security (c) Welfare (d) Working conditions (e) Industrial relations.
a) Wages :
   - Minimum Wages Act 1948
   - Payment of Bonus Act 1965
   - Equal Remuneration Act 1976

b) Social Security :
   - Employees' State Insurance Act 1948
   - Maternity Benefits Act 1961
   - Payment of Gratuity Act 1972

c) Welfare Measures :
   - Beedi Workers' Welfare Fund Act 1976
   - Coal Mines Labour Welfare Fund Act 1947

d) Industrial Relations Laws :
   - Trade Union Act 1926
   - Industrial Employment (Standing orders) Act 1946.

(e) Working Conditions :
   - Beedi and Cigar Workers (Conditions of Employment) Act 1966.
While the number of labour laws that are in the statute book is very large, it is not possible to discuss all of them. It is adequate to confine our discussion to only a few of them. This is for the reason that quite a large number of labour laws are sex-neutral, as for example, the Industrial Disputes Act 1947, and the Payment of Bonus Act, 1965, there are a few laws like the Factories Act, 1948, Mines Act, 1952, and the Plantations Labour Act, 1951, where there are special provisions relating to hours of work, restrictions on employment and the like in respect of women workers. Lastly, there are two laws which have been enacted specially with the women workers in view and these are the Equal Remuneration Act, 1976, and the Maturity Benefit Act, 1961. (A detail list is given in Annexure I).
4.4.1. BEEDI AND CIGAR WORKERS (CONDITIONS OF EMPLOYMENT ACT, 1966)

Safety and welfare benefits for women Beedi and Cigar Workers under the Act:

Latrines and Urinals

1. In every industrial premises, sufficient latrines and urinals accommodation of such types as may be prescribed shall be provided at all times while they are in the industrial premises:

2. The State Government may specify the number of latrines and urinals which shall be provided in any industrial premises in proportion to any number of male and female employees ordinarily employed therein, and may provide for such further matters in respect of sanitation in the industrial premises, including obligation of employees in this regard as it may consider necessary in the interest of the health of the persons employed therein.

Creches

1. In every industrial premises wherein more than fifty female employees are ordinarily employed, there shall be provided and maintained a Suitable room or rooms for the use of children under the age of six years of such female employees.
2. Such rooms shall
   (a) be provided adequate accommodation:
   (b) be adequately lighted and ventilated:
   (c) be maintained in a clean and sanitary condition;
   (d) be under the charge of women trained in the care of children and infants.

Prohibition of employment of women or young persons during certain hours

   No woman or young person shall be required or allowed to work in any industrial premises except between 6 a.m. and 7 p.m.

Power to Exempt

   The State Government may, by notification in the Official Gazette exempt subject to conditions and restrictions as it may impose, any class of industrial premises, or class of employers or employees from all or any of the provisions of this Act or of any rules made thereunder:

   Provided that nothing in this section shall be construed as empowering the State Government to grant any exemption in respect of any woman employee from any of the provisions of this Act or any rules made thereunder relating to annual leave with wages, maternity benefits, creches, wages, rejection of beedi or cigar and night work.
4.4.2. BEEDI WORKERS' WELFARE FUND ACT, 1976

Standards of Maternity Centre

1. The Standards of maternity centre to be provided by owners or contractors who are engaged in the manufacture of beedis for the purpose of getting the grants-in-aid envisaged in clause (c) of sub-section (i) of Section 4 of the Act shall be as specified in Schedule III, hereinafter in this rule and as in Rules 33, 34 and 35 referred to as the prescribed standard.

2. There shall be maintained an independent maternity centre at each establishment engaged in the manufacture of beedis according to the prescribed standard:

Provided that a common main maternity centre may be maintained for several establishments or factories engaged in the manufacture of beedis with a branch maternity centre attached to each establishment or factory engaged in the manufacture of beedis subject to the following conditions:

(i) The common main maternity centre shall maintain the prescribed standard for the aggregate number of workers of all the establishments or factories engaged in the manufacture of beedis served by it or the standard maintained by it during the year 1975, whichever is higher;
(ii) Every branch maternity centre shall have a qualified doctor and a qualified compounder;

(iii) The common main maternity centre shall be so situated that none of the establishments manufacturing beedis served by it is more than fifteen kilometers away from it; and

(iv) The common main maternity centre shall maintain an ambulance van for taking serious cases from the branch maternity centres to the common maternity centre.

3. The commissioner may, if he is satisfied that a maternity centre is being efficiently run and serves the purpose for which it is established, waive any of the requirements specified in the prescribed standard:

Provided that the functions of lady health visitor may be performed by a fully qualified and registered mid-wife who has not less than ten years’ experience as a mid-wife:

Provided further that a lady medical licentiate may be appointed to be in-charge of a maternity centre catering to more than 1000 workers, if she has ten years experience as a medical officer in independent charge of a maternity centre.

4. Every owner of an establishment or factory or a contractor engaged in the manufacture of beedis who maintains a maternity centre ac-
according to the prescribed standard shall submit to the Commissioner in January each year a certified statement of the expenditure incurred on the maternity centre during the preceding twelve months.

5. Extent of Grant-in-aid: Every owner of an establishment or factory or a contractor engaged in the manufacture of beedis who maintains a dispensary or a maternity centre for the benefit of workers employed in his establishment which conforms to the prescribed standard under Rule 29 or 32, as the case may be, and is subject to inspection under Rules 30 or 33, as the case may be, if he desires, to carry on improvement on the facilities existing on 1 April 1976 be eligible for such grant-in-aid in respect of non-recurring expenditure on such improvement as the Central Government may decide. subject to the condition that it shall not exceed 50 per cent of the said expenditure.

4.4.3. CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

The object behind the passing of this Act is to regulate the contract labour and provide certain protection to them so that they may enjoy their fundamental rights guaranteed under the constitution of India.18

18. The court observed that there are certain rights of contract labourers to which they are entitled such as wages, holidays, hours of work and conditions of service as applicable to workmen directly employed by principal employer on the same or similar kind of work. (BHEL Worker's Association V. Union of India, 1985, ISCC 630).
Welfare and Health of Contract Labour

I. Rest-rooms

Separate rooms shall be provided for women employees.

2. Dining Hall

A portion of the dining hall and service counter shall be partitioned off and reserved for women workers, in proportion to their number.

3. Latrines and Urinals

Latrines shall be provided in every establishment coming within the scope of the Act on the following scale:

(a) where females are employed, there shall be at least one latrine for every 25 females;

(b) where males are employed there shall be at least one latrine for every 25 males:

Provided that where the number of males or females exceeds 100, it shall be sufficient if there is one latrine for every 25 males or females as the case may be, up to the first 100, and one for every 50 thereafter,

(i) Where workers of both sexes are employed, there shall be displayed outside each block of latrine and urinal a notice in the language understood by the majority of the workers "For Men Only" or "For women Only", as the case may be.

(ii) The notice shall also bear the figure of a man or of a woman, as the case may be. There shall be at least one urinal for male
workers up to 50 and one for female workers up to 50 employed at a time:

Provided that where the number of male or female workmen, as the case may be, exceeds 500 it shall be sufficient if there is one urinal for every 50 males or females up to the first 500 and one for every 100 or part thereof thereafter.

4. Washing Facilities

Separate and adequate screening facilities shall be provided for the use of male and female workers.

4.4.4. EMPLOYEES’ STATE INSURANCE ACT, 1948

The Employees’ State Insurance Act is a legislation which aims at bringing about social and economic justice to the poor labour class of the land. It aims at the labour welfare.¹⁹

Benefit

1. Subject to the provision of the Act, the insured person (the dependents of the persons hereinafter mentioned, as the case may be), shall be entitled to the following benefits:

   Periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy confinement, premature birth of child or miscarriage. such woman

being certified to be eligible for such payments by an authority specified in this behalf by the regulation (hereinafter referred to be as maternity benefits).

Benefits given to workmen under the Act cannot affect the question of sickness leave being provided for them.

Maternity Benefit

1. An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in the benefit period, if the contributions in respect of her were payable for not less than half the number of days of the corresponding contribution period.

2. Subject to the provisions of this Act and the regulations, if any, an insured woman who is qualified to claim maternity benefit in accordance with sub-section (i) the daily rate specified in (the first Schedule) for all days on which she does not work for remuneration during a period of twelve weeks of which not more than six shall precede the expected date of confinement:

Provided that where the insured woman dies during her confinement or during the period of six weeks immediately following her confinement for which she is entitled to maternity benefit, leaving behind in either case the child, maternity benefit shall be paid for the

whole of that period, but if the child also dies during the said pe-
riod, then, for the days up to and including the day of the death of
the child, to the person nominated by the insured woman in such
manner as may; be specified in the regulations and, if there is no
such nominee, to her legal representative.

An insured woman who is qualified to claim maternity benefit in ac-
cordance with sub-section (i) shall, in case of miscarriage be entitled, on
production of such proof as may be required under the regulation, to mater-
nity benefit at the rates specified in the first schedule for all days on which
she does not work for remuneration during a period of six weeks immedi-
ately following the date of her miscarriage.

An insured woman who is qualified to claim maternity benefit in ac-
cordance with sub-section (i) in case of sickness arising out of pregnancy,
confinement, premature birth of child or miscarriage shall, on production of
such proof as may be required under the regulations be entitled in addition
to the maternity benefit payable to her under any other provisions of this
Act for all days on which she does not work for remuneration, to maternity
benefit at the rates specified in the First Schedule for all days on which
she doesn’t work for remuneration during an additional period not exceed-
ing one month.
4.4.5. EMPLOYEES' STATE INSURANCE (GENERAL) REGULATION, 1950: MATERNITY BENEFIT

Under this Regulation an insured woman, who decides to give notice of pregnancy before confinement, shall give such notice in Form 19 to the appropriate Local Office by post or otherwise and shall submit, together with such notice, a certificate of pregnancy in Form 20 given in accordance with these regulations on a date not earlier than seven days before the date on which such notice is given.

Claim for Maternity Benefit Commencing before Confinement

Every insured woman claiming maternity benefit before confinement shall submit to the appropriate Local Office by post or otherwise:

(i) a certificate of expected confinement in Form 21 given in accordance with these regulations, not earlier than fifteen days before the expected date of confinement

(ii) a claim for maternity benefit in Form 22 stating therein the date or which she ceased or will cease to work for remuneration; and

(iii) within thirty days of the date on which her confinement takes place, a certificate of confinement in Form 23 given in accordance with these regulations.

Claim for Maternity Benefit Only after Confinement or for Miscarriage

Every insured woman claiming maternity benefit for miscarriage shall within 30 days of the date of the miscarriage; and every insured woman
claiming maternity benefit after confinement shall submit to the appropriate office by post or otherwise a claim for maternity benefit in Form 22 together with a certificate of confinement or miscarriage in Form 23 given in accordance with these regulations.

Claim for Maternity Benefit after the Death of an Insured Woman leaving behind the Child

For the purpose of the provision to sub-section (2) of Section 50 of the Act, the person nominated by deceased insured woman on Form I or on such other Form as may be specified by the Director General in this behalf and if there is no such nominee the legal representative shall submit to the appropriate office by post or otherwise a claim for maternity benefit as may be due in Form 24-A within 30 days of the death of the insured woman together with a death certificate in Form 24-6 given in accordance with these regulations.

Claim for Maternity Benefit in Case of Sickness Arising out of Pregnancy, Confinement, Premature Birth of Child or Miscarriage:

1. Every insured woman claiming maternity benefit in case of sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, shall submit to the appropriate office by post or otherwise a claim for benefit in one of the Forms 12, 13 and 14 appropriate to the circumstances of the case together with the appropriate medical certificate in Forms 8, 9, 10, 11, as the case may be given in accordance with these regulations.
2. The provisions of Regulations 55 to 61 and 64 shall so far as may be, apply in relation to a claim submitted and a certificate given in accordance with these Regulations as they apply to certification and claims under those Regulations.

Other evidence in lieu of a certificate

The Corporation may accept any other evidence in lieu of a certificate of pregnancy expected confinement death during maternity, miscarriage or sickness arising out of pregnancy confinement premature birth of child or miscarriage by an Insurance Medical Officer, if in its Opinion, the circumstances of any particular case so justify.

Notice of work for remuneration

Except as provided in Regulation 89-B. every insured woman who has claimed maternity benefit shall give notice in Form 24 if she does work for remuneration on any day during the period for which maternity benefit would be payable to her but for her working for remuneration.

Date of payment of maternity benefit

Maternity benefit shall be payable from the date from which it is claimed provided that such date does not precede the expected date of confinement by more than forty-two days and that no work is undertaken by the insured woman for remuneration.
Disqualification for maternity benefit

An insured woman may be disqualified from receiving maternity benefit if she fails without good cause to attend or to submit herself to medical examination when so required; and such disqualification shall be for such number of days as may be decided by the authority authorised by the Corporation in this behalf.

Provided that a woman may refuse to be examined by other than a female doctor or midwife.

Authority which may issue certificate

No certificate required under any of the Regulations 87 to 89-B shall be issued except by the Insurance Medical Officer to whom the insured woman has or had been allotted or by an Insurance Medical Officer attached to a dispensary, hospital, clinic or other institute to which the insured woman is or was allotted and such Insurance Medical Officer shall examine and if in his opinion the condition of the woman so justifies or in case of death of the insured woman or the death of the child if satisfied about such death, he shall issue to such insured woman or in case of her death to her nominee or legal representative, as the case may be, free of charge, any such certificate when reasonably required by such insured woman or her nominee or legal representative, as the case may be, under or for the purposes of the Act or any other enactment or these Regulations.
Provided that such Officer may issue a certificate as aforesaid, under these Regulations, to or in respect of an insured woman who is or was not allotted to him or to the dispensary, hospital, clinic or other institute to which such officer is attached. if such officer is attending the woman for prenatal care, for confinement, for miscarriage or for sickness arising out of pregnancy, confinement, pre-mature birth of child or miscarriage or in case of death, was attending the deceased insured woman or the child at the time of the death of the insured woman or the child.

Provided further that a certificate of pregnancy, of expected confinement, of confinement or miscarriage required under these Regulations, may be issued by a registered mid-wife which shall be accepted by the Corporation on counter-signatures by the Insurance Medical Officer;

Provided that such officer may issue a certificate of pregnancy expected confinement or confinement under these regulations to an insured woman who is not allotted to him or to the dispensary, hospital, clinic or other institution to which such officer is attached, if such officer is attending the woman for prenatal care or for confinement.

Provided further that a certificate of pregnancy, of expected confinement. or of confinement required under these regulations may be issued by a registered mid-wife shall be accepted by the Corporation on counter-signatures by the insurance Medical Officer.
Obligations of Insurance Medical Officer

Nothing in these regulations shall relieve an Insurance Medical Officer to whom an insured woman has been allotted, or an Insurance Medical Officer attached to the dispensary, hospital, clinic, brother institution to which an insured woman is allotted of the obligation to examine and if in her opinion the condition of the woman so justifies, issue free of charge a certificate of pregnancy, of expected confinement or confinement or miscarriage or of sickness arising out of pregnancy/confinement, premature birth of a child or miscarriage during any period in which such insured woman is obtaining treatment or attendance from any other person or from any other hospital or institution.

4.4.6. EQUAL REMUNERATION ACT, 1976

With a view to give effect to the goal of equal pay for equal work set out in clause (d) of Article 39 of the constitution, the President of India promulgated on 26th September, 1975, the Equal Remuneration Ordinance, 1975. The above ordinance was later converted into an Act as The Equal Remuneration Act, 1976. The Act provides for the payment of equal remuneration to men and women workers and for prevention of discrimination on the ground of sex, against women in the matter of employment and for matters connected therewith incidental thereto.

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

Payment of remuneration at equal rates to men and women workers and other matters

Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature:

1. No employer shall pay to any worker, employed by him in an establishment or employment remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

2. No employer shall, for the purpose of complying with the provisions of sub-section (i) reduce the rate of remuneration of any worker.

3. Where in an establishment or employment the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest: (in cases where there are more than two rates of such rates) shall be the rate at which
remuneration shall be payable, on and from such commencement, to such men and women workers.

Provided that nothing in this subsection shall be deemed to entitle a worker to the refusing of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this act.

4. No discrimination to be made while recruiting men and women workers on and from the commencement of this Act. No employer shall, while making recruitment for the same work or work of a similar nature (or in any condition of service subsequent to recruitment such as promotions, training or transfer) make any discrimination against women, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Provided that the provision of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.  

5. **Advisory Committee**

1. For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extent to which

women may be employed in such establishments or employment's as the Central Government may, by notification, specify in this behalf.

2. Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

3. In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment and such other relevant factors as the committee may think fit.

4. The Advisory Committee shall regulate its own procedure.

5. The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representation issue such directions in respect of employment of women workers as the appropriate Government may think fit.

6. Power of appropriate government to appoint authorities for hearing and deciding claims and complaints.
The appropriate Government may, by notification, appoint such officers, not below the rank of a labour officer, as it thinks fit to be the authority for the purpose of hearing and deciding

1. (a) Complaints with regard to the contravention of any provision of this Act.

(b) Claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature and may by the same or subsequent notification, define the local limits within which such authority shall exercise its jurisdiction.

2. Every complaint or claim referred to in sub-section (i) shall be made in such manner as may be prescribed.

3. If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section(i).

4. Where a complaint or claim is made to the authority appointed under sub-section(i), it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct:

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

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

5. Every authority appointed under sub-section (i) shall have all the pow-
ers of a Civil Court under the Code of Civil Procedure, 1908 (5 of
1908) for the purpose of taking evidence and of enforcing the attend-
ance of witnesses and compelling the production of documents, and every
such authority shall be deemed to be a Civil Court for all the purposes
of Section 195 and Chapter XXVI of the Code of Criminal Procedure.
1973 (3 of 1974).

6. Any employer or worker aggrieved by any order made by an authority
appointed under sub-section (i) on a complaint or claim may, within thirty
days from the date of the order, prefer an appeal to such authority as
the appropriate Government may, by notification, specify in this behalf,
and that authority may, after hearing the appeal, confirm, modify or re-
verse the order appealed against and no further appeal shall lie against
the order made by such authority.

7. The authority referred to in sub-section (6) may, if is satisfied that the
appellant was prevented by sufficient cause from preferring the appeal
within the period specified in sub-section (6) allow the appeal to be preferred within a further period of thirty days but not thereafter.

8. The provisions of sub-section (i) of Section 33 C of the Industrial Disputes Act 1947 (14 of 1947) shall apply for the recovery of fines due from an employer arising out of the decision of an authority appointed under this section.

Penalties

If after commencement of this Act, any employer:

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

(b) makes any discrimination between men and women workers in contravention of the provision of this Act, or

(c) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6.

He shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both of the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.
4.4.7. FACTORIES ACT, 1948

Prohibition of employment of women and children near cotton openers

No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work.

Provided that if the feed-end of a cotton openers is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

A woman or child may be employed in any part of a factory for pressing cotton where a cotton-opener is at work only if feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may specify in any particular case in writing. It is to be noted however that in such a case women and children may be employed on the side of the partition where the feed-end is situated.

The requirement is not met if there is a door made in a portion between the portions of the-room and that the door is shown to be open at a particular time. or even though it is shut, yet is not locked or other effec-
tive means to prevent it from being opened by a woman or child wishing to get into the press room. 22

Welfare

Washing Facilities

In every factory, separate and adequately screened facilities shall be provided for the use of male and female workers.

Creches

1. In every factory wherein more than thirty women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

2. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

3. The state Government may make rules:

(a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section.

(b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing.

22. B. N. Gamadia v Emperor, 50 Bom 34 : AIR 1926 Bom 57.)
(c) requiring the provision in any factory of free milk or refreshment or both for such children.

(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at necessary intervals.

**Working Hours of Adults**

Further restrictions on employment of women.

1. The provisions of this Chapter shall, in their application to women in factories be supplemented by the following further restrictions:

   (a) No exemption from the provisions of Section 54 may be granted in respect of any woman:

   (b) No woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories, vary the limits laid down in clause (b) but no such variation shall authorize the employment of any woman between the hours of 10 p.m. and 5 a.m.  

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23 The Report of Royal Commission on Labour may be referred to for the relevant observation:

"For every country the regulation of the hours of work for women follows suit to the regulation of the hours of work for children. The main arguments in favour of fixing the maximum hours for women at lower levels than those prescribed for men are that women have domestic duties to perform and that they find long hours a greater strain. In practice too, their hours are shorter in a number of factories."
(c) there shall be no change of shifts except after a weekly holiday or any other holiday.

2. The State Government may make rules providing for exemption from the restrictions, set out in sub-section (i) to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in any raw material.

3. The rules made under sub-section (2) shall remain in force for not more than three years at a time.

**General Prohibition:** The Inspector has no right to issue a general prohibition against the employment of women at night without going into the question whether the staff is sufficient.

Here it may be noted that an owner of a factory can employ women for night work only if the inspector deems it fit.

### 4.4.8. MINES ACT, 1952

**Provisions as to Health and Safety of women under the Act:**

1. There shall be provided separately for males and females in every mine a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to persons employed in the mine at all times.
2. All latrines and urinals provided under sub-section (I) shall be adequately lighted ventilated and at all times maintained in a clean and sanitary condition.

3. The Central Government may specify the number of latrines and urinals to be provided at any time, in proportion to the number of males and females employed in the mine and provide for such other matters in respect of sanitation in mines (including the obligations in this regard of persons employed in the mine) as it may consider necessary in the interest of the health of the persons so employed.

Employment of Women

1. No woman shall, notwithstanding anything contained in any other law, be employed

   (a) in any part of a mine which is below ground;

   (b) in any mine above ground except between the hours of 6 a.m. and 7 p.m.

2. Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on anyone day and the commencement of the next period of employment.

3. Notwithstanding anything contained in sub-section (I), the Central Government may, by notification in the Official Gazette, vary the
hours of employment above ground of women in respect of any mine or class or description of mine, so that no employment of any woman between the hours of 10 p.m. and 5 a.m. is permitted thereby.  

Leave with Wages

**Annual Leave with Wages**

In any other case, at the rate of one day for every twenty days of work performed by him.

Explanation: For the purpose of this sub-section:

(a) any days of lay-off by agreement or contract or as permissible under the standing order;

(b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed, shall be deemed to be the days on which the employee has worked in a mine for the purpose of computation of the attendance’s, but shall not earn leave for these days.

Power of Central Government to make rules

For requiring the maintenance in mines wherein any women are employed or were employed in any day of the preceding twelve months of

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suitable rooms to be reserved for the use of children under the age of six years belonging to such women, and for prescribing, either generally or with particular reference to the number of women employed in the mine, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervisor to be exercised therein;

For requiring the maintenance at or near pitheads of bathing places equipped with shower baths and of locker rooms for the use of men employed in mines and of similar and separate places and rooms for the use of women in mines where women are employed, and for prescribing either generally or with particular reference to the number of men and women ordinarily employed in a mine, the number and standards of such places and rooms.

Miscellaneous

Power to Exempt from Operation of Act

1. The Central Government may, by notification in the Official Gazette, exempt either absolutely or subject to any specified conditions any local area or any mine or group or class of mines or any part of a mine or any class of persons from the operation of all or any of the provisions of this Act or the regulations, rules or bye-laws:

Provided that no local area or mine or group or class of mines shall be exempted from the provisions of Sections 40 and 45 un-
less it is also exempted from the operation of all the other provisions of this Act.

2. The Central Government may, by general or special order and subject to such restrictions as it may think fit to impose, authorise the Chief Inspector or any other authority to exempt, subject to any specified conditions, any mine or part thereof from the operation of any of the provisions of the regulations, rules or bye-laws if the Chief Inspector or such authority is of the opinion that the conditions in any mine or part thereof are such as to render compliance with such provision unnecessary or impracticable.

4.4.9. PLANTATIONS LABOUR ACT, 1951

Welfare provisions for women workers:

1. In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the proceeding twelve months, or where the number of children of women workers (Including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.

25. Although land and capital presented no problems for the tea industry, labour was always in critical shortage on plantations. Although it was always claimed that the paucity of local sources of labour necessitated long distance recruitment, recent research has also established that the need for cheap and plaint labour in a strict work regime weighed more in the consideration of the planters than the availability of local labour per se.
Explanation: For the purposes of this sub-section and sub-section (I-A), “children” means persons who are below the age of six years.

1-A. Notwithstanding anything contained in sub-section (I), if, in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers, deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.

2. The rooms referred to in sub-section (I) or sub-section I-A shall:

(a) provide adequate accommodation;
(b) be adequately lighted and ventilated;
(c) be maintained in a clean and sanitary condition; and
(d) be under the charge of a woman trained in the care of children and infants.

3. The State Government may make rules prescribing the location and the standards of the rooms referred to in sub-section (I) or sub-section (I-A) in respect of their construction and accommodation
and the equipment and amenities to be provided therein.

Employer shall be bound to comply with such direction.

4.4.10. INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

Provisions for women workers are as follows:

Separate rooms shall be provided for female migrant workmen.

Canteens

(i) A portion of the dining hall and service counter shall be partitioned off and reserved for women migrant workmen in proportion to their number.

(ii) Washing places for women shall be separate and screened to secure privacy.

Latrines and Urinals

(1) Latrines shall be provided in every establishment on the following scale namely:

(a) Where females are employed, there shall be at least one latrine for every 25 females:

(b) Where males are employed, there shall be at least one latrine for every 25 males

Provided that where the number of males or females exceeds 190,
it shall be sufficient if there is one latrine for 25 males or females, as the case may be, up to the first 100, and one for every 30 thereafter.

(2) Every latrine shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings.

(3) (i) Where workers of both sexes are employed, there shall be displayed outside each block of latrine and urinal a notice in the language understood by the majority of the workers ‘For Men Only’ or ‘For Women Only’, as the case may be.

(ii) The notice shall also bear the figure of a man or of a woman, as the case may be.

(4) There shall be at least one urinal for male workers up to fifty and one for females up to fifty employed at a time:

Provided that where the number of male or female workmen, as the case may be, exceeds 500 it shall be sufficient if there is one urinal for every fifty females up to the first 500 and one for every 100 or part thereof thereafter.

Washing facilities

(1) In every establishment adequate and suitable facilities for washing shall be provided and maintained for the use of migrant workmen employed therein.
(2) Separate and adequate screening facilities shall be provided for the use of male and female migrant workmen.

Creche

(1) every establishment where 20 or more women are ordinarily employed as migrant workmen and in which employment of migrant workmen to continue for three months or more. the Contractor shall provide and maintain two rooms of reasonable dimensions for the use of their children under the age of six years, within fifteen days of the coming into force of the rules, and in case of an existing establishment, within fifteen days of the commencement of the employment of not less than twenty women as migrant workmen in new establishments.

(2) One of such rooms shall be used as playroom for the children and the other as bedroom for the children.

(3) If the contractor fails to provide the creche within the time laid down. the same shall be provided by the principal employee within fifteen days of the expiry of the time allowed to the contractor.

(4) The contractor or the principal employer as he case any be shall supply adequate number of toys and games in the playroom and sufficient number of cots and bedding in the sleeping room.

(5) The creche shall be so constructed as to afford adequate protection against heat, damp wind, rain and shall have smooth hard and impervious floor surface.
(6) The creche shall be at a convenient distance from the establishment and shall have adequate supply of wholesome drinking water.

(7) Effective and suitable provisions shall be made in every room of the creche for securing and maintaining adequate ventilation by circulation of fresh air and there shall also be provided and maintained sufficient and suitable natural or artificial lighting.

4.4.11. THE MATERNITY BENEFIT ACT, 1961

Objectives

The Maternity Benefit Act, 1961, aims at regulation of employment of women employees in certain establishments for certain periods before and after child birth and provision of maternity and certain other benefits. Some State Acts also provide for additional benefits such as free medical aid, maternity bonus, provision of creches, additional rest intervals, etc.

26. The recognition of the need to make special benefits and provide protection to the women before and after child birth is not a new phenomenon. The International Labour Organisation (ILO), at its very first session as early as in 1919 made an attempt to have some guidelines by adopting the Maternity Protection Convention (No.3). The principle advocating health of the individuals can also be found under Article 25 of the Universal Declaration of Human Rights. The same has also been recognised by the Indian constitution after the ILO asked for the need to protect them from maternal worries. The question of maternity protection at work assumes special significance in view of the growing number of young working women throughout the world.
Scope and Coverage

The Act extends to the whole of India and is applicable to every factory, mine or plantation (including those belonging to Government) and an establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees and to every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding establishment or class of establishments: industrial, commercial, agricultural or otherwise.

However, the Act does not apply to any such factory/other establishment to which the provisions of the Employees' State Insurance Act are applicable for the time being. But where the factory/establishment is governed under the E.S.I Act. and the woman employee is not qualified to claim maternity benefit under Section 50 of that Act, because her wages exceed Rs. 3,000 p.m. [or the amount so specified under Section 2 (9) of the ESI Act]. or for any other reason, then such woman employee is entitled to claim maternity benefit under this Act till she becomes qualified to claim maternity benefit under the E.S.I. Act.

Employees Entitled

Every woman employee whether employed directly or through a contractor who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.

For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.

There is neither a wage ceiling for coverage under the Act nor any restriction as regards the type of work a woman is engaged in.

**Administrative Authority**

The administration of the provisions of the Act in respect of firms and establishments engaged in exhibition of equestrian, acrobatic and other performances, is controlled by the Central Government, whereas in respect of all other establishments it is looked after by the concerned State Governments.

The Central/State Governments shall appoint competent authority and inspectors and shall make rules for enforcing the provisions of the Act.

**Salient Provisions**

**Restriction on Employment of Pregnant Woman**

No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage.
Besides, no woman should work in any establishment during the said period of 6 weeks.

Further, the employer should not require a pregnant woman employee to do an arduous, work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 6 weeks for which she does not avail of the leave as provided for in Section 6 of the Act 2.

**Discharge or Dismissal to be Void**

When a pregnant woman absents herself from work in accordance with the provisions of his Act it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or give notice of discharge or dismissal on such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.

Dismissal or discharge of a pregnant woman shall not disentitle her from the maternity benefit or medical bonus allowable under the Act, misconduct such as willful destruction of employer's goods or property, assault on any superior or co-employee, criminal offence involving moral turpitude, theft, fraud, or dishonesty in connection with safety measures or rules or interference with safety devices or fire fighting equipment.
Meaning of Maternity Benefit

Prior to the amendment of 1989, if a woman employee could not avail of the six weeks leave preceding the date of her delivery, she was entitled to only six weeks’ leave following the day of her delivery. However, by the above Amendment, the position has changed. Now, in case a woman employee does not avail six weeks’ leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e. preceding and following the day of her delivery, does not exceed 12 weeks.

A woman employee is entitled to maternity benefits under the Act irrespective of the number of children she has. This matter was considered in a high level committee set up by the Central Government. The Committee thought that though it is contrary to the family planning norms being advocated by the Government, it is also not appropriate to deny a woman employee the benefits under the law, once she gave birth to a child.

Amount of Benefit

The maternity benefit is payable to a woman worker at the rate of average daily wages for the period of her actual absence, during the benefit period. Wages for this purpose include basic wages, dearness and house rent allowance, incentive bonus and money value of concessional supply of foodgrains and other articles.
If a woman dies during the benefit period, the benefit is payable:

(i) up to and including the day of her death, in case she dies without delivering a child;

(ii) for the entire period, in case she dies after delivering the child: or

(iii) up to and including the day of child's death. in case the child also dies during that period.

Maternity Benefit

The benefit is payable for a maximum period of 12 weeks of which not more than six weeks shall precede the date of her expected delivery.27

"Average daily wages" means average of the wages payable to the woman employee for the days on which she has worked during the period of 3 calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wages fixed or revised under the Minimum Wages Act. or Rs. 10/- whichever is the highest.

Notice of Claim

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer stating as follows:

27. In a landmark decision the Central Govt. allowed 15 days Maternity Leave and enhanced the maternity leave from 90 to 135 days for the Central Govt. employees in accordance with the recommendations of the Fifth Pay Commission. (No.1301811197-Estd. (Leave), Govt. of India, Ministry of Personal Training, Dtd. 7th October, 1997)
(i) that her maternity benefit may be paid to her or to her nominee (to be specified in the notice);

(ii) that she will not work in any establishment during the period for which she receives maternity benefit; and

(iii) that she will be absent from work from such date (to be specified by her). which shall not be earlier than 6 weeks before the date of her expected delivery.

The notice may be given during the pregnancy or as soon as possible after the delivery,

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman from the benefits of the Act.

Payment of Maternity Benefit

The employer is liable to pay the amount of maternity benefit for the period preceding the date of expected delivery, in advance, to the woman employee on production of the proof of pregnancy (in the prescribed form). The balance amount due for the subsequent period should be paid within 48 hours of production of proof of delivery (in the prescribed form).
In case of death of a woman-employee entitled to maternity benefit, the employer shall pay the amount of benefit to her nominee or legal representative, as the case may be.

**Leave for Miscarriage and Illness**

In case of miscarriage, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of 6 weeks immediately following the day of her miscarriage.

Besides, leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child or miscarriage.

**Medical Bonus**

Every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs. 250/- if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

**Nursing Breaks**

Every woman who returns to duty after delivery of child shall in addition to the interval of rest allowed to her, be allowed in the course of her daily work, two breaks of 15 minutes duration each for nursing the child until the child attains the age of 15 months.
**No Deduction of Wages**

The employer should not make any deduction from the normal and used daily wages of a woman entitled to maternity benefit, merely due to the light nature of work assigned to her [by virtue of Section 4(3) of the Act] or for the nursing breaks allowed to her.

**Forfeiture of Maternity Benefit**

If any woman who has been allowed to go on maternity leave works in any other establishment for any period during the authorised leave then her claim to the maternity benefit for such period worked shall be forfeited.

**Obligations of Employers**

Important obligations of employers under the Act are:

1. To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the women employees in accordance with the provisions of the Act.

2. Not to engage pregnant women in contravention of Section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

3. To exhibit the abstract of the provisions of the Act and the rules made thereunder, in the local language at a conspicuous place in every part of the establishment in which women are employed.
(4) To prepare and maintain the prescribed registers records and muster rolls and submits the prescribed returns. Annual Return should be submitted in the revised form.

Rights of Employers

The employer has a right to appeal against an order of the Inspector to the competent authority, within 30 days of the service of the order. Important rights of an employee are:

(1) To make a complaint to the Inspector and claim the amount of maternity benefit important withheld by the employer.

(2) To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

Offences and Penalties

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<tr>
<th>Offence</th>
<th>Penalty</th>
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<td>(1) (a) Failure to pay maternity benefit as provided for under the Act.</td>
<td>Imprisonment up to one year and fine up to Rs. 500 (minimum 3 month and Rs. 200 respective).</td>
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<tr>
<td>(b) Dismissal or discharge of a woman employee in contravention of the Act.</td>
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(2) Failure to produce and register or document before the Inspector or obstructing the Inspector.

(3) Contravention of any other provision of the Act or the rules.

4.5. Conclusion:

From the foregoing discussion, it is clear that to provide security against various risks, peculiar to their nature, women workers have been given various benefits, concessions, protection and safeguards under different labour legislations. But despite this all, much remains to be achieved. Women workers are still made to suffer discrimination in social and economic spheres and continue to be the most exploited lot. It is true that laws are made for the welfare and benefit of people but after all it is the sincere and strict implementation which matters. Although the need for more and more laws is always felt in a welfare state like ours, yet the existing labour laws, with necessary modifications and amendments are sufficient for the time being to take care of the women workers in the organised sector leaving unorganised sector of employment unattended. Therefore, these laws should be extended to unorganised sector also where majority of the women are working.

Another 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.\(^2^8\)

The National Commission for Women Act, 1990, has created the National Commission for Women. The Commission has recommendatory functions such as:

- to make in its reports recommendations for the effective implementation of the safeguards provided for women under the Constitution and the laws;

- to review the provisions of the Constitution and laws affecting women and recommend amendments thereto;

- to make periodical reports to the government on any matter pertaining to women and in particular regarding various difficulties under which women toil.

\(^{28}\) On August 6, 1996, the former Police Chief of Punjab K.P.S. Gill was convicted by the Chief Judicial Magistrate (CJM) Chandigarh, under Section 354 and 509 of the Indian Penal Code, for outraging the modesty of an IAS officer Ms. Rupen Deol Bajaj. In an appeal, 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.
The Commission also has executive-cum-quasijudicial functions such as to take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities; to look into complaints and take *suo moto* notice of the matters relating to;

- deprivation of women's rights;
- non-implementation of the laws enacted to provide protection to women and also to achieve the objective of equality and development; and
- non-compliance of policy decisions, guidelines or instructions aimed to mitigating hardships and ensuring welfare and providing relief to women (Sathe).

A perusal of the legislations intended to protect women's rights at the workplace give an impression that they are enacted to meet the public demand, honour ILO Conventions and Recommendations and to promote constitutional values. In fact, they are not taking into account social realities. Most of these legislative provisions have remained as 'paper tigers'. These legislations do not seem to have made any impact on the service conditions of women employees especially in the unorganised sector. A census report indicates that 85.5 per cent of the marginal workers are female (India, 1991). For a common women these beneficial legislations do not seem to make any difference. On the contrary unfortunately in certain circumstances these
so-called beneficial legislations seem to be working against the interests of women. May be it is high time that a social audit of the impact of these beneficial legislations on the employment potential and service conditions of women is made.