CHAPTER VI

WOMEN LABOUR AND LEGISLATIVE FRAMEWORK

The post-independence period has been witnessing a growing concern for bettering the lot of women labour in India. Various provisions for the welfare of women are provided in many protective legislations like the Equal Remuneration Act, 1976, The Factories Act, 1948, The Mines Act 1952, The Plantation Labour Acts 1951, The Contract Labour (Abolish Rules Acts 1971) etc. Women's precarious position in economic production, their dependence on men, and the restriction of the domestic role in the family to women can be explained at least partly by protective legislation. A commission appointed in 1884 to investigate the operation of the 1881 Factories Act recommended that the number of working hours for women be restricted to eleven. This was to enable the female worker to go home and perform her household duties which would promote the general health of the whole body of workers. Similarly, prohibiting night work was decided upon because otherwise her home will be neglected. The children will be either left at home uncared for or brought to the mill which may affect their health.

In the history of the labour movement in Britain it has been found that male workers resisted the wholesale entrance of women and children into the labour force and sought to restore the disrupted family life. Men, therefore reserved union protection for men and argued for protective legislation for women and children.  

Employment Conditions

In India the right of women to public employment is recognised under the constitution. Article 16 of the constitution guarantees the right of equal opportunities in regard to employment to men and women without any distinction. During the United Nations Decade for Women, a wide range of initiatives have been taken at the national level including targets in national development plans, declaration of policy and statements of commitment to national action, the establishment of national mechanisms to deal with women's issues including employment, legislative changes and practical measures geared to the elimination of discrimination on the grounds of sex. There have been some attempts to introduce affirmative action variously defined as "equality policies" or 'positive action' to promote the status and full integration of women into political and economic systems. The

ILO Discrimination (Employment and Occupation).

Convention, 1958 (No. 111), and Recommendation (No. 111) define discrimination as "any distinction, exclusion or preference (or any of the grounds specified) which has the effect of multiplying or impairing equality of opportunity and treatment in employment or occupation". This definition takes into account the fact that equality of opportunity or treatment may be affected not only by negative attitudes, but also by preferences which are often less easy to discern in practice. It embraces both situations where equality is nullified completely and those more subtle instances where it is merely impaired. Since its adoption, Convention No. 111 has received one of the highest number of ratifications (107) of all ILO conventions - an indication both of the importance with which the instrument is regarded and of the willingness of member states to commit themselves to implementing its principles. A highly significant step was taken by the ILO in 1975 when it adopted a declaration on equality of opportunity and treatment for all workers and that all forms of discrimination on the grounds of sex which deny or restrict such equality are unacceptable and must be eliminated. Article 2(2) states unequivocally that "positive special treatment during a transitional period aimed at effective equality between the sexes shall not be regarded as discriminatory". The United Nations Convention on the Elimination of All Forms of Discrimination Against
Women, which as of January 1985 had been ratified by 65 states made an important contribution to the understanding of legal measures on discrimination equally emphasising that special measures of protection for women are not discriminatory if they are designed to promote equality of treatment.4

In India the Five-year plans have always placed emphasis on provision of minimum health facilities, increasing women's education and their participation in labour force. The Sixth Plan includes a chapter on Women and Development which lays stress on women's low rate of literacy and the necessity of a global social change. In the Seventh Plan (1985-89) a special component for women and a multisectoral approach have been adopted to ensure that there is convergence of programmes for their promotion.5

The Sixth National Development Plan (1978-83) had as its objective "to secure for women a fair share of employment opportunities". The Plan set out to encourage industries outside agriculture to stimulate women's employment - in 23 non-farm sectors women totalled 48 million. It also recognised the need to promote employment in what it described as "women - preferred jobs", such as office work

and work in textile, chemical and electronics industries. The role and potential of women in the rural areas, according to the plan has not been "adequately assessed and appreciated", since rural women perform a large number of roles connected with various types of agriculture and mixed farm activities, they have to be involved in the development process more effectively if they are properly trained and made aware of the technological advances, "the gains in productivity and production as well as reduction of losses is expected to be substantial.

A particular job may require a particular sex because of the sensitiveness of sex, or the peculiarities of social factors or handicaps of either sex. In these cases rule of equality should not be enforced blindly. Even the constitution has recognised difference between the sexes. It provides for special laws in favour of women. Muthamma case judgement stressed the point that men and women cannot be treated equally in all occupations and situations. But there are certain factors like marriage, affect men and women equally, a rule which discriminates both the sexes on the ground of matrimonial status is certainly discriminatory. In Muthamma's case, Supreme Court in its judgement called upon the government to overhaul the service rule which disentitled married women to be appointed to IFS service.
Justice V.R. Krishna Aiyer in his judgement stated:

"Marriage affected the efficiency of males and females alike in these days of nuclear families, Intercontinental marriage and unconventional behaviour . . . . . one fails to understand the naked bias against the gentler of the species."

So far as the efficient operation is concerned it can hardly be said that married women be less efficient than unmarried women or widows or men. The only difference between the two is burden on account of maternity leave.

Court in International Franchise case judgment held: "It is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and vary them if it is found necessary, unless the employer can justify an extra-ordinary condition like this by reasons which carry conviction."

Of course, in all cases rules of equality cannot be enforced. Constitution of India has recognised indifferences between the sexes and has provided for special laws in favour of women. Thus discrimination in favour of women can be made but not vice versa.

Article 15 of the Indian Constitution prohibits the state to discriminate against citizens on the grounds only of religion, sex, caste, place of birth or any of them. No citizen shall, on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment etc. Nothing in Article 15 shall prevent the state from making any special provision for women and children. Thus, while there can be no discrimination in general on the ground of sex, special provision in the case of women and children are permissible. A Government order making women ineligible for the post of a warden in men's jail was upheld as the position of a woman would become awkward and hazardous while ensuring and maintaining discipline over habitual offenders. The language of clause (3) of Article 15 is in absolute terms and does not appear to restrict in any way the nature or ambit of special provisions which the state may make in favour of women or children. The decision of Excise authorities to prefer men over women in granting licenses for opening liquor shops was struck down as coming within the prohibition of Article 15(1) and not saved by Article 15(3).  

Article 16 of the constitution lays down a general rule that there shall be equal opportunity for citizens in matters relating to "employment" or "appointment to only office" under the state. This does not mean that discrimination in favour of women or on the grounds of health and safety of women can not be made. The Mines Act 1951, prohibits the employment of women below ground. Similarly Factories Act, Plantations Act and Mines Act prohibit the employment of women except between the hours of 6 A.M. and 7 P.M. Factories Act further prohibits the employment of women on heavy machines or on jobs which involve risk to the health of women workers. Similarly Article 23 of the constitution and The Bonded Labour System (Abolition) Act, 1976 prohibits bonded labour. Section 4 of the Bonded Labour System (Abolition) Act 1976 says that on the commencement of this Act the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement stand freed and discharged from any obligation to render any bonded labour. This Act further makes a provision that any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act), by virtue of which any person, or any member of the family or dependent of such person is required to do any work or render any service as a bonded labourer, shall be void and in operative.  

Working Hours

Normally weekly hours under the existing labour enactment do not exceed 48. In practice, the hours of work in establishments working three shift daily amount to 45 per week, as shift is generally of 8 hours duration, including the half-hour rest interval. During the war years, employment in jute mills, engineering workshops, secured exemption from the provision of the Factories Act in respect of hours of work and rest day factory workers worked on an average from 10 to 12 hours a day. Ordinarily, weekly hours ranged from 48 to 54. However, factories which obtained exemption regarding hours of work and unregulated factories worked between 56 to 60 or even 70 hours per week. Daily hours of work in mines were 8 hours a day under ground but the hours of actual work did not exceed 4 to 5 and that too for about 4 to 5 days in the week. In Assam and Bengal, tea garden working being on a "hazira" basis, no rigid rule regarding the hours of work existed. Usually on "hazira" could be finished in 5 to 6 hours, piece rates worked up to 10-11 hour a day to improve their earnings in plucking season. Daily hours of work ranged from 8 to 9 hours and the spread over 10 to 11 hours in tea and coffee estates in South India. Most of the work in plantations is done by women.
The Factories Act, 1948 fixes 48 hours a week and not more than 9 hours a day for all adult workers. The Act also provides half-an-hour rest interval after five consecutive hours of work. The spread over, in case of adult worker, inclusive of intervals of rest shall not be more than ten and half hours in any day. Besides an half an hours rest interval, women delivered of a child who return to duty after such delivery is entitled to two nursing breaks of the prescribed duration in the course of the daily work. Nursing breaks can be allowed till the child attains the age of fifteen months. Section 66 of the Factories Act further restricts employment of women in factories in respect of their hours of employment. No employer shall allow any woman to work in any factory except between the hours of 6 A.M. and 7 P.M. and there shall be no change of shifts except after a weekly holiday or any other holiday. The State Government may vary the limit of hours of work between 6 A.M. and 7 P.M. but in no case women shall be allowed to work between the hours of 10 P.M. and 5 A.M. The State Government may exempt from such restrictions in case of woman working in fish cur or fish canning factories

11. The Factories Act, 1948, Sec. 51 and 54
12. Ibid, Section 55.
where the employment of women beyond the specified hours is necessary to prevent damage, to, or deterioration in any raw material. The Mines Act, 1952, lays down 48 hours a week and not more than 9 hours a day for surface workers and 8 hours a day for workers working below ground. Spreadover for workers working below ground is allowed up to 8 hours only and 12 hours for surface workers. This period of work is inclusive of rest interval which shall be of at least half an hour after five consecutive hours of work. Women workers are not allowed to work in night and below ground. Section 46 of the Act restricts employment of women in any part of mine which is below ground. Women shall not be employed above ground except between the hours of 6 A.M. and 7 P.M. Any woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. Central Government may vary the hours of work above ground of women but in no case employment shall be allowed between the hours of 10 P.M. and 5 A.M.

The plantations labour Act, 1951 provides that no adult worker shall be required to work on any plantation in excess of 48 hours a week and no adolescent or child for

16. Ibid. Sec. 31.
17. Ibid. Sec. 30.
more than twenty seven hours a week. If an adult worker works in excess of the number of hours constituting a normal working day he shall be entitled to twice the rates of ordinary wages. But no such worker shall be allowed to work for more than nine hours on any day and more than fifty-four hours in any week.\textsuperscript{18} No worker shall work for more than five hours before he has had an interval for rest for at least half an hour.\textsuperscript{19} Spreadover, inclusive of rest intervals and time spent in waiting for work shall not be more than twelve hours on any day.\textsuperscript{20} Section 25 of the Act prohibits employment of women in plantation otherwise than between the hours of 6 A.M. and 7 P.M. This restriction does not apply to midwives and nurses employed in any plantation.

The Bidi and Cigar Workers Act, 1966 restricts employment of women in any industrial premises except between 6 A.M. and 7 P.M.\textsuperscript{21} No employee shall be required or allowed to work in any industrial premises for more than nine hours in any way or for more than 48 hours in any week. Employee is entitled to overtime wages if he works beyond these hours but period of work including overtime work, should not exceed

\textsuperscript{18} The Plantations Labour Act, 1951, Sec. 19.
\textsuperscript{19} Ibid. Sec. 21.
\textsuperscript{20} Ibid. Sec. 22.
\textsuperscript{21} Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Sec. 25.
ten hours on any day and in the aggregate fifty-four hours in any week. Spread over, inclusive of rest interval which shall be of at least an hour, shall not be more than ten and a half hours on any day. Chief Inspector for reasons to be specified in writing may increase the spread-over to twelve hours.

Shops and Establishments Act 1957 (Punjab), lays down that no person shall be employed in any shop or establishment for more than forty-eight hours on any week and nine hours on any one day. This does not effect in any way the employers if they want to exceed the hours of work prescribed by section 7. On seasonal or exceptional pressure of work a person employed may be required to work for more than the normal working hours prescribed. However, the total number of overtime hours worked by an employee should not exceed fifty within a period of any one quarter. Overtime payment shall be twice the rate of normal wages calculated by the hours. No employee except Chowkidar, Watchmen or guard shall be allowed to work more than five hours before he has had an interval of at least half an hour. The period of work of an employee shall be so fixed

22. Ibid. Sec. 17
23. Ibid. Sec. 20
24. The Shops and Establishments Act, 1958 (Punjab), Sec. 7.
that, inclusive of his interval for rest, the spreadover shall not be more than ten hours in a day.\textsuperscript{25}

\textbf{Inter-state Migrant Workman (Regulation and Employment Conditions of Service) Act, 1979}, provides that hours of work of an inter-state migrant workman shall not be less favourable than those obtaining in that establishment or in similar employment in the area in which the establishment is located.\textsuperscript{26}

In India, large number of men and women workers are recruited through contractors but despite this large amount of contract labour, \textit{The Contract Labourer (Regulation and Abolition) Act, 1970}, makes no provision for fixing working hours.

Labour union have been advocating for reduction in the existing hours of work without less in wages. They have suggested a forty hours week, a five day week and eight hours a day. For commercial offices still shorter working hours are demanded. The reasons given are that reduction in hours will improve health and efficiency of workers and generate additional employment. The ILO Recommendation No. 116 also states that where normal weekly hours of work are either forty-eight or less, measures for a progressing reduction of hours of work to forty a week should be taken.\textsuperscript{25, 26}

\textsuperscript{25} Ibid. Sec. 8.
\textsuperscript{26} Inter-State Migrant Workman (R.E.C.S.) Central Rules, 1980, R. 8.36.
In most developing countries in recent years the share of female labour force has been slowly but steadily growing and many governments have introduced policies and measures to promote the employment of women, protecting their labour, training them in modern skills in general and providing better social conditions. Despite various positive tendencies observed in the advancement of women, there exists a large gap between human aspirations, development planning and legal regulations and the actual position of women in society. Problems and real obstacles continue to continue in employment practices, such as recruitment and promotion. Women continue to be concentrated in labour intensive and low economic echelons or service sectors, introduction patterns of employment receiving unequal as well as insufficient protection in their reproduction process as workers and as mothers who have the additional burden of family responsibilities.27

The ILO Night Work (Woman) convention, 1919 (No. 4) provides that women, without distinction of age, shall not be employed during night in any public or private industrial undertaking. The term "night" signifying a period of at least 11 consecutive hours, including the interval between 10 P.M. and 5 A.M. The convention allows exemptions for undertaking

27. Improvement of Working Condition, Women at Work, No.1. 1934, Geneva, ILO, p.27.
where only members of the same family are employed, for cases of force majeure and where the work involves the use of raw materials or materials in cause of treatment which are subject to rapid deterioration. ILO research results indicate that the vast majority of workers engaged in night work do not usually get more than four to six hours sleep during the day. Women are often excluded from many jobs on the basis of existing legislation although essential services like telephones and hospitals have always been outside the scope of labour laws.28

The most valued and significant of the protective measures adopted for women employees in India, as elsewhere, are those dealing with maternity leave and other allied benefits. Provisions for leave with wages subject to certain qualifying conditions, also exists in the Factories Act, 1948, the Mines Act, 1952 and the Plantations Labour Act, 1951 but women workers do not enjoy any special privilege in this respect under these Acts. Section 79 of the Factories Act, 1948 states that every worker who has worked for a period of 240 days in a factory during the previous Calendar Year shall be entitled to annual leave with wages. It shall be calculated at the rate of one day for every twenty days of work performed during the previous calendar year in case of an adult and one day for every fifteen days of work performed in case of a child. For the

purpose of computing the period of 240 days, any days of

~

~

Ly off by agreement or contract or as permissible under

_ the standing orders, in case of a female worker, maternity

leave for a period not exceeding twelve week and the leave

earned in the year prior to that in which the leave is

enjoyed shall be deemed to be days on which the worker has

worked in a factory. The leave shall be inclusive of all

holidays whether occurring during or at either end of the

period of leave. If a worker is discharged or dismissed

from service or quits his employment or is superannuated or
dies while in service, during the course of calendar year,

he or his heir or nominee, as the case may be, shall be

entitled to wages in lieu of the quantum of leave to which

he was entitled immediately before his discharge, dismissal,

quiting of employment, superannuation or death. In calcul-
ating leave fractions of leave of half a day or more shall

be treated as one full day's leave and fraction of less than

half a day shall be omitted. Any annual leave with wages

not taken by worker shall be added to the leave to be allowed

to him in the succeeding calendar year. But the total number

of days of leave that may be carried forward to a succeeding

year shall not exceed thirty in the case of an adult or forty

in the case of a child. A worker may at any time apply in

writing to the manager of a factory not less than fifteen

days before and not less than thirty days before in case of
public utility service. The number of times in which leave may be taken during any year shall not exceed three. If a worker wants to avail himself or herself of the leave with wages due to him or her to cover a period of illness, he or she shall be granted such leave even if the application for leave is not made within the specified time. For the annual leave a worker shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately proceeding his leave. It shall be inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrain and other articles. But it shall be exclusive of any overtime and bonus. 29

Similarly, Section 52 of the Mines Act, 1952 provides for annual leave with wages. It states that every person employed in a mine who has completed a calendar year's service therein shall be allowed leave with wages. Leave shall be calculated at the rate of one day for every fifteen days of work performed by him in case he is employed below ground and in any other case, at the rate of one day for every twenty days of works performed by him. For the purpose of computation of the attendances any days of by-off by 29. The Factories Act, 1948, Sec. 80.
agreement or contract or as permissible under the standing order, in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks and 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.

Section 30 of the Plantations Labour Act, 1951 provides that every worker shall be allowed leave with wages at the rate of one day for every twenty days of work performed by him in case of an adult and one day for every fifteen days of work performed in case of a young person. Any day on which half or more than half a day's work is performed shall be counted as one day. The leave shall be exclusive of all holidays, whether occurring during, or at either end of, the period of leave. If a worker does not in any one period of twelve months take the whole of the leave allowed to him, then leave shall be added in the succeeding period of twelve months. A worker shall cease to earn leave when the earned leave due to him amounts to thirty days. Worker shall be paid for the leave allowed, if employed wholly on a time-rate basis, at a rate equal to the daily wage payable to him immediately before the commencement of such leave under any law or under the terms of any award, agreement or contract of service, and in other cases, including cases where he is, during the preceding twelve calendar months,
paid partly on a time rate basis and partly on a piece-rate basis, at the rate of the average daily wage calculated over the preceding twelve calendar months. The average daily wage shall be computed on the basis of his total full-time earnings during the preceding twelve calendar months, exclusive of any overtime earnings or bonus, if any, but inclusive of dearness allowance.

The shops and commercial Establishments Act, 1958 (Punjab) makes provision for leave. Every person who has been in employment for not less than twenty days in a year shall be entitled to one day's earned leave for every such twenty days. Young person is entitled to one day's earned leave for every fifteen days of employment during the year. In case of discharge or dismissal or leaving service during the course of the year, an employee shall be entitled to leave with wages or wages in lieu of unavailed leave. Unavailed leave in any year shall be carried forward to next succeeding years. Every Sunday shall be a close day in every establishment. Government may fix any other day to be a close day in respect of any class of establishments for the whole of the state or any part thereof. It further provides that every employee in an establishment shall be allowed a holiday with wages on the Independence day, Republic day, and Mahatma Gandhi's Birthday and three other

31. Ibid. Sec. 10.
holidays with wages in a year in connection with such
festivals as Government may declare from time to time.
However, an employee can be asked to work on an holiday
provided he is paid double the wages.\textsuperscript{32} No wage period
shall exceed one month.\textsuperscript{33}

Inter-State Migrant Workmen (R.E.C.S.) Central
Rules, 1980,\textsuperscript{34} provides that holidays, hours of work includ-
ing extra wages for overtime work done and other conditions
of service of migrant workman, shall not be less favourable
than those obtaining in the establishment or in similar
employment in the area in which the establishment is
located. No wage period shall not exceed one month.\textsuperscript{35}

The Contract Labour (Regulation and Abolition) Act,
1970 makes no provision for leaves and holidays. Section
64 of the Contract Labour Regulation and Abolition Central
Rules, 1971 provides that no wage period shall exceed one
month.

The Beedi and Cigar Workers (Conditions of Employment)
Act 1966 provides that every employee in an establishment
shall be allowed leave wages at the rate of one day for
every twenty days of work performed by him during the previous
calendar year. Young person shall be allowed leave wages at

\begin{flushleft}
\textsuperscript{32} Ibid: Sec. 12.
\textsuperscript{33} Ibid: Sec. 16.
\textsuperscript{34} Rule 36.
\textsuperscript{35} Inter-State Migrant Workmen (R.E.C.S.) Central Rules
\end{flushleft}
the rate of one day for every fifteen days of work performed by him during the previous calendar year. If an employee is discharged or dismissed from service or quits employment during the course of the year, she shall be entitled to leave with wages. Unavailed leave in any year shall be added to the leave to be allowed in the succeeding calendar year. If an employee is discharged or dismissed from service or quits employment during the course of the year, she shall be entitled to leave with wages. Unavailed leave in any year shall be added to the leave to be allowed in the succeeding calendar year. Employee shall get wages for the leave period at the rate equal to the daily average of his or her total full time earnings, for the days on which he had worked during the month immediately preceding his leave wages shall be exclusive of any overtime earnings and bonus but inclusive of dearness and other allowances. Every industrial premises shall remain entirely closed, except for wetting of beedis or tobacco leaves on one day in the week which shall be specified by the employer. The Act prohibits the employment of woman in any industrial premises except between 6 A.M. and 7 P.M.

Allowed Holidays could be categorised under two heads i.e. (1) statutory holidays and (ii) national and festival holidays. So far as statutory holidays are concerned, the Factories Act, the Mines Act and the Plantations Labour Act.

37. Ibid: Sec. 27.
38. Ibid: Sec. 21.
39. Ibid: Sec. 25.
40. The Factories Act 1948: Sec. 52; The Mines Act, 1952: Sec. 29; The Plantations Labour Act: 1951, Sec.20.
provide that first day of a week shall be a day of rest for all workers. Sunday has been declared a day of rest in all the undertakings covered by these Acts. Women workers are entitled to weekly days of rest and in this respect they are at par with men workers.

In addition to welfare facilities etc., provided to women workers under various laws, they enjoy certain other facilities/amenities, such as, medical and educational facilities, vocational training, etc. provided by the State Governments, Employees Associations, Worker's Organisations and Special Welfare Funds for certain mines constituted by the Govt. of India, e.g. Coal Mines Labour Welfare Fund, Mica Mines Labour Welfare Fund and Iron Ore Mines Labour Welfare Fund. A number of labour welfare Centres are run by most of the State Governments and Union Territories.

Annual leave with wages and rest intervals are at par with those of an adult male workers but certain concessions are given for a specific issue i.e. two rest intervals in a day for feeding the newly born child up to 18 months. This annual leave with wages is in addition to maternity leave granted under the law.

In the case of Air Hostess case, the rule which compelled an Air Hostess to resign on her marriage if it takes place within four years of service or on first
pregnancy, was challenged. \textsuperscript{41} Supreme Court observed that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism. Therefore, it is clearly violative of Article 14 of the Constitution.

\textbf{Health, Safety and Welfare}

Most of the labour legislations make special provision regarding health and safety of women workers and promote their welfare.

\textbf{Health}

The Factories Act, 1948, besides making provisions of cleanliness, disposal of wastes and effluents, ventilation and temperature, dust and fume, artificial humidity, overcrowding, lighting, latrines and urinals and spittons, makes some special provisions for women. Section 19 of the Act provides: "separate enclosed accommodation shall be provided for male and female workers; such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an

\textsuperscript{41} \textit{(1981)} 4 SCC 355.
intervening open space or ventilated passages all such accommodation shall be maintained in a clean and sanitary condition at all times."

Section 8 of the Plantations Labour Act, 1951 provides that there shall be provided separately for males and females in every plantation sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein. All latrines and urinals shall be maintained in a clean and sanitary condition. Section 20 of the Mines Act 1952 states that there shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribe types so situated as to be convenient and accessible to persons employed in the mine at all times. All latrines and urinals shall be adequately lighted, ventilated and at all times maintained in a clean and sanitary condition. The Central Government may specify the number of latrines and urinals to be provided in any mine, 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 obligation in this regard of persons employed in the mine), as it may consider necessary in the interests of the health of the persons so employed.

42. The Plantations Labour Act, 1951: Sec. 9(2).
All these three Acts make provisions for the 'Drinking Water' facilities.\footnote{346}

Beedi and Cigar workers (C.E.) Act, 1966 provides that no room in any industrial premises shall be overcrowded to an extent injurious to the health of the person employed therein.\footnote{44} The Act further provides that in every industrial establishment there shall be made separate provision for urinals and latrines for female workers.\footnote{45}

The shops and commercial establishments Rule 1958 (Punjab)\footnote{48} provides for sufficient supply of drinking water facilities.

Contract Labour Regulation and Abolition Central Rules, 1971 provides for separate latrines and urinals for female workers. It says that where females are employed, there shall be at least one latrine for every 25 females.\footnote{47} Rule 53 provides that where workers of both sexes are employed there shall be displayed outside each block of latrine or urinals a notice in the language understood by majority of the workers "For men only" or "For women only". The notice shall also bear the figure of man or of a woman.

\footnote{43} The Factories Act, 1948: Sec. 18; The Plantations Labour Act, 1951: Sec. 8; The Mines Act, 1952: Sec. 19.
\footnote{44} Sec. 10.
\footnote{45} Sec. 12.
\footnote{46} Rule 16.
\footnote{47} Rule 51.
There shall be at least one urinal for female workers up to 50 employed at a time. Rule 40 provides for drinking water facilities.

Inter-State Migrant Workmen (R.E.C.S.) Central Rules 1980, provides that contractor shall provide sufficient quantity of wholesome drinking water, sufficient number of sanitary latrines and urinals and working facilities for the migrant workmen in the establishment.\textsuperscript{48}

\textbf{Safety}

Section 22 of Factories Act, 1948, prohibits employment of women to clean, lubricate, or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion or to clean lubricate or adjust any part of any machine, if the cleaning, lubrication or adjustment thereof would expose the women to risk of injury from any moving part either of that machine or of any adjacent machinery. Section 27 of the Act prohibits employment of women 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 opener is in a room separated from the delivery end by a partition extended to the roof or to such height as the Inspector may in any particular case specify in writing, women may be employed on the side of the partition where the feed-end is situated. The State

\textsuperscript{48} Rule 39.
Government may make rules prescribing the maximum weights which may be lifted, carried on, moved by adult men, adult women and adolescents and children employed in factories. (Sec. 34).

Section 46 of the Mines Act, 1952, prohibits employment of women in any part of a mine which is below ground; in any mine above ground except between the hours of 6 A.M. and 7 P.M. Every woman employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on any one day and the commencement of the next period of employment. The Central Government may, vary the hours of employment above ground of women in respect of any mine or class or description of mines, so however that no employment of any women between the hours of 10 P.M. and 5 A.M. is permitted thereby.

Section 25 of the Plantations Labour Act, 1951 prohibits the employment of women in any plantation otherwise than between the hours of 6 A.M. and 7 P.M. except with the permission of the State Government, provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

The Indian Merchant Shipping Act puts a ban on recruitment of women, except as nurses, to take employment on board seagoing ships.
The employers are also required to provide washing facilities exclusively for women workers. Separate bathing places, equipped with shower baths at and near the pit heads, for women workers are also to be provided as a statutory obligation under the Coal Mines (Pithead) Bath rules. Adequate water supply, lighting and drainage arrangements are also to be made in the bathrooms.

Welfare

Section 42 of the Factories Act, 1948 provides that separate and adequately screened washing facilities shall be provided for the use of male and female workers; such facilities shall be conveniently accessible and shall be kept clean. The Government may in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing. Section 48, provides that in every factory wherein more than thirty women workers are ordinarily employed thereby provided and maintained a suitable room or rooms for the use of children under the age of six years of such women. Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean sanitary condition and shall be under the charge of women trained in the care of children and infants. The State Government may make rules prescribing the location, and the standards in respect of construction, accommodation,
furniture and other equipment of rooms to be provided under this section; requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provisions of facilities for washing and changing their clothing; requiring the provision in any factory of free milk or refreshment or both of such children; requiring that facilities shall be given in any factory for the mother of such children to feed them at the necessary intervals. The Beedi and Cigar workers (Conditions of Employment) Act also provides for the creche facilities, wherein more than 50 women are ordinarily employed.

The rules framed by the State Governments under the above Acts specify that employer should make available for each child in a creche at least half a pint of milk every day and in addition give to children above 2 years wholesome refreshments.

Section 12 of the Plantations Labour Act, 1951 provides that 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 preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children below
six years of age, of such women workers. If the State Government deem it necessary it may by order ask the employer to provide for such facilities even where the number of women workers is less than fifty or number of children is less than twenty.

Rule 57 of the Contract Labour Regulation of Abolition Central Rule 1971 provides that separate and adequately screened working facilities shall be provided for women workers. Rule 44 lays down that a portion of the dining hall and service counter shall be partitioned off and reserved for women workers. If further lays down that washing places for women shall be separate and screened to secure privacy.

Beedi and Cigar Workers (C.E.) Act, 1966 provides for washing facilities for its employees. In every industrial premises where more than fifty female employees are ordinaril employed, employer shall provide for adequately lighted and ventilated and sanitary creches for the use of children under the age of six years of such female employees. Creches shall be under the charge of a women trained in the care of children and infants.

Inter-State Migrant Workmen (R.E.C.G.) Central Rules 1980, provides for separate rest rooms for female migrant

---

49. Sec. 13.
50. Sec. 14.
workmen. Rule 41 provides that a portion of the dining hall and service counter shall be partitioned off and reserved for women migrant workers, washing places for women shall be separate and screened to secure privacy. Rule 44 provides that in every establishment where 20 or more women are ordinarily employed as migrant workers and in which employment is likely 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.

In addition to welfare facilities provided to women workers under various laws, they enjoy certain other facilities/amenities, such as, medical and educational facilities, vocational training, etc. provided by the State Governments. Employer's Association, workers organisations and special welfare funds for certain mines constituted by the Government of India, e.g. Coal Mines Labour Welfare Fund and Iron Ore Mines Labour Welfare Centres are run by most of the State Governments and Union Territories. At these Welfare Centres, training is provided to women workers in various crafts such as training, embroidery and knitting, leather and other handicrafts, toy making, lac making etc. Literacy classes are also conducted at these Centres. In case of Gujarat, Maharashtra, Mysore, Karnataka and Punjab,

51. Rule 40.
the Labour Welfare Centres are administered by Welfare Boards set-up under their respective Acts. Responsibility for organising some sort of welfare work for women outside the factory has been accepted by employer's organisation also such as, the Bombay Mill owners Association and a number of large establishments on a voluntary basis. Among worker's organisations, the Ahmedabad Textile Labour Association has done a lot of work for promoting the welfare of women employees. Besides other welfare activities, the Association provides a residential boarding house for working class girls and has been running sewing classes for female members of worker's families in different labour localities. Women welfare work undertaken by statutory welfare funds was confined to setting up of women welfare centres and maternity and child welfare centres in different areas of the industry.52

Recently, a four member sub-committee has been set up by the development panel on asbestos products industry of the Directorate of Technical Development (DGTD) to examine the issue of employing women workers in this industry. According to the sub-committee chairman Dr. S.K. Dave, debarring women workers from employment in the asbestos products industry, save them from exposure to serious health

52. Women in Industry: Labour Bureau, Govt. of India, Simla. 1975.
hazards would also be considered.\textsuperscript{53}

Thus, various provisions in the above mentioned Acts provide special facilities to women but these Acts lack implementation. Survey of Textile Mills at Surat reveals that these facilities are either not available at all to women workers and if they are made available, they are in very improper and unhygienic manner. Like in none of the mills under survey, employer provides for creche facilities because everywhere attempt is made to keep the number of women workers below 30 or by employing unmarried girls or by terminating the job on pregnancy. Regarding bathroom and washing facilities the situation can be summed up by saying that such facilities are available to women but of no use at all. Toilets and bathrooms are kept in such an unhygienic way that it is dangerous for the health of women as well as for the health of industry. They stink so much that one finds it very difficult to stay there and work. Moreover, this becomes breeding place for so many diseases. The main problem is not the absence or inadequacy of law, but their effective implementation. Measures should be taken to generate safety consciousness such as (i) intense safety education, (ii) involvement of worker's representatives in safety councils, (iii) institution of incentives and awards for safety, (iv) audio-visual

\textsuperscript{53} Indian Worker, October, 14, 1985, p.3.
educational programmes to workers, their families and the
people living near hazardous industrial units and (v)
periodical medical check up of the workers.54

Despite international and national measures to protect
their health and safety, the majority of women workers in
Asian factories are at risk due to unhealthy and unsafe
working conditions. For example, in the Philippines women
workers are reported to be regularly exposed to harmful
substances as well as being overworked by compulsory over-
time. A terminal case of aplastic anaemia (an illness
directly linked to lead poisoning) has been reported. Many
other women, especially in the electronics industry, are
exposed to carcinogenic substances such as benzene, cadmium,
epoxy resins and lead. In a microchip factory, where workers
were required to have 20/20 vision as a prerequisite to
employment, one woman who had worked in the factory for
sometime was reported to need glasses of 400/450 grades.
Continuous work with fine fibres without adequate rest
periods and work environment was the main reason for this
condition. In Thailand assemblers in a semi-conductor
manufacturing plant look through microscopes for seven to
eight hours a day at fine gold wires the width of a human
hair; 50 such wires go into one chip and the women are
pressed to make up to 800 chips a day, causing a lot of eye

54. Indian Worker, June 10, 1985, p.4.
strain. They are also exposed to overs of 600-1,000°C, which bake the chips. In the Republic of Korea the leader of the women's union of the Wounpoong Textile Factory was beaten up on her way home one day. This was a way to convince her fellow workers to close down their unions, as some male workers had asked them to do. The other women at the Wounpoong factory had also been attacked at the plant by the men. There was no prevention against intrusion at the factory. Below are some examples of health and safety measures which could be further enforced along with the ILO instruments to ensure better protection for women workers. Protection of Workers' Health Recommendation, 1953 (No. 97); occupational safety and health and working environment convention, 1981 (No. 155) and Recommendations No. 164 on the same subject. At the national level: increased work accident compensation (Thailand, 1982), Safety at Work Act (Solomon Islands, 1982) and a plan to improve occupational safety and health in industry (India). 55

In many countries, developed and developing, industrial expansion has occurred without sufficient protective measures for workers. Women suffer special pressures of health since jobs are considered to be of secondary importance where medical and health facilities are inadequate. In 1984, 55. Women at Work: Geneva, ILO, No. 1, 1984, p. 29.
the ILO in its International Programme for the Improvement of Working Conditions and Environment (PIACT) emphasised measures on humanisation of work to improve conditions of life. Women are known to be particularly susceptible to certain physical stresses in the work environment, such as heat and noise, and their consequences. They are also more susceptible than men to the effects of vibration and tend to develop deterioration of the joints more quickly. In many occupations involving a great deal of physical exertion, such as carrying heavy loads repeatedly over a period of time, women appear to have a higher incidence of low-back pain syndrome than men. In office work, long hours at the terminal cause eye, neck and back fatigue and more serious problem such as migraine headaches and nausea. A great many of the problems have to do with poor office environment design, particularly poor and unsuitable lighting. Uncomfortable chairs, lack of humidity and poor ventilation also contribute to the strain. Another problem is found in low quality machines which have so called "nouseeating" colours, especially fluorescent green. In Japan, it is reported that semiconductors are assembled in special rooms called "sterilised rooms" specially controlled to protect against dust, over-heating or humidity. The women who work in these too dry, too cool, "sterile" conditions complain of body fatigue, physical debilitation, and physical deterioration even though they are
still young (20-29 years old). Studies in the United States have shown that women working in the electronic industry experience a higher rate of stress on the job than in almost any other occupation. Speed work, pacing, long working hours, repetitive or monotonous work, are factors leading to high levels of stress among different jobs.  

56. Equal Pay for Equal Work

The ILO Equal Remuneration Convention, 1951 (No. 100) lays down the general principle that ratifying member states shall promote and, in so far as is consistent with the methods for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for work of equal value. Since its adoption, 105 member states have ratified this convention. The ILO committee of Experts on the Application of Conventions and Recommendations has noted, from the reports submitted by ratifying countries, that several of them have carried out detailed analysis of the different forms of pay discrimination in violation of the convention and have subsequently undertaken or envisaged a wide variety of measures to ensure its implementation. The committee concluded that while the principle of equal pay is generally accepted as a matter of public policy, there are various shortcomings in putting this principle into practice. Since the convention refers to all

Equal Remuneration Act, 1976 lays down that it is the duty of the employer to pay equal remuneration to men and women workers for the same work or work of a similar nature. "No employer shall pay to any worker, employed by him in an established 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 for employment for performing the same work or work of a similar nature." 59

"No employer shall for the purpose of complying with the provisions of this Act reduce the rate of remuneration of any worker." 60 Equal Remuneration Act, 1976, further prohibits discrimination against women while making recruitments for the same work or work of a similar nature except where the employment of women in such work is prohibited or restricted by or under any law. It further provides that such provisions 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. 61

Equal Remuneration Act, 1976 lays emphasis for providing increasing employment opportunities for women. To

59. Equal Remuneration Act, 1976, Sec. 4(1)
60. Ibid: Sec. 4(2).
61. Ibid: Sec. 5
serve this purpose, the appropriate Government shall constitute advisory committees to advise it with regard to the extent to which women may be employed in such establishment or employments. Members of such committees shall be nominated by the appropriate Government and no committee shall have less than ten members, of which one half shall be women. In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment, the nature of work, hours of work, suitability of women for employment, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the committee may think fit. 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 an opportunity to make representations, issue such directions as it may think fit. Differences in regard to the remuneration of men and women workers in any establishment, if based on some other factors other than sex, does not amount to a contravention of any provision of the Equal Remuneration Act, 1976. The requirements of equal treatment for men and women shall not apply, but without prejudice to its operation as regards in other matters, if any special treatment is accorded to women in

62. Ibid. Sec. 6.
63. Ibid. Sec. 16.
connection with the birth, or expected birth, of a child or if the terms and conditions of a woman's employment are affected by compliance with the law regulating the employment of women. 64

In fact the Supreme Court of India has evolved the principle of "equal pay for equal work" from Article 16 of the constitution which enjoins equality of opportunity in matters of public employment. In the case of Randhir Singh Vs. Union of India, 65 Supreme Court observed that the principle of 'equal pay for equal work' is not an abstract doctrine but one of substance. It added: It is true that the principle 'equal pay for equal work' is not expressly declared by our constitution to be a fundamental right but it certainly is a constitutional goal. Article 39(d) of the constitution proclaims 'equal pay for equal work' for both men and women as a Directive Principle of State Policy, "Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes." To that extent the Equal Remuneration Act, 1976 gives a legislative sanction to what has already been provided for in the constitution of the country. In the said case the Supreme Court held that the scale of pay of the Driver-constable in the Delhi Police Force should be fixed at least on par with that of the Drivers of the Railway

64. Ibid. Sec. 15.
According to findings of an ILO comparative analysis of developments in male-female wage differentials, salary gaps narrowed between 1973 and 1982, but widened between 1977 and 1982 in the following countries: Australia, Denmark, the Netherlands, and the United Kingdom. The ILO analysis covered ten countries in non-agricultural activities and fourteen countries in manufacturing industries for the year 1973 and 1982. Fourteen countries in non-agricultural activities were covered and Eighteen in manufacturing the wage gaps were calculated from gross salaries in national currencies as published in the ILO's 1983 edition of the Year Book of Labour Statistics. The wage gap between men and women is measured by the difference between salaries they receive expressed in percentage of the male salary. In 1982 among selected European countries women's wages lagged behind those of men in non-agricultural activities by only 11.4 percent in France but by 33 per cent in Switzerland, while in Japan and the Republic of Korea the gaps reached 47.2 per cent and 54.9 per cent respectively. From 1973 to 1982 Japan was the only country where the gap between men's and women's wages widened from 46.9 per cent.

to 47.2 per cent for the period 1973 to 1982, women's wages drew closer to those of men in the following countries: Australia, Belgium, Czechoslovakia, Danmark, Finland, the Federal Republic of Germany, Greece, Ireland, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. Improvements ranged from the most notable in Australia where the gap narrowed from 30.6 per cent to 21.8 per cent, to Czechoslovakia where it narrowed only slightly from 32.6 per cent to 31.1 per cent.

Despite tall talk of "equality of sexes" earnings of women workers in the main plantations - tea, coffee and rubber - continue to be lower than their male counterparts. An occupational wage survey by the Government Labour Bureau reveals that the difference between the earnings of men and women in all the three plantation have registered an increase in the last sixteen years. In tea plantations, this difference rose from 11 paise in 1958-59 to 98 paise in 1974-75 the year taken into account in the latest survey. In Coffee and rubber plantations, this rose from 40 paise to 117 paise and 48 paise to 142 paise respectively over the same period.68

The problem is not over the principle but over its implementation. What is meant by 'equal work'? Does it mean work in 'equal quantity' or work of 'similar nature'?

68. Woman workers earn less than men: Indian Worker, Feb. 25, 1980.
(irrespective of quantity) or 'work absolutely identical'. If 'equal pay for equal work' means 'work of equal quantity' payment of different wages to men and women workers based on the amount of work turned out by them would be perfectly justified though it may seem revolting to the protagonists of the principle of 'equal pay for equal work'. In certain occupations specially the harder unskilled ones, the output of women workers is lower than that of male workers. It is also a fact that piece rate wage is a fairly frequent practice in industry, from coal cutting to textiles and plantations and Beedi making. In Beedi making women may have an edge over male workers, but in coal cutting and textiles reverse is the case. The confusion is regarding the interpretation of principle 'equal pay for equal work'. If by 'equal work', it means 'work of the same nature', it may become difficult to put it in practice. No employer is going to pay higher than the quantity of work turned out in worth. This would simply mean that the social objective of 'equal pay for equal work' will not be rooted in economic reality and it would pose all the problems of implementation. The purpose of labour legislation is to avoid exploitation of the weaker party and not to give the weaker party an edge over the stronger one. Even the Supreme Court of India has its reservations in this regard. Dealing with Dr. C. Girjambal vs. Government of Andhra Pradesh, 69

the Supreme Court observed that the principle of 'equal pay for equal work' cannot be invoked or applied invariably in every kind of service and certainly cannot be invoked in the grade of professional services when these are to be compensated. Dressing of an injury or wound is done both by a doctor as well as a compounder, but surely it cannot be suggested that for doing this job doctor cannot be compensated more than the compounder. Similarly, a case in a law of court is argued both by a senior and a junior lawyer, but it is difficult to accept that in matter of remuneration, both should be treated equally. The observation of Supreme Court is a bit confusing. It would like first to decide the type of service where the principle of 'equal pay for equal work' could reasonably apply. This by itself is no easy task and there are objective tests to decide the problem. If by 'equal work' it means 'identical work', it is common knowledge that no two jobs are absolutely identical. Even in the same industry, work involved may be common but function may differ. For example, in canal digging, men folk do the digging and women folk carry the earth or in building trade men folk do harder job and the women folk lighter ones'. Do these differentiations justify different wages?  

70. Equal pay for men and women: The Indian Worker, August 5, 1985, p.7.
Where men and women are doing the same nature of work, one can find differences in wages thereto. Like, women engaged in construction undertakings work shoulder to shoulder with men, sometimes doing the same 'work' and same 'nature' of 'job' and sometimes nature of work done is different but requires the same labour and efforts. Survey of women workers in construction work at Patiala reveals, that many times nature of work performed is the same. But in both the cases women are paid less than men. Women get up early than men, do domestic chores, start work on site at the same time when men start, finish work at the same time when men do and then after this they do cooking, washing etc. All domestic work which is counted no where and goes unpaid.

Similarly, women in agricultural work, have to work for the same hours as men do and many a times the nature of job performed is same. Even when nature of job performed is different, it requires the equivalent skill and labour. Findings of the survey reveal that women are paid less than men. 72

Survey 73 of Textile Mills in Surat (Gujrat) reveals that employers are clever enough to circumvent the rules

71. Survey was conducted by Research in District Patiala, Punjab.
72. Survey was conducted by Research in Village Bahadurgarh Kasba and Majri of Patiala District, Punjab.
73. Survey was conducted by Researcher in Surat (Gujrat).
in their favour. In all the mills under survey the situation is like this: Women and men together are not employed to work in same unit or on same type of work. Work performed is different by men and different by women. Thus, it is not possible to make comparison although both work for the same hours and their jobs require the equivalent skill and labour. Requirement of Equal Remuneration Act, 74 is that 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 similar nature. Employer by giving different or work of different nature can very easily waive off this requirement. Different wage rates for the equivalent work, thus, can be legally justified. 'House work' always goes unpaid and has no recognition anywhere. A group of militant women raised the demand that housewives should receive salaries for washing, cooking and cleaning, women want their work, their unpaid work, to be recognised, to be counted by Governments in the gross National Product and eventually to be paid for "American housewife Wilmette Brown told a news Conference at Nairobi. Indian born Krishna Ahuja Patel, 74. Equal Remuneration Act, 1976. Sec.41
Geneva based employee of the United Nations International Labour Organisation, told the News Conference that the household work should be considered employment so that women can enjoy social security benefits.\(^75\)

In India agriculture is predominant economic activity of about 80% population of the country in which more than 35% of engaged work force is of women. Agricultural sector is not covered by the definitions of employer and establishment provided in the Equal Remuneration Act which say that employer carries the meaning assigned to the term in clause (f) of section 2 of the payment of Gratuity Act 1972, a legislation which deals with primarily organised labour in establishments like factories, mines, oil fields, ports, companies and other establishments. Therefore, the benefit of this law could not be extended to women workers in agricultural sector. A similar problem of unorganised labour enjoyed through contractors has been partly tackled by extending the basic principle of equal remuneration in construction work by the Contract Labour (Regulation and Abolition) Act, 1970 because supervision of contractors employing generally twenty or more workmen could be undertaken in establishment which are of reasonable duration in matter of time, by department of labour under labour ministry. Agricultural sector remained unregulated operating under

\(^{75}\). Women demand wages for house work: The Indian Worker, August 12, 1985, p.2.
the principle of laissez-faire and controlled by economic principle of demand and supply. The magnitude of problem of non-observance can be appreciated from the fact that substantial part of body plantation, harvesting and threshing (outside Punjab) is being done by women who are paid less than their male counterparts for the same type of job done. Besides the general working conditions of women in agricultural sector are less favourable as against their counterparts in organised section like functions where regulatory and welfare labour laws are applicable. The reason for this neglect has been absence of supervisory staff of labour department and casual and intermittent nature of job itself by women for whom governmental control and protection is not available.76

The Equal Remuneration Act covers employments most of which fall under the public sector. Surprisingly, Uttar Pradesh appears to be the lone State to report violations of the Act during the last one decade. According to available figures, in employments under the central sphere the number of prosecutions launched during 1982, 1983 and 1985 were 15, 58 and 67 respectively. The respective number of convictions for the three years were 8, 25 and 30.77


The women cell in the Ministry of Labour is responsible for monitoring the administration of the Equal Remuneration Act. An Advisory Committee has been set up under the Act to advise the Government for purpose of providing increasing employment opportunities for women. The central government had already appointed authorities for hearing and deciding claims and complaints under the Equal Remuneration Act.\textsuperscript{78} According to Ms. Lotika Sarkar, Government failed to set up Advisory Committees to implement the Equal Remuneration Act. The Act says equal remuneration should be given for "same or similar job". The educated class of women in service have benefited from the Act. But women working in factories, at construction sites and in agriculture continue to be discriminated against on the ground that their jobs are not similar to the work done by the men.\textsuperscript{79}

Social Security

Freedom from want may be a modern slogan but the aspiration for such a freedom is as ancient as mankind itself. Social Security may generally be defined as protection provided by the society to its members against mishaps which are unforeseen and over which man has no control. According to Lord Beveridge, Social Security is an attack

\textsuperscript{78} Women Workers, Indian Worker, Republic Day Special Number, 1986, p.21.

\textsuperscript{79} Ms Lotika Sarkar, in Sept. 23-Oct. 7, 1985 issue of Femina, p.27.
on five giants - wants, disease, ignorance, squalor and idleness. "Prof. Watkinson defined Social Security as, "the securing of an income to take the place of earning when they are interrupted by unemployment, sickness or accident, to provide for retirement through old age, to provide against loss of support by death of another person and to meet exceptional expenditure connected with birth, death or marriage .... The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible." Friedlander defines social security as, "programme of protection provided by society against these contingencies of modern life - sickness, unemployment, old age, dependency, industrial accidents and individualism - against which the individual cannot be expected to protect himself and his family by his own ability or foresight." Social Security measures have a two fold significance for every developing country. They constitute an important step towards the goal of a Welfare State, by improving living and working conditions and affording the people protection against the uncertainties of the future. Article 41 of the

Constitution of India envisages that, "the State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement and in the other cases of undeserved want."

The evaluation of social security in India in the systematised methods of social assistance and social insurance is the result of the influence of the west. The various legislative measures adopted by the Government which provide protection to the industrial workers in certain contingencies have been given as follows:

1) The Workmen's Compensation Act, 1923.
2) The Employee's State Insurance Scheme, 1948.
5) The Employees Provident Funds and Miscellaneous provisions Act, 1952.
6) State old age Pension Schemes.

The workmen's compensation Act, 1923 provide for payment of compensation to the dependents of the workers i.e. (i) those dependents who are considered dependents without any proof, and (ii) those who must provide proof that they are dependents. The first group includes widow, a minor legitimate son, an unmarried legitimate daughter or
a widowed mother. The second group includes those who are wholly or partially dependent on the earnings of the workman at the time of his or her death, a widower, apart other than a widowed mother, a minor legitimate son, an unmarried legitimate daughter, or if widowed and minor, a minor, widowed daughter-in-law, a minor child of a predeceased son, a minor child of a predeceased daughter where no parent of the workmen is alive. The Act applies to all workers employed in factories, mines, plantations, transport and construction work, railways and certain specified hazardous occupations. It also includes workmen whose employment is of casual nature and who are employed for the purpose of employer's trade or business. Compensation is payable in the case of injury caused by the accident arising out of and in the course of employment. There are large number of women workers in the plantations and construction work. In plantation most of the work is done by women. Thus a large number of women worker get the benefit under this Act. The workmen is entitled to compensation under this Act if temporary disablement lasts for more than three days. No compensation is payable for temporary disablement for the waiting period of 3 days, but this period gets included if disablement lasts for 28 or more days. Thus women get this benefit besides the benefits available to them on the grounds of maternity.

82. Workmen's Compensation Act, 1923. Sec. 3.
The Employees State Insurance Act, 1948 applies to all factories including factories belonging to Government other than seasonal factories. The Act provides for certain benefits to employees in case of sickness, maternity and 'employment injury'.

Section 47 of the Act states that a person shall be qualified to claim sickness benefit for sickness occurring during any benefit period if the contribution in respect of him were payable for not less than half the number of days of the corresponding contribution period. Workmen shall not be entitled to the benefit for the first two days of sickness except in the case of spell of sickness following at an interval of not less than fifteen days, the spell of sickness for which sickness benefit was last paid. Sickness benefit shall not be paid to any person for more than fifty six days in any two consecutive benefit periods. In addition to sickness benefit women workers are entitled to maternity benefit also.

The Act further provides for maternity benefit to insured woman workers. A woman worker is entitled to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contribution in respect of her payable for not less than half the number of days of

83. Employees State Insurance Act, 1948, Sec. 49.
84. Ibid. Sec. 50
corresponding contribution period. Women worker shall be entitled to receive benefit at the daily rate specified in the First Schedule for all days on which she does work during a period of twelve weeks. Not more than six weeks shall precede the expected date of confinement. Where the insured women dies during her confinement or during the period of six weeks immediately following her confinement leaving behind the child maternity benefit shall be paid for the whole of that period. If the child also dies during the said period, then for days upto and including the day of the death of the child benefit shall be given to the person nominated by the insured woman. If there is no nominee than benefit shall be given to her legal representative. In case of miscarriage, woman is entitled to maternity benefit during a period of six weeks immediately following the date of her mis-carriage. An insured woman in case of sickness arising out of pregnancy, confinement, premature birth of child or mis-carriage shall be entitled for maternity benefit for an additional period not exceeding one month.

Maternity Benefit Act, 1961

Under this Act a woman worker is entitled to maternity benefit if she has actually worked for a period not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery.

85. Sec. 5.
This qualifying period of one hundred and sixty days does not apply to a woman who has immigrated into the state of Assam and was pregnant at the time of the immigration. Employer is liable for the payment of maternity benefit at the rate of the average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day. The maximum period for which any woman is entitled to maternity benefit is twelve weeks. For calculating the days on which a woman has actually worked in the establishment, the days for which she has been laid off during the preceding twelve months shall be taken into account. Where a woman worker dies during the period of maternity leave, benefit shall be payable only for the days up to and including the day of her death. If she dies during this period after delivering the child, benefit shall be paid for the entire period of six weeks immediately following the day of her delivery. If child also dies during the said period, then for the days up to and including the day of the death of the child, employer shall be liable to pay the benefit. Any woman who is pregnant may give notice in writing to her employer stating the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. If she has not given the notice when she was pregnant she may give such notice as soon
as possible after delivery. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer on the production of such proof that the woman is pregnant and amount due for the subsequent period shall be paid by the employer within forty eight hours of production of such proof that the woman has been delivered of a child. The failure to give notice does not disentitle a woman to maternity benefit. If a woman dies before receiving such maternity benefit or amount, employer shall pay such benefit or amount to the person nominated by the woman and if no nomination is made then to her legal representative. This Act makes provision for medical bonus also along with maternity benefit. Every woman is entitled to medical bonus, if no pre-natal confinement and post-natal care free of charge is provided for by the employer. In case of miscarriage, a woman on production of proof is entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage. A woman suffering from illness arising out of pregnancy, delivery, premature birth of child or miscarriage, on production of such proof

is entitled to leave with wages for a maximum period of one month in addition to other maternity leave or benefit. This Act makes unlawful for an employer to discharge or dismiss woman worker during pregnancy or on account of such absence. Employer is further prohibited from giving notice of discharge or dismissal or to vary to her disadvantages any of the conditions of her service on such a day that the notice will expire during such absence. In case of discharge or dismissal during her pregnancy, she is entitled to maternity benefit and medical bonus which she would have received had she been not dismissed or discharged. Any woman deprived of any of such benefits may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed by law. Employer cannot make any deduction from the normal and usual daily wages of a woman on the ground of the nature of work assigned to her on request made by her under Sec. 4(3) of the Act or breaks for nursing the child allowed to her.

Employer cannot refuse maternity leave to the woman worker nor can terminate the services of any woman worker on the grounds of pregnancy. Any rule which allows termination of services on grounds of pregnancy is struck down.

---

by Supreme Court. In Air Hostesses case, Justice Fazal Ali observed that once a woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961, she is entitled to certain benefits including maternity leave.

"It seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood—the most sacrosanct and cherished institution. We are constrained to observe that such a cause of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution.\(^93\)

The Court further observed that in case, the corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the Air Hostesses, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the management making arrangements on a temporary or adhoc basis by employing additional Air Hostesses.\(^93\)

---

In International Franchise Case, Supreme Court considered the bar on married women working in a particular company. Justice Wanchoo held: "The only difference between the two is burden on account of maternity leave."

The Court observed that it is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour.

The Payment of Gratuity Act, 1972 states that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Gratuity shall be payable on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. The completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. Section 2(h) (ii) defines 'family' in case of female employee. It states that in case of female employee family consists of, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any. If a female employee, by a notice in writing to

95. The Payment of Gratuity Act, 1972, Sec. 4.
the controlling authority, expresses her desire to exclude her husband from her family, the husband and his dependent parents shall no longer be deemed to be included in the family of such female for the purposes of this Act. Such notice can be subsequently withdrawn by such female employee.

Like Male workers, women workers are also entitled to Lay off and Retrenchment compensation under Industrial Disputes Act, 1947. Section 25-C of the Act lays down that any workmen whose name is born on the muster rolls and who has completed not less than one year of continuous service under an employer is entitled to lay-off compensation. Section 25-F lays down that a workmen employed in any industry who has been in continuous service for not less than one year under an employer is entitled to retirement compensation. Continuous Service as defined under Section 25-B, for the purpose of calculating the number of days on which a workman has actually worked includes the days in case of a female on which she has been on maternity leave, so however, the total period of maternity leave does not exceed twelve weeks.

The Employees Provident Funds and Misc. Provisions Act, 1952 provides for Employees Provident Scheme, Employee’s Family Pension Scheme and Employees Deposit linked Insurance Scheme. The purpose of these schemes is to provide family
pension, life assurance benefits and life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

The Employer's Liability Act, 1938, section 3 provides that where personal injury is caused to a workman by reason of the omission of the Employee to maintain in good and safe conditions any way, works, machinery or plant connected with or used in his trade or business or by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him, the employer is liable unless the employer proves that the risk was fully explained to and understood by the workman and that the workman voluntarily undertook the same.  

Similarly, the Personal Injuries Compensation Insurance Act, 1963 provides for Personal Injuries (Compensation Insurance) Scheme, Compulsory Insurance and Personal Injuries (Compensation Insurance) Fund. The workmen who sustained personal injuries will be paid compensation by the Central Government provided the employer has taken out a policy of insurance.

Administration and Enforcement Machinery

During the past decade (1970-80) in many countries the national institutional machinery became an integral part of policy and legislation to promote sensitisation on

96. Employer's Liability Act, 1938, Sec. 4.
various aspects of the working life of women. In 1978, when the ILO sent a questionnaire to various ministries of labour, replies were received from only 28 countries which had established a women's bureau/committee/commission to promote equality or opportunity and treatment of women workers. According to the 1983 information there are about 90 countries which have set up such agencies within the existing executive or legislative structure or as consultative bodies. While the ILO questionnaire addressed itself to the ministries of labour, it should be noted that "women's bureau were established across various ministries, mostly in ministries of education and social affairs, but also at the highest policy-making levels in the form of inter-ministerial committee that acted as the co-ordinators in promoting projects, programmes and policies on working women."

Labour administration includes enactment and administration of labour laws. In India, the enactment as well as the administration of labour laws is the responsibility of both the union and the state governments. Legislative powers are shared by the union and state governments in accordance with the lists adopted by the Constitution of India i.e. the union lists, the concurrent list and state list. The principle matters of labour interest in the Union list are:

(i) Participation in international Conferences, associations and other bodies and implementing the decisions made there at.

(ii) Major posts and post quarantine.

(iii) Regulation of labour and safety in mines and oil fields.

(iv) Industrial disputes concerning Union Employees

(v) Union agencies and institutions for -
   (a) Professional Vocational or technical training, or
   (b) The promotion of special studies or research.

(vi) Inquiries, surveys and statistics for the purpose of the matters in the Union list.

(vii) Railways.

(viii) Airways, aircraft and air navigation, air traffic and airodromes, etc.

(ix) Post and telegraphs, telephones, wireless, broadcasting etc.

Matters mentioned in concurrent list are:

(i) Economic and Social Planning.

(ii) Trade Unions, industrial and labour disputes.

(iii) Social Security and Social insurance, employment and unemployment.

(iv) Welfare of labour including conditions of work, provident fund, employer, liability, workmen's compensation, invalidity and old age pension and maternity benefits.
(v) Vocational and technical training of labour.
(vi) Factories.
(vii) Inquiries and Statistics for purposes of any of the matters specified in concurrent list and state list

Relief of disabled and unemployable is covered under state list.

To implement the legislative measures on the above matters and to supplement the same, administrative machinery exists both at Central and State levels. The Ministry of Labour and Employment of the Central Government is the main agency for policy formulation and administration in all labour matters. The functions of the Labour Ministry have expanded with the enlarged responsibilities of the Government as a whole. The responsibility of the Ministry of Labour and Rehabilitation (Department of Labour and Employment) in respect of the Union list is full and direct. The activities of the Ministry in regard to concurrent subjects cover policy laying, coordination, control and direction. It is the central administrative machinery for the formulation of labour policy, for the enforcement of labour laws and for the promotion of labour welfare. The machinery for discharging the functions entrusted to the Ministry consists of several Directorates organisations.
1. **Directorate General of Employment and Training**

The Directorate was started with the object of resettlement and employment in civil life the demolished ex-servicemen, women and discharged war workers. Subsequently, the scope of coverage of the Directorate was extended to civilians also. The Directorate General run several central Training Institutes for craft instructors and two research institutions - one for a better understanding of employment situation and the other for improving the quality of training. Its ancillary services include various reports and reviews of the employment market, vocational guidance and employment counselling and occupational research and analysis. The organisation is headed by a Directorate General.

2. **Office of the Chief Labour Commissioner (Central)**

The organisation is also known as the industrial relations machinery. This office administers the labour laws for which the centre is responsible. Besides, this organisation has additional duties connected with (i) the verification of membership of registered unions in industries for which the Central Government is the appropriate Government and (ii) the determination of membership strength of All India Trade Union Federations for representation at national and international forums.

3. **Directorate General of Mines Safety**

Working conditions in mines and the implementation of Mines Act, 1952 and the Maternity Benefit Act, 1961,
in mines other than coal mines are the functions entrusted to this office.

4. The Directorate General of Factory Advice Service and Labour Institutes

Apart from providing advisory service to the factory inspectorates in different states, the organisation also conducts research in the whole range of problems connected with safety, health, welfare and productivity. It runs the central labour institutes and the Regional Labour Institutes. The Central Labour Institute was set up to facilitate the proper implementation of the Factories Act, 1948, to provide a centre of information for inspectors, employers, workers and other concerned with the well being of industrial labour, and to stimulate interest in the application of the principles of industrial safety, health and welfare.

Labour Bureau

In 1946, the Government of India created the Labour Bureau. It publishes "Indian Labour Journal (Monthly), Indian Labour Statistics (Annual), and Indian Year Book (Annual)", giving authoritative and up-to-date statistics and description of labour affair in the country. Besides, the labour Bureau compiles and publishes annual reports on working of Factories Act., Minimum Wages Act, and the Trade Union Act as well as brief reviews in the Indian Labour Journal on the working of various other Labour Acts.
Other organisations connected with the Labour Ministry fall under three categories: (i) Subordinate offices, (ii) Ad-hoc bodies, and (iii) Autonomous bodies.

**State Labour Machinery**

At the Secretariat level, the functions of the Department are more or less similar to those of the Central Ministry, but confined to industries for which the State Government is the appropriate Government. All the States have set up organisations for the administration and enforcement of various labour laws in force in their territories and for the collection, compilation and dissemination of statistical and other information relating to labour. All the States have appointed Labour Commissioners for the purpose of administration of labour laws and welfare activities in their respective areas. In the discharge of their functions, the commissioners are generally assisted by Deputy Labour Commissioners or Assistant Labour Commissioners. All States have also appointed Chief Inspector of Factories and Chief Inspector of Boilers to administer the Factories Act 1948 and the Indian Boilers Act, 1923 respectively. Commissioners for workmen compensation Act, 1923 and Registrar of Trade Unions under the Trade Union Act, 1926 have also been appointed in all States.99

Besides this, there is a Ministry of Social and Women Welfare at Centre. Its function is to promote measures for the welfare of women.

Contract Labour (Regulation and Abolition) Act, 1970 provides that appropriate Government may appoint Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their power. Inspector has powers to enter, at all reasonable hours, any premises or place where contract labour is employed, for the purpose of examining any register or record, examine any workman employed therein, require any person giving out work and any workman to give information which is in his power and seize or take copies of such register, record of wages or notices. Act further provides for the appointment of Licencing Officers and Licencing of Contractors. Licencing Officer may make such investigations before granting the Licence.

Section 19 of the Shops and Commercial Establishments Act, 1958, (Punjab), provides for appointment of Inspectors by Government. Inspector is authorised to enter at all reasonable times any establishment within his jurisdiction

100. Sec. 28.
101. Sec. 11,12.
102. Sec. 13.
and make such examination of the premises, registers, records, notices and take on the spot or otherwise evidence of any person as he may deem necessary for carrying out purposes of this Act. He may exercise such other powers as may be necessary for carrying out the purposes of this Act.

The Beedi and Cigar Workers (Conditions of Employment) Act 1966 makes provision for the appointment of Inspectors and Chief Inspectors. Inspector has power, within local limits for which he is appointed to make such examination and hold such enquiry for ascertaining whether the provisions of this Act are being complied with in any place or premises. He may enter any premises within his jurisdiction for the purpose of inspection and require the production of any register and document. If an Inspector has reasonable grounds for suspecting that any manufacturing process is being carried on in any establishment in contravention of the provisions of this Act, he may after giving due notice to the employer or occupier, enter such establishment. Every Employer or occupier shall accord to Chief Inspector or Inspector all reasonable facilities in the discharge of his duties under this Act.

Inter-State Migrant Workman (R.E.C.S.,) Act, 1979 provides for appointment of Licensing Officers and

103. Sec. 6.
104. Sec. 7.
105. Sec. 7.
registering officers for the purposes of granting Licenses to contractors and registering the establishments respectively. Act further provides for the appointment of Inspectors. Inspection may within the local limits for which he is appointed, enter any premises or place if he has reason to believe that any Inter-State Migrant Workmen are employed therein and for satisfying himself whether payment of wages, conditions of service, or facilities to be provided to such workmen are in accordance with legal provisions. He may examine any register or record or notices required to be kept, any person found in any such premises for the purpose of determining whether such person is an Inter-State Migrant Workman, require any person giving out work to any workman to give any information which is in his powers, seize or take copies of such register, record of wages or notices and exercise such other powers as may be presented.

The Factories Act, 1948 provides for the appointment of Inspectors and certain powers of Inspectors like entering any place which is used as factory, making examination of the premises, plant and machinery etc.
Section 95 of the Act makes it clear that whoever wilfully obstructs an Inspector in the exercise of any powers conferred on him by or under this Act, shall be punishable with imprisonment for a term which may extend to three months or fine which may extend to five hundred rupees or with both.

The Mines Act, 1952, makes provision under section 5 of the Act that Central Government may appoint Chief Inspector of Mines for all the territories to which this Act extends and Inspectors of Mines subordinate to the Chief Inspector. Every owner, agent and manager of a mine shall afford the Chief Inspector and every Inspector all reasonable facilities for making any entry, survey, measurement, examination or enquiry under this Act. The Government has power to appoint court of inquiry in cases of accidents. Any person who contravenes the provisions of this Act shall be penalised and penalty shall be imposed as prescribed under Chapter IX of the Act. Similarly, The Plantation Act, 1951, provides for the appointment of Chief Inspector and Inspectors. Every employer shall afford the inspector all reasonable facilities for making entry, inspection, examination or enquiry under this Act.

110. Sec. 9.
111. Sec. 24.
112. Sec. 4.
113. Sec. 6.
The Equal Remuneration Act, 1976, Section 9 makes provision for the appointment of Inspectors. An Inspector may at any place within the local limits of his jurisdiction enter any building, factory, premises or vessel, take on the spot the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being complied with, examine the employer, his agent or servant and make copies of take extracts from any register or other document maintained in relation to the establishment under this Act.

If after commencement of this Act any employer makes any recruitment, makes any discrimination between men and women workers in contravention of the provisions of this Act or makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, he shall be punishable with fine which may extend to five thousand rupees. 114

114. The Equal Remuneration Act, 1976, Section 10.