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# Advancing Equality: Legal Perspectives on Gender-Inclusive Labour Rights, Pay Equity, and Opportunities

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## ABSTRACT

*This article critically analyzes the legal provisions on gender equality in India. The study of gender equality in labour law is very important. It looks at rules and systems that are meant to stop unfair treatment and create equal opportunities for work. The abstract discusses key aspects such as equal pay, anti-discrimination measures, and workplace policies that contribute to establishing a fair and empowering atmosphere. By examining the dynamic interplay between legal frameworks, organizational practices, and societal attitudes, this abstract provides a comprehensive overview of the ongoing efforts to promote gender equity in the labor force. It looks back at history to see how men and women have been treated at work and how laws have tried to make things fairer. By doing a thorough legal analysis the study finds problems and suggests changes to make sure gender equality measures are stronger. The result helps us understand gender equality better in the legal system.*

## KEYWORDS

*Gender Equality, Labour, Equal Pay, Anti-Discrimination, Legal Reforms*

## INTRODUCTION

In today's world we need to look closely at how women rights are treated. Gender equity within the framework of labour law holds utmost significance, bridging historical gaps and addressing present challenges. Making sure everyone is treated fairly at work, regardless of this gender, is important in labour law.

Discrimination comes in many forms and has different

consequences. One clear consequence is that it lowers the rewards, like wages, for the effort and skills of groups facing discrimination in the job market. This type of discrimination affects women in all countries, though to varying degrees. Closing the gender pay gap is a key goal in efforts against discrimination and for equal opportunities. It's a crucial part of Labour law to reduce discrimination, aligning with the Declaration on Fundamental Principles and Rights at Work. These principles include the freedom to organize and negotiate work conditions, freedom from forced labor, protecting children from work requirements, and freedom from discrimination in employment.

The goal of gender equality at work is to ensure generally fair opportunities and results for both women and men, even if the outcomes are not identical for everyone. Achieving workplace gender equality means that individuals can experience and enjoy equal rewards, resources, and opportunities regardless of their gender.<sup>1</sup>

Achieving gender equality within the framework of labour law is pivotal for fostering fair and inclusive workplaces. To ensure this, labor laws should first enforce equal pay policies, guaranteeing that men and women receive comparable wages for the same work. Additionally, anti-discrimination measures must be robustly implemented to eliminate biases in hiring, promotion, and overall employment practices based on gender. Creating family-friendly workplace policies, such as parental leave and flexible working hours, is crucial for supporting both men and women in managing their professional and family responsibilities.

To address discrimination and exploitation, there was a necessity to offer security and protection through the law, namely the Constitution of India (Articles 14, 15, 16, 23, 39, 43, and 46). These constitutional provisions aim to safeguard and provide security for women workers.<sup>2</sup> The government implemented several legislations for the protection of women workers: Equal Remuneration Act, 1976, The Factories Act, 1948, The Maternity Benefit Act, 1961, The Mines Act, 1952, The Minimum Wages Act, 1948, The Workmen's Compensation Act, 1923, Beedi and Cigar Workers (Conditions of Employment Act), 1966, The

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<sup>1</sup> What is workplace gender equality? | WGEA, <https://www.wgea.gov.au/about/workplace-gender-equality> (last visited Feb 16, 2025).

<sup>2</sup> Poojatsk, Women Rights Under Indian Labour Laws: A Socio-Economic Study, Legal Service India E- Journal (2024).

Plantation Labour Act, 1951, etc.

### **EVOLUTION OF LABOUR LEGISLATION**

Labour legislation has played a crucial role in shaping the trajectory of industrial relations in India. The principle of establishing social justice has been the guiding force behind the inception and evolution of labour laws in the country. The establishment of the International Labour Organization (ILO) not only prompted global considerations for the welfare and working conditions of workers but also contributed to the proliferation of labour laws worldwide, with India being no exception. Factors such as the Swaraj Movement of 1921-24 and the establishment of the Royal Commission on Labour in 1929 further propelled the development of labour laws in India. The historical narrative of labor legislation in India is inherently entwined with the era of British colonialism. British political economic considerations played a significant role in shaping early laws. Initially, the challenge of securing an adequate number of regular Indian workers for British establishments led to the necessity of enacting laws for indenturing workers. Clearly, this labor legislation was instituted to safeguard the interests of British employers.

Subsequently, the Factories Act was put into effect. It is widely acknowledged that Indian textile goods posed significant competition to British textiles in the export market. To counteract this and increase the cost of Indian labor, the Factories Act was initially introduced in 1881.<sup>3</sup> This move was prompted by pressure exerted on the British Parliament by textile magnates from Manchester and Lancashire. As a result, the first regulations on working hours, the elimination of child labor, restrictions on women in night employment, and the introduction of overtime wages for work exceeding eight hours were established. Although the apparent impact of this measure was focused on worker welfare, the true motivation was undoubtedly protectionist.

The initial Indian law governing the interaction between employers and their workers was the Trade Dispute Act of 1929 (Act 7 of 1929). This legislation included provisions to limit the rights of strikes and lockouts, yet it lacked mechanisms to address disputes.<sup>4</sup>

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<sup>3</sup> Dr. J. Mahalakshmi, *Labour Law – I*, (2006) 6, 91.

<sup>4</sup> National Crime Investigation Bureau's, <https://ncib.in/> (last visited Feb 16, 2025).

The original colonial legislation underwent significant revisions in the post-colonial era as independent India emphasized the need for transparent collaboration between labor and capital. The core of this collaboration received unanimous approval during a tripartite conference in December 1947. The consensus from this conference emphasized the assurance of fair wages and favorable working conditions for labor, with the corresponding expectation of complete cooperation from labor to ensure continuous production and heightened productivity, aligning with the strategy for national economic development. All involved parties committed to observing a three-year truce period, devoid of strikes and lockouts. As a result, the Industrial Disputes Act (the Act) was enacted on 01.04.1947, replacing the Trade Disputes Act of 1929, and has since remained an essential component of the statute book.

### **PURPOSE OF LABOUR LEGISLATION**

Tailoring labor legislation to address the economic and social challenges of the contemporary work environment plays three crucial roles. Firstly, it sets up a legal framework that encourages both productive individual and collective employment relationships, thereby contributing to a thriving economy. Secondly, by offering a structure for communication between employers, workers, and their representatives regarding work-related issues, it becomes a crucial tool for cultivating harmonious industrial relations grounded in workplace democracy. Lastly, it acts as a persistent assurance and safeguard of fundamental principles and rights at work, enjoying widespread social acceptance, and establishes procedures for their application and enforcement.

However, effective fulfillment of these functions depends on labor legislation being responsive to labor market conditions and the needs of the parties involved. Experience demonstrates that the most efficient way to ensure the consideration of these conditions and needs is through the active involvement of those concerned in the formulation of legislation, facilitated by processes of social dialogue. Such stakeholder involvement is crucial for garnering broad support for labor legislation and facilitating its application both within and beyond the formal structured sectors of the economy.

In the workplace, labor laws play a significant and crucial role. These laws are in place to ensure that employees are treated fairly within their work environments, safeguarding their rights as workers. They also emphasize the importance of recognizing and appropriately compensating employees for their expertise.

While employees are expected to adhere to the terms of their work contracts, it is crucial to prevent any form of ill-treatment. Harassment, whether physical, mental, or emotional, is strictly prohibited in the workplace. Furthermore, gender bias, sexism, and racism have no place in these environments. Equality is prioritized, and promotions and pay scales should be based solely on an employee's credibility, skill sets, and hard work.<sup>5</sup>

### **LIST OF SEVERAL LEGISLATIONS FOR THE PROTECTION OF WOMEN WORKERS**

Some of the protective legislation for safeguarding the interests of working women are:

#### **1. *Equal Remuneration Act, 1976***

In 1976, the Indian Government enacted the Equal Remuneration Act to address wage disparities between male and female workers. The primary goals of this legislation were to establish parity in wages based on the nature of employment, promote equal opportunities in employment, safeguard individuals against discriminatory practices in employment or occupation, and prevent unfair dismissal from work solely based on sex.<sup>6</sup> The Act specifically prohibits the dismissal of a woman from employment solely due to her gender. Its overarching aim is to foster equality among all genders, irrespective of whether it is male or female.

In the case of *Budhan Choudhary v., the State of Bihar*<sup>7</sup>, the Supreme Court emphasized that the principle of equality does not necessitate uniform treatment of all individuals. Instead, it highlighted that the classification of individuals must be reasonable. To meet this standard, the classification should be based on two key principles. Firstly, it should involve an intelligible differentia, distinguishing people of one group from others. Secondly, this differentia must have a rational connection to the objective intended to be achieved. Although the specific case did not directly address the concept of 'equal pay for equal work,' the principles established in this case have been widely referenced by the courts in cases dealing

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<sup>5</sup> Prompt Personnel, *Why Labour Laws Are Important in Today's Era*, Prompt Personnel (May 20, 2021), <https://www.promptpersonnel.com/why-labour-laws-are-important-in-todays-era/> (last visited Feb 16, 2025).

<sup>6</sup> Clarity on Equal Remuneration Act, 1976, Unacademy, <https://unacademy.com/content/bpsc/study-material/labor-and-social-welfare/clarity-on-equal-remuneration-act-1976/> (last visited Feb 16, 2025).

<sup>7</sup> 1955 AIR 191.

with such issues.

## **2. The Factories Act, 1948**

According to Section 22(2) of the Factories Act, 1948 stipulates that women are prohibited from engaging in the cleaning, lubrication, or adjustment of any part of a prime mover or transmission machinery while it is in motion. Additionally, women cannot clean, lubricate, or adjust any part of a machine if such actions would pose a risk of injury from moving parts, either from that machine or any adjacent machinery.<sup>8</sup>

Section 27 of the Factories Act prohibits the employment of women in any area of a factory where cotton pressing or the use of a cotton opener occurs. This measure is implemented to safeguard the health of women, considering the heightened risk of cotton bales igniting flames.<sup>9</sup>

Section 66(1) of the Factories Act, Subject to the condition that sufficient safety measures or prescribed safeguards are in place, female workers may be obligated or permitted to work during the time frame of 7:00 p.m. to 6:00 a.m. in any factory.<sup>10</sup>

According to *Latex Ltd. v. Maniamma*<sup>11</sup>, It has been established that the regulations outlined in Section 66(1)(b) serve as a safeguard against the exploitation of female workers, specifically by preventing them from being compelled to work during night hours without their consent.

## **3. The Maternity Benefit Act, 1961**

In India, the provisions related to maternity leave and benefits are outlined in the Maternity Benefit Act of 1961. This law provides comprehensive maternity benefits, including medical bonuses, paid leave, and allowances for nursing breaks.<sup>12</sup> The legislation is crafted to assist women during childbirth,

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<sup>8</sup> GOI, Ministry of Labour & Employment  
<<https://labour.gov.in/womenlabour/about-women-labour>> (last visited Feb 16, 2025).

<sup>9</sup> Abanti Bose, *Employment of Women in Factories under the Factories Act, 1948*, iPleaders (Jun. 1, 2021), <https://blog.ipleaders.in/employment-women-factories-factories-act-1948/> (last visited Feb 16, 2025).

<sup>10</sup> Vasantha R. vs Union of India and Ors. (2001) IILLJ 843 MAD.

<sup>11</sup> 1994 (2) KLT 111.

<sup>12</sup> Maternity Benefit Act: Maternity Leave Applicability, Rules, Eligibility, Benefits, cleartax, <https://cleartax.in/s/maternity-benefit-act> (last visited Feb 16, 2025).

aiming to safeguard and uphold the livelihood and interests of female employees. It allows them the essential time to nurture their newborns while giving priority to their personal well-being.

As per the provisions of the Act, women working in recognized organizations and factories have the right to take maternity leave for a period of up to 6 months. This leave can be utilized both before and after childbirth, allowing for a cumulative duration of 6 months. The employers are mandated to provide the female employee with her full salary throughout this maternity leave period.

In the case of *Rasitha C.H. Vs State of Kerala & Anr.*<sup>13</sup>, the Kerala High Court has ruled that women employees, regardless of their employment status (contractual or otherwise), are entitled to maternity leave. Justice A. Muhamed Mustaq emphasized that maternity benefits are not solely statutory or contractual but are linked to a woman's dignity. The court held that denying maternity benefits based on contractual employment is unjust, asserting that the University must provide such benefits despite any terms in the contract. In response to a petition by Rasitha, who was initially denied maternity leave by Calicut University, the court ordered the university to pay her maternity benefits, equivalent to those given to other university workers, within two months.

#### **4. The Mines Act, 1952**

According to Section 46 of The Mines Act, 1952, it is prohibited to employ women in any subterranean section of a mine. Above-ground employment for women is constrained to the timeframe between 6 A.M. and 7 P.M. Furthermore, women engaged in above-groundwork must have a minimum break of eleven hours between the conclusion of one day's work and the commencement of the next. Nevertheless, the Central Government possesses the authority, through an official notification, to alter the working hours for women above ground in specific mines or categories, as long as no woman is allowed to work between 10 P.M. and 5 A.M.<sup>14</sup>

Currently, women in open cast mines are permitted to work for specified hours primarily during the daytime. The proposed amendment would extend this permission, enabling

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<sup>13</sup> 2018 SCC OnLine Ker 7404.

<sup>14</sup> Lawgist <<https://lawgist.in/mines-act/46>> (last visited Feb 16, 2025).



women to work in open cast mines during any shift, regardless of the time of day. An official mentioned that Coal India, with a current workforce of approximately 3 lakhs, includes women constituting 15-20% of the total strength.

### **5. The Minimum Wages Act, 1948**

Wages are a fundamental right for all workers, including women, as remuneration is due for every individual's labor. According to the Minimum Wages Act of 1948, the government establishes a minimum wage that every person must receive, ensuring a fair baseline.<sup>15</sup> Women are entitled to equal pay as men for similar work, regardless of the employment type, including temporary, piece- rate, daily, contractual, or agricultural work. Even if an individual consents to a lower wage, the employer is obligated to pay the government-prescribed minimum wages. The minimum wages should be determined on a daily, hourly, and monthly basis.

In the *Sanjit Roy v State of Rajasthan*<sup>16</sup>, the court determined that individuals providing labor or services to others are entitled to receive at least the minimum wage. If an individual receives compensation below the prescribed minimum wage, they have the right to lodge a complaint, invoking a violation of fundamental rights as per Article 23. They can petition the court to intervene and enforce the payment of minimum wages, thereby addressing the infringement of Article 23.

### **6. The Workmen's Compensation Act, 1923**

Instances of accidents or illnesses at the workplace leading to the death or disability of female workers are not just financial setbacks but also impact their role in household management. In the event of death, compensation is determined as either 50 percent of the monthly wages or a minimum of Rs 80,000, whichever is higher.<sup>17</sup>

In the case of *Smt. Rita Devi & Ors vs New India Assurance Co. Ltd. & Anr.*<sup>17</sup>, it was established that due to the work-related risk, the widow was eligible for compensation under the Workmen's Compensation Act of 1906. The court, in this instance, adhered to its prior decision. The claimants had the

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<sup>15</sup> vikaspedia < <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/legal-awareness-for-women/laws-relating-to-working-women> > (last visited Feb 16, 2025).

<sup>16</sup> [1983] 2 SCR 271.

<sup>17</sup> (2000) 5 SCC 113.

option to pursue compensation under either the Workmen's Compensation Act or the Motor Vehicles Act.

### **7. *Beedi and Cigar Workers (Conditions of Employment Act), 1966***

The objective of this legislation is to ensure the well-being of workers in beedi and cigar establishments, both those who are self-employed and those subject to work condition regulations. This Act is applicable to all employees in such establishments, excluding those who are self-employed and operate from their own residences. The provisions cover various aspects, including the prohibition of night work, the provision of creches, the maintenance of latrine and urinal facilities, and other general welfare provisions.

According to Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, it is specified that women are not to be compelled or permitted to engage in work within any industrial premises except during the hours from 6 a.m. to 7 p.m.<sup>18</sup>

Section 14 mandates that in industrial premises with more than thirty female employees, suitable rooms must be provided for children under six years of age belonging to these employees. These rooms should offer adequate accommodation, proper lighting, ventilation, cleanliness, and be supervised by women trained in childcare. The State Government has the authority to establish rules concerning the location, construction, and standards for such rooms. Additionally, rules may require extra facilities for childcare, such as provisions for washing and changing clothes, and may even necessitate the provision of free milk or refreshments for the children. Furthermore, the rules can ensure that facilities are available for mothers to feed their children at necessary intervals.<sup>19</sup>

### **8. *The Plantation Labour Act, 1951***

Section 9 In every plantation, an adequate number of latrines and urinals, designed as per regulations, must be provided separately for males and females. These facilities should be conveniently located and easily accessible for the workers. All the latrines and urinals provided must be kept in a clean and sanitary condition.

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<sup>18</sup> Ibid.

<sup>19</sup> The Beedi And Cigar Workers (Conditions Of Employment) Act, 1966.

Section 12 of the legislation mandates that in plantations with fifty or more women workers employed in the past twelve months, the employer must establish and uphold suitable rooms for children below six years of age belonging to these women. These rooms must offer adequate accommodation, proper lighting and ventilation, cleanliness, and be supervised by a woman trained in childcare.<sup>20</sup>

### **IMPORTANT CASE LAWS UNDER VARIOUS LABOUR LEGISLATIONS FOR WOMEN RIGHTS**

In the legal case *Madhu Kishwar and others v State of Bihar and Ors.*<sup>21</sup>, the petitioners, belonging to the Oran tribes of Bihar, contested the Chhota Nagpur Tenancy Act of 1908. Their challenge was based on the argument that the Act restricted property succession exclusively to males. The petitioners asserted that this provision violated the fundamental right to equality. The court acknowledged the constitutional entitlement of female members of these tribes to the guarantees under Article 14 as citizens of the country. However, instead of rendering a judgment on the substantive issues, the court instructed the state of Bihar to explore potential avenues for extending inheritance rights to females within the legal framework.

In the legal case of *Air India v Nargesh Meerza*<sup>22</sup>, the court determined that the dismissal of employment due to pregnancy was not only unjustifiable but also arbitrary. This action was deemed a clear violation of the fundamental right protected under Article 14 of the Constitution. The court reasoned that it was unreasonable for the employer, Air India, to terminate the services of an air hostess based on pregnancy, especially after four years of her dedicated service. Such an act was considered as coercing the air hostess to refrain from having children, thereby disrupting the natural course of human life. The court underscored the infringement on the ordinary course of human nature because of terminating employment solely due to pregnancy.

In the legal case of *State of Kerala and K. Kunihipacky*<sup>23</sup>, a dispute emerged over the prioritization of female lecturers in state colleges exclusively catering to women. A male lecturer contested the elevation of his junior female colleague to a professorship within the same department, alleging a violation of Article 16. Historically, women were appointed to teaching roles

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<sup>20</sup> The Plantation Labour Act, 1951, s 12.

<sup>21</sup> 1992 SCC 102.

<sup>22</sup> AIR 1981 SC 1829.

<sup>23</sup> AIR 1965 Ker 108.

in women's colleges whenever feasible. The state argued that given the well-established practice of favoring females in women's colleges, it was justifiable to prioritize a female candidate for promotion. However, the court ruled that, despite the reasonableness of preferring women in women's colleges due to general gender inequality, seniority should not be overlooked. The court instructed the government to reassess the promotion after the contestant provided valid reasons supporting their advancement. Essentially, the court established that while females might receive preference over males in women's colleges as a customary practice, once appointed, senior male and female employees of equal competence should be promoted.

This prompts the question of whether the court would adopt a similar position if a female alleged discrimination in men's colleges, where the majority of staff are men. It is probable that the court would uphold the tradition of giving preferences to men in men's colleges.

### **CONCLUSION**

The pursuit of gender equity within the realm of labor law is a fundamental imperative for establishing a just and inclusive workplace environment. The overarching goal is to ensure that individuals, irrespective of gender, are afforded equal opportunities, fair treatment, and comprehensive protection within the labor force. The evolution of labor laws reflects a commitment to addressing discriminatory practices, mitigating gender-based disparities, and upholding the rights of women and other gender minorities in the professional sphere.

Despite considerable advancements, persistent challenges underscore the need for sustained efforts to eradicate gender-based discrimination and promote workplace environments that actively support diversity and inclusion. Emphasizing equal pay, eliminating gender biases in hiring and promotions, and providing robust mechanisms for addressing workplace harassment are pivotal components of fostering gender equity under labor law.

It is essential to recognize that achieving genuine gender equity necessitates a comprehensive and multifaceted approach. This entails not only the continuous refinement of legal frameworks but also the implementation of progressive organizational policies and a societal shift in attitudes towards gender roles. By fostering collaborative efforts across these domains, we can aspire to create workplaces that empower individuals of all genders to thrive professionally and contribute meaningfully to

the collective success of society.