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Bhavana Rao
Assistant Professor-Selection
Grade, University of
Petroleum and Energy Studies,
Ph.D. Scholar, Faculty of
Law, University of Delhi,
New Delhi, India

India's legislative measures for gender equality in economic sphere

Bhavana Rao

Abstract

In India, women workforce constitutes an integral part of total workforce, there is a serious under-estimation of women's contribution as workers and is far fewer women in the paid workforce than men. National legal regime should focus on women's economic rights as well as implementation of policy through effective means. Women's self-employment should be encouraged as it significantly increases women's income and therefore family wellbeing, and so reduces poverty. Trade can expand women's role in the economy, decrease inequality, and improve women's access to skills and education.

Keywords: Women entrepreneurs, constitution and women, women in economy, labour

Introduction

The legal framework for labour and trade related rights in India comprises an intricate and complex web of constitutionally guaranteed labour rights, labour legislations at both the state and central levels (labour is in the concurrent list of the Seventh Schedule of the Constitution), judicial and administrative interpretations of labour rights, and international human rights and labour rights instruments.

The Fundamental Rights of the right to equality (Article 14), protection from discrimination (Article 15), equality of opportunity for all citizens for public employment (Article 15), the rights to freedom of speech, assembly and association (Article 19), the rights to life and personal liberty (Article 21), prohibition of traffic in human beings and forced labour (Article 23), prohibition of employment of children in hazardous employment (Article 24) as well as several Directive Principles of State Policy such as Articles 38, 39, 39A, 41, 42, 43, 43A and 47 which require the state to promote the welfare of the people, to make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and to secure just and humane conditions of work and maternity relief, as well as a living wage and ensuring a decent standard of life, amongst other things, form the bedrock of the Constitutional framework of labour rights in the country.

At the international level, Article 23 (1) of the Universal Declaration of Human Rights on the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, innumerable international instruments on labour rights, including the eight core conventions of the ILO, the ILO Declaration on the Fundamental Principles and Rights at Work 1998, ILO's Decent Work Agenda (which has found expression in the UN Sustainable Development Agenda in the form of SDG 8), and the recently adopted ILO Centenary Declaration on the Future of Work provide 2 some of the key principles of the normative legal framework for labour rights. Despite the breadth of this normative and legislative landscape, for informal women workers in India, the protections accorded by labour law have been few and far between. India is currently on the brink of major legislative labour reforms. The Ministry of Labour and Employment is in the process of consolidating more than 40 labour laws that tackle several diverse and disparate labour issues into a set of four labour codes. These new codes will thus govern industrial relations, working conditions, remuneration, and social security. Given the unequal burdens of care.

The equal remuneration act

It was enacted to prevent discrimination between workers on grounds of gender. The preamble to the act describes it as:

“An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto ^[1].”

Correspondence

Bhavana Rao
Assistant Professor-Selection
Grade, University of
Petroleum and Energy Studies,
Ph.D. Scholar, Faculty of
Law, University of Delhi,
New Delhi, India

The purpose of the act is to make sure that employers do not discriminate on the basis of gender, in matters of wage fixing, transfers, training and promotion. It provides for payment of equal remuneration to men and women workers, for same work or work of similar nature and for the prevention of discrimination against women in the matters of employment. Discrimination is nothing more than the expression of a preference.

In this neutral sense, without assessing either the consequences of such behaviour, or the "social justice" aspect, the right to discriminate is a desirable feature of any free society. Individual acts of choice may sometimes result in a preference that might exclude or inconvenience a certain group. However, how valid or just is it to make such a choice illegal? Even more significant, how many profit-maximising, and efficiency-enhancing entrepreneurs would make such a choice? Except in rare circumstance, people's preferences are not absolute, but vary depending on other factors, main among them being the cost, or benefit of making such a choice. Under normal circumstances, the higher the cost (the lower the benefit), the less likely the choice will be made. Discrimination has a price, and the existence of this price will limit the existence of discrimination prevalent in the market.

Prohibition of discrimination during recruitment

Section 5 of the Equal Remuneration Act specifically forbids employers from discriminating against women during recruitment. It states:

"On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women."^[2]

In a competitive world such legislation has no bearing at all. All discrimination in the market costs money, and any profit-maximising entrepreneur would realise the costs of discrimination and do his best to remove it. During recruitment, if employers discriminate against women, and refuse to hire them, they are doing this at their own detriment.

An employer would only want to hire a woman if she can display herself to be amply able to perform the task at hand. If this is so, by judging applicants on grounds other than efficiency, an employer is hiring those who are potentially less productive, or less suited to the job. Such a policy would definitely cause profits to decrease.

Profit seekers would begin employing women, and as such employment would increase. As demand for women workers increases, their wages also get bid up. An employer hiring on bases other than an employer's ability to contribute to firm's productivity wouldn't be able to persist since his willingness to operate with discrimination would confer an advantage on his competitors. If all entrepreneurs aren't actively practising discrimination, then one who is doing so is operating under a comparative disadvantage.

He must either bear these losses, or change his hiring policy. Furthermore, during recruitment, in a world of incomplete information, employers must guess at employees' productivity using some proxies, and gender might prove to be a possible proxy. Factors such as maternity leave, inability to work late hours, inability to work night shifts etc. are reflections of the worker's productivity, and would go towards establishing gender as a proxy.

Using such proxies economises in information, if employers later find that such proxies are wrong, they will find they are hiring workers with low productivity, and principles of profit maximisation would force them to choose new proxies.

Maternity benefit (amendment) act, 2017 ("maternity amendment")

In India women workforce constitutes an integral part of total workforce, there is a serious under-estimation of women's contribution as workers and is far fewer women in the paid workforce than men. This disparity not only affects women's spending power, it penalizes their retirement security by creating gaps in Social Security and pensions. It's pathetic to see such situation in country like India where the legal systems are largely shaped by its unique history of fundamental freedom and right to equality, for instance principle of gender equality is enshrined in the Indian Constitution, in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles.

The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. The Indian Constitution guarantees equality as 'Fundamental Rights' under Part III. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. Charter of rights contained in the Constitution of India guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India^[3].

These include individual rights common to most liberal democracies, such as equality before law and equal protection of law while the Constitution not only grants equality but also empowers states to adopt positive measures of positive discrimination in favour of women for neutralizing cumulative socio economic, education and political disadvantage faced by them.³³ The Constitutional (74th Amendment) Act, 1992, brought in provisions mandating one-third reservations for women in local governance bodies.

These guarantees apply to state and public institutions. Part IV of the Indian Constitution is dedicated to social, economic, political acclivity of depressed class. It enlists socio-economic and cultural rights under the title of 'Directive Principles of State Policies' (DPSP). The Judiciary under Article 32 and 226 respectively, have the power to enforce constitutional guarantees of fundamental rights, thus making the right to Constitutional Remedies as one among the fundamental rights.

2017 witnessed the bold amendment to the Maternity Benefit Act, 1961 ("Maternity Act"). The Maternity Amendment extends paid maternity leave for women employees with less than two surviving children, from the original twelve (12) weeks to twenty-six (26) weeks. A maximum of eight (8) weeks can be taken before the expected delivery date and the remaining after childbirth. Women expecting their third child were also provided with the right to take twelve (12) weeks of paid maternity leave—six (6) weeks before childbirth and six after. The Maternity Amendment also mandates establishments employing 50 or more employees to have a creche which is

required to have prescribed facilities and amenities. Women employees have a right to visit the crèche four times a day, including during their rest interval.

Concluding remarks

Women's self-employment is encouraged as it significantly increases women's income and therefore family wellbeing, and so reduces poverty. In the study of MIDAS-SMEF, "a majority of the respondents said that their parents, husbands, even children, discouraged them from entering into business". Buvinic & Furst-Nichols, in a study in Brazil, found that "children's survival rates increased 20 percent when household income was controlled by their mother". The World Bank's World Development Report 2011 said that some countries should pay attention to the elimination of unfair practices towards women. Increasing the level of skill of women would increase such a country's productivity by almost 25 percent. The reason for this is that in the patriarchal society men are considered as the family breadwinner and women are given care-giving responsibilities in the family. Brush *et al.* points out: "Many societies mainly define women through roles connected to family and household responsibilities; societal values implicitly interpret women's entrepreneurship as less desirable and, as a result, provide lower normative support." Further, promoting gender related provisions in international trade laws and national legislations can lead to the following benefits ^[4]:

Trade can expand women's role in the economy, decrease inequality, and improve women's access to skills and education.

Exporters employ more women: In developing countries, women make up 33 percent of the workforce of exporting firms compared with just 24 percent of non-exporting firms.

Trade creates better jobs for women: When women are employed in sectors with high levels of exports, they are more likely to be formally employed in a job with better benefits, training and security.

Trade increases women's wages and increases economic equality: Developing countries that double their manufacturing exports—a typical increase for developing countries that open themselves to trade—would see women increase their share of total manufacturing wages from 24% to 30% through a combination of increased employment and higher salaries.

If we refer to the World Bank Report, it provides the following challenges with respect to gender equality in trade:

1. Trade policy is inadvertently biased against women, resulting in lower levels of employment and higher prices for consumer goods.
2. Although no country overtly imposes tariffs according to gender, implicit biases can amount to "pink tariffs" that put women at an economic disadvantage—as both producers and consumers.
3. Compared to men, women tend to spend a larger share of their income goods with high tariffs, such as food. Removing import tariffs could help women gain 2.5 percent more real income than men.
4. Targeted policies can help women maximize the benefits of trade. These include removing trade barriers that impede women's access to international markets

and improving women's access to education, financial services, and digital technologies.

5. The lack of gender-specific data reinforces biases against women in trade policymaking. Sex-disaggregated data is necessary to assess how different policies and obstacles impact women and men differently

Apart, from that it can be observed from the above study on International Trade & Women Participation that "in 2017, World Trade Organization (WTO) members agreed to a Joint Declaration on Trade and Women's Economic Empowerment, which aims to increase women's participation in trade. While the declaration is non-binding, it includes provisions for sharing on gender-related information in Trade Policy Reviews.

It also tries to lower barriers for women in trade while identifying Aid for Trade as an initiative to help develop the tools for crafting gender-responsive trade policies. A number of recent bilateral and regional trade agreements are also including chapters on trade and gender." But on the one hand, legal enforcement removes flexibility and the possibility of adopting trade policies that coincide with national development strategies. "The mere threat of legal action may be sufficient to force a government to change their policies. The dispute settlement process also limits participation and transparency because only governments can act as complainants and defendants in the proceedings. Furthermore, effective participation in a dispute proceeding is very costly and requires specialized training. Finally, the legal forum focuses very narrowly on specific rules and facts, ignoring the broader context and full range of values and factors relevant to justice and development. Gender issues, for example, are usually not legally relevant." ^[5]

Now, coming to the Indian Scenario it can be said that, the Constitution in India prohibits discrimination on the basis of sex. The equal remuneration act, 1976, ensures equal wages and equal work for women. However, there are still enormous barriers between policy and practice and the conversion of policies into reality. There are various councils and bodies established for the wellbeing of women such as the National Commission for Women, Department of Women and Child Development and the Parliamentary Committee on Empowerment of Women which has reviewed various laws and recommended amendments.

The National Policy for Empowerment of Women (2001) commits to address all forms of violence against women including physical, mental and that arising from customs and traditions. Various programmes and policies have been initiated by the state to enhance empowerment of women, such the Support to Training and Empowerment Programme (STEP), The Rashtriya Mahila Kosh (RMK), Swarnajayanti Gram Swarozgar Yojana (SGSY), Mahila Samakhya and the MGNREGA ^[6].

Some of the practical recommendations that can be inculcated through legal & policy measures are as follows:

1. Advocate for, and support the provisioning of, gender-responsive public services, from basic infrastructure to social protection.
2. Recognize, reduce and redistribute women's unpaid work, including in family enterprises and farms and in care work and domestic chores

3. Bring visibility, recognition and rights to women farmers and women informal workers
4. Ensure that more money reaches women's hands
5. Improve work conditions for women by bringing about wage parity and providing social security and workplace facilities (e.g. childcare)
6. Create an environment that enables women to secure their rights and realize their full potential Push up investments across the four drivers from both government and the private sector Invest in job-oriented skills for women and up skill women entrepreneurs to boost local job demand
7. Establish public and private investment funds to support women's entrepreneurship
8. Significantly improve the work conditions in the informal sector, 3 which are currently precarious
9. Increase the number of women in the so-called "non-traditional" jobs and sectors
10. Close the digital gender gap
11. Monitor existing laws, including labour laws, municipal laws, land laws and other laws which affect informal and agricultural women workers and broader policies and programmes
12. Ensure implementation of existing laws and policies to enhance empowerment of women in the informal economy and agriculture
13. Develop a framework for intervention for women micro-entrepreneurs in the informal economy including those in family enterprises in order to highlight the role of women micro entrepreneurs and to advocate for measures to increase their earnings and scale
14. Need of comprehensive legal and policy framework for the rights of women farmers ensure the visibility and recognition of women farmers and their entitlements
15. Need for a social security net for informal workers including agricultural workers with a focus on women's needs
16. Restructuring existing statutes in line with CEDAW provisions to ensure protection, inclusion and promotion of women in socio-economic sphere.

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