

GENDER DISCRIMINATION OF WOMEN WORKERS IN THE CONSTRUCTION INDUSTRY: AN ASSESSMENT OF THE PREVAILING LAWS AND THEIR ENFORCEMENT IN INDIA.

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Abstract: The advent of globalization in India has seen an increasing informalisation of employment, including home based, contract labour. Coupled with this is a complete absence of any widespread system for welfare and social security in this sector. Construction Sector accounts for over 1.7 crore building and other construction workers in India. It also accounts over 30 percent of women workers. Women Workers are concentrated in the lower end of the spectrum as their work is insecure, low paid, irregular and often unrecognized. They balance between children, home and work, and more often than not, their income is not commensurate with their work. Women Workers suffer exploitation on various accounts. They are only employed as unskilled workers, even if their work is the same or similar to that of male workers. Gender stereotyping is also rampant on construction site. From the beginning of human history it is seen that women's role in the development of human societies has been limited to reproductive labour, it is likely that women's role in construction industries has no change. Gender division of labour force and gender stereotyping surface as the main causes of the marginalization of women construction workers. Women workers in the construction industry are also largely victims of desertion by their spouses and this has led to a high incidence of women headed households in the industry which are more poverty prone and vulnerable. Within the larger culture of exploitation of workers in the construction industry, women are doubly exploited- neither women's needs, nor their rights as workers are addressed.

In this context this paper examines the need for recognition, protection, equality and social security for this segment of workers and makes recommendations in providing welfare and security measures for the women in the unorganized sector.

Key words: Gender, Women workers, Construction Industry

Introduction: Construction activity is an integral part of a country's infrastructure and industrial development. It includes hospitals, schools, townships, offices, houses and other buildings; urban infrastructure (including water supply, sewerage, drainage); highways, roads, ports, railways, airports, power systems; irrigation and agriculture systems, telecommunications etc.[1] The Construction Industry is one of the largest Contributors to India's GDP (Gross Domestic Products). According to Reserve Bank of India between 2005-2006 and 2009-2010, the industry's turnover has increased at an average rate of 9 to 12 percent. The construction industry is also the second largest employer after agriculture, employing a total of about 33 million people directly. This industry being one of the largest sectors in the country in ensuring employment on the other hand has been employing more and more million people in other related industries such as paints, bricks, cement etc, and providing substantial employment and growth inputs to other manufacturing industries.

Broadly, the construction industry can be divided into three segments: Residential Construction, Commercial Construction and Infrastructure Construction. Of these segments, infrastructure construction occupies maximum share at about 54%. Within Infrastructure highest investment is seen in the power and road building which is about 48%. The total turnover of the construction industry in 2009-10 was about 4.4 Trillion (according to survey by the National Sample Survey Organisation). Construction industry in some sense is the take-off point for most industries, as well as for socio-economic growth in general.

According to the International Labour Organization

(ILO), Construction is one of the principal industries in all countries owing to its integral role in development work, be it in the area of health, education, food production, transport, general infrastructure etc.[2] Construction workers form part of the 369 million workers in the unorganised sector, which contributes around 60 percent to the "national economic output" of the country, according to the National Commission for Enterprises in the Unorganised Sector (NCEUS).

Construction as an activity has been around since the beginning of human history. As, however, almost all the historical literature on women's role in the development of human societies has been limited to reproductive labour, it is likely that women's role in construction in traditional societies has been blanked out too. Women construction workers are trapped in a cycle of late entry, being unskilled, receiving low wages and therefore, being casualised. Women Workers suffer exploitation on various accounts. Women are only employed as unskilled workers, even if their work is the same or similar to that of male workers. Women's work is normally considered simple and requiring the least amount of skill, and hence the low wages are justified. Even when women do undergo skill development and receive training, they are unlikely to receive work as skilled workers because of the fear that they will take work away from skilled men workers.

Although many labour laws are applicable to the industry and on protection of women workers in the construction industry, none of them have been able to ensure construction workers basic right to safe working and living conditions. Though the construction industry occupies such a centre stage, some of the mind boggling

questions are...

- Where are the construction workers who made it possible..?
- Whether the women and men in construction industry are allowed to work in the same environment?
- Whether the welfare amenities provided to the construction workers in particular to women workers are adequate?
- Whether women workers are provided with equal wages as that of men?
- Role of State and the steps taken by the Government of India to protect the interests of women construction workers are adequate enough?

Within this general context of construction workers and their plight, the actual problem primarily lies with the way the industry is structured, leaving no visible link between its work generator and the actual workers. This problem gets compounded due to the fact that in construction, the product is stationary but the site of production changes. These are the two reasons that do not allow for a regular employee – employer relationship like other industries. In addition to this is the fact that this industry is seemingly always growing; but the reality is that it continually displaces its own labour with a fresh supply from poor rural areas.

Women construction workers incontestably belong only to the segment of unskilled workers. Construction workers are the single largest workforce that is completely market determined. Therefore, the numbers employed from day-to-day can vary substantially which adversely affects women's employment opportunities. Moreover, the unfortunate reality is that many women do not make it to the decision making levels or power positions among the main players in construction industry. In many places in Delhi and Bangalore[3] women do not even make it to the market place of construction workers, as it is their husbands or other male relatives who bargain on their behalf and fix work for them. Though women are often employed as head load workers carrying bricks, cement, sand and water over long distances and climb scaffoldings which are precariously balanced wooden beams, this difficult work is considered unskilled and remains invisible to most people in the industry. All women's work is considered 'easy, suitable for the weak', appropriate for a secondary income earner and, by implication, best suited for an irregular worker. By contrast, men's work is projected as tough work requiring physical strength, needing greater skill, and fraught with danger and risks. Moreover, men's income is understood to provide for family and hence they are entitled to better wages. Wherein, women's income are not seen to be crucial for family survival, but as a much greater proportion of their wages goes towards maintaining the family in comparison to the proportion of men's wages that reaches home.

Women's status as unskilled workers in the construction industry rubs off and remains unchangeable in the trade

unions as well. Women participate in labour struggles, but rarely reach leadership positions as equals of their male colleagues.[4] Though women did participate in large numbers and were vocal in expressing their opinions and difficulties in struggle-related and union-related matters, the foremost barrier in women's participation at all levels of union seems to be non-recognition of the multiple roles of women, by both the women themselves and the men.

Gender Biases in the Industry: Gender stereotyping is also rampant on construction sites. Gender division of labour force and gender stereotyping surface as the main causes of the marginalization of women construction workers. Within the larger culture of exploitation of workers in the construction industry, women are doubly exploited- neither women's needs, nor their rights as workers are addressed. Women are hardly ever seen as an integral and necessary part of any construction unit, though everyday women workers participation is on the increase women workers are treated only as appendages to the male workers, owing to deep rooted notions of this being a man's industry.

Wages and Earnings: Women's earnings are lower even when they perform the same or similar work as that of men, and they get meagre wages. And it is true that women workers are paid less than the statutory wages. In respect to women workers daily wages are even less than the half or sixty percent of the minimum wages.[5] Proven instances put forth that provisions of Equal Remuneration Act are violated very often by saying that the jobs performed by men are tougher than those done by the corresponding women workers. This in conjunction with the practice of placing women in the casual or temporary segments of the workforce. As the industry displays more and more fragmentation, women continue to belong to the fragment of lowest wages, with few opportunities to cross over to the fragment of higher wages and greater skill development, resulting the start at lowest wage in the industry and end at same level. The bulk of the increase in women's employment appears to be in line with general trend of search for unskilled, cheap, malleable and flexible labour.

Personal Life and Its Myth: Women workers in the construction industry are also largely victims of desertion by their spouses and this has led to a high incidence of women headed households in the industry which are more poverty prone and vulnerable.[6] The two types of women seen in the industry are migrant women with their spouses (Both being unskilled workers) and women who are separated/divorced or widowed. This implies that increasingly more vulnerable women are found in this industry and hence their income is very important for the survival of family. It is also a common phenomenon of sexual exploitation of women workers by employers/contractors and by other men co-workers.[7]

Working Conditions and Welfare Amenities: Despite the fact that many labour legislations have been made

applicable to the construction workers, the working condition of these workers are highly unsatisfactory and welfare amenities actually available to them are just negligible. Out of whom women construction workers are the worst sufferers as their employment is regarded as secondary to the male workers in the industry. Special provisions regarding the protection and welfare of women workers do not exist in the labour laws applicable to the industry.

Workers engaged in building and construction industry have invariable to handle dusty, hard or rough materials like sand, cement, concrete, bricks, etc. They are thus prone to injuries and health hazards. Ordinarily no precautions had taken by employer to prevent inhalation of dust, fumes etc., Women workers hands and feet in most of the cases found in pitiable condition having many scratches. No women worker in majority cases found to have been provided with hand gloves or any other protective equipment for handling the building and construction materials. Rarely in few projects a few male workers engaged in manual mixing of concrete, sand and cement found wearing gumboots while performing their job.

With respect to welfare amenities, it's just a myth within the industry. Facilities like Drinking water, Latrines and Urinals, Washing facility, crèches, Maternity benefits, canteens, first-Aid and Medical facilities, Shelter/Housing, transport facilities, educational facilities, Recreational facilities etc., are even unheard by these workers. Generally the Building and Other Construction Workers are unheard of their rights at all levels. Women construction workers in particular are so vulnerable that they have hardly heard of their basic rights available under various labour legislation they are just found only to be secondary to male workers in the industry.

Constitutional Provisions and Labour Standards for Workers in India: The Constitution of India upholds all the fundamental principles envisaged in the seven core International Labour Standards. Out of the seven labour conventions, India has ratified three, they are Forced Labour[8], Equal Remuneration[9] and Discrimination.[10] The Government of India has ratified some Conventions such as Hours of Work Industry Convention 1919, Night Work (Women) Convention 1919, and Minimum Age Convention 1919, Right to Association (Agricultural workers), Workmen's Compensation 1925, and Equal Remuneration Convention 1951.

The Indian Constitution upholds the principle of equality between men and women. Laws are enacted fixing the hours and minimum wages of labourers and to improve their living conditions. There are plethora of labour laws enacted like, The Workmen's Compensation Act 1923, Trade Union Act 1926, The Payment of Wage Act 1936, The Minimum Wages Act 1948, The Factories Act 1948, The Employees State Insurance Act 1948, Industrial Disputes Act 1947, Payment of Bonus Act 1955, Maternity Benefits Act 1967, Contract Labour

(Regulation and Abolition) Act 1970, Bonded Labour System 1976, Equal Remuneration Act 1976, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, The Child Labour (Prohibition and Regulation) Act 1986, The Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act 1996..etc.

These various laws have been enacted with their basis in the Directive Principles under the Indian Constitution which contains reference to work in some articles.[11] These articles relate to rights to: adequate means of livelihood, equal pay for equal work, humane conditions of work, living wage for those who work and participation of workers in managements. Some of the Fundamental Rights[12] mentioned in the Constitution also makes reference to right to work.[13] Besides these, entries 21, 23, 24 and 26 of Concurrent List (List-III) authorise the State Governments to take necessary steps for regulation and control of commercial and industrial monopolies, trade unions, industrial and labour disputes, social security and social insurance, employment and unemployment, welfare of labour etc, respectively with an intention to ensure protection of interest of all citizens of India.

Industrial Law And Women: In a semi-industrialised country like India, the working class is destined to be one of the weaker sections of society and this society being male-dominated, female labour receives very poor recognition or value. Not that there are no statutory provisions. In fact, the Indian Constitution provides equal rights and opportunities to both the genders. In addition there are specific provisions for protection and welfare of working women in many of the labour laws. But most of these statutes do not cover the units in small and informal sectors which are the predominant workplaces of women (such as construction industry). Even where they are covered by the statutes, the poor enforcement practically nullifies the provisions. Moreover, there is one more tragic factor that has to be pointed is the very laws which are meant for working women are paradoxically turned against their interests by unscrupulous employers. If the employers find it difficult to bypass these provisions, they get rid of the women workers and thus strike at the economic base of their livelihood.

Even after the reasons mentioned above, both Union and State under its Constitutional powers had formulated number of legislations pertaining to women engaged in industrial activities some of which are as follows:

Equal Remuneration Act,1976

Maternity Benefit Act,1961

The Bonded Labour System (Abolition) Act, 1976

The Factories Act,1948

The Building and other Construction Workers Act, 1996

The Unorganized Workers Social Security Act, 2008

Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 provides for the

prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected therewith or incidental therewith. The Act also prohibits discrimination while recruiting men and women workers for the same or similar nature of work except where the employment of women in such work is restricted or prohibited by or under any law for the time being.

Till 1975, there was no specific provision mandating payment of equal wages to women even though discrimination against women in the payment of wages was widely rampant.[15] Such discrimination was practiced not only by the private employers but by the instruments of the State as well. This situation continued in spite of the fact that Article 15 of the Constitution specifically prohibits discrimination against women. The provision relating to "equal pay for equal work" is not an enforceable fundamental right but is issued as the directive to the State in Part IV of the Constitution.[16] By this, the State has been obliged to secure such social and economic freedoms for the citizens which could not be guaranteed at the time when the Constitution was framed due to the then prevailing socio-economic conditions.[17]

The Directive Principles of the State Policy of Constitution of India specifically directs the State to secure equal pay for equal work for both men and women[18]. To realise this constitutional mandate the Parliament legislated the 'Equal Remuneration Act, 1976' (herein after referred to as 'the Act'. In *Dharwad Dist. PWD Employees Association v/s State of Karnataka*[19] the Supreme Court of India has stated that this Act provides for equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on the basis of sex.

The Act enumerates that every employer is under statutory obligation to pay remuneration at equal rates to men and women employees if they perform the same work or work of a similar nature.[20] As provided under Section 5 of the said Act, no employer shall be allowed to make discrimination while making recruitment for the same work or work of similar nature or make any discrimination on the basis of sex unless that particular employment of women or men is restricted or prohibited by any statute. This provision is similar to the provision contained in Article 16(1) of the Constitution. Under the Equal Remuneration Act, 1976 the Court of Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable and can take cognizance on its own motion or on a complaint by the appropriate Government or by the aggrieved person or by any registered welfare organisation. Though the said Act being comprehensive, it is unfortunate that women construction workers are not being secured under this act moreover these women workers are unaware and uninformed of the above Act.

Maternity Benefit Act, 1961: The Constitution of India, 1950 imposes obligation upon the State to make

provision for securing just and humans conditions of work and for maternity relief.[22] In view of this constitutional obligation the parliament has passed the Maternity Benefit Act, 1961 to regulate the employment of women in specified organisation /institution/establishment for certain period before and after the child birth and to provide for maternity and other benefit.

Maternity Benefit Act lays down the mandatory provisions with regard to maternity leave for working women whether in the organized or unorganized sectors. It further provides for continuation of employment and prohibition from dismissal in case of miscarriage or medical termination of pregnancy and tubectomy operation. The Act provides for nursing breaks to be given to women who have returned from maternity leave to be able to feed their child within the day. The Supreme Court in *Municipal Corporation of Delhi v/s Female Workers*[23] has held that workers, on casual basis and daily wages of Municipal Corporation, are equally entitled to maternity benefits. In the instant case the Court observed "the activity of the Delhi Municipal Corporation by which construction work is undertaken or roads, lands are repaired or trenches are dug would fall within the definition of industry" hence these workers would have to be protected in the light of various statutory provisions of the industrial law, one of which is the Maternity Benefit Act, 1961.

The Bonded Labour System (Abolition) Act, 1976:

The Constitution of India abolishes all kinds of forced and bonded labour system in India.[24] In light of this mandate, the law makers have enacted the Bonded Labour System (Abolition) Act, 1976. The above enactment was enacted to provide for the abolition of the bonded labour system with view to prevent the economic and physical exploitation of the weaker sections of the people.

The Factories Act, 1948: This Act is an important legislation as it contains certain provisions regarding the nature of work to be given to women workers, hours of work for them, etc. It also makes arrangements for certain welfare amenities.

(a) **Night Work:** The Act prohibits the employment of women between 7p.m to 6a.m. Section 66 (1) (b) states that no women shall be required or allowed to work except between 6a.m to 7p.m

(b) **Maximum Permissible Weight of Load:** The Act does not allow women workers to handle excessively heavy weights.

(c) **Creche Facilities:** Section 48(1) of the Factories Act, 1948 provides that in every factory wherein more than thirty women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(d) **Unhealthy Employment:** The Factories Act, 1948 prohibits the employment of women in any part of a factory for pressing cotton in which a cotton opener is at work.[25] There is also provision under which

no women worker is allowed to clean, lubricate or adjust any part of the prime machinery. Its pertinent to note that even apart of these laws, women construction workers are always exposed to risk of injury from such similar machineries at the work site while cleaning, lubricating and functioning various machineries like that of concrete mixing machinery, lifts etc. Section 19(1) (a,b,c,d and f) of the above act also states “ In every factory sufficient and separate latrines and urinals as prescribed for male and female workers must be provided”

(e) **Welfare:** The Act makes provisions for a number of welfare facilities for workers. Most of these are meant for both male and female workers, but there are some especially for women, e.g. separate and adequately screened washing facilities have to be provided in every factory for the use of female workers.[26]

The Building and Other Construction Workers Act, 1996: The above law aims to provide for regulation of employment and conditions of service of the building and other construction workers, as also for their safety, health and welfare measures in every establishment which employs or employed during the preceding year ten or more workers. The exception made is only in respect of residential house for own purpose constructed with a cost not exceeding Rs 10 lakh and such other activities to which the provision of Factories Act, 1948 and Mines Act, 1952 apply.[27]

Although various provisions mandates for registration of each establishment and workers within 60 days from the commencement of work to ensure that there are no malpractices in compliance of law, said provisions remains merely on paper for various reasons. The Supreme Court’s recent directive to all States and Union Territories to file a status report on implementation of the Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act and the Building and Other Construction Workers Welfare Cess Act, both of 1996, is significant. Notices to the States had been issued in 2006 but apart from a few who filed sketchy affidavits, most of the states simply failed to respond.

The Unorganized Workers Social Security Act, 2008: This Act formulates schemes for different sections of unorganized workers on matter relating to life and disability cover, health and maternity benefits. It also formulates schemes for old age protection and any other benefit as may be determined by the Central Government.

The aforesaid provisions through different enactments amply prove that the State has made considerable efforts to provide additional facilities to the women engaged in the industries. This facilities and welfare measures include equal remuneration, leave during pregnancy, minimum wage, compensation for personal injuries, weekly holidays, washing facilities, canteen facilities, rest rooms, crèches and medical benefits etc. Undoubtedly, women have natural disadvantages and

unique features of motherhood and in keeping this in view the provision Article-15(3) has been inserted in the Constitution. Thus, the legislature has enacted the special industrial laws for women and children.

Although various provisions regarding employment have been outlined for the betterment and benefit of women construction workers in particular, in some of the legislations, but these provisions seem to be merely on papers and lacking more of actual implementation process ahead.

Judicial Response: Several rights of the workers in the unorganised sector have been recognised by the Supreme Court of India in its various judicial decisions. In *Peoples Union for Democratic Rights v/s. Union of India*,[28] the Supreme Court has made a distinct contribution to labour law but has displaced the creative attitude of judges to protect the interests of the weaker sections of the society. The Court has enlarged the contours of the fundamental right to equality, life and liberty, prohibition of traffic in human beings and forced labour and prohibition of employment of child labour provided in the Constitution. The case arose out of the denial of minimum wage to workmen engaged in various Asiad Projects and non-enforcement act of the Minimum Wage Act, 1948, Equal Remuneration Act, 1976, Articles 23 and 24 of Indian Constitution, Contract Labour (Regulation and Abolition) Act, 1970, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and other social legislations.

In the instant case the Court has held that the employment of children below the age of 14 years in the construction work of the Asiad Project is violation of fundamental right and non-observance of the provisions of the Equal Remuneration Act, 1976 would amount to breach of Article 14 of the Constitution. Further the violation of Contract Labour (Regulation and Abolition) Act, 1970 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 intended to ensure basic human dignity to workmen, but violated Article 21 of the Constitution of India.

In *Sanjit Roy v/s. State of Rajasthan*,[29] it has been held that the payment of wages lower than the minimum wages to the persons employed on Famine Relief Work is violative of Article 23 of Constitution of India. Further in *Bandhua Mukti Morcha v/s. Union of India*,[30] the Supreme Court held that when action is initiated in the court through public Interest litigation alleging the existence of the bonded labour, the Government should welcome it as it may give the Government an opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is the Constitutional obligation of the Government under Article 23 which prohibits “forced labour” in any form.

These are some of the landmark decisions of Supreme Court of India, wherein several basic rights of the individuals especially the workers in the unorganized sector have been safeguarded.

Besides, the judiciary has looked at various legislations as containing a revolutionary potential of hanging Indian society and providing social justice to the working class. Ironically, however, studies of social justice and poverty studies are still a nascent enterprise in India.

Concluding Remarks: It is unfortunate that in the euphoria of liberalization and globalization we are made to forget the most fundamental task of institution-building for mobilization of rural and urban masses within the construction industry for growth, employment, equality and poverty alleviation. The workers particularly women workers are so unorganized and incapable to bargain on the issue of welfare and social protection. Though there are various protective enactments for the construction workers, but the

ground realities are totally opposite from legal provisions on the subject. Subsequently the enforcement mechanism provided with relevant enactments are inadequate and ineffective in enforcing the provisions in practical life. Moreover there is no single agency which ensures the effective and efficient implementation of relevant schemes. Hence, it is the need of hour to formulate and implement a comprehensive law covering all construction workers under various adversities, not only at work place but also afterward. The law should also ensure and promote gender equitable industry as the success of any law depends upon its implementation; otherwise the legislation remains a piece of paper for workers especially in the construction industry.

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