

JUDICIAL CONTRIBUTION ON RIGHTS OF WOMEN WORKERS IN THE UNORGANIZED SECTOR IN INDIA VIS-À-VIS UNADDRESSED CONSTRUCTION SECTOR – A CRITICAL STUDY

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Abstract

Judiciary interprets laws related to labour rights, including those concerning women workers and their rights which ensures their enforcement of such right. The Courts can provide legal remedies to aggrieved women workers who face violations of their rights, such as non-payment of wages, harassment, or unsafe working conditions. The Judiciary acts as a guardian of their rights and safeguard against exploitation and abuse faced by the women workers. Courts can intervene to prevent and address instances of physical, emotional, or sexual abuse, ensuring accountability for perpetrators and providing protection to victims. The Courts can monitor Government organizations in discharging of their duties like carrying out labour laws and welfare programs for women workers. Judicial activism ensures that the enforcement of their obligations and allocate resources effectively to protect the rights of women workers. The judiciary serves as a crucial guardian of women workers particularly in the unorganised sector. It protects their rights by interpreting and enforcing laws, delivering landmark judgments, engaging in judicial activism, in order to safeguard their right against exploitation, recognizing rights, monitoring government actions, and contributing to legal advocacy and awareness. Through these actions, the judiciary plays an important role in advancing the cause of social justice and securing gender workers in India. This paper is going analyse the rights of the women workers in the unorganised sector in India through judicial response with untold story of construction workers.

Key Words: unorganized sector, Supreme Court of India, construction workers, labour rights, women workers

The Constitution of India has given important role to the Indian judiciary to act as Ivory Tower in the country. Justice Untwala, has compared the judiciary to “a watching tower above all the big structures of the other limbs of the state as to whether they are working in accordance with the Law and Constitution.” The Indian Judicial System carried a function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and upholding the general principles social justice within the constitution framework

Introduction

Labour force is a phenomenal inbuilt nature of Human resource, Men and Women who have made their contribution through their work in a day to day life including their personal menial work. Moreover, Men are engaged work other than household work that is other than domestic work but women are considered as dependent and suppressed class they have been doing menial nature of domestic work within their house. historically the women were had been undervalued and often overlooked as

a legitimate form of employment. But, in the recent trends women are inevitable workforce in India. They have been engaged in all type of work including National security force such as in the Army also.⁷⁷⁷

Usually the labour force might be classified into organised nature of work and unorganised nature of work wherein in the organised nature labour rights shall be entitled by the legal framework and the employer shall be inclined to provide all social security benefits to their employee. In the unorganised sector which has not been known to the labour force that they have all rights to get it from their employer particularly equal remuneration to women workers.⁷⁷⁸

The workers engaged in all essential tasks predominantly women are from marginalized communities, facing exploitation, low wages, long hours, lack of job security, and minimal access to social security benefits. The Court recognized that the lack of legal protections for women workers in the unorganised sector has violated constitutional guarantees of equality, dignity, and fair treatment under the law. The Court's directive to the central and state governments to consider formulating comprehensive legislation specifically tailored to address the unique challenges faced by women workers in the unorganised sector. The judgment underscored the importance of regulating their employment conditions, ensuring fair wages, providing social security coverage, and safeguarding them against exploitation and abuse.

The Judiciary acts as a guardian of their rights and safeguard against exploitation and abuse faced by the women workers. Courts can intervene to prevent and address instances of physical, emotional, or sexual abuse, ensuring accountability for perpetrators and providing protection to victims. The Courts can monitor

⁷⁷⁷ The Supreme Court of India has held in a case *Lt.Col Nitisha v. Union of India*, 3rd Nov, 2023, in which the women Army officer to be given equally in regular posting from April, 2024

⁷⁷⁸ The Equal Remuneration Act, 1976; the Act provides that the payment of equal remuneration for men and women workers and prohibition of discrimination on the ground of sex at the work place of employment.

Government organizations in discharging of their duties like carrying out labour laws and welfare programs for women workers. Judicial activism ensures that the enforcement of their obligations and allocate resources effectively to protect the rights of women workers. The judiciary serves as a crucial guardian of women workers particularly in the unorganised sector. It protects their rights by interpreting and enforcing laws, delivering landmark judgments.

The Supreme Court of India, in its judgment on acknowledged the urgent need to address the plight of women workers and emphasized the state's responsibility to protect their fundamental rights through landmark ruling had far-reaching implications, sparking public discourse and policy debates on labour rights and social justice in India. It catalysed efforts within the government, civil society, and the legal community to advocate for the rights of women workers and push for concrete legislative reforms particularly in the unorganised sector in India.

Women workers and Unorganised sector in India

The women workers in the unorganised sector is tracing way back to household work that is domestic work engaged by such women. The women workers in the organised sector have been regulated by a codified labour laws and other standing orders but in the unorganised sector though the laws are enacted in favour them it would not inclined to comply either by the employer or reached to the women worker. In India's workforce the self-employment and employment in unorganised sector is an inclusive factor in the Indian economy.

The unorganised sector's contribution is characterised in vast and major part in such economy. Though it is an informal or unorganised labour employment it has been traced that this kind of employment workers are in 43.7 crore workers in this sector out of 46.7 crore in the national employment workforce in

India.⁷⁷⁹ According to the National employment survey provides that in the unorganised sector 24.6 crore workers engaged in agricultural work, 4.4 crore workers are working in the construction sector and remaining in the manufacture and service sectors. The govt. of India has enlisted the unorganised labour force into four major groups like in occupational nature, nature of employment, self-employed group and service category. In the occupational nature landless agricultural women workers are majorly taking part but they are getting less wages and unable to get other labour rights.

In the recent days they are doing certain agricultural based rural work under 100 days program work.⁷⁸⁰ In the beedi Industry women are engaged in beedi rolling and making of it. They have been affected by the occupational disease and other health related issues in which they have no awareness to get the labour benefits due to illiteracy and poor socio economic condition of their life. In the construction industry the women workers are usually engaged in incidental or supportive work like 'sithaal' supporting to men workers. They are unskilled and paid less wages rather than men workers. Moreover, the women workers are not only doing the work at the workplace but also they are bound to do the domestic work in their household like cooking, child care and other household works. So they are overburden in their life nature.

The women construction workers are facing multiple problems due to their feminine status and are always in danger of physical and financial exploitation by their male co-workers this gender discrimination not only happens in the construction site but also in the intake of employment itself. The law relating to sexual abuse at workplace has never been identified by these workers in which such exploitation prevails in these unorganised sector. In the construction sector there is a gender

discrimination in the construction sites. They are paid less paid and treated with disrespect in certain situation. The following are the problems faced by the women workers in the construction industry i) Male Oppression; ii) Sexual harassment; iii) Irregular working hours; iv) Excess lifting of loads; v) not providing personal protective equipment; vi) non-payment of social insurance and social assistance. Judiciary acts as a guardian of their rights and safeguard against exploitation and abuse faced by the women workers. Courts can intervene to prevent and address instances of physical, emotional, or sexual abuse, ensuring accountability for perpetrators and providing protection to victims.

Women workers in the unorganised sector and Labour Legislation in India

Indian constitution is the parent Act for all laws including the laws which is enacted in the parliament and state legislature. The constitution has guaranteed the rights of women against the gender bias and its employment guarantee. Moreover, the Directive principles of state policy has given directives to the state to enact laws relating to equal pay for equal work and guarantee of living wage and labour rights in India. The women workers in India are in poor condition of labour in the unorganised sector in which the state has an obligation to enact laws in order to get their rights and benefits.

The Building and other Construction workers' (Regulation of Employment and Condition of Service) Act, 1996 provides health, safety and welfare measures to the construction workers the Act also dealt with hours of work and condition of labour of such workers. The Act, governs and constituted committees i) Advisory committee and ii) Expert committee; the Advisory committee is under two types 1. Central Advisory committee and 2. State Advisory committee. The role of the committee is to advise the concerned govt. in the matters relating to administration of this Act. The Expert

⁷⁷⁹ National Sample Survey Organisation (NSSO), 2009 - 10

⁷⁸⁰ National Mahatma Gandhi Rural Employment Guarantee Program

committee consist of person specially qualified in building and other construction work

As per the Act, 1996 the employer has to make an application for registration of establishment before the registering officer. After commencement of this Act, The application shall be submitted within the period of sixty days from the date of operation of the establishment.⁷⁸¹ The state govt. shall constitute welfare board for the benefit of this worker's. In accordance with this Act, where five hundred or more building workers are ordinarily employed there shall be a safety committee and safety officer for the safety of this workers. The employer shall prepare an emergency action plan in the construction establishment. The following may be emergency situations i. any fire or explosion; ii. Any collapse of lifting appliances; iii. Collapse of any building structure; iv. Drowning of building worker or any vessel; v. landslides which causes building workers buried. The employer shall make a mitigating action plan for such occupation disaster.

Under the *Unorganised Worker's Social Security Act, 2008*, the unorganised worker shall make a registration in which he or she has to comply the following condition that he or she shall have completed 14 years of age and shall make a declaration that he or she is an organised worker. After submitting the registration application, the District Administration will issue the identity card with unique identification number.⁷⁸² The registered unorganised worker shall be eligible to get the social security schemes under this Act. As for as this study concern, the women workers in the unorganised sector may avail the maternity benefit under Janani Suraksha Yojna. The aim of the Indian Constitution is to promote social and economic justice of the people of India. The part III of the Constitution that is Fundamental Rights guaranteed that any person shall be equality before law or the equal protection of the laws

within the territory of India.⁷⁸³ In *Hindustan Antibiotic Ltd.*, Case the Supreme Court of India has held that where the labour is engaged in any sector or any region or any industry whichever may be the application of labour laws would common to every factor.⁷⁸⁴

The govt. of India has introduced several programs and policies for the women worker's social security and their development of socio economic condition. The social welfare department has been changed into family welfare and child development and particularly women and child development. The central govt. funded Integrated Child Development Scheme spread over in India for health and eradication of malnutrition of the pregnant and lactating women including unorganised women workers.⁷⁸⁵

Women worker's rights and Judicial activism

The Supreme Court of India, in its judgment on acknowledged the urgent need to address the plight of women workers and emphasized the state's responsibility to protect their fundamental rights through landmark ruling had far-reaching implications, sparking public discourse and policy debates on labour rights and social justice in India. It catalysed efforts within the government, civil society, and the legal community to advocate for the rights of women workers and push for concrete legislative reforms particularly in the unorganised sector in India

The case highlights women workers in India significant challenges and issues related to their working conditions, rights, and overall dignity. Women workers often face exploitation and unfair treatment due to gaps in labour laws and discriminatory practices based on factors like sex, race, and caste.

In *Vandana Prasad* case appellant requested specific information from the Ministry of Labour & Employment regarding the following,

⁷⁸¹ Sec.7 of the Building and other Construction Worker's (Regulation of Employment and Condition of Service) Act, 1996
⁷⁸² Sec.10 of The Unorganized Worker's Social Security Act, 2008

⁷⁸³ Art.14 of the Constitution of India, 1950

⁷⁸⁴ *Hindustan Antibiotics Ltd v. Workmen*, AIR (1967) SC 948

⁷⁸⁵ The Govt. of India introduced ICDS on 2nd October, 1975 in the eve of Mahatma Gandhi Ji 106 year of Birth

1. The number of construction workers, domestic workers, and women workers who received maternity benefits in the last five years.
2. The percentage of female workers engaged in the unorganized sector. How proposed amendments to the Maternity Benefits Act would affect women working in the unorganized sector.
3. The status of implementation of the Unorganized Workers Social Security Act, 2008.

However, the appellant did not receive any response from the Ministry of Labour & Employment regarding these requests up to the present date. As a result, the appellant approached the Central Information Commission seeking redressal for the lack of response.⁷⁸⁶

The Supreme Court of India to address the issue of sexual harassment at the workplace. The court recognized the absence of legislation specifically addressing sexual harassment and the need for immediate measures to protect women's rights and ensure a safe working environment.⁷⁸⁷

The court defined sexual harassment to include unwelcome physical contact, sexually coloured remarks, and advances, which create a hostile or offensive work environment. The judgment emphasized that sexual harassment violates a woman's fundamental rights under Articles 14, 19, and 21 of the Constitution, including the right to equality, freedom of speech and expression, and the right to life and dignity. In the absence of specific legislation, the court laid down guidelines and preventive measures to address sexual harassment at the workplace, drawing on international conventions and norms. Setting up internal complaint's committees (later formalized in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. Ensuring awareness and sensitization programs on sexual

harassment. Taking disciplinary action against offenders. Raising awareness about women's rights and the need for legislative measures to prevent and redress sexual harassment. Encouraging subsequent legal reforms, leading to the enactment of the Sexual Harassment of Women at Workplace Act in 2013.

In the Vishaka case judgment the Supreme Court of India marked a significant milestone in India's legal framework by recognizing sexual harassment as a violation of fundamental rights and providing concrete guidelines for employers and authorities to prevent and address such harassment. It underscored the judiciary's role in protecting women's rights and ensuring a safe and equitable working environment for all. In the case ***Shramjeevi Mahila Samiti Vs. State of NCT of Delhi***⁷⁸⁸ the Supreme Court of India issued certain directives and directions regarding the welfare of unorganized sector workers, particularly domestic workers. The Government of India had constituted a National Social Security Board through a notification dated 22nd May 2017.

The Supreme Court of India has made an observation in ***Municipal Corporation of Delhi v. Female Workers (Muster roll) and another***⁷⁸⁹, in this case the female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in advance stage of pregnancy and also soon after delivery, unmindful of detriment to their health or to the health of the new-born. The court held that though the unorganised worker has not entitled to get benefit under Maternity Benefit Act, 1961 this benefit is a social security benefit so it must be extended to the workers who have been engaged in the construction work they are covered under the Building and other Construction workers (Regulation of

⁷⁸⁶ *Vandana Prasad v. Ministry of Labour & Employment*; Central Information Commission, 16th Nov, 2018; www.indiakanoon.org

⁷⁸⁷ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011

⁷⁸⁸ SLP No. 150/2012

⁷⁸⁹ AIR 2000 SC1274

employment and Condition of Service) Act, 1996.

In a Common Cause case⁷⁹⁰ Justice Bhagwati emphasized that the rights and benefits provided to workers under various labour laws are aimed at ensuring basic human dignity for them. The court found that the failure of private contractors engaged in constructing buildings for the Asian Games in Delhi to implement these laws, coupled with the failure of state authorities to enforce these provisions, infringed upon the fundamental right of workers to live with human dignity as enshrined in Article 21. This landmark judgment underscored the importance of upholding labour rights and ensuring that workers are not exploited or deprived of their entitlements, including the right to receive fair wages. The decision highlighted the responsibility of both employers and the state to safeguard the fundamental rights of workers and to enforce labour laws effectively to protect the dignity and well-being of all workers.

The govt. of India has enacted The Code on Social Security, 2020, which provides social security measures to ensure access to health care and income security for unorganized workers. These measures include: i) Maternity benefit; ii) Protection from working during the six weeks after delivery, miscarriage, or medical termination of pregnancy iii) Income security in cases of unemployment, old age, sickness, invalidity, work injury, or loss of a breadwinner. In 2023, the Union govt. has proposed to introduce a bill relating to Maternity Benefit for Women workers in the Unorganised Sector.

Conclusion

The workers in the unorganised sector are in scattered nature of workplace and their labour condition so the concept of negotiation and settlement would be a diluted form of grievance remedial settlement. So the stakeholders are having more responsibility to provide the social security benefits to these labours. The Indian Legislature has historically paid insufficient

attention to enacting protective legislation for the informal sector in 2008 the Unorganised Workers Social Security Act was enacted. The Act mandates the establishment of National Social and State Social Security Board in every state⁷⁹¹, with representation from unorganised workers, employers, and the government, tasked with recommending social security schemes.

The women workers in the construction sector usually under daily wages and they have not been engaged in big construction sector in the project based work. They are getting employment by calling of service or pick and choose basis. They never get continuous employment and proper wages and they have to make travel from their resident place to workplace with any additional travel payment in their day wages now certain state gov. has introduced social welfare scheme for women like free bus travel for women is reducing their travel cost burden. Moreover, they are facing certain health issues like menstruation period, miscarriage and pregnancy related health issues in which they are in non-employment that should be considered to be paid wages by the govt. so the appropriate govt. has a responsibility to provide the remedy for such women workers in the construction sector like house building work.

Though the govt. of India has implemented certain scheme for women workers in the unorganised sector particularly Janani Suraksha Yojana it has not reached to the beneficiary fully due to their illiteracy and unaware of this scheme. This scheme is a National Rural Health Mission and it is being implemented in order to reduce maternal and neo-natal mortality and it is promoting the institutional delivery among poor pregnant women in India. The govt. of India has provided cash assistant for their delivery and the child care. In spite of the central and state govt. being enacted the policies and schemes such thing to be reached to the beneficiaries in which

⁷⁹⁰ *People Union for Democratic Rights v. Union of India*, AIR 1982 SC1473

⁷⁹¹ Unorganised Worker's Social Security Act, 2008

the role of the Accredited Social Health Activist (ASHA) is majorly playing vital part to link the govt. and the poor pregnant women.

At the outset, the civil society organizations and trade unions have intensified their campaigns to raise awareness about women workers' rights and provide support services such as legal aid, skill development, and effective negotiation with the employer to arrange the compensation for their unaddressed grievances.

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