LABOUR AND FUNDAMENTAL HUMAN RIGHTS
IS DISCRIMINATION LAW DOING THE JOB IT IS SUPPOSED TO DO?

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Women in India form quite a large portion of the current labour force. The 1991 census states that it was 28.6% or 89.8 million. However, around 94% of women workers are in the unorganized sector. Most of the focus is on the 6% of the women who are in the organized sector where most of the laws apply and are better enforced. The Constitution of India was drafted in such a way as to ensure that all workers, men and women were equally protected by the law. The Directive Principles of State Policy which encapsulate the directives to the Government while formulating its policies are very clear about many of these rights. These Principles contained in Part IV of the Constitution have been read into Article 21 of the Fundamental Rights in Part III to safeguard and guarantee the workers their rights. However, with globalization and liberalization we see that more and more these rights have been eroded by both the Government and the judiciary through its interpretation and decisions in the cases that have come up before it since the 1990's. However, there are a few instances that demonstrate the ability and power that they possess to safeguard women's human rights if they have the inclination and commitment to ending discrimination in the work place.

The Fundamental Rights section, Part III of the Indian Constitution reflects some of the basic human rights of all people. Article 14 guarantees equality before law and equal protection of the law, while Article 15 prohibits discrimination on the grounds only of sex amongst other forms of discrimination. Article 15 (3) provides for special provisions to be made for women and children. Article 16 prohibits discrimination in matters of employment. Article 16 (4) provides for reservation of appointment or posts in favor of any backward class of citizens which in the opinion of the State may not be adequately represented in the services of the State. Article 19 (1) (g) gives the right to freedom to practice any business, trade or occupation and Article 21 guarantees the right to life and personal liberty.

In addition are the provisions in Part IV as I mentioned earlier. While Article 38 speaks of the promotion of welfare of all the people Article 39 (a) speaks specifically of right to an adequate means of livelihood for men and women equally. Article 39 (d) addresses the issue of equal pay for equal work for both men and women (the Government of India went on to enact the Equal Remuneration Act in 1975 to fulfill this direction) and Article 39 (e) particularly directs the state to ensure that its policy secures that the health and strength of workers, men and women and children are not abused and that the citizens are not forced by economic necessity to take to vocations unsuited to their age or strength. Article 41 adds strength to Article 39 (a) by stating that within the limits of its economic capacity and development the State should make effective provisions for securing the right to work amongst other things to its entire people. Article 42 is one of the hall marks of the Indian Constitution as it takes into consideration the very specific context of pregnancy related discrimination in the context of employment and therefore it directs the State to make provisions for securing not only just and humane conditions of work but also for Maternity Relief. It is in this context that the Government of India went on to enact the Maternity Benefit Act, 1961 which enables women in the labour force who have been employed for 160

days in a twelve month period to provided leave with pay and medical benefits for up to four months.

There are a number of cases in which the Supreme Court helped to advance the rights of women and strike down those laws or practices that were discriminatory. Though, this may not be true in the case of all women workers. One of the earliest challenges came from Ms. Muthamma[1] (who died only recently), a senior Indian Foreign Service Officer. In 1978 she filed a writ petition stating that certain rules in the Indian Foreign Service (Recruitment, cadre, seniority and promotion) Rules, 1961 were discriminatory. The rules in fact provided that no married woman would be entitled as of right to be appointed to the service. In fact a woman member was required to obtain permission of the government in writing before her marriage was solemnized and that she could be required to resign if the government was satisfied that due to her family and domestic commitments she was unable to discharge her duties efficiently. The Supreme Court struck down these rules on the ground that they violated the fundamental right of women employees to equal treatment in matters of public employment under Article 16 of the Constitution.

Similarly in another case[2] the discriminatory regulations of Air India were challenged. The regulations did not allow the Air Hostesses to marry before completing four years of service. If anyone of them got married within that period that she had to resign and if she got married after four years but became pregnant after that she still had to resign. If she neither got married before the four year period was over or married only after the four year period and did not become pregnant she could only continue in service till she attained the age of 35. These provisions were challenged in this case, while the Supreme Court did not accept all the contentions. It, in fact, said that Air Hostesses were a separate category and therefore those regulations could not be termed discriminatory. It was a reasonable classification as in their situation both in spirit and purport the classes were essentially different. It, however, regarded the provision relating to pregnancy as being manifestly unreasonable and arbitrary and therefore violative of Article 14.

In Mrs. *Neera Mathur v Life Insurance Corporation of India*[3] the Supreme Court recognized the right to privacy of female employee. Mrs. Neera had been appointed by the LIC without them knowing that she was pregnant. She applied for maternity leave and when she returned thereafter she was terminated. The reason given was that she had withheld information regarding her pregnancy when she had filled their questionnaire. The Supreme Court on perusing the questionnaire was hocked to find that it required women candidates to provide information about the dates of their menstrual cycles and past pregnancies. It considered them to be an invasion of privacy of a person and violative of Article 21 which guarantees right to life and privacy. It, therefore, directed the LIC to reinstate Mrs. Neera and to delete those columns from its future questionnaires.

In yet another case[4] where a petition was filed by a former employee of a company who had worked as a Confidential Lady Stenographer and complained that during the period of her employment her remuneration had been less favorable than the male stenographers for performing the same or similar work. She drew the attention of the Court to the Equal Remuneration Act (25 of 1976) Section 4. The Supreme Court upheld her contention and

[1] C.B. Muthamma v Union of India 1979 4 SCC 260
[2] Air India v. Nergesh Meerza and Ors 1981 4SCC 335
[3] AIR 1992 SC 392
[4] M/s Mackinnon Mackenzie and Co. Ltd. V Audrey D'Costa and Another AIR 1987 SC 1281

stated that the employer was bound to pay the same remuneration to both male and female workers irrespective of the place where they were working unless it is shown that the women were not fit to do the work of the male stenographers.

In *Ram Bahadur Thakur (p) Ltd. v Chief Inspector of Plantations*[5] a woman worker employed in the Pambanar Tea Estate was denied maternity benefit on the grounds that she had actually worked for only 157 days instead of the required 160 days. The Court, however, drew attention to a Supreme Court Decision[6] wherein the Court held that for purposes of computing maternity benefit all the days including Sundays and rest days which maybe wageless holidays have to be taken into consideration. It also stated that the Maternity Benefit Act would have to be interpreted in such a way as to advance the purpose of the Act therefore upheld the woman worker's claim.

One of the most important decisions of the Supreme Court is Vishaka and Ors v State of Rajasthan.[7] This was a writ petition filed by several non-governmental organizations and social activists seeking judicial intervention in the absence of any law to protect women from sexual harassment in the work place. The Court observed that every incident of sexual harassment is a violation of the right to equality and right to life and liberty under the Constitution and that the logical consequence of sexual harassment further violated a woman's right to freedom to choose whatever business, occupation or trade she wanted under Article 19 (1) (g). The Court further held that gender equality included protection from sexual harassment and right to work with dignity which is a basic human right. Therefore in the absence of domestic law, the Court referred to the CEDAW and its provisions which were consistent with the provisions of the Indian Constitution and therefore read those provisions into the Fundamental Rights interpreting them in the broader context of the objective contained in the Preamble.

While these cases demonstrate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of women there are several instances where such rights are brazenly violated. The women workers most vulnerable to this are those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors women, generally, tend to be employed in the lowest paid, most menial tasks using the least technology. Women often work in labour intensive sectors. It is almost like they are working in a different segment of the labour market from that of men one that is invariably lower paid. There are even instances in some sectors of women being paid less than men for even the same work for example in the tea plantations, construction, agriculture etc. These women do not even get the Maternity Benefit. This is mostly because of the fact that their employment is temporary, poor enforcement of the Act and the inability of these women to fight for their rights. It is estimated that only 1.8% of the workforce is covered by he statutory provisions. In some of the states like Andhra Pradesh, Karnataka and Gujarat efforts are on to extend the maternity benefits to agricultural workers. While in Kerala the boards that look after the welfare of the cashew workers, coir workers and hand loom weavers have also begun to provide maternity benefit.

Similarly the provision of the Factories Act of 1948 for crèches in factories where more than 25 women are employed does not extend to the unorganized sector. Thus, excepting for the

[5] 1982(2) LLJ 20
[6] B. Shah v Presiding Officer, Labour Court, Coimbatore 1978(1) LLJ 29
[7] 1997 6 SCC 241

crèches run under the Social Welfare Boards or voluntary agencies there is little help in this regard for women in this sector. Considering that majority of the women workers are in the organized sector there is urgent need to ensure that the discrimination against women is ended and that the State take immediate steps to ensure the implementation of many of its progressive welfare legislations for workers extends to women workers in the unorganized sector.

Some gains have been made but there is still a long way to go. The most important task is to ensure the implementation and enforcement of existing laws and enacting new legislation to ensure that women are not dissuaded from joining the labour force or forced to endure these indignities.