



Constitutional Protection Pertaining to Social Security for Women with Special Reference to the Unorganized Sector Workers

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ABSTRACT

Women have been ill-treated in every society for ages and India is not an exception to this universal problem. Approximately half the population of our country is of the female gender. Irrespective of which protective social security is silent about her. The unorganized sector that holds an inevitably very important place in Indian Economy has been found to be the most vulnerable, oppressed and ignored sector in India. It employs about 93% of the work force. Unorganized sector employs a vast majority of women. Any social, economic or industrial system that ignores the potential, talents and special aptitudes of this half will be flawed on many counts. It is, therefore, necessary to ensure equal opportunities in all the respect. The opportunities and rights are vital, and are corollaries of the perceptions and fundamental principles enshrined in our Constitution, the full development and deployment of the potential of the female workforce cannot be ensured merely by making these opportunities available. The system and the laws have also to take cognizance of, and provide for, the special responsibilities that women bear to society and the species.

KEYWORDS

INTRODUCTION

"Everybody needs social protection throughout their lives, as young children, in working life and in old age. People need protection in case of specific shocks, such as illness, disability, and loss of income or work. ..."

-World Health Organization 2012

It is a harsh reality that women have been ill-treated in every society for ages and India is not an exception to this universal problem. The irony lies in the fact that in our country where women are worshipped as *shakti* the atrocities are committed against her in all sections of life.

Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but has to shoulder the double responsibility; one she has to work where she is employed and secondly she also has to do all the house hold works, moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart.¹

Approximately half the population of our country and, therefore, of the potential workforce is of the female gender. Irrespective of which protective social security is silent about her. The unorganized sector that holds an inevitably very important place in Indian Economy has been found to be the most vulnerable and ignored sector in India. It employs about 93% of the work force. Unorganized sector employs a vast majority of women. They are the most oppressed section of the society.²

Any social, economic or industrial system that ignores the potential, talents and special aptitudes of this half will be flawed on many counts. It will be guilty of denying equal opportunities, and thus creating conditions that cause or perpetuate exploitation and disparities.

It is, therefore, necessary to ensure equal opportunities for employment; equal remuneration for equal work, equal opportunities for the acquisition and up gradation of skills; equal opportunities for promotions; equal opportunities for access to positions of responsibility; equal respect, and protection

from indignities, harassment and humiliation at place of work; equal opportunities for the redressal of grievances; and equal access to the by-lanes and highways and summits of entrepreneurship, and all the requirements of entrepreneurship including credit.

While all the opportunities and rights are vital, and are corollaries of the perceptions and fundamental principles enshrined in our Constitution, the full development and deployment of the potential of the female workforce cannot be ensured merely by making these opportunities available. The system and the laws have also to take cognizance of, and provide for, the special responsibilities that women bear to society and the species.³

MEANING AND DEFINITION OF SOCIAL SECURITY

A well accepted definition of social security runs, "By social security we understand a programme of protection provided by society against those contingencies of modern life- sickness, unemployment, old age, dependency, industrial accidents and invalidism- against which the individual cannot be accepted to protect himself and his family by his own ability or foresight".⁴

According to Beveridge social security is "the security of an income to take the place of an earning when they are intercepted by unemployment, sickness or accident to provide for retirement through age. To provide against loss of support by the death of another person and to meet an exceptional expenditure such as those connected with birth, death and marriage".⁵

I.L.O defines social security as "the security that the society furnishes through appropriate organization against certain risks to which its members are exposed. These risks are essentially contingencies against which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with fellows".⁶

The I.L.O itself in the following words has redefined the aforesaid term, "it is convenient to regard as social security services only such schemes as to provide a citizen with benefit designed to prevent or cure disease, to support him when unable to earn and restore him to gainful activity".

INTERNATIONAL LABOUR ORGANIZATION CONCERNING SOCIAL SECURITY FOR WOMEN WORKERS

In the history of mankind women has been subject to various constraints and compulsions in the man-dominated society. The problem of her suppression has not been confined to any particular region, religion or any socio-cultural relationship and it has travelled beyond all these boundaries. These problems attracted the attention at the International level to provide security to the women.

Thus Social security for women have been recognized and guaranteed in all international instruments, notably the ILO Conventions.

To provide social security to the women in the First Session itself held in the year 1919, the ILO has adopted conventions relating to social security concerning Maternity Protection.⁷

Subsequently ILO social security (Minimum Standards) Convention – 1952 (No. 102) has thus laid down the basic minimum standards for the social security which is an attempt to have unified coordinated and consolidated means to achieve the goals of social security which takes into account all nine contingencies namely:

1. Medical care,
2. Sick-ness benefit,
3. unemployment benefits,
4. Old-age benefits,
5. Employment injury benefit,
6. Family benefit,
7. Maternity benefit,
8. Invalidity benefit and
9. Survivor's benefits⁸

IV. CONSTITUTIONAL PROTECTION PERTAINING TO SOCIAL SECURITY FOR WOMEN IN THE UNORGANIZED SECTOR

Social security in India as a normative sense is part of social justice within larger perspective of social policy framework though it is one of the fundamental rights in the individual capacity. Social security is part of directive principle in the Constitution it is integrally linked with the live and as such it becomes the fundamental right as declared by the Supreme Court in various pronouncements.⁹

The Indian Constitution does not explicitly refer to the right to social security. The various provisions envisage social security as a part of constitutional scheme in the Constitution. Following are some of the social security provisions applicable to women workers under the Constitution are:

The elimination of *gender-based* discrimination is one of the fundamentals of the constitutional edifice of India. In fact the Constitution empowers the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative discriminations and deprivations which women face.

Preamble to the Constitution:

The preamble to the constitution, *inter alia*, assures justice, social, economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as a class by itself and permits enactment of laws and reservations favoring them. Several articles in our constitution make express provision for affirmative action in favor of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.¹⁰

Fundamental Rights (Part III)

The few important provisions for women are mentioned below in brief:

- Article 14 of the constitution of India ensures to women the right to equality;
- Article 15(1) specifically prohibit discrimination on the basis of sex and article 15(3) provides for affirmative and positive action in favor of women by empowering the

state to make special provisions for them;

- Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex;¹¹
- Article 21 of the Constitution states that, *no person* shall be deprived of life or personal liberty except according to procedure established by law.

This article includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Therefore without social security there cannot be any dignity to human life, thus social security is one of the essential ingredients of dignified human life within the meaning of article 21 of the constitution.¹²

These fundamental rights, therefore, a woman can go to the court if one is subjected to any discrimination.

Directive Principles of State Policy (Part IV)

Some provisions of directive principles of state policy contained in part IV of the Constitution direct the state to protect the women's right. Though they are not enforceable by any Court, but they are fundamental in providing welfare to them. Some directives are explicitly intended to improve the status of women workers and for their protection. As the words 'people' and 'citizen' in these directives means both men and women, all the directive principles are related to women also.

Following are some of the provisions

- Article 41 conceptualizes social security as "the state shall, within the limits of their economic capacity and development, make effective provision for securing the right... to public assistance in cases of unemployment, old age, sickness, disablement, and other cases of undeserved want";¹³
- Article 38 requires the state to secure a social order in which justice- social, economic and political- for the promotion of welfare of the people. Clearly the intention of the makers of the Constitution was to ensure that equality would not be only of opportunity but in reality;
- Article 39 puts down the principles of policy to be followed by the state which include that the state should direct its policy towards securing the right to an adequate means of livelihood, that there is equal pay for equal work, that the health and strength of workers men and women, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- Article 42 requires the state to make provision for securing just and human conditions of work and for maternity relief;
- Article 46 requires the state to promote with special care the education and economic interests of the weaker sections of the citizens. Clearly then the objective is to strive towards a gender just society.¹⁴
- Article 47 requires the state to raise the level of nutrition and the standard of living of its people and to improvement of public health.
- The obligations cast on the State in the above Articles constitute Social Security. The Concurrent List in the Seventh Schedule of the Constitution also lays down social security issues in two of its items:
- Item 23 – Social Security and insurance, employment and unemployment.
- Item 24 – welfare of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pension and maternity benefits.¹⁵
- Although these principles are strictly not justiciable, the Supreme Court of India, through its judicial activism, has infused dynamism into these non-justiciable provisions and issued directions to the state to implement them.

THE PRINCIPAL SOCIAL SECURITY LAWS ENACTED IN THE LIGHT OF INDIAN CONSTITUTION.

The chief social security legislations enacted in line of the Directive Principles of State Policy includes:

- The Employees State Insurance Act, 1948, which provides for comprehensive medical care and monetary compensation in case of sickness, maternity, death or disablement.
- The Minimum Wages Act, 1948, which fixes a minimum amount of wages to be paid to employees.
- The Employees Provident Fund and Miscellaneous Provisions Act (1952), which provide provident fund, superannuation pension, and family pension in case of death during service.
- The Employee's Compensation Act, 1923, which require payment of compensation to the workman or his family in case of employment related injuries, resulting in death or disability.
- The Maternity Benefit Act (1961), which provides for 12 weeks wages during maternity as well as paid leave in certain other related contingencies.
- The Payment of Gratuity Act (1972), which provides 15 days wages for each year of service to employees who have worked for five years or more in establishments having a minimum of 10 workers.¹⁶

Though there are good numbers of Social Security legislations to meet the mandate of our Constitution and provide some sort of protection to the people in case of various workers in unorganised sector, the scope, and coverage of these legislations is limited to a lesser percentage of the total work force in the unorganized sector due to various reasons. But the remaining large number of persons working in unorganized sectors such as the small and marginal farmers, the landless agricultural labours, the rural artisans, the handicrafts men and women, the fishermen and women the salt workers, the hamals and the building and construction workers etc., are deprived of protection under many Social Security legislations of the State.¹⁷

The Government of India enacted the Unorganized Sector Workers' Social Security Act, 2008 to provide social security benefits to these vulnerable classes of persons, the Act is unsuccessful in fulfilling the demands of the unorganized workers. The Act only offers some schemes which are nothing but already existing target oriented social security programmes initiated by the Central Government which are not universally applicable to all unorganized sector workers. Application of these schemes is subject to the condition that the family must be a below poverty line. Thus this awaited Act is failed in realizing the aspirations of millions of poor workers.

V. CONCLUSION AND SUGGESTIONS

Social security constitutes an important element in guaranteeing social and economic needs to individuals. Though social security for women are ensured in the light of these constitutional provisions, it is noticed that several forms of gender-based discriminations still exist. The full potential of women remains underutilized. The implementation of these laudable constitutional postulates has not been satisfactory. Thus even a cursory glance of parts III, IV, IVA of the Indian Constitution will make it abundantly clear that the makers of our Constitution, the legislature and the judiciary have provided a fundamental law that takes into consideration the fact there can be no distinction made on the basis of the sex of a citizen which ensures that women will be treated equally under the law and are entitled to every single right as citizens of India.

Thus majority of the work force in the above said unorganized sectors are in an urgent need of a comprehensive Social Security protection which can be achieved by dedicated efforts of the government and can be supplemented by non-government organizations.

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