

GENDER AND LABOUR LAWS



Notes

In the previous lesson, you have learnt various laws that safeguard the safety and security of women and children. From newspaper and other media sources, you might have read about how physiological differences between the two sexes, division of labour and gender hierarchies have been created in society. In India, it is believed that during the Vedic period, men and women enjoyed equal status. However, later, gender imbalance and discrimination entered society. Social practices like Sati, child marriage, the Devadasi system, buying and selling of vulnerable groups, bigamy, divorce, and Halala reflect gender discrimination. Even after legally making these practices defunct through legal reforms, the essence of the dysfunctional gender equity still rampantly prevails in society and is manifested through domestic violence, human trafficking, dowry deaths, female feticide, female infanticide, sexual objectification, violence and sexual harassment of women at workplace.

At the workplace, sexual harassment discriminates and de-motivates women and young girls from having an active work life. In order to ameliorate discriminatory conditions at the workplace, laws on industry and working conditions were passed. These enactments contain special provisions for women to eliminate injustice and discrimination at workplace. Some of these legislations are the Workmen Compensation Act, 1923; the Payment of Wages Act, 1936; the Factories Act, 1948; the Maternity Benefit Act, 1961; the Minimum Wages Act, 1948; the Employees State Insurance Act, 1948 and the Pensions Act, 1987. Gender injustice is not a new problem, nor restricted to the Indian landscape. It requires not just legal reforms but also attitudinal changes. Until that is brought, women will continue facing discrimination in society.

This lesson presents a comprehensive view of the provision made to protect women's interest while working.



OUTCOMES



Notes

After completing this lesson, learner:

- states the meaning of Gender and Labour Laws in India:
- appreciates the importance and need for Gender and Labour Laws.
- recognizes the importance of Gender and Labour Laws at International level:
- identifies the Gender and Labour Laws in India:
- appreciates the role of the judiciary in ensuring Gender and Labour justice In India.

17.1 GENDER AND LABOUR LAWS IN INDIA

To protect women's right to work, various legislations have been framed and implemented to encourage women to engage in economically gainful work.

17.1.1 What is Gender Justice?

Gender equality and protection of women's interests through labour laws are key ingredients of social justice.

India's economic progress and development is marred by a consistent rise in gender inequality. This is evidenced by India's poor performance across various socio-economic indicators, reflecting a low considerably female-male labour force participation rate, high maternal-mortality rate, low women's literacy levels and a low representation of women in Parliament compared to other countries in South Asia and other regions. The government's low social and economic investment in promoting the freedom of women in both individual and social capacity, and ensuring equitable development, remain the key factors responsible for a rising gender imbalance.



INTEXT QUESTIONS 17.1

1. What was the status of women in ancient, medieval, and modern India?
2. Explain the need for Labour laws in India.

17.2 Constitution of India and Labour Legislations

The Preamble of the Indian constitution secures Justice – Social, Economic and Political, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity;

fraternity, assuring the dignity and unity of the individual and integrity of the nation. These principles enshrined in the Preamble provide a bedrock for framing all labour and social legislations and their progressive and creative interpretation in favour of the working classes.

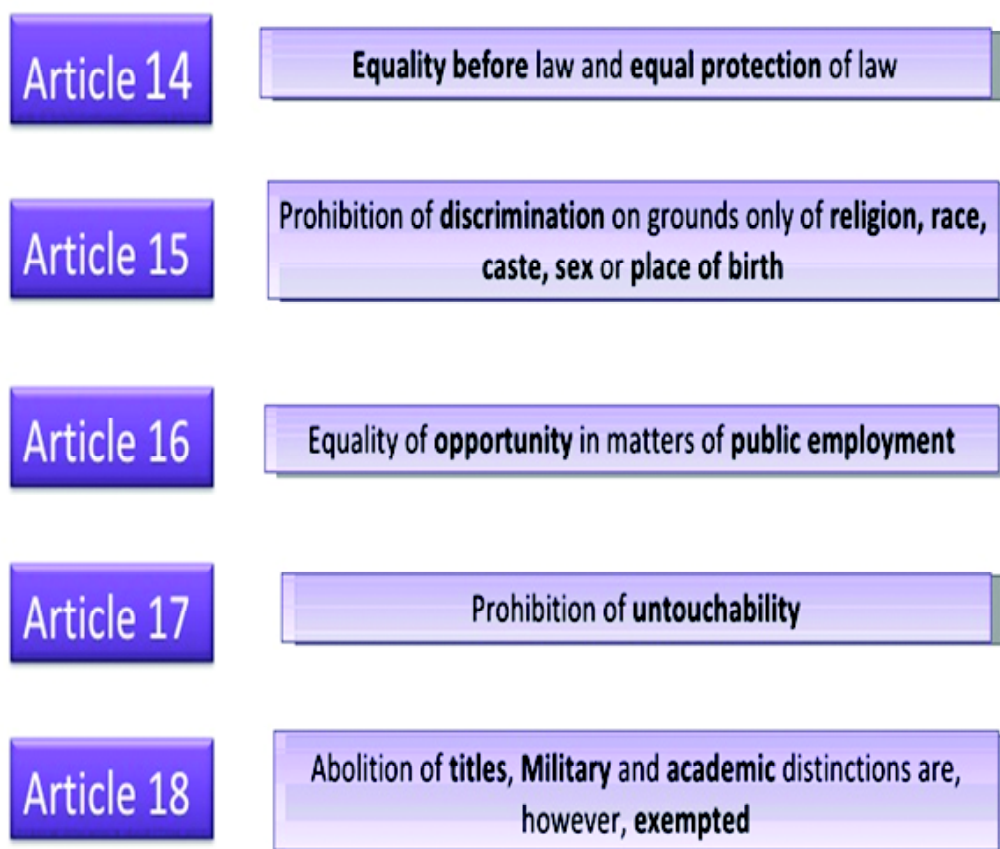


Fig. 17.1 Our Rights in the Constitution of India

Article 14 of the Constitution ensures that the State shall not deny to any person the equality before the law and equal protection of the laws. There shall be no discrimination based on religion, race, caste, sex and place of birth. Article 15 guarantees the right against discrimination. Article 15(3) talks about special protection for women. Article 16 provides the right to equal opportunity in terms of public employment, irrespective of gender. Article 19 guarantees freedom of speech and expression, to assemble peaceably and without arms, to form associations and unions; to move freely throughout the territory of India, to reside and settle in any part of the country, to practice any profession, or to take up any occupation or trade. Another fundamental right dealing with children is Article 24: Prohibition of Employment of Children in Factories, i.e. the legislation such as the Child Labour (Prohibition and Regulation) Act, 1986. Article 39 talks about certain principles of policy that need to be followed by the State, which are securing adequate means of livelihood equally for men and women, equal pay for equal work to men and women, and the health and strength of workers, both of men and women are not abused. Article 42 requires the State to make provision for securing humane work conditions



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and maternity relief. Article 45 provides for early childhood care and education to children below the age of six. The State has to provide early childhood care and education to all children. The Constitution of India contains provisions for the survival, development and protection of children. Article 51A(k) makes it a fundamental duty of the parents or guardians to provide opportunities for education to children or wards between the ages 6 and 14. In 2002, the Indian Parliament provided the Right to Education through a constitutional amendment and passed the Right to Education Act 2009.

**INTEXT QUESTIONS 17.2**

1. List the important constitutional provisions for the promotion of equality.
2. State the provisions made in the constitution of India to abolish exploitation.

17.3 WOMEN AND LABOUR LAWS – NEED FOR SPECIAL TREATMENT?

The industrial laws bestow upon women special rights owing to their unique physical, mental and biological attributes. These laws are a combination of pre-independence and post-independence laws. These Acts regulate various aspects related to the workspace, for instance, work hours, health, safety and welfare of women workers to ensure guaranteed equality before the law and equal treatment to women workers. These laws were enacted based on conventions and recommendations adopted by the International Labour Organization (ILO) to increase the efficiency of women and improve their participation in useful services while also ensuring infant welfare and the provision of equal pay for equal work.

Some of the important labour legislations enacted for the welfare of women are:

17.3.1 The Maternity Benefit Act, 1961

- **“The Maternity Benefit Act, 1961 (53 Of 1961)”**: This Act was put in enacted to regulate the employment of women in certain establishments before and after child-birth along with providing maternity and certain other benefits to women.

Maternity leave and its benefits protect the dignity of motherhood. In addition, they provide for the full and healthy maintenance of the woman at work and her child. Today, as more women are joining the workforce, provisions for maternity leave and other benefits are provided at the workplace.

This legislation provides that

1. The woman will not be asked to join work for six weeks after the delivery or in case of miscarriage.



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2. Maternity benefits will be given in terms of wages as prescribed under the Act.
3. The woman shall become eligible for the maternity benefits under this Act only if she has worked for the employer for the period not less than one hundred and sixty days during the twelve months immediately preceding the date of her expected delivery.
4. The woman can avail of a maximum of 12 weeks of leave.
5. No woman shall be asked to do the kind of work that can harm her or her child's health during pregnancy.
6. Women who have a miscarriage or tubectomy shall be entitled to the same benefits.
7. An additional period of one month shall be allowed to a woman suffering from illness arising out of pregnancy, delivery, or premature birth of a child (Miscarriage, medical termination of pregnancy or tubectomy operation) along with the period of absence allowed to her as leave with wages at the form of maternity benefit.

17.3.2 Creche Facility

Crèche facility is referred to the day care services for the children. In 2017, by an amendment, Section 11A was inserted in the Maternity Benefit Act, 1961 which mandated a crèche facility in the establishment with more than fifty employees. The employee is allowed to visit the crèche four times a day.

(1) Every establishment having fifty or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities: Provided that the employer shall allow four visits a day for the woman, which shall also include the interval for rest allowed to her. (2) Every establishment shall intimate the benefits in writing and electronically to every woman at the time of her appointment available under the Act.

In addition, the government, on May 18, 2017, rolled out a notification which added another rule under Maternity Benefit (Mines and Circus) Act, 1963. It provides that the creche service has to be made available within 500 meters from the entry of the establishment, and it shall also provide common facilities.



INTEXT QUESTIONS 17.3

1. Explain the need for bestowing a special status to women under labour laws.
2. Explain the main features of 'The Maternity Benefit Act 1961'.

17.4 THE EQUAL REMUNERATION ACT, 1976



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Equality in matters of wages significantly impacts respect and dignity at work. Equal pay for equal work for women and men, becomes a vital subject to be considered while enacting laws to ensure a non-discriminatory environment at work. It was perceived that women were physically weak and should be paid less for the same piece of work done. This perception was later exploited by factory owners who ———— women as cheap labour. Since there was less attention given to the protection of workers, women were conditioned and recruited at lower wages because the conditions of work were not good.

ILO works for the protection of working women. Many of its conventions are ratified by India. The conventions which have not been ratified are accepted in principle. Article 39 of the Constitution of India is one such directive based upon the principles of ILO. It directs the State to secure equal pay for equal work for men and women. The Equal Remuneration Act 1976 was passed by the Parliament to actualise this directive principle. The Act provides for the payment of an equal amount of remuneration to men and women workers for the same or similar type of work performed by them. In addition, it prohibits discrimination of any form in the recruitment process and provision of service conditions except where the employment of women is prohibited or restricted by the law.

“**National Policy for the Empowerment of Women in 2001**” was adopted by the Government of India to bring in gender justice and transform *de jure* equality into *de facto* equality. Many State Governments formulated policies for woman’s empowerment. The implementation of these policies is taken care of by National and State Councils. Members of the Councils include officials and representatives of non-governmental organizations, trade unions, academics, experts, social activists, etc. they review the progress of the policies twice a year. The aim of the policy is to:

- Work for the advancement, development and empowerment of women in all spheres of life
- Develop a more responsive judicial and legal systems which are sensitive to women’s needs
- Involve more women actively in decision-making by ensuring women’s equality in power-sharing
- Mainstream a gender perspective in the development process
- Bring forth comprehensive economic and social empowerment of women
- Strengthen the formation of relevant institutions and their mechanisms



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- Partner with community-based organizations to make women's empowerment wholesome
- Implement international obligations/commitments and promote cooperation at the international, regional, and sub-regional levels.

“National Policy for the Empowerment of Women in 2016”:

National Policy for the Empowerment of Women in 2001 was amended in 2016 with the following three dimensions:

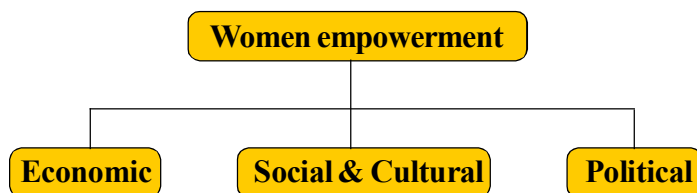


Fig. 17.2 Dimensions of Women's Empowerment

This policy has the following objectives-

- Creating a conducive social, cultural, economic, and political environment for women which would enable them to enjoy the fundamental rights and realize their full potential.
- Mainstreaming gender in all-round development processes/programs/projects and actions.
- Designing a holistic and life cycle approach for promoting women's health by making arrangements for appropriate, affordable and quality healthcare.
- Improving and incentivizing access of women's/girls' right to universal and quality education.
- Increasing and incentivizing participation of women in the workforce.
- Promoting equal participation of women in social, political and economic spheres, including the institutions of governance and institutions of decision-making.
- Transforming discriminatory social attitudes, and mindsets with community involvement and engagement of men and boys
- Developing judicial and legal systems which are gender sensitive.
- Strategizing the elimination of all forms of violence against women through strengthening policies, legislations, programs, institutions and community engagement.



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- Focusing on the development and empowerment of women, especially those belonging to vulnerable and marginalized groups.
- Building and strengthening stakeholders’ participation and partnerships for women’s empowerment.
- Strengthening, monitoring, evaluating, auditing and building data systems to bridge gender gaps.

17.5 THE MINIMUM WAGES ACT, 1948 (FACTORIES ACT 1948)

The availability of cheap labour in the market can easily affect the rate of paid wages. To prevent the exploitation of labour, the Minimum Wage Act was passed. This Act was enacted to securing the welfare of the workers in a competitive market and providing minimum wages to both skilled and unskilled labour. The Act lays down that the central government shall fix the minimum wages of employment. They have been provided in the Schedule of the Act. They refer to various employments covered under the Act like those carried on by or under the authority of the Central Government, by railway administration or in relation to a mine, oilfield or major port, or any corporation established by a Central Act, and by the state government for the other employments. Under these provisions, the Act intends to prevent the exploitation of workers by fixing the minimum wages that an employer must pay.

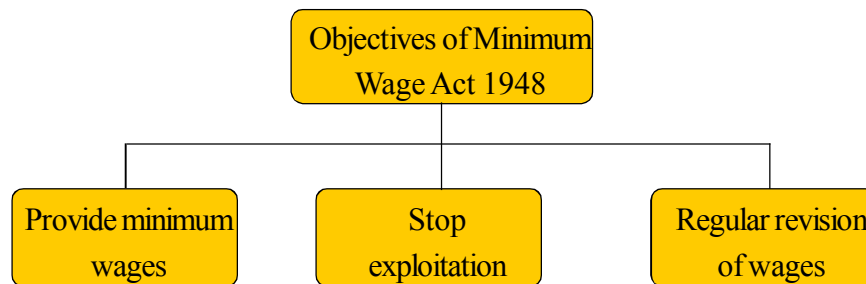


Figure 17.3 Components of the Minimum Wage Act 1948

The minimum wages are fixed, keeping in mind the fulfillment of the physical needs of a worker as well as preserving his efficiency as a worker. However, the process of fixing the minimum wage has yet to be defined in the Act. There is no guideline as to what should be taken into consideration while fixing the minimum wage. Consequently, different sets of principles in fixing or revising the minimum wages have been followed by different wage-fixing authorities.

There are four main types of wages. These are:

- Subsistence Wage:** - Subsistence wage includes the wage which can only meet the bare physical needs of a worker and his family.



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- b. **Minimum Wage:** - The wage that is able to provide for the bare physical needs as well as preserve the efficiency of workers, including some measure of education, health and other expenses is called Minimum Wage.
- c. **Fair Wage:** - Fair wage counts the capacity of the industry to pay at the prevailing rates of wages in the particular industry and is, therefore, an adjustable step that moves up the level of wage.
- d. **Living Wage:** - Lastly, there is the living wage which enables the workers to maintain the health and decency of their living by allowing them a measure of comfort and some insurance against the more important misfortune of life.

The minimum wage must be paid irrespective of the extent of profits earned by the establishment, its financial condition and the availability of other workmen at lower wages. The wages must always be fair. This means that wages must be sufficiently high to provide for the worker his family with food, shelter, clothing, medical care and education of children. A fair wage lies between the minimum wage and the living wage.

The level of paid wages holds fundamental importance since they help sustain the living standards of wage earners and their families, irrespective of the level of economic development. They also indicate economic progress and social justice that the State can make. Discrimination may take multiple forms and, thus, may lead to a various outcome. The most common outcome is the reduction of rewards and skills put in by the discriminated group. This greatly impacts women in all countries. However, the extent of the impact may differ in different countries. ILO, through its multiple programmes, aims to reduce this discrimination. To support this, the Declaration on Fundamental Principles and Rights at Work provides for the freedom to organize and negotiate conditions of work, the freedom from forced or compulsory labour, the freedom to protect children from requirements to work and the freedom from discrimination in employment and occupation.

Despite efforts at national and international levels, the employment and employment conditions of women have not been up to the mark. Labour surplus, unemployment and under-employment add to this problem, and women remain out of the realm of economic activity. The economic reasons act as an additional costs in the process and further impede women's employment. The statutory obligation on an employer to pay the maternity benefit is considered a burden by the employer. It causes hesitation on the part of the employer to employ a woman. Some employers are, thus, interested in recruiting only unmarried women with the condition that they will resign upon getting married. This is a discriminatory, unfair and highly unjust practice.

**Notes****INTEXT QUESTIONS 17.4**

1. Explain the benefits of 'The Equal Remuneration Act, 1976'.
2. Describe the main features of 'The Minimum Wages Act 1948'.
3. Highlight the main aims of the National policy for the empowerment of women in 2001.
4. Name the different types of wages.

**WHAT YOU HAVE LEARNT**

- Various legislations are passed to curb the imbalances created by gender hierarchies and to promote women's empowerment. The Constitution of India also makes special provisions and guarantees various rights to women. These rights and duties of the State are enumerated under Part III of the Constitution, dealing with fundamental rights and Part IV, dealing with the Directives Principles of State Policy, respectively. For securing gender justice for working women, enactments like The Maternity Benefit Act, 1961, The Equal Remuneration Act 1976, The Factories Act 1948 were passed.
- The constitutional provisions and other legislations reflect the intention to promote gender equality. However, the implementation of the provisions remains challenging. As a result, women continue to face the same form of discrimination. Along with ineffective enforcement, lack of awareness is another reason behind it. These laws have not been able to break the social norms of patriarchy, subjugation of women within the family, deep-rooted traditions and customs and male chauvinism.
- India needs to focus on effective implementation of laws and the effective redressal mechanisms. The best way is to mobilize the grassroots participation of individuals, enterprises and employers.

**TERMINAL EXERCISE**

1. Highlight the main aims of the National Policy for the Empowerment of Women, 2001.
2. State different legislations enacted by the government to protect the interest of women.
3. Explain the reasons for enacting the labour laws.
4. Contact any 10 women you know and ask the following questions. Draw inferences based on the collected information.

Q. No.	Question	Response
1.	Have you ever experienced discrimination?	
2.	Do you face domestic violence?	
3.	Do you get equal pay as men get?	
4.	Are you able to oppose the discrimination on your own	

You may add more questions to the list. Later based on the replies, write a report on the work status of women.



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ANSWERS TO INTEXT QUESTIONS

17.1

- In ancient India, women enjoyed a respectable and equal status with men. In the medieval period, discrimination against women had set in. In modern India, the constitution has granted equality to all citizens, and no discrimination is allowed based on sex. Although some problems are there for women in practice, the scenario is changing, and gender equality is being felt.
- To achieve the goal of equality for women workers
 - To promote the freedom of women
 - To ensure participatory equitable development.

17.2

- Article 14 “The state shall not deny to any person the equality before the law or equal protection of laws.”
 - Article 15 guarantees right for the right against discrimination
 - Article 16 guarantees the right to equal opportunities in public employment
- Article 24 guarantees the right to the prohibition of employment of children in factories etc.

Article 39 ensures equal pay for equal work to both sexes.



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Article 42 directs the State to make the provision for securing human conditions of work and maternity relief for women.

Article 45 provides the directive for early childhood care and education to children.

Article 51A directs the State to provide free and compulsory education to children aged 6 to 14 years.

17.3

1. (i) Because of women's unique physical and biological characteristics.
- (ii) For the safety, security, and health of the women.
2. Features of the "Maternity Benefit Act 1961"
 - (i) It provides for allowing maternity leave to women, different maternity benefits, full wages for the period of maternity leave, a creche facility for the newborn etc.

17.4

1. Benefits of 'The equal remuneration act 1976'.
 - (a) It ensured equal pay for equal work
 - (b) It abolished discrimination in recruitment and service conditions.
2. (i) It fixes the minimum wages for skilled and unskilled labour.
- (ii) Fixed minimum wages ensure the fulfillment of the needs of the workers.
- (iii) Minimum wages Act does not define what minimum wages are. Because of this, different wage fixing authorities follow different sets of principles in fixing or revising the minimum wages.
3. (i) Work for the advancement, development and empowerment of women in all spheres of life
- (ii) Develop a more responsive judicial and legal systems which are sensitive to women's needs
- (iii) Involve more women actively in decision making by ensuring women's equality in power sharing
- (iv) Comprehensive empowerment of women (economic, social)

- (v) Partnership with community-based organizations for wholesome impact.
- (vi) Implementation of international obligations for promoting gender equality.
- 4. (i) Subsistence wages (ii) Minimum wages (iii) Fair wages (iv) Living wages



Notes

MODULE -6

Gender and Media

The module seeks to highlight the relationship between gender and language and how one impacts the other. The module familiarizes the learner with the impact of print and visual media on gender equality and society in India. This module also discusses the role and impact of new media social change as an agent.

18. Gender and Language
19. Media representation of Gender
20. New Media and Social Change