

## Module 2

જેન્ડર આધારિત અધિકાર



# GENDER RIGHTS

Centre for Education and Communication (CEC)

## **GENDER RIGHTS**

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# Gender Equality

જેન્ડર આધારિત અધિકાર



## **Gender Equality**

Gender equality means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections.

Gender Equality is at the very heart of human rights and values of the United Nations.

The United Nations has from time to time made significant effort to promote gender equality. It established the Commission on the Status of Women - the main global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. The UN also adopted various landmark agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Declaration and Platform for Action.

The Preamble to the Constitution of India recognises dignity of an individual and that such dignity should be ensured by guaranteeing equal fundamental

## **Gender Equality**

rights to all individuals. Dignified lives contain the essence of equality and freedom. The fundamental rights provided in Part III of the Constitution is equally applicable to all persons irrespective of sex.

The Constitution of India guarantees all such rights to women which are given to men. Women thus enjoy the Right to Equality, the Right to freedom, the Right against exploitation, the Right to freedom of religion, Cultural and Educational Rights and the Right to Constitutional remedies.

# Difference between gender and sex





## **Difference between gender and sex**

Sex refers to the biological difference between men and women.

Gender refers to the role played by men and women in society.

Therefore it is important to note that while one's sex is a biological fact which remains same in any culture, what that sex means in terms of the gender role played by a 'man' or a 'woman' in society can be quite different in different cultures. Gender role has a big impact on the health of any individual. For instance, it is assumed that women shall take care of household chores as well as work at kilns, which can be detrimental to their physical health.

Defined gender roles in society put women at risk of:

- sexual assault;
- poor obstetric care during pregnancy and childbirth; and
- health risks through the impact of child care, household chores, and physical labor.

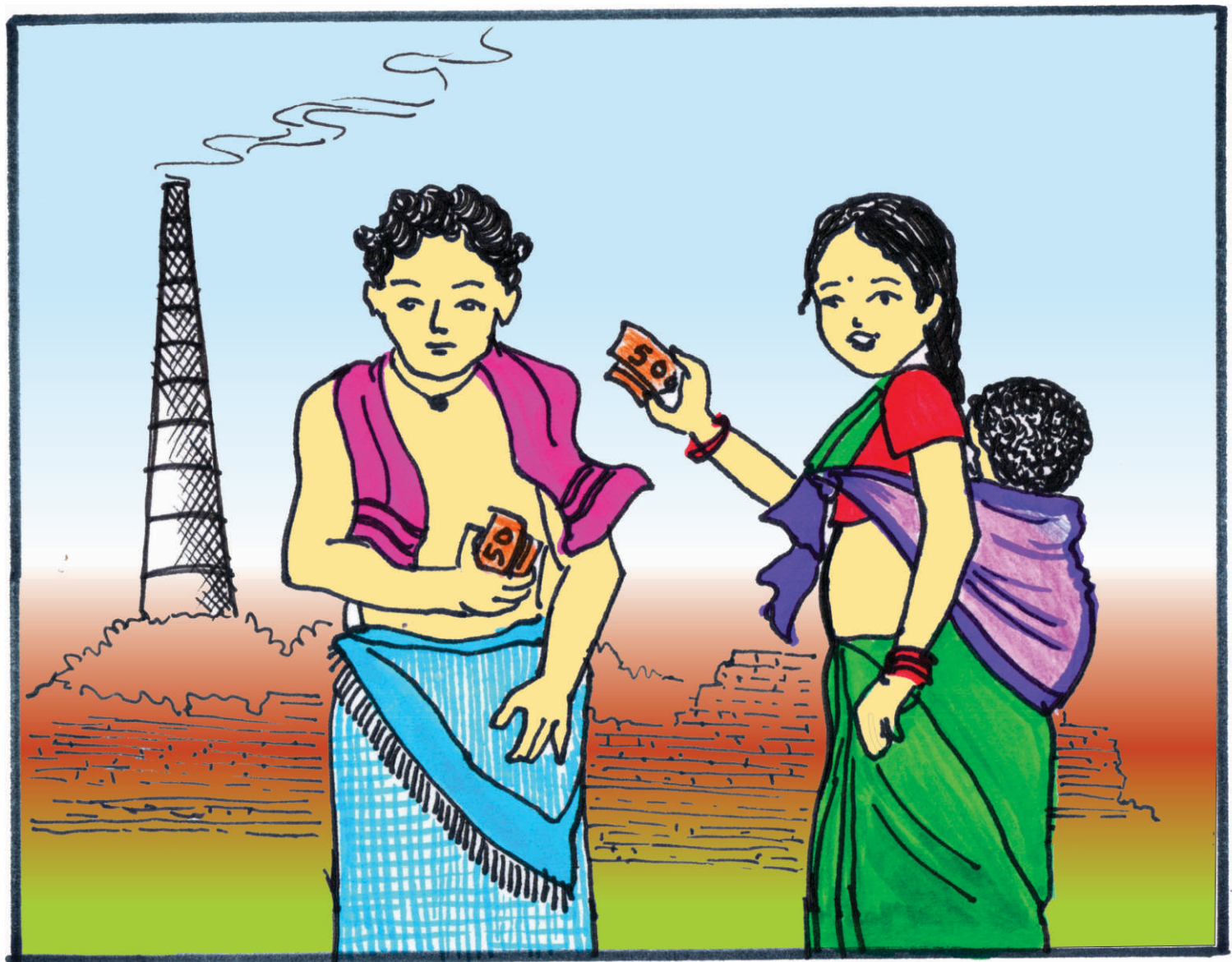
## **Difference between gender and sex**

In addition to the above, studies have shown that women are more prone to issues of mental disease because of the gender role thrust on them by the society they live in.

Gender roles also defines how we interact with the other individuals in society. Gender roles are social constructs and they can be changed as they are not static in nature.



# What are Gender Rights?



## **What are Gender Rights?**

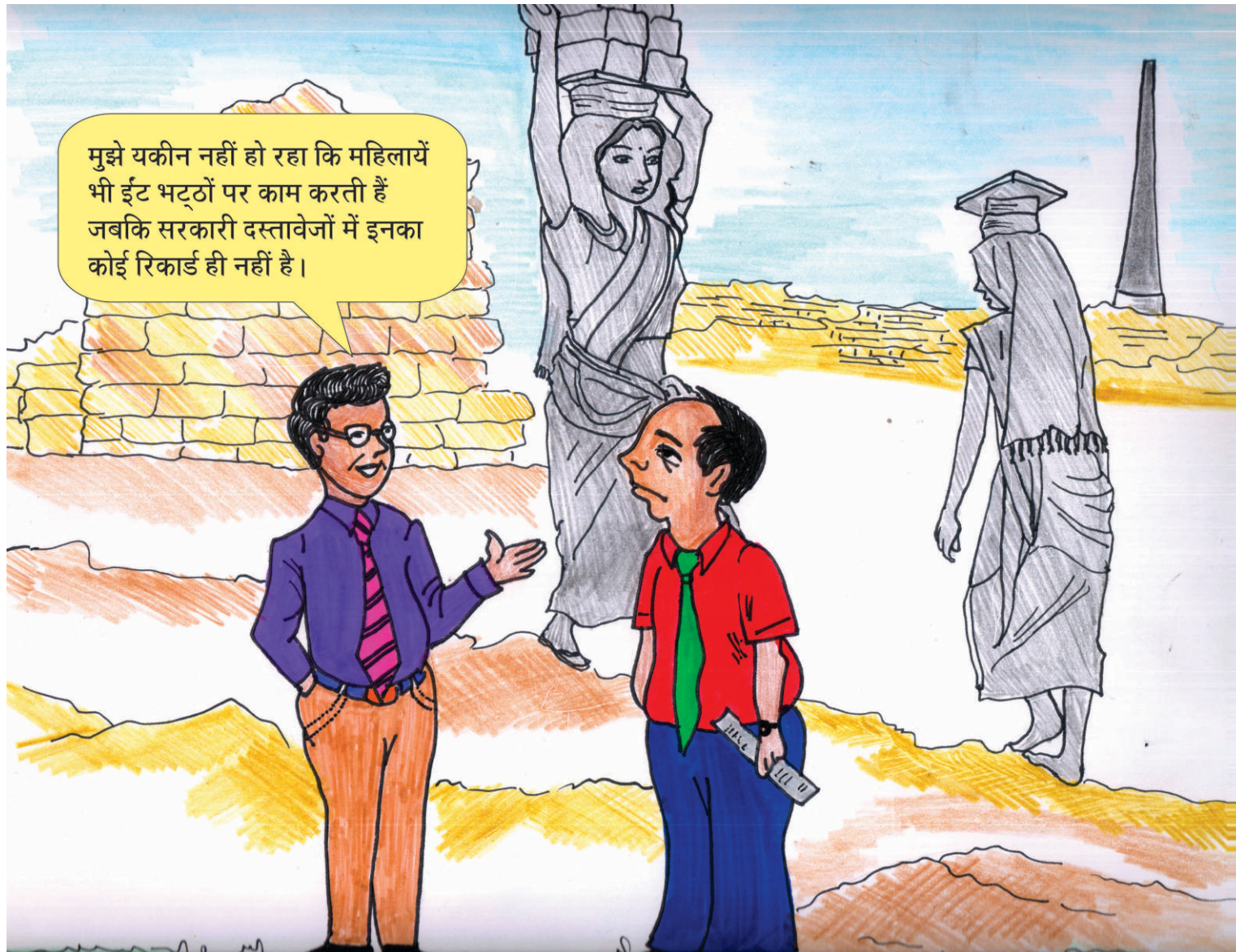
Gender rights in this module refer to the rights of women which protect them from discrimination as well as assist them to stand as equals with men in society.

This is necessary because the largest unpaid women workforce in the world is employed in the brick kiln industry. In addition, it is stated that women workers in the unorganised work sector are the most exploited section of workers without any attention being given to their welfare.

Therefore it is essential that we give our attention to understanding the different rights available to women workers.



## Discrimination faced by women workers



## **Discrimination faced by women workers**

The status of women has always been an indicator of the level of development of a particular society.

Some societies hold women in an inferior status and deny them equal opportunities to develop their potential, to gain advantageous employment, and to earn a wage that is equal to what others of the same capability are paid.

More or less in every society, women hold such inferior status.

The lack of equal opportunity especially affects women, who often face discrimination, particularly when it comes to employment.

Sexual division of labour is highly prevalent in our society. But, it is important to note that there is nothing “natural” about the sexual division of labour. It is a societal construct. Men and women perform different kinds of work both within the family and outside and this has little to do with biology. Only the actual process of pregnancy is biological. The work allotted to women within the home such as cooking, cleaning, raising children etc, can equally be done

## **Discrimination faced by women workers**

by men. Unfortunately, this work is considered to be “women's work”. This sexual division of labour is not limited to the home; it extends even to the public arena of paid work. Certain kinds of work are considered to be “women's work”, and other kinds, men's. More important is the fact that whatever work that women do, gets lower wages and is less valued.

The division of work at brick kilns is largely defined by sex. Women workers are generally involved in unskilled activities like mixing of clay with dough, carrying of bricks and loading them.

They are also involved in the activity of turning bricks for the purposes of moulding.

They do not have access to any other kind of work like brick firing. Women workers are not paid wages separately.

Wage disparity is so hard to combat because it is often very hard to detect.

## **Discrimination faced by women workers**

### **Remedy available**

The ILO Constitution of 1919, and the ILO Convention on Equal Remuneration 1951, both recognise the principle of “equal pay for work of equal value.”

This is also enshrined in the Constitution of India under Articles 14 and 15, as well as the Equal Remuneration Act of 1976. Despite such recognition often the issue of equal pay for women workers goes un-championed, even by trade unions, as they often do not view this to be a problem that affects the workers as a whole.

The Equal Remuneration Act provides for equal wages for same or similar work done by women in relation to the men workers. Minimum Wages Act provides for payment of minimum wages for their daily work. The wages have to be paid either daily, weekly or monthly.

Involvement of NGOs and Trade Unions can play an important role in implementation of the aforementioned acts for the benefit of women workers.



## **Patriarchal setup of society**

Women workers in brick kilns have been subject to more exploitation as compared to their male counterparts because of the patriarchal system that exists in our societies. They are constantly subject to sexual violence at the hands of their employers, contractors or male co-workers.

They are enslaved by the caste system, the patriarchal system and the debt bondage system.

The existing patriarchal relations creates a system where women are responsible for all household errands, which includes walking miles early morning to fetch water, without receiving or expecting to receive any help from the male members of the family. Apart from this the women are also burdened with the responsibility of arranging for food for the family and raising the children.



## **Patriarchal setup of society**

### **Solution**

Patriarchy has no gender. It is an important issue for both men and women to handle. Male workers should take equal responsibility for working upon gender issues that exist in society.

It is important that male members of the family also contribute to the household workload so that the women are less burdened. This also promotes better health as women workers can get resting time after working hours.

## Invisible workforce



## **Invisible workforce**

According to a recent study, there are around 10-20 million workers working in the brick kiln industry in India. Out of this half of the workers are women who are not recognised or registered in the muster rolls.

Only 30% of all the brick kiln workers are registered in the rolls of the kilns and almost all of them are male workers.

Women workers are treated as invisible workers as the wages are only paid to the males who are deemed to be the head of the working unit. This is discriminatory as the women workers work for the same number of hours as their male counterparts.

Women are not included in any of the official records that brick kiln owners maintain – they are officially not employees and excluded from some employment rights. This is illegal, under Indian law women should not be discriminated against in relation to payment on the grounds of gender.

## **Invisible workforce**

An added disadvantage to the women workers is that, in situations where their names are not present in the muster roll they are not able to get any benefits from the social security schemes, for instance under the Maternity Benefit Scheme.

This kind of treatment starts at the very stage of hiring done by contractors as well. The women workers have no say in the process of hiring or selecting the nature or work or negotiating wages with the contractor. They abide by what they are told by their husbands.



## **Invisible workforce**

### **Solution**

It is important to understand that women have an equal right of participation in the hiring process as they are the ones who are going to work.

Maintenance of proper records of the workers is mandatory under various labour laws in the country. Time and again the Supreme Court has stated that absence of such records indicates existence of practice of bonded or forced labour, which is illegal under the Bonded Labour System Abolition Act.

Further, under the Minimum Wages Act and Payment of Wages Act, it is mandatory for employers to issue wage slips to each worker engaged by them. Therefore, women workers are also required to be provided with fair wages for their work and issued such wage slips.

## **Harsh reality**

The condition for women workers is worse than male workers as during the negligible rest time given to the workers, the women also have to take care of household chores.

This neglect of women in recognizing them as workers also tends to reinforce their low status as workers.

In brick kilns, the women workers put in as much time and effort into brick making as their male counterparts, but their contribution has been deeply neglected, which in turn has aggravated their low status as workers and social beings.

Women have no control over financial matters as they do not receive the wages directly. It is their husbands who receive the wages on their behalf and the men use the wages as they wish.

A large part of the wages earned by women is used by men for their own spending like on alcohol, bidis and other leisure activities. Women exercise no control over their own income.

## **Harsh reality**

### **Solution**

If women were able to gain control over their earnings then they would have some savings which they would be able to use on their own.

Under various labour laws in India, women workers have been provided with special provisions catering to their unique characteristics, physically, mentally and biologically.

These laws not only regulate the hours of work but also contained provisions of health, safety and welfare of women workers and guarantee equality before law and equal treatment to women workers. Most of these laws have been inspired by the Conventions and recommendations adopted by the International Labour Organization. The main objectives for passing these laws are to enable the women to increase their efficiency, to increase their participation in useful services, to ensure their infant welfare and to provide equal pay for equal work.



## **Recognise Your Strength**

It is important to realise that assigned roles to gender are just social construct and they can be changed for providing better status to women. Women workers are equally important and skilled to handle work, which up till now has been handled only by men.

We as a community should come together in order to break any notions which accord low status to women workers. Women workers should no longer be treated as an invisible workforce and they have an equally important role to play in the brick making process at brick kilns. Women workers have a right to be identified as a workforce and we as individuals can help them by supporting their cause and claim for such rights.

## Gender based violence and sexual harassment



## **Gender based violence and sexual harassment**

Acts such as unwanted physical contact and advances, demand or request for sexual favours, passing sexual comments or telling sexual stories, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature amount to sexual harassment.

Sexual exploitation of women by employers, contractors, middlemen etc. is one of the most serious issues related to women workers in brick kilns. It goes unreported because of a number of reasons, which include the fear of losing out the only source of livelihood, lack of awareness as to what constitutes harassment and where to report such cases.

Issues such as lack of toilets and bathing spaces make women workers more vulnerable to and at risk of such harassment.

These incidents of exploitation are very difficult to track because of the indirect employer-employee relationship that exists at brick kilns.

Sexual harassment is considered as a violation of a woman's fundamental

## **Gender based violence and sexual harassment**

right to equality, a right guaranteed by Articles 14 and 15 of the Constitution.

Any act against a woman which is impliedly/ explicitly sexual in nature and is unwelcome and occurs at the workplace, shall constitute sexual harassment under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In this regard, the Supreme Court in Vishaka vs State of Rajasthan gave a landmark judgment for protecting women from sexual harassment at the workplace. The guidelines issued by the SC impose a duty on employers to prevent (for example, by creating awareness of the guidelines in the workplace) or deter (for example, by initiating criminal proceedings) the acts of sexual harassment.

Employers also have a duty to provide the procedures for the resolution, settlement or prosecution of such acts by taking all steps required.

These guidelines have been further fortified through the enactment of The

## **Gender based violence and sexual harassment**

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Prevention of Workplace Sexual Harassment Act”) was made effective from December 09, 2013 by the Ministry of Women and Child Development, India. The Government has also notified rules under the Prevention of Workplace Sexual Harassment Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“Prevention of Workplace Sexual Harassment Rules”)”

# **Gender based violence and sexual harassment**

## **Remedy Available**

This Prevention of Workplace Sexual Harassment Act allows for the setting up of a local complaints committee by the appropriate government for investigating and redressing complaints from women workers in the unorganised sector or in cases where the complaint is against the employer.

Alternatively, any women worker facing sexual harassment can file a criminal complaint to the local police against the harasser under section 354A of the Indian Penal Code.



## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**



मातृत्व अवकाश विशेषाधिकार नहीं, हर महिला का “अधिकार” है।



## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**

Maternity benefits forms an important social security benefit, which are provided to women who give birth or are about to give birth. This is in recognition of the fact that India is the number one contributor to pre-natal deaths in the world.

These benefits are very important in the context of brick kilns as it is a known fact that women workers at brick kilns end up working even late into their pregnancy, thereby causing birth-related problems and even miscarriages.

One of the direct causes of this is that usually the workforce at brick kilns work as a family unit as the payment to workers are made on a piece rate basis. This forces even pregnant women to work for long hours and risk their health due to exhaustion and other hazards at the sites.

Therefore, the government has come out with the Maternity Benefit Act catering to the needs of pregnant women.

## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**

This Act is applicable to any establishment having 10 or more employees.

It provides for 26 weeks of paid maternity leave to a female employee who has worked for 80 days in the preceding 12 months with the employer.

The law also envisages paid leave to be provided in other specified cases, including a medical termination of pregnancy, a miscarriage or pregnancy-related illness, along with payment of a medical bonus in case the employer is not providing any free pre-natal confinement or post-natal care.

It states that any establishment with 50 or more employees is required to set up crèche facility within close proximity to the worksite.

In a judgment of far reaching consequences the Supreme Court in *Municipal Corporation of Delhi v. Female Workers* declared that the maternity benefit is applicable to casual workers and daily wage workers also.

This is a beneficial piece of judgment which will cover a large number of

## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**

women workers who were till date refused maternity benefit because of the casual and temporary nature of service.

One of major defects in the MB Act is that under this Act the entire burden for payment of compensation is on the employers.

This has led to a tendency amongst the employers either not to employ women or to evade the payment of maternity benefit.

## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**

### **Remedy available**

Normally, for any grievance under the Act, the aggrieved woman may approach the Inspector appointed under the Act.

However, where she is dissatisfied with the orders passed by the Inspector or where a larger question of law is involved she may approach the Metropolitan Magistrate or a First Class Judicial Magistrate of the competent jurisdiction. However, such a case must be filed within 1 year from the date of commission of offence.

Any office bearer of a registered Trade Union of which such a woman is a member or a voluntary organization registered under the Societies Registration Act, 1860 or any Inspector may also file a case in a court of law on behalf of the aggrieved woman. In some cases, the Inspector may enter any place where women are working, in exercise of powers given to him under the

## **Rights under Maternity Benefit Act, 1961 as amended by Maternity Benefit (Amendment Act) 2017**

Act and examine any registers, records or notices required to be maintained under the Act. He may examine any employee of the establishment and require them to give him information regarding particulars of employees, payments made and application or notice received from them. If he finds any discrepancies in the matter or payment of maternity benefits, he may direct such payments to be made.

## **Rights of women workers under Equal Remuneration Act 1976**

For women to be paid lesser wages as compared to men is a custom in our society, which has been going on for centuries and therefore women do not question it.

In order to promote the principle of equal work deserves equal pay, the government had introduced the Equal Remuneration Act of 1976.

This statute has been in place for a number of decades now and even though people are aware about its existence yet it seen that the practice of paying lower wages for same or similar work persists everywhere.

The main purpose of the Equal Remuneration Act has been to ensure payment of equal remuneration to men and women workers in an establishment doing same or similar work.

Another purpose of this Act (and in this respect the Act is a great advance on the ILO Convention No.100 on Equal Remuneration), relates to avoidance of discrimination on ground of sex against women in the matter of employment.

## **Rights of women workers under Equal Remuneration Act 1976**

The Act is a Central Legislation and applies to the whole of India.

The objective of the Act is to provide for protection against discrimination of women workers on the ground of sex and the payment of equal remuneration for women in the matter of employment.

Meaning of equality of work: The equality of work is not based solely on the designation or the nature of work but also on factors like qualifications, responsibilities, reliabilities, experience, confidentiality, functional need and requirements commensurate with the position in the hierarchy are equally relevant.

The Act doesn't make a distinction like employment or the period of employment and applies to all workers even if engaged only for a day or few days.



# **Rights of women workers under Equal Remuneration Act 1976**

## **Remedy available**

No overriding effect is given to any agreement, settlement or contract to the provisions of the Equal Remuneration Act.

Any settlement or any agreement with the employee that is detrimental to the employee isn't allowed.

The Ministry of Labour and the Central Advisory Committee are responsible for enforcing this Act.

When the employer doesn't comply with the provisions of the act, he will be liable to pay fine, imprisonment, or both.

This includes, not merely initial recruitment but also stages of one's employment including promotions.

For any discrimination faced by women workers with regards to the payment of remuneration, complaint can be filed with the labour officer and the labour department.

## Special provisions related to women workers under the Factories Act



## **Special provisions related to women workers under the Factories Act**

Under the Act, factories which have more than 500 workers should have an ambulance room with nursing staff.

For more than 250 workers, there must be a canteen and where there are 150 or more workers there must be shelters, rest rooms and lunchrooms.

Creches are required in every factory having 30 or more women workers.

A crèche is a nursery. It is a place where babies of working mothers are taken care of while the mothers are at work.

Section 48 of the Factories Act, 1948 provides that in every factory wherein more than 30 women workers are ordinarily employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women.

The rooms shall provide adequate accommodation, and shall be adequately lighted and ventilated. Such rooms shall be maintained in a clean and sanitary

## **Special provisions related to women workers under the Factories Act**

condition and shall be under the charge of women trained in the care of children and infants

Under the Act, the daily hours of work of adult workers have been fixed at 9.

Though the Act permits men under certain circumstances to work for more than 9 hours on any day, it does not permit women to work beyond this limit.

Also in case of women workers there shall be no change of shifts except after a weekly holiday or any other holiday.

To safeguard women against the dangers arising out of lifting heavy weights, the Factories Act authorises the appropriate Governments to fix the maximum load that may be lifted by women. Rules framed by all the State Governments (Except U.P.) have fixed the following maximum weights for women employed in factories.

Adult Females	65 lbs
Adolescent females	55 lbs
Female Children	30lbs

## **Special provisions related to women workers under the Factories Act**

The Act makes it obligatory for every factory to maintain an adequate number of latrines and urinals of the prescribed type separately for men and women workers.

Such facilities are to be conveniently situated and accessible to workers at all times while they are in factory. Every latrine is required to be under cover and so partitioned off as to secure privacy and have a proper door and fastenings.

### **Remedy under the Factories Act**

What if the above mentioned provisions of Factories Act are not being followed?

If provisions of the Factories Act are being violated then you can approach the labour inspector or other labour officials and ask them to visit the brick kiln worksites for inspection. This inspection can be with regards to health, safety and/or welfare measures taken up at the brick kilns.

Alternatively, a written application about such grievances can also be sent to the labour department.



## **Janani Suraksha Yojna (For non-migrant women workers)**





## **Janani Suraksha Yojna (For non-migrant women workers)**

The programme has been initiated by the Ministry of Health and Family Welfare, Government of India under the umbrella of National Rural Health Mission (NRHM).

It aims at reducing maternal and infant mortality rate and increase institutional deliveries of BPL families.

Under the scheme, cash assistance is provided to pregnant women to encourage institutional delivery.

The target group for the scheme are all pregnant women belonging to the below poverty line (BPL) households who are of the age of 19 years or above. This scheme supports upto two live births.

In case of brick kiln workers, if there are pregnant women, they usually give birth at the kilns itself, as going to a doctor would mean huge expenditure.

Non-institutional delivery not only poses danger to both the mother and the new born but it also has long term effect on the health of the child and the mother.

## **Janani Suraksha Yojna (For non-migrant women workers)**

The child and the mother do not get any pre-natal and post birth care. The women are often found to be anemic and children are malnourished.

### **How to get the benefits of JSY scheme**

The scheme requires the family of the expectant women to register her name for the JSY scheme. Thereafter the women become eligible to draw the benefits of the scheme. But in case of pregnant women who migrate in search of work, the scheme does not provide any assistance.

Registration can be done with the help of anganwadi workers working under the ASHA scheme. They can help in registration of the women with the local Primary Healthcare Centre. ASHA or other health workers also assist in obtaining BPL certificates from Panchayats as it is an important criterion for being eligible for this scheme.

## Participation in Trade Unions



## **Participation in Trade Unions**

Women workers at the brick kilns need to become more than just passive members in the trade unions and play an important role in representing issues faced by them at trade union meetings.

Absence of representation of women in the trade unions is a significant reason why women's problems at brick kilns are not raised before the employers.

Specific issues related to working women- like maternity benefits, equal wages, crèche and day care facilities, increasing casualisation of women workers have rarely figured in the demands put up by trade unions to employers.

There are many factors which have contributed to the ineffective role played by women in trade union activity. They include: male dominated setup of the unions; lack of attention to the issues which are specific to women; the dual role played by women at work and at home.

Male workers can help achieve such a status for the women workers by encouraging them to raise their voices in trade union meetings.

## **Points to Remember**

- Gender equality means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections.
- Gender roles are social constructs and they can be changed as they are not static in nature.
- Gender rights refer to the rights of women which protect them from discrimination as well as assist them to stand as equals with men in society.
- The lack of equal opportunity especially affects women, who often face discrimination, particularly when it comes to employment.
- This sexual division of labour is not limited to the home; it extends even to the public arena of paid work.
- The division of work at brick kilns is largely defined by sex. Women workers are generally involved in unskilled activities like mixing of clay with dough, carrying of bricks and loading them

## **Points to Remember**

- Patriarchy has no gender. It is an important issue for both men and women to handle. Male workers should take equal responsibility for working upon gender issues that exist in society.
- Women workers are treated as invisible workers as the wages are only paid to the males who are deemed to be the head of the working unit.
- It is important to understand that women have an equal right of participation in the hiring process as they are the ones who are going to work.
- Women have no control over financial matters as they do not receive the wages directly.
- If women were able to gain control over their earnings then they would have some savings which they would be able to use on their own.
- Absence of representation of women in the trade unions is a significant reason why women's problems at brick kilns are not raised before the employers





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