

WOMEN AND LABOUR LAWS IN INDIA

Challenges, Opportunities and The Road Ahead

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Preface

In recent decades, India's workforce has witnessed a significant transformation, with women emerging as an indispensable force in the nation's economic, social, and developmental progress. Yet, despite these advancements, women continue to face multifaceted challenges — ranging from unequal pay and limited workplace participation to issues of safety, representation, and access to justice. The intersection of gender and labour law thus becomes a critical lens through which the realities of equality, dignity, and empowerment can be meaningfully explored.

This book, *Women and Labour Laws in India: Challenges, Opportunities, and the Road Ahead*, is a comprehensive attempt to examine how India's evolving labour law framework responds to the changing aspirations of women in the workforce. It brings together scholarly contributions from academics, practitioners, and researchers who collectively explore the gaps, strengths, and opportunities within India's labour and welfare regimes. Each chapter delves into a distinct aspect of women's labour rights—ranging from maternity benefits, sexual harassment, and pay equity to legislative reforms, judicial oversight, and policy innovations.

The compilation captures both the spirit of reform and the continuing need for introspection. Chapters such as *Balancing Motherhood and Careers: The Impact of India's Maternity Benefit Act on Women's Work-Life Harmony* and *Maternity*

Leave and Beyond: Balancing Life and Law highlight the progress made in supporting working mothers, while others—like Navigating the Lacunas in Indian Legislation: Protecting Women Domestic Workers and Towards Safer Workplaces: Policies and Measures to Prevent Sexual Harassment—draw attention to persistent systemic barriers that demand urgent redressal.

At the same time, the inclusion of forward-looking discussions such as Employment-Linked Incentives & Labour Welfare: Evaluating the Employment Linked Incentive (ELI) Scheme and Its Legal Framework and Women in the Support to Training and Employment Programme (STEP) Scheme: Challenges and Opportunities reflect a policy-oriented outlook toward inclusive and sustainable employment. These contributions underscore that true gender justice in the labour market requires not only robust laws but also effective implementation and societal commitment.

Taken together, the twelve chapters in this volume create a rich dialogue between legal principles, empirical realities, and policy imperatives. They underscore the need to move beyond mere compliance toward creating workplaces that truly value equality, dignity, and participation.

We hope this book serves as a meaningful resource for students, scholars, legal practitioners, policymakers, and all those interested in advancing women's rights in the world of work. More importantly, we hope it inspires a continued conversation on how law can be a tool not just for protection but for empowerment—ensuring that every woman in India's workforce can contribute, grow, and thrive with dignity.

We extend our deepest gratitude to all contributors for their insightful research and thoughtful analyses, and to our readers for their engagement with this important and evolving discourse.

Prof. (Dr.) Naresh Kumar Vats

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CHAPTER 1

Balancing Motherhood and Careers: The Impact of India's Maternity Benefit Act on Women's Work-Life Harmony

Dr. Ankita Kumar Gupta* &
Dr. Gunjan Ahuja**

ABSTRACT

The Maternity Benefit Act of India, introduced in 1961 and amended in 2017, is a landmark piece of legislation that protects women's employment during pregnancy and grants them a full-paid leave of absence to care for their children. The Act requires 26 weeks of maternity leave for women working in businesses with 10 or more employees, as well as additional advantages such as maternity leave for adopting and commissioning mothers, creche facilities, and provisions for work-from-home arrangements after maternity leave. This Chapter investigates the Maternity Benefit Act's impact on Indian women's work-life balance, critically examining both their professional and personal lives. While the Act makes considerable strides in guaranteeing work security and financial stability during pregnancy, its implementation presents various challenges. The extended leave duration has been a double-edged sword; at the same time, it strengthens the mother-child bond, it also raises concerns among companies about hiring and maintaining female employees, potentially contributing to gender discrimination in the hiring process. Furthermore, this paper examines the broader context of work-life balance for Indian women, taking into account socio-cultural expectations, home

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responsibilities, and workplace dynamics. It investigates the effectiveness of current organizational policies and support systems in creating a favourable environment for working mothers. This chapter emphasizes the importance of a comprehensive approach that includes flexible working hours, remote work possibilities, and strong support structures both inside and outside the workplace to achieve true gender parity and improve the quality of life for Indian women. This chapter aims to contribute to the gender equality discourse by providing a comprehensive analysis of the Maternity Benefit Act and its intersection with work-life balance, as well as to inform policymakers, employers, and society at large about the steps required to create a more inclusive and supportive environment for working women in India.

Keywords: Maternity Benefit Laws, Motherhood, Work-life Balance, Career.

INTRODUCTION

Every woman goes through several stages of life. Giving birth is a significant milestone. After joining an organization, women were apprehensive that if they took maternity leave, they would lose their jobs and the employer would not let them rejoin. Employers also prefer not to hire female employees given that they must provide several maternity perks to women, including maternity leave. Several adjustments are being made to the maternity benefit provisions. However, there is still room for improvement because it is a moral responsibility to defend women's interests to help them become financially independent and confident and provide peace of mind during such a difficult period when they deserve to be happy and fulfilled.

Women's subjugation in today's society stems from their economic dependence. Women today need to be financially independent and engaged in all facets of business in order to end this kind of subjugation and lay the foundation for equality. The government must set up conditions that are suitable for women's needs in order to support such initiatives. One of the "most important needs for women is maternity benefits".

Women make up a sizable proportion of the Indian workforce, and women's employment is gradually expanding. Not that

there aren't legal protections in place. The Indian Constitution grants equal rights and opportunities to all genders. Many labor laws include explicit requirements for the safety and well-being of working women. However, most of this rule does not apply to small and independent firms, which employ most women.

Empowering Work-Life Balance

The harmony between one's personal and professional obligations is known as work-life balance. It includes the ability to efficiently manage time and energy to meet job obligations while simultaneously prioritizing personal hobbies, family, social events, and self-care. Achieving work-life balance is critical for overall well-being, stress reduction, good relationships, and increased productivity and pleasure in the workplace as well as at home.

Work-life balance refers to people's ability to choose when, where, and how they work. It is attained when an individual's entitlement to a fulfilling existence both inside and outside of paid labor is understood and valued as the norm, benefiting the individual, company, and society as a whole.

Significance of Work-Life Balance for Women

In the Indian context, women's work-life balance is inextricably linked to cultural norms, societal expectations, and economic realities. Women in India frequently encounter enormous pressure to fulfill conventional gender roles as caregivers and homemakers while also pursuing their professional goals. Balancing work obligations with domestic responsibilities, such as childcare, eldercare, and household tasks, can present unique obstacles for Indian women.

Creating a work-life balance is critical for Indian women's general well-being and mental health. The act of balancing career goals with family commitments can cause significant levels of stress, tiredness, and burnout. Furthermore, women in India may face challenges such as limited access to cheap childcare and social stigma associated with working mothers,

emphasizing the significance of supporting workplace policies and a culture that prioritizes work-life balance. Today's working women are constantly pushed by the demands of full-time jobs, and when the day is done at work, they have extra duties and commitments at home.

A recent analysis¹ on 'Women in Modern Workplaces in India' by Hero Vired, a prominent LearnTech firm from the Hero Group, finds that work-life balance is the primary impediment to women rising in their professions or smashing the glass ceiling. According to data from a poll of 2 lakh women, 70% identified this as the top difficulty. This emphasizes the importance of comprehensive solutions that identify and address the complicated reciprocal relationship between professional and personal duties in today's modern workplace.

The survey highlights the hurdles that women encounter when returning to work after a maternity break. Significant barriers include feeling disconnected from touch with technological changes, worry about skill erosion, and challenges in finding relevant career possibilities. Despite the desire to reintegrate and advance in their jobs, these obstacles frequently prevent women from realizing their full potential in the workplace.²

Despite all of this, the survey indicated continuing biases against women in the workplace. The majority of respondents identified pay inequities, microaggressions, and a lack of growth chances as important challenges. Women respondents also identified challenges in readjusting to workplace culture following career gaps, such as feeling out of touch with technology, worrying about skill degradation, and trouble finding relevant job prospects.³

1 *Women in Modern Workplaces, 2024 Report* (Hero VIREED, A Hero Group Company 2024), <https://staging.herovired.com/wp-content/uploads/2024/03/Modern-Workplaces-for-Women-2024-report.pdf> (last visited June 3, 2024).

2 *Ibid.*

3 *Ibid.*

Certain Solutions for Maintaining Work-Life Balance for Women

Maintaining work-life balance is especially crucial for women, who frequently confront specific hurdles while juggling professional and personal duties. Implementing flexible work hours can be quite beneficial, allowing women to adapt their schedules to fit family responsibilities such as school drop-offs and pick-ups. Remote work solutions help to achieve this balance by reducing commuting time and enabling a more customized work environment, allowing women to mix family responsibilities with business obligations.

Comprehensive leave for parents' policies, including extensive paid maternity, paternity, and shared parental leave, are required. These rules allow new moms to take the required time off for childbirth and postnatal care without financial constraints, promoting healthier recovery and bonding time with their newborns.

Another important component is childcare support, which can be offered on-site or through financial assistance for external providers, relieving the logistical hurdles of locating trustworthy daycare. Encouraging the use of vacation days and personal time off to address family needs and personal well-being ensures that women have the time they need to recover and manage family duties, thereby minimizing burnout.

Access to mental health treatments, such as counselling and stress management programs targeted to women's specific stressors, helps them maintain their mental health and negotiate the challenges of juggling various tasks. Regularly monitoring and adjusting workloads to ensure they are manageable, particularly for women with additional home obligations, helps to avoid overload and burnout. Employee Assistance Programs (EAPs) that offer family counselling, financial advice, and legal services can help women manage personal difficulties more successfully, lowering stress and allowing for a better work-life balance.

Training and development programs focusing on time management, stress reduction, and work-life balance solutions tailored to women's requirements are also advantageous. These programs teach women how to successfully manage their time and stress, which improves their general well-being. Finally, creating a workplace culture that values and actively supports work-life balance, with a special emphasis on the issues that women experience, encourages them to prioritize their well-being and feel supported in juggling work and home life. Such an open workplace promotes job satisfaction and retention, helping women to succeed professionally and emotionally.

Enhancing Work-Life Balance through Maternity Benefit Laws

Maternity Benefit Law in India plays an important part in improving women's work-life balance by providing critical support and protection during a vital life event. To begin, the legislation requires a period of paid maternity leave, typically 26 weeks, to ensure that women have enough time to recuperate from childbirth and bond with their newborns without fear of losing their jobs or financial stability. This provision enables women to prioritize their health and the well-being of their families, resulting in a better work-life balance.

The Maternity Benefit Law encourages employers to adopt supportive policies and procedures that meet the requirements of pregnant employees and new moms. By establishing a framework for maternity benefits like prenatal and postnatal care, breastfeeding breaks, and flexible work arrangements, the law helps women better navigate the obstacles of juggling work and childcare duties. These initiatives allow women to continue working while caring for their children, encouraging greater gender equality and economic empowerment.

The Maternity Benefit Law promotes a cultural shift towards acknowledging and honoring women's roles in the workplace and at home. By recognizing the significance of maternity leave and supporting a family-friendly work environment, the law helps to break down old gender norms and stereotypes linked with caregiving obligations. This, in turn, encourages

more women to enter the industry and advance their careers, resulting in a more inclusive and equal society.

India's Maternity Benefit Law plays an important role in improving women's work-life balance by providing necessary protections, encouraging supportive workplace practices, and promoting cultural change. By addressing the specific requirements of pregnant employees and new moms, this legislation helps to create a more supportive and gender-responsive work environment that benefits women, their families, and society as a whole. In addition to the creation of public regulations to support duties outside of paid employment, organizations are increasingly adopting explicit policies to assist the work/life nexus.

ROAD TO MATERNITY BENEFITS IN INDIA

The Indian Constitution⁴ pledges justice, liberty, and equality to all of its residents, as well as to promote brotherhood among them. The Constitution guarantees several fundamental rights to attain these goals. Negative rights are also protected, such as the prohibition of discrimination and the denial of equal rights under the law. The Constitution recognizes women's unequal social standing, and a specific article allows the state to make special arrangements for women and children, even if it contradicts the mandate not to discriminate against citizens.

Article 15(1)⁵ of the Constitution prohibits the government from facing discrimination based on faith, race, caste, gender, or birthplace. Discrimination is illegal, but preferential treatment is not. Article 15(3)⁶ of the Indian Constitution empowers the state to make special arrangements for civilians and children. The purpose is to advance and strengthen women's rights

4 *India Const.*

5 *India Const.* art. 15(1) ("The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.").

6 *India Const.* art. 15(3) ("Nothing in this article shall prevent the State from making any special provision for women and children.").

by allowing them to participate in the country's social and economic activities.

According to the author, the primary goal of Article 21⁷ is to provide for a broader range of needs and should be interpreted liberally. As a result, the right to life should include providing maternity benefits to women for them to truly pursue a profession without fear of losing their job/source of income/passion simply because of life expectancy.

The "Bombay Maternity Benefit Act, of 1929", was the first piece of law passed in Bombay regarding maternity benefits. This statute was designed to control women's working conditions in certain enterprises during and after pregnancy. It aimed to provide maternity benefits and safeguards to female workers, such as maternity leave and other provisions to protect their health and well-being during pregnancy and childbirth.⁸

Soon after, other states enacted similar legislation with minor differences, such as eligibility, wage rates, and so on. The "Mines Maternity Benefit Act of 1941", the "Plantation Labour Act of 1951", and other important legislations included provisions for maternity benefits. However, the extent of the Acts differed in terms of eligibility for payment, the duration and rate of maternity benefits, and so on and the Acts only covered workers in mines and plantations and had limited application.

Other legislation that addresses maternity protection include the "Employees' State Insurance Act of 1948"⁹ and the "Central Civil Services Rules of 1972".¹⁰ The primary goal of the Act is

7 *India Const.* art. 21 ("No person shall be deprived of his life or personal liberty except according to procedure established by law.").

8 *"Under the Act, every woman worker who has worked for nine months in a factory was made eligible for maternity benefits on the production of a medical certificate. The benefits included leave of absence of the woman worker for four weeks; and monetary benefit at the rate of 'eight annas per day'."*

9 Employees' State Insurance Act, No. 34 of 1948 (India).

10 Central Civil Services (Leave) Rules, 1972, updated as on Oct. 18, 2023 (India).

to develop a framework of socioeconomic welfare and make comprehensive provisions for it. All of India is covered by this Act. Except seasonal sectors, this Act primarily applies to all factories, including those owned by the government. Different provisions of the Act may be applied to any other establishment or class of establishments, whether they be commercial, industrial, agricultural, or otherwise, with the approval of the Central Government after consulting with the Employees' State Insurance Corporation or the State Government. Nonetheless, the relevant government must provide six months' notice before any such regulation extension can take place.

To address discrepancies in maternity protection under the various Acts, the government of India created the "Maternity Benefit Act, 1961". It was significantly amended in 1970, 1972, 1973, 1975, 1976, 1988, 1995, and 2017. In India, Article 42¹¹ of the Indian Constitution directs the state to establish provisions for ensuring reasonable and humane working conditions and maternity benefits.

The "Maternity Benefit Act of 1961" was adopted by the Indian Parliament to control women's employment in specific enterprises for specified periods before and after childbirth, as well as to offer maternity and other benefits. The "Maternity Benefit Act of 1961" was adopted with not only the pre-constitutional maternity legislation in mind but also the International Labour Organization's mandate for maternity protection. In India, the Maternity Benefit Act of 1961 is not the sole piece of legislation that offers maternity protection or benefits.

PRESENT LEGAL FRAMEWORK OF MATERNITY BENEFITS IN INDIA

The Maternity Benefit Act, 1961

The Directive Principles of State Policy are found in Part IV of the Indian Constitution, and Article 42 mandates that the "State

11 "The State shall make provision for securing just and humane conditions of work and for maternity relief."

provide adequate measures to provide fair and compassionate working conditions as well as maternity benefits".¹² With these directions in mind, Parliament passed the Maternity Benefit Act of 1961 (herein after referred to as the Act). The Maternity Benefit Act, of 1961 is a historic piece of legislation, which was passed to preserve working women's jobs and offer benefits during their maternity leave. The Act is a crucial legislative initiative that acknowledges the value of maternity leave and offers women the support they need during this critical time. The lives of working women and their families have been profoundly impacted by this act, which has improved working conditions for women, increased the involvement of women in the workforce, and promoted gender equality in the workplace.

The Act regulates women's employment before and after childbirth for a specific amount of time. Any factory or other establishment to which the Employees State Insurance Act of 1948 applies is subject to the provisions of the 1961 Act. Women may file a claim under Section 2(2) of the Maternity Benefit Act, 1961 if they are not eligible to receive maternity benefits under the E.S.I. Scheme.¹³ The entirety of India, including the State of Jammu and Kashmir, is covered by the Maternity Benefit Act, 1961. After the Mines Maternity Benefit Act of 1941 was repealed at the end of 1972, this Act was implemented in mines.¹⁴

The Maternity Benefit Act offers specific benefits in the event of birth of the child¹⁵, miscarriage¹⁶, delivery complications during childbirth¹⁷. Although the Act has undergone numerous amendments, the latest amendment was done 2017 when the Maternity Benefit (Amendment) Act, 2017¹⁸ came into effect

12 *India Const.* art. 42 ("The State shall make provision for securing just and humane conditions of work and for maternity relief.").

13 The Maternity Benefit Act, No. 53 of 1961, s. 30 (India).

14 *Ibid.*, s. 30.

15 *Ibid.*, s.5.

16 *Ibid.*, s. 9.

17 *Ibid.*, s. 10.

18 The Maternity Benefit (Amendment) Act, No. 6 of 2017 (India).

and amended few sections¹⁹ and inserted a new section.²⁰

Fundamental human rights such as the right to health and medical assistance with maternity benefits are necessary to ensure working women's safety and security. The State Governments are responsible for extending the Act's advantages to any organization or project.²¹ Under some circumstances, the Act forbade employers from hiring women if they knew that a worker at the establishment was pregnant and that the worker would get Maternity Benefits at the rate of the average daily salary for the duration of her real absence. The Act prohibits *"employment or work by the women under certain circumstances and provides that no employer shall knowingly employ a women in any establishment during six weeks immediately following the day of her delivery or her miscarriage or medical termination of pregnancy; no woman shall work in any establishment during six weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy"; "no pregnant woman shall, on a request being made by her in h this behalf, be required by her employer to do any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or likely to cause her miscarriage or otherwise to adversely affect her health; the period referred to above shall be the period one month immediately preceding the period of six weeks, before the date of her expected delivery, any period during the period of six weeks for which the pregnant women does not avail of leave of absence under Section 6 of this Act."*²²

The Act further stipulates that any agreement made at the time of appointment between an employer and a woman is void if it confers less favourable benefits or is less beneficial to women workers. However, if the agreement grants the woman access to more favourable benefits than those stipulated by this Act,

19 *Ibid.*, s. 3 & s. 5.

20 *Ibid.*, s. 11.

21 *Ibid.*, s. 2.

22 *Ibid.*, s. 4.

it remains enforceable.²³ It is therefore illegal for companies to fire or discharge a female employee because of her absence from work due to pregnancy, childbirth, miscarriage, or tubectomy surgery.

The Maternity Benefit Act seeks to give working women the respectable resources they need to transition into motherhood in an honourable and peaceful manner, free from the threat of being victimized for being compelled to miss work during the prenatal or postpartum period. Legislators have reinforced women's reproductive roles; the primary goal of these legislative measures is to stop the discriminatory practice that existed in independent India, when women were refused employment opportunities on the basis of their biological functions. Additionally, it eliminates the practice of employers treating married women less favourably than single women and the mindset that existed among them, which held that married women should not be employed since it puts a burden on them to provide maternity leave.

Inspector appointments are mandated by the Act to ensure that laws are properly enforced. An inspector may be appointed by the appropriate government, which will also specify the inspector's local jurisdictional boundaries.²⁴ The inspector has the power of inspecting registers, records, and notices that are required to be kept or exhibited by this Act, he is also authorized to enter any premises or place where women are working.²⁵ When a female employee files a complaint with the inspector alleging that her maternity benefit was wrongfully withheld or that her employer fired her for violating the terms of this Act, the inspector may, on their initiative, initiate an investigation, or authorize an investigation to be conducted. The inspector may also order that the payment be made to the female employees.²⁶

23 *Ibid.*, s. 27.

24 *Ibid.*, s. 14.

25 *Ibid.*, s. 15.

26 *Ibid.*, s. 17.

The Maternity Benefit (Amendment) Act, 2017

Further, with regard to maternity benefits, India has joined the ranks of developed, progressive nations thanks to the historic Maternity Benefit (Amendment) Act of 2017. India is now one of the 16 nations with the longest paid leave for new moms, thanks to the expanded Maternity Leave Benefit duration.²⁷ The goal of the maternity leave offered by the Maternity Benefit Act of 1961 is to give paid time off to female employees so that they can care for their child from an early age, which is crucial for the child's wellbeing. It also gives women the chance to breastfeed their child exclusively.

The length of maternity leave to which a female employee is currently entitled to actual compensation has been increased from 12 weeks to 26 weeks.²⁸ About 1.8 billion of India's working women would benefit from this. Women who are expecting can use their maternity benefits up to six weeks before the due date.²⁹ This is useful because most pregnant women begin to feel queasy about traveling around the eight-month mark, necessitating more rest and prudence. Maternity benefits are payable to a woman who lawfully adopts a child under three months old or a commissioning mother for a period of twelve weeks following the date the child is given to the adopting mother or the commissioning mother.³⁰ The Amendment Act of 2017 contained an enabling provision that allows women to "*work from home*" once their 26-week leave term has passed.³¹ The management and the female employee have to mutually agreed upon it, depending on the nature of the task. For working parents who want flexible work schedules and at-home baby care, this is beneficial. Further the Amendment Act of 2017 also provided that "*Every establishment*

27 *India's New Maternity Leave Policy Puts the U.S. to Absolute Shame, Fortune* (Mar. 13, 2017), <https://fortune.com/2017/03/13/us-maternity-leave-india-new/> (last visited June 3, 2024).

28 The Maternity Benefit (Amendment) Act, No. 6 of 2017, s. 5(3) (India).

29 *Id.* proviso inserted after s. 5(3).

30 *Id.*, s. 5(4).

31 *Ibid.*, s. 5(5).

having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities; provided that the employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her."³²

The "Maternity Benefit (Amendment) Act, 2017" has a big impact on working women's status because it forbids employers from firing female employees during pregnancy and limits them from withholding money from their pay for pregnancy-related absences or any other reason specified in the Act. The Act clearly states that the employer cannot cause her any trouble by permitting her to work part-time throughout her pregnancy and take time off to care for her unborn child when she returns to work after the birth.

Identifying Gaps in Maternity Benefit Act

The Maternity Benefit (Amendment) Act, 2017, in particular, has significantly improved the protection of working mothers' rights in India through maternity laws. However, a number of shortcomings and difficulties persist:

Restricted Applicability: The Act only covers businesses with ten or more workers, which excludes a sizable percentage of women employed in India's informal economy, which makes up the majority of the labour force. Women employed in the unorganized sector comprises a sizable portion of domestic workers, agricultural labourers, and part-timers are not protected by the Act and are therefore not eligible for maternity benefits or other forms of protection.

High Employer Burden: Hiring women of reproductive age may be discouraged by the fact that employers carry the full cost of providing maternity benefits. This may unintentionally result in hiring procedures that discriminate against women.

Challenges with Implementation: Despite the law's demand for maternity leave and other benefits, there are insufficient mechanisms for efficient implementation and enforcement.

32 *Ibid.*, s. 11(A).

Due to insufficient regulatory oversight and enforcement mechanisms, a large number of women are either ignorant of their rights or unable to assert them.

Inadequate Paternity Leave: Emphasizing maternity leave at the expense of insufficient paternity leave reinforces gender stereotypes and puts the majority of the childcare load on women. Additionally, this dissuades dual parenting duties.

Absence of Post-Maternity Support: The law stipulates that businesses employing fifty or more people must have crèche facilities, although it is unclear how accessible and high-quality these facilities must be.

Effect on job Progression: Long-term maternity leaves can have a negative impact on women's chances for job progress and promotions, even though they are advantageous for the mother and child. Long-term leaves may be viewed by employers as less dedicated to their work, which could hinder their ability to advance in their careers.

Low Public Awareness: The Maternity Benefit Act is not well known to many women, which results in underutilization of the benefits. The prevalence of this ignorance is highest in semi-urban and rural settings.

Insufficient Assistance for Adoption and Surrogacy: Although the legislation offers leave for adoption and surrogacy, it does not sufficiently address the special difficulties that adoptive moms and commissioning mothers in surrogacy arrangements encounter. When compared to biological mothers, the length of leave awarded in these situations is frequently shorter.

JUDICIAL TRENDS IN MATERNITY BENEFIT LAWS IN INDIA

The Supreme Court of India held in a recent order dated August 17, 2023,³³ that women who have been employed on a fixed-term basis and who meet the requirements for maternity benefit under the Maternity Benefit Act, 1961 would be entitled

33 *Dr. Kavita Yadav v. Sec'y, Ministry of Health & Family Welfare Dep't & Ors.*, Civil Appeal No. 5010 of 2023 (India).

to full “maternity benefit”, even if the duration of such benefit exceeds the term of their employment contract. Further it was held that the definition of “maternity benefit” as provided in the Act relates to the amount that a woman is entitled to receive on account of her pregnancy.

The Supreme Court held that women workers have a constitutional right to a two-year paid parental leave in addition to the required 180 days of maternity leave. Chief Justice D Y Chandrachud and Justice J B Pardiwala headed the bench, emphasizing that denying such leave would be equivalent to forcing women to quit their occupations.³⁴

The Airports Authority of India refused to grant a worker maternity leave for a third child over twelve years ago on the grounds that she already had two children. The Bombay High Court held that the Airport Authority of India was not justified in doing so and ordered AAI to provide maternity benefits to the women employee for her September 2012 delivery within 8 weeks.³⁵

INTERNATIONAL SCENARIO ABOUT MATERNITY & PATERNITY LEAVES

Laws usually set minimum maternity leave requirements and, in many cases, provide government subsidies. Businesses are free to offer longer lengths, but not always. Consequently, maternity leave policies vary across nations with regard to the duration of leave and the proportion of pay earned during that time.

Several countries permit parents to prolong their leave, even if their Law indicate the minimum number of weeks required for maternity leave. Maternity leave in Estonia consists of 20

34 *Maternity Leave: Two-Year Childcare Leave, Along with Maternity, a Constitutional Right for Women Employees That Can't Be Denied: SC, Econ. Times*, <https://economictimes.indiatimes.com/news/india/childcare-leave-along-with-maternity-a-constitutional-right-for-women-employees-that-cant-be-denied-sc/articleshow/109524412.cms> (last visited June 3, 2024).

35 *Bombay HC Upholds Maternity Benefits for Third Child, Sets Aside AAI's Denial to Employee*, *Times of India* (May 11, 2024).

weeks of fully paid leave for mothers, and an extra 62 weeks of optional “bonus” parental leave.³⁶ The pay for these optional weeks may vary depending on whether the mother or father is employed; in Austria, for instance, there is a minimum of 16 weeks at 100% pay, followed by 44 further weeks at 73.1% pay.³⁷

Maternity leave begins in a number of nations, including Chile, several weeks prior to the due date of the child. Mothers in Chile are required to start their leave six weeks prior to their due date and extend it for an additional 12 weeks following (the duration may be adjusted if the due date is incorrect).³⁸ Mothers in Austria are expected to take time off from eight weeks prior to their due date until eight weeks after the birth.

After a child is born or adopted, covered employers in the United States are required by the Family and Medical Leave Act (FMLA) to provide at least 12 weeks of unpaid family leave. This rule has several exceptions, such as when an employer employs less than 50 people, when the expectant parent has worked there for less than a year, and when the employee's compensation is in the top 10% of the organization. Businesses are allowed to extend the FMLA's minimum 12-week unpaid leave requirement for new parents and provide them with a partial pay check if they so want.³⁹

In the US, zero weeks of paid maternity leave are the minimal required. Moreover, the Organization for Economic Cooperation and Development (OECD), a global organization that comprises several of the most developed and wealthy countries in the world, reports that the United States has the fewest maternity leave laws and benefits of any country.

36 *Maternity Benefit and Maternity Leave*, Sotsiaalkindlustusamet (Est.), <https://www.sotsiaalkindlustusamet.ee/en/family-benefits-and-allowances/family-benefits-overview/maternity-benefit-and-maternity-leave> (last visited June 4, 2024).

37 *Maternity Allowance*, Österreich.gv.at, https://www.oesterreich.gv.at/en/themen/familie_und_partnerschaft/geburt-eines-kindes/5/1/wochengeld.html (last visited June 4, 2024).

38 *Government of Chile*, <https://www.gob.cl/en/> (last visited June 4, 2024).

39 *Family and Medical Leave (FMLA)*, U.S. Dep't of Labor, <https://www.dol.gov/general/topic/benefits-leave/fmla> (last visited June 4, 2024).

United Kingdom Maternity benefits are supplied through the Statutory Maternity Pay (SMP) scheme, which is run by the Department for Work and Pensions. Here's some information regarding maternity benefits in the UK. Female employees are entitled to 52 weeks of maternity leave, which can be taken starting 11 weeks before the due date and ending 52 weeks following birth. The first 26 weeks of leave are known as "*Ordinary Maternity Leave*", while the remaining 26 weeks are known as 'Additional Maternity Leave'. The UK also offers paternity leave, which allows eligible employees to take up to two weeks of paid leave within 56 days of their child's birth.⁴⁰

Maternity leave laws around the world are a tapestry of cultural, economic, and political elements, with each thread tailored to a specific country's values and interests. Within Europe, Scandinavian countries are models of strong assistance for new parents. Norway, Sweden, and Denmark have extensive laws that provide mothers with significant durations of paid leave up to 59 weeks in Norway and 480 days in Sweden highlighting a dedication to promoting work-life balance and gender equality. While not reaching Scandinavian norms, the United Kingdom provides a year of maternity leave with varied levels of pay, which decreases after the first few weeks.

In contrast, the United States is a clear anomaly among developed countries, with no federally mandated paid maternity leave. The Family and Medical Leave Act (FMLA) allows for 12 weeks of unpaid leave; however, this puts a significant financial hardship on families. In comparison, Canada offers a more supportive environment, beginning with 15 weeks of paid maternity leave and continuing with further shared parental leave alternatives. Maternity leave periods vary throughout Asia, from Japan to India, reflecting different cultural standards and economic resources. Japan offers 14 weeks of leave with moderate compensation, whereas India extends up to 26 weeks with complete employer coverage, demonstrating the range of policies in the region.

40 *Maternity Pay and Leave*, GOV.UK, <https://www.gov.uk/maternity-pay-leave> (last visited June 4, 2024).

The Oceania region is a mixed bag, with Australia⁴¹ offering 18 weeks of paid leave at the minimum wage and New Zealand⁴² offering 26 weeks based on past earnings. In Latin America, countries like Brazil⁴³ and Mexico⁴⁴ provide varied lengths of paid leave, demonstrating a commitment to maternal welfare. Meanwhile, in South Africa⁴⁵ and Nigeria⁴⁶ have extended maternity leave periods, albeit with distinct financial assistance structures.

At its root, the variance in maternity leave policy reflects the complex dance of tradition and progress, economics and social welfare. Countries with generous policies prioritize family well-being and gender parity, frequently using a combination of employer contributions and government assistance. In contrast, the lack of comprehensive policies, as seen in the United States, emphasizes the intricate interplay of individual rights and societal obligations. Finally, the evolution of maternity leave policies indicates a country's capacity to strike a balance between its workforce's requirements and broader social and economic imperatives, altering the landscape of family life and workforce participation for future generations.

41 *Maternity Leave*, Australian Unions, <https://www.australianunions.org.au/factsheet/maternity-leave/> (last visited June 4, 2024).

42 *Taking Parental Leave*, New Zealand Gov't (2022), <https://www.govt.nz/browse/work/parental-leave/taking-parental-leave/> (last visited June 4, 2024).

43 *"Matern Maternity Leave – Brazil*, Anglo Info, <http://www.angloinfo.com/how-to/brazil/healthcare/pregnancy-birth/maternity-leave> (last visited June 4, 2024).

44 *Maternity Leave – Mexico*, Anglo Info, <http://www.angloinfo.com/how-to/mexico/healthcare/pregnancy-birth/maternity-rights> (last visited June 4, 2024).

45 *Basic Guide to Maternity Leave*, Dep't of Labour, Gov't of S. Afr., <https://www.labour.gov.za/DocumentCenter/Pages/Basic-Guide-to-Maternity-Leave.aspx> (last visited June 4, 2024).

46 *Maternity & Work*, Wage Indicator Foundation, <https://mywage.ng/labour-law/maternity-work/> (last visited June 4, 2024).

CONCLUSION & SUGGESTIONS

It is clear that, while progress has been made, more work is needed to secure equitable opportunities for women in the workplace. There is a need for ongoing efforts to provide a supportive workplace, correct biases, and provide opportunities for professional development. With rising research demonstrating the importance of upskilling for women trying to reintegrate into the workforce following a career break, we understand the need to support their professional journey.

To improve women's work-life balance in India, numerous adjustments to the Maternity Benefit Act can be proposed. To begin, expanding the current 26-week maternity leave to 52 weeks would provide moms more time to care for their newborns. Furthermore, providing and implementing a minimum of 12 weeks of paternity leave will encourage shared parenting responsibilities while easing the burden on women. Flexible working hours and remote work choices for new moms and fathers in the first two years following childbirth might help to improve work-life balance. Mandating employer-provided or subsidized childcare facilities at or near the workplace would be critical in assisting working parents.

All businesses must have provisions for breastfeeding breaks as well as safe, private areas for nursing moms. Standardizing leave rules for adoptive parents to ensure they receive the same advantages as biological parents promotes inclusion. A phased return to work program, in which new mothers can progressively increase their working hours, would help ease the transition back to full-time employment. Encouraging companies to provide health and wellness initiatives, such as counseling and postpartum support, will improve the overall well-being of new moms.

It is vital to strengthen regulations that assure job stability for women returning from maternity leave, as well as to enforce strict anti-discrimination laws in hiring, promotion, and compensation. Promoting awareness and training programs on

the benefits and legal elements of maternity and paternity leave would contribute to a more supportive work environment. Allowing additional paid leave for women who experience problems during pregnancy or childbirth, as well as allowing dads to split their leave entitlements, would provide flexibility based on the needs of each particular family.

It is also necessary to provide small firms with government subsidies or tax breaks to help them manage the financial strain of longer breaks. Creating re-entry programs and training for women returning to work following maternity leave would aid in their reintegration and skill development. Establishing a strong legislative framework for grievances, as well as assuring prompt legal redress and support for women dealing with maternity-related employment concerns, will strengthen the rights and support accessible to working moms. Implementing these reforms would promote gender equality while also greatly improving work-life balance for Indian women.

2

CHAPTER

Consent Under the OSH Code 2020: Boon for Empowerment or Curse of Burden

**Simranjeet Kaur* &
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ABSTRACT

The rights of labour class such as health, working condition, and their safety has always been a matter of concern not just at the level of establishment itself but at a national level. To tackle with these concerns the government has come up with the “Occupational Safety, Health and Working Conditions Code 2020” (hereinafter referred to as OSH Code, 2020). The code aims at prescribing the standards for the working conditions, health and safety measures, and special provisions for women. The code consolidates 13 existing laws. An important provision under this code is related to the word “consent” of women working beyond regular working hours. This chapter delves into the interpretation of word “consent”, and explores whether these provisions are a boon or a curse for women at workplace. The word “consent” encompasses within itself some essentials like voluntary mutual agreement, educated decision-making, express documentation, and the ability to cancel the consent without any repercussions. On the other hand, challenges such as lack of awareness, mental coercion, uneven enforcement mechanism can undermine these protections provided under the OSH Code, 2020, thus exposing the women to exploitation. This chapter explores the legal and also

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the practical implications of all these essential elements, whether they truly benefit women or they inadvertently create new challenges, thereby offering a comprehensive analysis of the OSH Code's impact on women's rights and safety in the workplace. This chapter also discusses about the responsibilities of employers in maintaining compliance with this code and the role of regulatory authorities in monitoring adherence to these provisions.

Keywords: Consent, Empowerment, Extended Work Hours, Women's Rights, Occupational Safety..

INTRODUCTION

From being nurtures to becoming breadwinners, women have entered the realm the working class in India. Female participation in the labour force and right to decent work environment is very much essential for an inclusive and sustainable development of the country.¹As per the latest report of periodic Labour Force Survey (PLFS) 2021-22 women's workforce participation was 32.8 percent female of working age of fifteen years and above and which was 23.3% in 2017-18.²The gender gap in the working class has slightly narrowed. To bridge this gap, the Indian government introduced various codes such as, The Code on Social Security 2020³, The Code on Wages, 2019⁴, OSH Code, 2020⁵. The OSH Code, 2020 aims at providing detailed measures for health and safety of the workers in a given establishment. The code prescribes special provisions for women including the safety measures to be followed in an establishment. Sec43 of the code gives women the freedom to work beyond the working hour. Sec43 makes

- 1 Ministry of Labour & Employment, *Female Labour Utilization in India* 36 (Apr. 2022).
- 2 Ministry of Labour & Employment, *Female Labour Utilization in India* 12 (Apr. 2022).
- 3 *The Code on Social Security, 2020*, available at <https://vvgnli.gov.in/en/code-social-security-2020> (last visited July 15, 2024).
- 4 *The Code on Wages, 2019*, available at https://labour.gov.in/sites/default/files/thecode_on_wages_as_introduced.pdf(last visited July 15, 2024).
- 5 *The Occupational Safety, Health and Working Conditions Code, 2020*, available at <https://labour.gov.in/whatsnew/occupational-safety-health-and-working-conditions-code-2020-no-37-2020> (last visited July 15, 2024).

it mandatory for employers to take consent of women before assigning them to work at night shift. Although the code has not been implemented so far, but states like Haryana, Odisha, Telangana, Madhya Pradesh, Tamil Nadu, Andhra Pradesh, Himachal Pradesh, Uttar Pradesh have established rules that are in line with sec43 of the code. The rules encourage diversity at workplace. The provisions that prohibit employment of female employees in night shifts have been considered to be violating their right to work and denying them equal opportunity as their male counterparts.⁶ An important provision under the code is related to the word “consent” of women working beyond regular working hours. This article delves into the interpretation of word “consent” as the code does not define it, and explores whether these provisions are a boon or a curse for women at workplace. The word “consent” encompasses within itself some essentials like voluntary mutual agreement, educated decision-making, express documentation, and the ability to cancel the consent without any repercussions. On the other hand, challenges such as lack of awareness, mental coercion, uneven enforcement mechanism can undermine these protections provided under the OSH Code, 2020, thus exposing the women to exploitation. This article explores the legal and also the practical implications of all these essential elements, whether they truly benefit women or they inadvertently create new challenges, thereby offering a comprehensive analysis of the OSH Code’s impact on women’s rights and safety in the workplace. The article also discusses about the responsibilities of employers in maintaining compliance with this code and the role of regulatory authorities in monitoring adherence to these provisions.

Definition of Employee and Employer

The regulatory framework in India that governs the interaction between an employer and employee is being significantly

6 Nishith Desai, *Female Employees Working in Night Shift in India – Recent Updates*, <https://www.nishithdesai.com/NewsDetails/10628> (last visited July 15, 2024).

altered by the OSH Code 2020. It is essential to comprehend these definitions in order to apply labour welfare rules. Employers and employees are currently addressed by the FA, 1948 and the IDA, 1947, even if the OSH Code 2020 is not yet in effect. It is crucial to comprehend the employer-employee relationship in light of the numerous rulings rendered by the Supreme Court of India.

In *WDTA vs The Management*,⁷ the court observed that the object of the Industrial Dispute Act, 1947 (hereinafter referred to as IDA, 1947) was designed to encourage measures for guaranteeing and maintaining good relations and amity between employers and workers. Additionally, it is noted that the nation's progress depends on industrial peace and concord, both of which are dependent on the social and economic advancement of labour.

It is crucial to understand the terms “employer” and “employee” independently in order to fully understand the fundamental idea of this relationship.

Employee

Sec. 2(t) of the OSH Code, 2020 defines an “employee” as a person who works for a company and receives remuneration, with the exception of apprentices under the Apprentices Act, 1961. This definition includes skilled, unskilled, semi-skilled, manual, operational, supervisory, managerial, administrative, technical, clerical, or any other type of work, regardless of whether the job terms are explicitly stated. The government can also designate someone as an employee, but this does not include Armed Forces members.

Anybody who works as a manager in a mine, or is appointed by the owner, or agent, or manager, or with the management's knowledge, whether paid or not, is considered an employee in the context of mines. This includes operating, maintaining,

⁷ *Workmen of Dimakuchi Tea Estate v. Mgmt. of Dimakuchi Tea Estate*, AIR 1958 SC 353.

repairing, or servicing any mining machinery; loading minerals for dispatch within the mine premises; working in any mine office; handling and transporting minerals up to the dispatch point; gathering and transporting sand to the mine; developing the mine (apart from regular buildings, roads, wells, or unrelated construction); and providing welfare, health, sanitation, or security services in the mine (excluding residential areas).

To receive benefits under the Act, an employer-employee relationship must be established. Thus, it is crucial to determine who qualifies as an employer and employee under the Code.

In the *Management of Reserve Bank of India vs. Their Workmen*⁸, the Supreme Court interpreted the concept of a “workman” under the IDA, 1947 which is similar to the definition of “employee” under the FA, 1948. The SC held that the designation of any employee is not conclusive; rather, the nature of duties performed by the person is the primary factor in determining their status as a workman (or employee) under the Act.

Employer

According to Section 2(u) of the OSH Code 2020, an “employer” is defined as any person who, directly or indirectly, employs one or more employees in an establishment, either on their own behalf or on behalf of another individual. In cases where, the establishment is operated by a Department of the Central or the State Government, the designated authority specified by the head of the respective department will be considered the employer. In the absence of such a designation, this responsibility falls on the department head. The Chief Executive of the local authority is acknowledged as the employer for establishments under its management. The term also includes:

- Control exercised by a person over the affairs of any other establishment;

8 *Management of Reserve Bank of India vs. Their Workmen*, AIR 1996 SC 1241.

- The owner, agent, or manager as mentioned in Sec. 67 in case of mine;
- Contractors.
- Legal representatives of a deceased employer.

The term “employer” under the FA, 1948, in India is often subject to judicial interpretation. Establishing an employer-employee relationship is essential for providing relief to workmen under the Act.

In case of *BWSSB v. A. Rajappa*⁹, the Supreme Court addressed the definition of “industry” under the IDA, 1948 which is closely related to the employer-employee relationships in factories. The SC interpreted industry based on the triple test and ruled that the term “industry” includes any systematic activity coordinated by between employer and employee for the production and/or distribution of goods and services.

The SC in *Regional Director, ESI Corporation v. P. K. Mohan*¹⁰, clarified the definition of “principal employer” under the ESI Act, 1948 which often overlaps with the FA, 1948. The court held that a principal employer is responsible for the welfare of employees, including those working under a contractor within the factory premises.

Further in *DC Investment (P) Ltd. v. P. K. Prathapan*¹¹, the SC emphasized the importance of employer’s supervision and control over the workers while addressing employer-employee relationships and managerial control within a factory setting. Therefore, if an employee is under the employer’s supervision and control, they are entitled to the benefits of welfare provisions.

THE EMPLOYER-EMPLOYEE RELATIONSHIP

The onus of proving the employer-employee relationship is on the workmen.¹² Furthermore, the workmen’s claim cannot be

9 *Bangalore Water Supply & Sewerage Bd. v. A. Rajappa*, AIR 1978 SC 548.

10 *Regional Director, ESI Corporation v. P. K. Mohan*, (2000) ILLJ 231 (Raj.).

11 *DC Investment (P) Ltd. v. P. K. Prathapan*, AIR 2005 SC 1624..

12 *Madan v. Anmol Fin. Servs. Ltd.*, 2019 (161) FLR 679 (Del. HC).

upheld in the absence of an employer-employee relationship.¹³ If the employee's name appears on the muster roll, the employer-employee relationship will exist; if not, it will not.¹⁴ Again, if contract labour is paid by the contractor, there is no employer-employee relationship between them and the main employer.¹⁵

Consent in the Employer-Employee Relationship

Consent plays a crucial role in the employer-employee relationship, particularly in terms of agreements regarding working conditions, terms of employment, and dispute resolution. The concept of consent is pivotal in ensuring that both parties—employer and employee—enter into and maintain a fair and mutually beneficial relationship.

Legal Framework

A number of laws and regulations, such as the FA, 1948, the IDA, 1947, and the OSH Code 2020, regulate the legal framework of consent in workplace interactions. These laws guarantee that consent is acquired and upheld during the duration of employment by outlining the rights and obligations of both employers and employees.

INTERPRETATION OF SECTION 66 OF THE FACTORIES ACT, 1948

Section 66 of the FA, 1948, imposes additional restrictions on the employment of women in factories to supplement the existing provisions. It stipulates that women are not eligible for any exemptions from Section 54, which sets daily labour hours (Clause a). Women are prohibited from working in factories outside the hours of 6 A.M. to 7 P.M., although the State Government can vary these limits through notifications, provided that no woman is employed between 10 P.M. and 5

13 *Pragati Eng'rs Workers Ass'n v. Nat'l Highway Auth. of India*, 2019 LLR 496 (HP HC).

14 *Ram Chandra Ram v. Cent. Coalfields Ltd.*, (India).

15 *Nat'l Project Constr. Corp. v. P.O. Indus. Tribunal*, (India).

A.M. (Clause b). However, the appropriate government i.e. the State Government may vary the limits laid down in clause (b) for any factory, provided that no such variation authorizes the employment of any woman between the hours of 10 P.M. and 5 A.M.

The question related to the legal validity of section 66 (1) (b) came before the court in *Omana Oomen case*,¹⁶ the issue was regarding the legal validity of the denial of appointment to women employees by F.A.C.T. Ltd. on the basis of the requirement to work night shifts, citing sec. 66(1)(b) of the FA, 1948. The Court held that sec. 66(1)(b) of the FA, 1948 should not be used to discriminate against women in employment solely based on gender. The Court ruled that discrimination against women in the workplace on the basis of gender alone is prohibited under FA, 1948 Section 66(1)(b). It is also noted that other women had been employed in similar roles and male employees were working day shifts, indicating that the denial of employment based on night shifts alone was unjustifiable.

The court suggested that the company could have sought permission as per the proviso to sec. 66(1)(b) to accommodate women in day shifts, which it failed to do. The rationale behind the judgement is the constitutional principles of equality and non-discrimination. It emphasised that while protective labour laws are necessary, they should not become tools for perpetuating gender biases or denying equal employment opportunities to women. The court highlighted the need to interpret and apply protective provisions in a way that upholds gender equality and ensures fair treatment in employment practices.

Sanuja v. Kerala State Beverages Corporation Ltd.¹⁷

In this case, rule under Kerala State Beverages Corporation Ltd, prohibiting women from being employed in liquor shops was challenged. The Kerala High Court struck down the arbitrary

16 *Omana Oomen Vs. The FACT Ltd. and Ors.*, AIR 1991 Ker. 129..

17 Writ Petition (C) No. 12956 of 2014 (T), Kerala (HC).

rule prohibiting women from working in liquor shops, citing Article 14, 15, 16 and 19 of Constitution of India. The court determined that these regulations were discriminatory and had no legitimate connection to the nature of the work or the general welfare. The ruling affirmed the fundamental values of equality and non-discrimination against employment restrictions based on gender. The Court stressed that rules prohibiting certain genders from employment must have a valid basis and shouldn't propagate prejudices or stereotypes in society. The court's decision aimed to ensure that women have equal opportunities in employment, aligned with the constitutional guarantees of equality and non-discrimination.

Treasa Josfine v. State¹⁸

In this case, the issue of denying a woman the opportunity to be recruited as a safety officer was brought before the Kerala High Court. The FA, 1948's Section 66(1)(b) application, which was used to reject her employment on the basis of only her gender, was the main source of contention. Gender equality in job possibilities is upheld by the Kerala High Court's finding that Section 66(1)(b) of the FA, 1948 cannot be used to reject employment on the basis of gender alone. The court underlined that narrow interpretations of labour regulations should not support gender discrimination because cultural developments have acknowledged women's skills in the modern workforce. The court observed that the objective of Section 66(1)(b) is to protect women from hazardous working conditions rather than to bar them from employment opportunities where they are qualified and willing. The judgment emphasized the evolving societal norms and the constitutional mandate of equality and non-discrimination. It recognized the changing roles of women in various sectors, including safety and security roles, and emphasized that labour laws should be interpreted in a manner that promotes gender equality and empowers women in the workforce. The court's decision aimed to strike

18 *Treasa Josfine v. State*, AIR Online 2021 Ker 415.

a balance between protective labour laws and ensuring equal opportunities for women in employment.

ANALYSIS AND INTERPRETATION OF THE WORD “CONSENT” UNDER THE OSH CODE, 2020

Definition of “Consent” under OSH Code, 2020

The word “consent” has nowhere been defined under the Code, but it lays emphasis on the importance of voluntary agreement in matters relating to working conditions, safety practices or hours of work. It is pertinent to understand the meaning of the word “consent” because the Code attempts to secure informed consent from the female workers. Generally, the word consent means to give permission or assent to do something; while agreeing to do something a person should have full knowledge as to what he/she is giving permission to do so. Consent is when a person willingly accepts the proposal of the other person. Consent can be given in written form as well as orally.

As per sec13 of The Indian Contract act defines “consent” as “two or more persons are said to consent when they agree upon the same thing in the same sense”.¹⁹ The concept of “consent” is based on the Latin legal maxim “consensus ad idem”. It means “agreement to the same thing” or “meeting of minds”.²⁰ So, to give consent means to have apt understanding of the agreement for which persons are agreeing to do and it should be the same matter on which persons are consenting.

The consent given should be a free consent. As per sec14 of ICA, 1872, Consent is free when it is not caused by the following:

- coercion,
- undue influence,
- fraud,
- misrepresentation, and
- mistake.²¹

19 *The Indian Contract Act, 1872*, s. 13.

20 *Ibid.*, s. 13.

21 *Ibid.*, s. 14.

Free consent ensures the validity and enforceability of the act for which the party has consented.

Consent is of two types either expressed or implied.²²The expressed consent is called the explicit consent where there is an unambiguous agreement between the two parties and there is a clear communication of the same between the parties. The consent should be communicated in such a manner and language which is known to both the parties.

Implied consent is where the agreement is given through some action or inaction which is inferred through the given circumstances, indicating that a person has agreed on the proposal.

For informed consent, it is necessary that there is awareness among the workers about the nature of work they are going to perform, associated risk involved in such work and the safety measures that the employer is supposed to take. It is also essential that the workers comprehend the information provided to them regarding their duties and working conditions and moreover the consent must be given without any coercion or undue influence from employees.

The word 'consent has been defined as "an act of reason accompanied with deliberation, the mind weighing, as in balance the good or evil or either side consent supposes three things a physical power, a mental power and a free and serious use of them." If by acts and conduct are allowed otherwise freely and seriously without any objection for which consent is required consent will be implied.

ESSENTIAL COMPONENTS OF CONSENT

Voluntary Mutual Agreement between the employer and the female employee: - For voluntary mutual agreement, it is necessary that there has to be an agreement. Sec2(e) of ICA, 1872 defines agreement as "every promise and set of promises forming consideration for each other is an agreement".²³

²² *Ibid.*, s. 9.

²³ *Ibid.*, s. 2 (e).

Thus, promise here is an assurance that one party makes to the other to do or refrain from doing something. Most often, an agreement is an exchange of promise, which means party promises to do or refrain from doing something for a consideration. Consideration means anything of value that is exchanged between the parties to a contract.²⁴ In order to make that promise enforceable the promise has to be supported with consideration. Moreover, for consent it is required that there is a voluntary mutual agreement, which means that the terms and conditions in a contract between the parties should be agreed in the same sense by both the parties. There has to be "consensus ad idem" i.e. meeting of minds.²⁵ For consent, it is also required that the consent should be of voluntary nature. It means that there should be no coercion, undue influence, misrepresentation or mistake.

Thus, according to sec27 of the OSH Code, 2020²⁶ if the employer wants the employee to work overtime, or employer wants to employ female employee beyond working hours (Sec43), or the employer wants women in dangerous operations (sec44), he has to take prior consent from the employee and that consent should be, first, voluntary i.e. without any coercion, undue influence, fraud, misrepresentation or mistake, secondly, employee and employer should mutually agree to the terms and conditions of such overtime work i.e. there has to be 'consensus ad idem' which means agree upon the same thing in the same sense.

Challenges: - A research study was conducted by ASSOCHAM on "Night Shifts for Women: Growth & Opportunities". The said study was sponsored by National Commission for Women (NCW). The study aimed to find the impact of nightshifts. ASSOCHAM believes that certain favourable conditions are required in order to encourage women to work for night shifts. Such conditions are security, monetary compensation and

24 *Ibid.*, s. 2 (d).

25 *Ibid.*, s. 13.

26 *The Occupational Safety, Health and Working Conditions Code, 2020*, s. 27.

provision of fringe benefits. The above study

- Safety Concerns: - the research was conducted in 9 cities, which included namely Delhi, Kolkata, Mumbai, Bangalore, Ludhiana, Ahmedabad, Pune, Hyderabad and Chennai. The result showed that 71.1% do not feel insecure, whereas 28.9% respondents feel insecure in the night shift work. Near about 44 to 45% feel that Bangalore and Ludhiana are highly insecure zones, probably due to the Pratibha's murder case in Bangalore and gender discrimination in Ludhiana could have played a major role for the insecurity level. Moreover, only 2 % get inhouse self-defence opportunity.²⁷

In Vishaka case the Supreme Court of India laid guidelines to prevent women from sexual harassment at workplace.²⁸

Issue: - The issue that arises is how far does the employer's responsibility extend in ensuring that the women who has consented to work late hours is safe?

Should the employer provide only the safe transportation or the responsibility extends until the employee reach home?

- Social Stigma: - Though our Constitution treats everyone equally, but still according to the survey, 13.5% women who work in night shifts face social and societal problem. Because of night shift jobs they are not able to provide time to their family members, they don't spend quality time with their children, nor attend their school functions.

Issue: - The question arises how can this social stigma be eradicated? The role of employers and the government to effectively address and combat the social stigma comes

27 The Associated Chambers of Commerce & Industry of India (ASSOCHAM), *Night Shift for Women: Growth & Opportunities*, <https://ncwapps.nic.in/pdfreports/NIGHT%20SHIFT%20FOR%20WOMEN.pdf> (last visited July 15, 2024).

28 Ms. Khushboo Kamal, *Indian Laws on Women's Safety in Night Shifts* (2023), <https://aishwaryasandeep.in/indian-laws-on-womens-safety-in-night-shifts/> (last visited July 15, 2024).

into picture. What specific actions can be taken to support and empower women in this context?

- **Health Issues:** - By working in night shift, near about 13.3 % employees face mental health tensions. Dependence on their employers for even basic necessities like transportation, meals etc create mental health problems, near about 30% experience backache, some experience continual tiredness and some face digestive disorders, sleep difficulties, frequent cold and cough etc.

Issue: The question that needs to be addressed is the role of employer and government in this regard.

- **Coercion and Undue Influence:** - some women might give consent because of coercion or undue influence being exercised by the employer at workplace.

Issue: - The OSH Code 2020 does not have express provision that addresses coercion or provide any mechanism for women to safely report such issue i.e. absence of whistleblower laws is an issue that needs to be addressed.

Educated decision making: Educated decision making under the OSH Code, 2020 ensures that the women or workers, make voluntary, educated and autonomous choices about their employment conditions. This ensures that their rights of employees are protected. For informed decision making, it is required that there is full disclosure of information by the employer, there is clear understanding by the employees, there is no coercion i.e. there is an element of voluntariness, capacity to consent, consent has been properly documented, there is well established communication mechanism established between the employer and the employee encouraging the employees to raise their concerns. Thus, following are the essential ingredients for educated decision making: -

- (a) **Full Disclosure:** - Sec43 of the Code²⁹ mandates the employer to disclose complete information regarding the working conditions, risks, benefits and the various rights of

29 The Occupational Safety, Health and Working Conditions Code, 2020, s. 43.

the employee. The employer needs to inform the employee about the work hours, safety protocols, potential hazards and compensation for the extra hours to be in by the employee. Further Sec84³⁰ imposes responsibility on the occupier of every factory that is involved in hazardous process to disclose to the workers all information relating to dangerous health hazards and what measures does the employer take to eradicate such hazard. The act also states that a policy to be made by the employer with respect to health and safety of the workers and also to draw up emergency plan and detailed disaster control measure and information with regard to same to be shared with the employees working in the factory. The sec further states that if at any time occupier propose to engage in hazardous process, it shall within 30 days before the commencement of such activity, inform the Inspector cum Facilitator about the nature and details of the process.

Sec85³¹ further imposes responsibility on employer or occupier that is involved in any hazardous process to maintain registers of health records or medical records of employees who are exposed to any chemical, toxic or any other harmful substances and such records are accessible to the workers. The code lays down the responsibility on the state government to prescribes maximum permissible limits of exposure to chemicals and toxic substances.³² Sec89³³ states that if the workers who are employed in any factory that is engaged in hazardous process and he has reasonable doubt regarding any imminent danger in the factory, they can bring notice of the same to the person who is in- charge of the factory or the process. and the concerned person in charge of the factory will take immediate remedial action if he is satisfied about the existence of such eminent danger.

30 *Ibid.*, s. 84.

31 *Ibid.*, s. 85.

32 *Ibid.*, s. 88.

33 *Ibid.*, s. 89.

Case: - *Firoz Alam v. State of Chhattisgarh*³⁴

Parties involved: - Public Interest Litigation was filed by the Occupational Health, Safety, Sustainability Association India (OHSSAI) Foundation against the Principal Secretary Ministry- Department of Labour, Government of Maharashtra and others.

Facts: - A steel wire mesh carved in which resulted death of five construction workers and injuries to five others. A safety officer was arrested and it was contended that this arrest was unjust as his role was advisory in nature according to Factories Act.

Issues: The issue involved in the case was that whether the safety officer whose role is considered to be advisory in nature, should be liable and was the arrest justified for the accidents that had taken place. Moreover, there should be clarity of the roles and accountability of different safety officers involved. The need for clarity on the responsibilities and accountability of safety officers in such incidents are required.

Analysis: The Factories Act, 1948 mandates safety officers with roles such as advising management on safety measures to be followed, conducting safety inspections and ensuring that there is compliance with the law.

Held: - The court was of the opinion that the advisory role of safety officers does not absolve safety officers of responsibility towards the incident that had taken place. They have active duty to ensure compliance with the law and thus to ensure safety protocols are followed.

Issue: - The issue that needs to be addressed is that how detailed the information provided to employees should be for them to understand the potential risks and benefits.

(b) The manifested act: - For an educated decision making it is required that there should be an act. The act could be a statement (a declaration), a signature or a click on an "accept" icon or a

³⁴ *Firoz Alam v. State of Chhattisgarh*, <https://indiankanoon.org/doc/451786/#:~:text=In%20accordance%20with%20Section%20304A,Section%20304A%20of%20the%20I.P.C.> (last visited July 15, 2024).

nod of a head. Where there is a 'promissory statement' it raises questions with regard to interpretation of the words used in such statements and where it is an action i.e. 'accept', sign, it however raises questions on the identity of the actor and also raises question whether the actor understood the meaning of it. The presumption of signing a document or clicking on an 'accept' icon, is interlinked with the concept of 'duty to read'. 'Duty to read' is a legal principle that generally means that the parties to the contract are obligated to read and understand the terms and conditions of the agreement before signing the same.³⁵ Thus, each party is responsible for knowing what is written in the contract and cannot later claim that they did not understand the terms of the contract. this doctrine is related to the doctrine of 'caveat emptor' which means 'let the buyer beware'.³⁶ This doctrine means that it is the responsibility of the buyer for making an informed decision and are expected that they conduct their own due diligence before entering into a contract. This intentional manifestation or understanding of the terms and conditions is just one of the requirements for consent. If the consent given lacks voluntariness or knowledge, there is no consent, despite the manifested act.

Thus sec27, 43 and 44 requires consent from the employees (including female employees) and such consent shall be documented and the presumption that arises from an action, signing a document is that the employee has read the document, but if that consent lacks voluntariness or knowledge, there is no consent despite the act of signing.

(c) Understanding or Knowledge:- Various researches have revealed that the human beings suffer from intellectual barrier, such as biases, difficulty in assessing complex information and Heuristics means that there are mental shortcuts or thumb rule principle being followed by some people. Due to time

35 *Duty to Read*, Priority Justice, <https://www.priorityjustice.com/business-contract-attorney#:~:text=The%20duty%20to%20read%20is,before%20entering%20into%20a%20contract> (last visited July 15, 2024).

36 *Ibid.*

constraints, they regret the decision that they have made.³⁷ The famous case to depict the same is *Raffles v. Wichelhaus*.³⁸ Thus there has to be mutual assent which means both should agreeing upon the same thing in same sense, in the above case there was no agreement because the buyer and seller were thinking of different ships. The court may adopt two approaches to deal with the problem. The first approach is act- oriented approach, which means your signature means you agreed or intent- oriented approach, which means the court might look at the context and decide you didn't really understand or intend to agree to the terms.

For the consent provision under the OSH Code, 2020, the competent authority should adopt an intent-oriented approach which means that the authority might look at the context and decide you did not really understand or intend to agree to the terms.

(d) Voluntariness: The word 'voluntariness' is difficult to define. An individual who is physically forced to consent an act is not said to act voluntarily. Use of physical force or threat to use physical force means that there is no voluntariness. Thus, use of coercion, undue influence, fraud, misrepresentation is prohibited. Coercion is defined under Sec15, Undue Influence under sec16, Fraud under sec17 of the Indian Contract Act³⁹

All the above cases show the lack of voluntariness among the employees. Thus, the workers should have autonomy to make decisions based on their personal circumstances and preferences. This includes the right to refuse work that they perceive as unsafe or beyond their capacity.

(e) Capacity: Certain categories of people are incapable of entering into an agreement Thus, employees employed by an establishment should be major, sound mind and not

37 Nancy S. Kim, *Relative Consent and Contract Law* (2017), https://scholars.law.unlv.edu/cgi/viewcontent.cgi?params=/context/nlj/article/1729/&path_info=pjjk4qgusf67nm40k96i8rvgy8rw665.pdf (last visited July 15, 2024).

38 Dr. R.K. Bangia, *Contract Law – I* (Allahabad Law Agency 2023).

39 *The Indian Contract Act, 1872*, s. 17.

disqualified by law from contracting. Children below the age of 18 years and mentally infirm may escape contracts because courts presume, they lack the ability to meet the knowledge condition necessary for valid contract.⁴⁰

(f) Consent Procedures and Women Safety

Consent for hazardous work: - Sec43⁴¹ of the Code provides that women shall be entitled in all establishments to work beyond hours of work i.e. before 6 a.m. and beyond 7 p.m. Such working to be allowed only, if necessary, steps are taken with regard to safety, working hours or such other condition to be observed by the employer.

Sec44⁴² of the Code mandates that where the appropriate Government can assess that particular hazardous activity is taking place in an establishment, the Government may ask the employer to provide adequate safeguards prior to engaging in such activity and involving the women in such activity.⁴³

Challenges

Ensuring proper safeguards are taken could be challenging especially in smaller or less regulated establishments. Moreover, continuous monitoring whether the establishments are ensuring proper compliance with the secis required. Understanding 'what constitutes dangerous?' could be challenging and may lead to potential inconsistencies in the application of the provision. The word "adequate safeguards' could be open for interpretation. This makes it necessary that the appropriate government should ask employer to frame proper safeguards. This at the same time can lead to additional costs for employers, challenging the small establishments.

Sec44 tries to create a safer work environment for women, thereby promoting gender equality, but if it is not carefully

40 *Ibid.*, s. 11.

41 *The Occupational Safety, Health and Working Conditions Code, 2020*, s. 43.

42 *Ibid.*, s. 44.

43 *Ibid.*, s. 44.

implemented, the provision might lead to discrimination. Employers might not hire women for certain roles to evade the additional cost burden that it will impose. Despite, having the legal provision, cultural and social attitudes towards women in certain jobs or hours might pose challenges. Moreover, the secmandates that the women can be allowed to work before 6 am and beyond 7 pm only when consent has been taken. The consent may not be genuine or may not be voluntary due to coercion or undue influence. Safeguards should be prescribed and properly documented to show that the consent is genuine and not the forced consent.

Working hours and overtime: - Sec27 of the OSH Code states that there shall be paid wages for the overtime work, but this overtime work can only be allowed if there is consent of the worker. Thus, if a female worker is working overtime, consent of the female worker is mandatory by sec27 of the Act and the female worker will be paid for the overtime work which is twice the rate of wages. The secfurther provides that the appropriate government may prescribe the total number of hours of overtime.

Analysis of the Above Provision

Sec27⁴⁴ mandated that the workers be compensated for the extra time they are putting in, which is a strong incentive and the compensation is also fair for the additional hours of work they are putting in. the potential issue which can be foreseen is that despite fixing the fair compensation, the effectiveness of this provision could be a challenge as the effectiveness depends on the proper enforcement mechanism and timely paying the workers. Moreover, flexibility provided to for the calculation of overtime work (daily or weekly, whichever is more suitable to the worker) will create confusion and administrative burden if not communicated or standardized properly within the organization. Further, the requirement of consent mandated by the provision can in actual practice make workers feel pressured to consent to overtime work due to fear of losing

44 *Ibid.*, s. 27.

their jobs or any other means of coercion can be used to force them to work extra time. Thus, here employers are required to maintain proper proof of documentation which should state that the consent is not caused by coercion or undue influence and the consent should be informed consent i.e. the workers should be informed the time of work they will be subject to when required to work overtime.

The provision further states that the Government “may” prescribe the maximum hours of overtime. This would help in setting the maximum limit, but, however, this part of the provision is not mandatory and further it leads to inconsistency. This means that different state governments will frame different rules and thus inconsistency would prevail in the country and thus effective implementation and monitoring of these limits could be challenging

Revocation of the contract without negative repercussions: - the issue of consent and its revocation is crucial. The provisions under OSH Code, 2020 do state about consent which has to be documented, but it does state about the revocation of consent. Without revocation procedure the employees may feel trapped, which may further lead to increased anxiety, stress and their inability to change their circumstances. Thus, all this can lead to health impacts. Thus, might compel them to work in environment which is not favourable to them. Erosion of trust between employees and management can take place, which can further impact employee engagement, job satisfaction and overall organizational culture. Thus, for fair and supportive work environment it is necessary that revocation of consent provision is introduced and allow employees to make their own informed choices about their working conditions. Clear guidelines should be established and procedures for both granting and revoking consent, thus employers can contribute towards transparency and thus respecting the rights of employees.

RESPONSIBILITY OF EMPLOYERS

Section 23 of OSH Code, 2020 deals with Employer's Responsibilities. It imposes two-fold responsibilities general and specific.

General Responsibilities

Under the OSH Code 2020, Section 23(1) mandates that employers are responsible for maintaining prescribed health, safety, and the working conditions within their establishments. The Central Government sets these standards, and the employer must ensure these conditions are met, promoting a safe and healthy work environment for all employees.

Specific Provisions

Section 23(2) elaborates on the general responsibilities by allowing the Central Government to prescribe specific provisions that establishments or classes of establishments must follow. These include ensuring cleanliness and hygiene to prevent health hazards and regulating ventilation, temperature, and humidity to create a comfortable work environment. Additionally, employers must maintain an environment free from dust, noxious gases, fumes, and other impurities.

Further, employers are required to implement adequate standards for humidification and air quality, including artificially increasing humidity, ventilation, and cooling in workrooms. Providing safe and potable drinking water is also a critical responsibility. To prevent overcrowding, employers must ensure sufficient space for employees and maintain adequate lighting for safety and productivity.

Sanitary facilities must be sufficient and hygienic, with separate accommodations for male, female, and transgender employees. Effective waste and effluent management systems must be in place to prevent environmental contamination. Lastly, employers are required to implement any other arrangements deemed necessary and appropriate by the Central Government to safeguard the health, safety, and well-

being of employees. These comprehensive provisions ensure that the workplace remains safe, healthy, and conducive to employee welfare, reflecting the broader mandate of the OSH Code 2020.

CONCLUSION

The said Code of 2020 represents a significant step towards ensuring safety and wellbeing of women at workplace. It has very significant provisions, especially concerning mandatory consent provision for late- night work. However, the lack of explicit guidelines on revoking such consent can lead to several drawbacks for employees, including less or diminishing autonomy, increased health risk, potential exploitation. Real life examples highlight the complexities and challenges in implementing such provision and creating awareness about the existing provisions. Challenges such as health risk, social stigma and safety concerns spoil the work life balance. Employers must be proactive in implementing such provisions in true letter and spirit and they should respect the consent provision, provide support to the employees. The true intent of the OSH Code, 2020 is to foster an inclusive and safe working environment for women, thus it becomes imperative that employers, government, policy makers and stakeholders collectively address these gaps. Ensuring compliance will lead to transparency and fairness in consent related processes, thus empower employees especially women in vulnerable sectors to make informed decisions or choices about their work hours and conditions.

Globalization and Labour Dynamics: Challenges and Opportunities

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ABSTRACT

Globalization has profoundly reshaped labour dynamics worldwide. The economically developed countries like the Australia, Canada, Western European nations, Japan, and United States enjoy higher wealth levels, technological advancements, and political influence. However, this progress has come at a cost for workers. Outsourcing and offshoring have disempowered labour forces, while global value chains have revolutionized production processes across borders. Developing countries play a pivotal role in global production networks, often providing inexpensive labour. Unfortunately, this reliance on cheap labour perpetuates exploitation and precarious work conditions, leading to stark economic and social disparities. The new economy has transformed labour markets, work arrangements, and workplaces. Technological advancements present both opportunities and challenges, altering the landscape of employment. Novel employment arrangements, such as gig jobs and short-term contracts are now hallmarks of the new economy. The boundary between free and unfree labour blurs, impacting workers' agency and rights. The three key mechanisms such as

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international trade, migration, and capital flows shape the working conditions and labour rights. These changes affect wages, work hours, job safety, freedom of association, and the elimination of forced and child labour. Labour unions and activists grapple with finding effective strategies amidst globalization and technological shifts. This chapter gives an insight on changing labour dynamics due to globalization, essential for creating an equitable and sustainable future in safeguarding labour rights.

Keywords: Gig Jobs; Labour Dynamics; Outsourcing; Offshoring; Short-Term Contracts; Globalization; Social Security; Working Conditions; Economy.

INTRODUCTION

Globalization, an ongoing process of increased interconnectedness across borders, has significantly influenced labor dynamics. Traditional work patterns have been disrupted, and new forms of labor such as gig work, remote freelancing, and platform-based employment have gained prominence. These shifts challenge established norms and necessitate adaptive policies. Digitalization and automation have revolutionized work, creating job opportunities in tech industries while displacing certain roles. Workers in the gig economy often lack traditional protections like social security and health benefits. Balancing economic growth with fair labor practices is crucial, especially considering the contributions of migrant workers to host economies. Despite presenting opportunities like flexible work arrangements and global collaboration, globalization also poses challenges related to inequality and precarious employment. Navigating this landscape requires innovative policies and a commitment to safeguarding workers' rights.

Advanced technology leads to new forms of capital accumulation. Restructuring of work arrangements creates new labor struggles.¹ There is a need to incorporate labor rights, environmental protection in trade agreements.

1 Ursula Huws, "The Globalization of Labor and the Role of National Governments: Toward a Conceptual Framework", in *Labor in the Global Digital Economy: The Cybertariat Comes of Age*, 85–100 (NYU Press, 2014).

Globalization must work for working families, address rising inequality.² Europe has seen the rise of emerging employment models compared with traditional in terms of employer-employee relationships and work patterns. These new forms aim to increase flexibility for both employers and employees, with a wide diversity in their characteristics and employment relationships.³ Globalization weakened traditional labor movements, but empowered new forms of activism. Informal sector challenges traditional labor characterizations and organization structures.⁴

Labour can globalize strategically in response to neoliberal capitalism. Diverse organizational forms can lead to labor's globalization in 21st century.⁵ Labour and social movements integral for progressive global solution. Global labor force emerging in response to neoliberal globalization.⁶

Research indicates the challenges for workers and unions in globalization and precarious employment.⁷ Globalization of production affects labor markets, industry structure, and industry location. "Foreign outsourcing can increase demand for skilled labour both at home and abroad".⁸ The New International division of Labour (NIDL) leads to wealth

2 Jay Mazur, "Labor's New Internationalism", 79 *Foreign Affairs* (2000).

3 Eurofound, "New Forms of Employment", available at: <https://www.eurofound.europa.eu/system/files/2017-06/ef1461en.pdf> (last visited June 20, 2024).

4 R. Bhattacharya & K. Sanyal, "Beyond the Factory: Globalisation, Informalisation of Production and the New Location of Labour", 44(22) *Economic and Political Weekly* 35–44 (2009).

5 Peter Evans, "Is it Labor's Turn to Globalize? Twenty-First Century Opportunities and Strategic Responses", *Global Labour Journal* (2010).

6 Ronaldo Munck, "Globalization, Labor and the 'Polanyi Problem'", 45(3) *Labour History* 251–269 (2004).

7 Shibata S., "Globalization and Precarious Forms of Production and Employment: Challenges for Workers and Unions", in Carole Thornley, Steve Jefferys et al. (eds.), *Labour History* 164–165 (Taylor & Francis, 2012).

8 Gordon H. Hanson, "The Globalization of Production", available at: <https://www.nber.org/reporter/spring-2001/Globalization-of-Production> (last visited May 29, 2024).

inequality and power concentration affecting women. Resource allocation in NIDL is based on power relations.⁹ A Study presents extensive analysis of new forms of labour organization. It provides regulatory framework in managing platform labour.¹⁰ New forms of employment are a result of technological, economic, social, and political factors. The development of remote work and digital platforms has potential for growth.¹¹ New types of employment, such as permanent platform and gig economy, are developing in regional labor markets. Platform employment has an ambiguous influence on regional labor markets.¹²

Japan's labor market reform, including upgrading skills, mobility of labour between enterprises, and job-based employment assesses the challenges to the reform and suggests ways to overcome them, aiming to reduce labor shortages, skill shortages, and inequality.¹³ Based on the available literature, a conceptual framework has been formulated to understand the globalization and labour dynamics: challenges and opportunities (Refer figure 1).

New forms of employment are identified from the secondary data. Conceptual framework is designed to understand the labour dynamics due to globalization. Challenges and opportunities in the labour dynamics as part of globalization

9 Valeria Sodano, *"The New Division of Labor in the Globalized Economy: Women's Challenges and Opportunities"*, 40(3) *Forum for Social Economics* 281–298 (Taylor & Francis, 2011).

10 Ekaterina Savel'eva, *"Digital Labor Platforms: New Forms of Labor Organization and Regulation"*, (Monograph, INFRA-M, 2021).

11 V. A. Ostapenko & I. M. Morozova et al., *"Development of the New Employment Forms in the Context of Digital Transformation of the Economy"*, 5(3) *E-Management* 64–72 (2022).

12 Tatiana Ivanova & Irina Mitrofanova, *"New Forms of Employment in Regional Labor Markets (Exemplified by Regions of the Southern Federal District)"*, *Regionalnaya Ekonomika. Yug Rossii* 138–150 (2022).

13 Zou F., *"The 'New Trinity' Reform of Labour Markets in Japan"*, 30(3) *Asia Pacific Business Review* 577–595 (2024).

are conceptualized to address them. Descriptive and Analytical methodology are adopted to the research questions. The following are the source of secondary data collection.

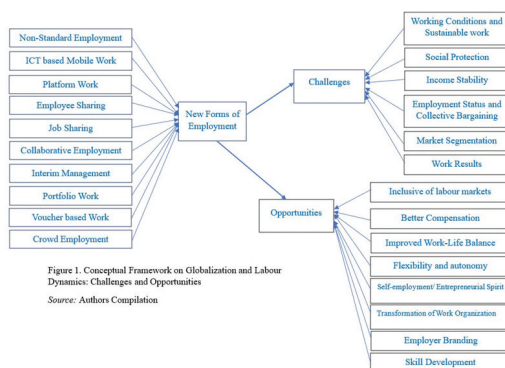
Table 1. Sources of Secondary data

S. No.	Particulars	Numbers
1.	Journals	08
2.	National / International Agency Reports	06
3.	Webpages	06
4.	Books/Edited Books	02
Total		22

Source: Authors Compilation

Due to globalization and technological advancement, there is a change in the labour dynamics that led to new forms of employment. They are as follows:

*Non-standard employment:*¹⁴ It encompasses work arrangements that differ from traditional full-time, permanent jobs. Key types include part-time, temporary, contract, freelance, gig work, telework, and zero-hours contracts.



14 International Labour Organization, “Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects”, available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_534496.pdf (last visited June 29, 2024).

*ICT based Mobile work:*¹⁵ “A work arrangements where employees operate remotely, away from a fixed location, using digital technologies such as laptops, mobile phones, and the internet”. It allows for greater flexibility in choosing where and when work is performed.

Platform work: It refers to “a form of employment where organizations or individuals use online platforms to access other organizations or individuals”. They do this either to solve specific problems or render services in exchange for payment. These digital platforms facilitate a gap in exchange of labour and services for certain remuneration through algorithms, involving three parties: (1) a client (2) the platform managing the algorithm and (3) the person rendering the work.¹⁶

Employee sharing: It is a “staffing practice where two people work in the same position on a part-time or reduced-time schedule, sharing the responsibilities that a full-time employee would typically handle alone”.

Job sharing: It involves actively delegating duties and splitting full-time hours between the two employees. They split the workload, often working part-time hours, while collaborating closely to ensure continuity and effective performance.

15 Eurofound, “New Forms of Employment”, available at: <https://www.eurofound.europa.eu/system/files/2017-06/ef1461en.pdf> (last visited June 29, 2024).

16 Eurofound, “New Forms of Employment: 2020 Update, New Forms of Employment Series”, available at: <https://www.eurofound.europa.eu/system/files/2020-12/ef20027en.pdf> (last visited June 29, 2024).

Collaborative employment.¹⁷ It refers to a work environment where individuals actively work together toward common goals, benefiting both the team and the company. It involves sharing knowledge, skills, and diverse perspectives, which can spark creativity and motivation within the organization.

Interim management.¹⁸ It is a specific type of temporary employment that provides management resources and skills to customer companies during periods of transition or change. Employers often hire interim managers to fill positions with short notice, especially when internal employees lack the specific qualifications.

Portfolio work.¹⁹ It is a dynamic approach to employment where individuals engage in multiple related or unrelated jobs simultaneously. Often referred to as “slashers - people with portfolio careers may hold various job titles, such as writer/photographer or graphic designer/stylist”.

Voucher-based work.²⁰ It involves workers receiving vouchers or tokens as payment for their services that has emerged since around 2000.

17 Eurofound, “New Forms of Employment”, available at: <https://www.eurofound.europa.eu/system/files/2017-06/ef1461en.pdf> (last visited June 29, 2024).

18 Eurofound, “New Forms of Employment: 2020 Update, New Forms of Employment Series”, available at: <https://www.eurofound.europa.eu/system/files/2020-12/ef20027en.pdf> (last visited June 29, 2024).

19 Eurofound, “New Forms of Employment: 2020 Update, New Forms of Employment Series”, available at: <https://www.eurofound.europa.eu/system/files/2020-12/ef20027en.pdf> (last visited June 29, 2024).

20 *Ibid.*

Crowd Employment:²¹ It utilizes online platforms to connect companies or persons with an indefinite and diverse group of other entities. Its purpose is to address particular problem or deliver product or render services in return for certain remuneration. Unlike traditional continuous employment, crowd employment relies on individual tasks, which are outsourced to a large pool of online workers. Technology facilitates the entire process, from client-worker matching to task execution and submission

Globalization: It refers to the “process of increased interconnectedness and integration of economies, cultures, and societies across national borders. It involves the flow of goods, services, capital, technology, and information between countries”.

Labour Dynamics in the context of Globalization: Globalization and disruptive technologies have transformed labor dynamics, resulting in both challenges and opportunities. In the context of labor dynamics, these changes have significantly impacted employment are discussed as follows:

CHALLENGES TO THE EMERGING EMPLOYMENT FORMS

The following are the challenges that new employment form faces due to globalization and advancement of technology:

Working Conditions and Sustainable Work

Expectations to be available beyond typical working hours often arise in ICT-based mobile work and platform work. Irregular or extended working hours are common among non-standard workers can significantly impact their work-life balance. The lack of stable employment may also affect workers’ long-term economic sustainability. Certain forms of non-standard employment (NSE), particularly ICT-based

21 Eurofound, “*New Forms of Employment*”, available at: <https://www.eurofound.europa.eu/system/files/2017-06/ef1461en.pdf> (last visited June 29, 2024).

mobile work, can have notable environmental consequences due to increased travel and resource consumption. Blurred boundaries between work and personal life in ICT-based mobile work may lead to overwork and burnout. Additionally, job sharing, while intended to improve work-life balance, can result in increased workload if responsibilities are not clearly defined. In the context of digital platform (platform work & ICT-based mobile) work, the absence of formal workplace settings can lead to inadequate health and safety measures. Furthermore, high-stress roles with tight deadlines in interim management can adversely impact mental health.

Portfolio work and interim management offer diverse experiences but may lack clear career advancement pathways. Platform work, characterized by task-based assignments, provides limited opportunities for skill development and career progression. In remote work, blurred boundaries between work and personal life can lead to burnout and stress, as employees struggle to disconnect. Gig and freelance work, while flexible, can sometimes result in overwork when workers take on multiple gigs to ensure sufficient income. Remote and freelance workers may lack access to essential tools, technology, and support systems typically provided in traditional office environments. Managing multiple roles and responsibilities in a portfolio career can be challenging without adequate support and resources.

Social Protection

Non-standard workers including ICT-based & platform worker are not entitled to occupational health measures, retirement plans and paid leaves or unemployment insurance. Inadequate social protection further increases their vulnerability. Poor working conditions, including unsafe environments, are prevalent in non-standard employment, particularly in platform work and voucher-based arrangements. The uncertainty and irregularity associated with such employment can lead to stress and mental health issues. Additionally, navigating benefit entitlements across multiple employers

such as collaborative and employee sharing employment can be complex and may result in insufficient coverage.

Voucher-based and platform work are often excluded from traditional social security systems, which poses risks for long-term financial security. In cases of employee sharing, pensions and other long-term benefits may not be adequately addressed across different employers. Gig, Freelance, and platform workers typically do not receive traditional employment benefits. While some remote workers receive full benefits, those classified as independent contractors may not have access to such benefits.²²

INCOME STABILITY

Numerous non-standard employment forms lack a guarantee of steady income, which contributes to financial instability. Employees frequently engage in short-term or project-based contracts, leading to job insecurity. In the case of platform work, earnings can vary significantly based on demand and competition. Workers frequently encounter uncertainty in income and employment continuity. The absence of a guaranteed steady paycheck makes financial planning challenging in Gig and freelance work. Similarly, part-time and temporary employment provide less job security and fewer benefits compared to full-time positions.

Employment Status and Collective Bargaining

Non-standard workers often face limited access to training and professional development. Opportunities for career advancement and skill growth are fewer in their work contexts. Existing labor laws may not sufficiently protect non-standard workers, who may be misclassified as independent contractors rather than employees, reducing their legal safeguards. Additionally, non-standard employment workers are less likely to be unionized or represented in collective bargaining

22 Isabelle Deganis & Makiko Tagashira et al., “Digitally Enabled New Forms of Work and Policy Implications for Labour Regulation Frameworks and Social Protection Systems”, available at: <https://social.desa.un.org/publications/digitally-enabled-new-forms-of-work-and-policy-implications-for-labour-regulation> (last visited June 30, 2024).

processes, limiting their influence over working conditions and employment terms. The dispersed and independent nature of work in platform work and ICT-based mobile work poses challenges for organizing and collective bargaining. Furthermore, diverse and fragmented work experiences can hinder efforts to form or join unions in portfolio careers.

There is an ambiguity in employment status of collaborative employment and platform work that can lead to exploitation and limited enforcement of labor rights. ICT-based mobile work faces challenges in applying traditional labor laws to remote and flexible work arrangements. Algorithms used in platforms can perpetuate biases, resulting in discrimination and inequality. Additionally, power dynamics between collaborating entities may lead to unfair treatment of workers.

Market Segmentation

Gig and freelance work, remote work, part-time and temporary employment, platform work, coworking, shared workspaces, and portfolio careers represent prevalent new forms of employment that vary by region, industry, and individual circumstances. Platform work provides accessible and streamlined labor market entry, even for disadvantaged groups. However, it remains uncertain whether this trend will eventually facilitate workers' transition to standard jobs in the traditional labor market or contribute to further labor market segmentation. Working remotely or independently can result in feelings of isolation and a lack of camaraderie and support from colleagues. While co-working spaces can alleviate this isolation, they may not fully replicate the sense of belonging found in traditional workplaces.

Work Results²³

Efficiency and effectiveness of work results may decrease due to casual work, leading to reputational damages. Ensuring

23 Eurofound, "New Forms of Employment: 2020 Update, New Forms of Employment Series", available at: <https://www.eurofound.europa.eu/system/files/2020-12/ef20027en.pdf> (last visited June 29, 2024).

productivity and maintaining accountability can be challenging for both employees and managers in remote work. Conversely, in gig and freelance work, quality control and performance evaluation may be inconsistent.

OPPORTUNITIES TO THE EMERGING EMPLOYMENT FORMS

The following are the opportunities created to new employment form due to globalization and technological advancement:

Inclusive of Labour Markets

Platform work encompasses a wide range of job types, from driving and delivery to freelance writing and graphic design, creating diverse opportunities. It provides access to a global market of clients and customers, potentially increasing earnings. Many platform jobs require minimal qualifications and can be started quickly. Additionally, workers have the chance to build professional networks across various sectors. In ICT-based mobile work, collaboration with international teams and clients is possible. Furthermore, voucher-based work can formalize informal sector workers, granting them legal protections and benefits.

Better Compensation

Interim managers are in high demand for their expertise and ability to manage transitions or crises. Combining multiple part-time jobs, freelance work, and projects can provide varied income sources.

Improved Work-life Balance

The flexibility to work as needed can be advantageous for students, retirees, or individuals with other commitments. In ICT-based mobile work, having greater control over work schedules can help balance personal and professional lives. Additionally, employees can achieve better work-life balance by working fewer hours through job sharing.

Flexibility and Autonomy

Workers can choose their own hours and work on tasks that fit their schedules in platform work. Causal work employment is ideal for those seeking short-term employment or additional income. Remote work enhances the ability to work from anywhere with internet access, reducing commuting time and expenses. Job sharing allows flexibility in part-time work schedules. Workers can choose tasks that fit their schedules and receive immediate payment in voucher-based work. Portfolio work provides greater control over work choices and career direction.

Self-Employment and Entrepreneurial Spirit

Voucher-based work creates opportunities for individuals who lack access to traditional employment. Collaborative employment fosters creativity and innovation through joint efforts, while also building professional networks. Portfolio work allows individuals to pursue multiple passions and interests simultaneously. Thus, creates opportunities for self-employment and fosters entrepreneurial spirit.

Transformation of Work Organization

Employee sharing, individuals can apply their skills across multiple organizations, gaining diverse experiences. Exposure to different work environments and organizational cultures enhances career development. In collaborative employment, workers collaborate on projects, sharing resources and expertise. Interim management offers opportunities to apply and enhance leadership and management skills in various settings.

Employer Branding

In certain instances, employee sharing can offer more stable employment compared to traditional part-time roles, while also ensuring equal pay and equal treatment. Organizations can pool the costs associated with skilled employees, making it economically feasible. Job sharing can help retain skilled workers who might otherwise leave due to their inability to commit to full-time work.

Skill Development

In casual employment, individuals have the chance to gain experience across various industries and roles. ICT-based mobile work allows access to tools and technologies, enhancing efficiency. Employees can apply their skills across multiple organizations, benefiting from diverse experiences through employee sharing. Employers gain from the combined skills and perspectives of multiple employees in job-sharing roles. A portfolio work environment offers an opportunity to develop a broad range of skills across different roles and industries.

In India, it is estimated that the gig workforce raises to 23.5 million by 2029-30. Currently, there are 47% of gig workers are in medium-skilled, high-skilled roles are 22%, and low-skilled positions are 31%".²⁴ It recommends launching a 'Platform India' initiative, akin to 'Startup India,' to promote platformization.²⁵

It also suggests improving access to finance for platform workers, emphasizing platform-led skilling models, and introducing 'Skill Certificates' for career advancement.²⁶ Additionally, proposals include extending social security benefits—such as paid sick leave, health insurance, and retirement plans—to gig and platform workers. Gig economy workers in India face long hours, with 83% of cab drivers and 78% of delivery personnel working over 10 hours daily. Many workers earn less than Rs 15,000 per month, leading to difficulties in managing household expenses. The demanding work schedule results in physical and mental health issues, including pain and stress-related conditions.²⁷ There is a need

24 NITI Aayog, "India's Booming Gig and Platform Economy – Perspectives and Recommendations on the Future of Work", available at: https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf (last visited June 29, 2024).

25 *Ibid.*

26 *Ibid.*

27 Shiva Rajora, "Longer Working Hours & Low Earnings: How India's Gig Workforce Fares", available at: https://www.business-standard.com/industry/news/longer-working-hours-low-earnings-how-india-s-gig-workforce-fares-124031100985_1.html (last visited June 28, 2024).

to recognize app-based workers as full-time employees with access to minimum wages and healthcare, rather than as gig workers. “India’s gig workforce is projected to grow from 7 million to 25 million by 2030, with a focus on enabling first-time employment and skill development”.²⁸

Appropriate government needs to invest in technology, support the workforce, and create a regulatory framework to foster the gig economy’s growth and ensure long-term sustainability.²⁹ Gig workers face issues like inconsistent income, lack of benefits, and regulatory hurdles, which need to be addressed through targeted investments and policies.³⁰ With proper budget allocation and a commitment to worker and community support, the gig economy can drive a more robust, inclusive, and sustainable economic model.

The draft bill defines “a gig worker as someone who performs work arranged via a platform, paid per task, and includes piece-rate work”. The Karnataka draft Bill aims to protect gig workers’ rights, introducing safeguards against unfair dismissals and ensuring social security and occupational health. It mandates weekly payments, reasons for deductions, and introduces a two-level grievance redressal mechanism.³¹ It also proposes a welfare board and fund for gig workers, financed by a welfare fee and government contributions, ensuring registration and safe working conditions.³² This draft

28 Kartik Narayan, “A Budget Solution to India’s Skilled Workforce Challenge: Unleash the Gig Contingent”, available at: https://economictimes.indiatimes.com/news/economy/policy/a-budget-solution-to-indias-skilled-workforce-challenge-unleash-the-gig-contingent/articleshow/107027315.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited June 16, 2024).

29 *Ibid.*

30 *Ibid.*

31 Shilpa Elizabeth, “What Does the Karnataka Bill Promise Gig Workers?”, available at: <https://www.thehindu.com/news/national/karnataka/what-does-the-karnataka-bill-promise-gig-workers-explained/article68375781.ece#:~:text=A%202022%20NITI%20Aayog%20report,on%20in%20Bengaluru%20alone%20reportedly> (last visited July 8, 2024).

32 *Ibid.*

is part of a broader movement in India to address the social security and welfare of gig workers, with similar initiatives in Rajasthan, Haryana, and Telangana.

European Union, China and USA have identified new employment forms and included certain protection to the employees and workers with fewer legislations. However, ILO Recommendation No. 198 advises governments to “review, clarify, and adapt relevant laws and regulations to guarantee effective protection for workers in employment relationships”. It also addresses criteria for determining employment status.³³

CONCLUSION

Globalization has reshaped the landscape of labor markets, giving rise to modern employment types such as gig work and telecommuting. Employees grapple with challenges including unstable job conditions, insufficient social benefits, and fluctuating earnings. Meanwhile, technological progress presents advantages such as adaptable work schedules, opportunities for skill enhancement, and broader access to jobs. The recommendation is for legal frameworks to evolve in order to safeguard workers engaged in these contemporary job models, focusing on robust social security measures and equitable work standards. Furthermore, the paper underscores the gig economy’s capacity to bolster economic expansion, provided it is nurtured by suitable strategies and fiscal support.

33 International Labour Organization, “Protecting Workers in New Forms of Employment”, available at

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_845714.pdf (last visited on 20 June 2024).

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CHAPTER

Towards Equity: Bridging the Gender Pay Gap and Advancing Women's Rights

Megha Mahesh*

ABSTRACT

The gender pay gap is a pervasive and multifaceted issue that continues to persist in workplaces worldwide, despite advancements in gender equality. It is a reflection of systemic injustices that impede efforts to achieve gender equality. This abstract outline practical tactics for closing this disparity and advancing fair compensation. This chapter presents strategies to address the gender pay gap, including regular pay audits, equal pay policies, unconscious bias training, flexible work arrangements, gender diversity in leadership, compensation policy reviews, transparent recruitment and promotion processes, employee resource groups, and accountability mechanisms. These efforts are supported by explicit equal pay rules and impartial compensation standards, aiming to reduce discrimination, address pay disparities, and promote a more equitable workplace culture. Flexible work schedules help women balance personal and professional obligations, while encouraging diversity in leadership roles improves representation and impacts pay policy decisions. Open hiring and promotion procedures reduce prejudice and promote fair professional growth. Implementing these strategies can mitigate

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the gender pay gap, providing insights and actionable recommendations for organizations, policymakers, and stakeholders committed to advancing gender equality in the workplace. In consonance with the 2024 theme “Invest in women: Accelerate progress” it emphasizes the importance of creating an inclusive society and investing in women’s empowerment and by adopting a holistic approach that addresses the root causes of the gender pay gap, we can create more inclusive and equitable workplaces where all employees are valued and compensated fairly, regardless of gender.

Keywords: Gender Pay Gap, Equal Compensation, Workplace Equality, Transparency, Pay Audits, Equal Pay Policies, Women Empowerment, Gender Diversity, Accountability.

INTRODUCTION

The gender pay gap in India is a narrative that demands our attention. It’s time to look at things through a new lens and challenge the status quo. The gender pay gap is a persistent issue across all countries, with an estimated global gap of 24%. Despite advancements in women’s education and economic independence, gender pay gaps remain prevalent in labour markets worldwide. This gap, defined as the difference in average wages between men and women, contributes to an overall income disparity between genders. Women often face challenges in accessing equal remuneration and formal employment status, particularly when concentrated in the informal economy.

Closing the gender pay gap is crucial for social justice and economic empowerment. When women are reliant on their wages for subsistence, they may fall into poverty and struggle to provide a decent standard of living for themselves and their families. Pay discrimination limits women’s choices and impacts their lifetime earnings, hindering their ability to develop their capabilities fully. Achieving pay equality can lead to positive economic outcomes by leveraging women’s potential and talents, benefiting both individuals and economies.

Efforts to address the gender pay gap have traditionally focused on women’s behaviour and choices, attributing the gap to factors such as lower education levels and occupational

segregation. However, women have made significant strides in education and employment participation, challenging the notion that individual actions alone can achieve gender equality. Instead, there is a growing recognition of the need to reform employment institutions, including practices related to wage setting, recruitment, and promotion.

Policies aimed at closing the gender pay gap should be developed alongside broader initiatives to reduce inequality, promote social justice, and support working parents. By raising and extending minimum wage floors, reducing wage differentials, and valuing women's work and skills, societies can create a more equitable labour market. Gender pay audits, action plans, and opportunities for career progression in female-dominated sectors are essential components of efforts to address pay disparities.

Legislative rights to equal pay for work of equal value are crucial, yet many countries lack effective laws in this regard. Gender inequalities persist in various forms, necessitating a comprehensive approach to address structural barriers to pay equity. Overcoming gender segregation in both paid and unpaid work, regulating working hours to support working parents, and enhancing the valuation of women's work are key steps in narrowing the gender pay gap.

In conclusion, closing the gender pay gap is a multifaceted endeavour that requires systemic changes in employment practices and societal attitudes. By recognizing the value of women's contributions, promoting equal pay rights, and creating opportunities for career advancement, societies can move closer to achieving gender equality in the workplace. Empowering women economically not only benefits individuals and families but also contributes to overall social and economic development.

Women Empowerment in Labour Force Reforms

- “The World Economic Forum (WEF) recently ranked India at 135 out of 146 countries in its Global Gender Gap (GGG)

Index for 2022. According to the World Inequality Report 2022 estimates, men earn 82 per cent of the labour income in India, whereas women earn 18 per cent.”

- “In the year between July 2022 and June 2023, an average salaried Indian male made ₹20,666 in a month. A woman, on the other hand, made ₹15,722.25.”
- “But women are making moves, and they have a seat at the head of the table.”

Gender equality and promoting women’s economic empowerment have been key focuses in India’s policy discussions. The Government of India has taken significant steps to enhance women’s participation in the workforce. According to the Periodic Labour Force Survey (PLFS), there has been a notable increase in women’s workforce participation from 22% in 2017-18 to 35.9% in 2022-23. While progress has been made, there is still room for improvement through effective implementation of existing policies by employers.¹

The Government of India has introduced various programs and initiatives to boost employment rates and improve the quality of work for women. These initiatives encompass social security programs, skill development, enhanced educational opportunities, and legislative reforms. These efforts have played a crucial role in narrowing gender gaps and increasing female workforce participation. However, challenges persist, necessitating proactive employer initiatives to enhance access to safety, flexibility, and social security for women in the workforce.

The government’s commitment to women’s empowerment is evident through the implementation of numerous measures aimed at enhancing women’s engagement in the labor force. Policies, programs, and initiatives have been rolled out to uplift education and livelihood opportunities, particularly for women. The government’s efforts to improve women’s economic well-being are reflected in various schemes and policies that have been put into action.

1 *High Level Committee on the Status of Women*, Government of India (2015).

The advisory for employers to promote women's workforce participation emphasizes the importance of gender equality and women's economic empowerment. Employers are encouraged to eliminate gender bias in recruitment, promotion, and performance reviews. Regular reviews and audits of pay structures are recommended to identify and rectify gender pay gaps. Providing night shift and transportation facilities, along with promoting women in management and leadership roles, are highlighted as essential steps for fostering diversity and inclusivity in the workforce.

Employers are advised to review procurement practices to support women-run enterprises in the value chain. Encouraging flexible working arrangements, including teleworking, for both men and women is crucial for balancing work and care responsibilities. Creating a supportive and inclusive environment for women workers, along with initiatives like gender-neutral creche breaks and working women hubs, can significantly contribute to enhancing women's participation in the workforce.

The advisory also stresses the importance of developing resource groups for retaining women in the workplace. These groups provide direct access to senior female leadership for mentoring, fostering a conducive environment for women's growth and development. Training and sensitization programs are recommended to raise awareness and promote gender equality in the workplace.

In, women's empowerment in labour force reforms is a multifaceted endeavour that requires collaborative efforts from the government, employers, and society as a whole. While progress has been made in increasing women's participation in the workforce, there are still challenges to overcome. By implementing proactive measures, such as promoting gender equality, providing support for work-life balance, and creating inclusive work environments, we can further advance women's economic empowerment and foster a more equitable and thriving labour force. The integration of women's rights into labour law reforms aims to address gender disparities,

promote equality, and empower women in the workforce. In India, various initiatives have been undertaken to enhance women's rights in the labour sector.

One key aspect of labour law reforms is ensuring equal pay for equal work, regardless of gender. This principle aims to eliminate gender-based wage discrimination and ensure that women receive fair compensation for their work. Additionally, measures to address workplace discrimination, harassment, and bias are essential in creating a safe and inclusive work environment for women.

Maternity rights and benefits are another critical area of focus in labour law reforms concerning women. Providing maternity leave, childcare support, and breastfeeding facilities are essential to support women in balancing work and family responsibilities. These reforms aim to prevent discrimination against pregnant women and ensure their well-being in the workplace.

Furthermore, promoting women's participation in decision-making processes and leadership roles is vital for gender equality in the labour force. Labor law reforms can include provisions that encourage gender diversity on corporate boards, equal opportunities for career advancement, and initiatives to bridge the gender gap in leadership positions.

Addressing challenges faced by women in non-standard forms of employment, such as part-time work or informal sectors, is also crucial in labour law reforms. Ensuring that women in these sectors have access to social security benefits, fair working conditions, and legal protections is essential for their economic empowerment and well-being.

Moreover, combating gender stereotypes and promoting a culture of gender equality in the workplace are integral parts of labour law reforms. Training programs on gender sensitivity, diversity, and inclusion can help create a more supportive and respectful work environment for women.

Hence, integrating women's rights into labour law reforms is essential for promoting gender equality, empowering women in the workforce, and creating a more inclusive and equitable work environment. By addressing issues such as equal pay, maternity rights, leadership opportunities, non-standard employment, and workplace culture, labor law reforms can contribute to advancing women's rights and fostering a more diverse and thriving labor force in India and beyond.²

IDENTIFICATION AND ANALYSIS OF GENDER PAY GAP

The identification and analysis of gender pay disparities is one of the most crucial initial steps in addressing pay equity inside companies. By comparing pay based on gender and evaluating compensation data, organizations can find disparities in base income, other compensation components, and total compensation. Calculating average salaries for men and women in each job category and conducting reasonable and explicable tests might help locate areas with gender pay disparities and uncover their underlying causes.³

Gender pay disparities can be used to shed light on issues such as discrimination in performance management processes, occupational segregation, and unequal access to discretionary pay.

By analyzing data and understanding the causes that lead to gender pay gaps, organizations may tailor their strategies to address specific issues and advance just and equal compensation policies. Setting the areas in order of priority of concern, particularly focusing on like-for-like gender pay gaps, can help organizations comply with legislation and work towards achieving gender pay equity.

CAUSES FOR GENDER PAY GAP

The gender pay gap persists for a number of reasons. One significant contributing element is industrial and occupational

2 *International Labour Organization, Women in Business and Management.*

3 *World Gender Equality Agency, Gender Pay Equity* (2019).

segregation, where men and women frequently work in different industries and professions and where traditionally, jobs dominated by men have been paid more than those dominated by women. The underrepresentation of women in senior roles and flexible or part-time senior occupations further exacerbates the gap. This is because women are less likely to be able to access higher-paying jobs because they are more likely to work part-time due to caring responsibilities. Another factor contributing to the gender wage gap is women's weak link to the labor force, which is primarily the result of unpaid caregiving responsibilities.⁴

Inequalities in access to education and training may also contribute to gender disparities in pay. The gender pay gap is largely caused by unconscious biases and practices in recruiting and compensation choices, according to research, with women managers typically receiving less for equivalent work than their male counterparts. Bias in performance management practices, where males receive higher performance ratings and, hence, higher pay, further exacerbates the inequality.⁵

Due to the fact that women typically start at lower pay rates and have greater difficulties moving up the pay scale, differential start salaries and access to discretionary compensation can further contribute to gender pay discrepancies. Extended absences may hinder the advancement of income, particularly for women. Furthermore, women who work part-time could make less money annually.

Organizations must perform in-depth studies of their compensation practices in order to address the root causes of the gender pay gap. This analysis must look at base salary, total compensation, and variables that affect pay differences between genders. Bridging the gender wage gap and improving women's rights in the workplace require implementing gender-inclusive job evaluation processes, guaranteeing

4 *International Labour Organization, World Employment and Social Outlook: Trends for Women 2017* (Geneva, 2017) at 18.

5 *Workplace Gender Equality Agency, Perspective Paper: Women and Negotiation* (2019).

fair and equitable starting rates, and encouraging gender diversity in leadership posts. As a result, the gender wage gap is a complicated problem that is impacted by a range of organizational, cultural, and personal factors. Organizations can strive towards attaining pay parity and fostering a more fair and inclusive work atmosphere for all staff members by recognizing and resolving the underlying reasons of gender-based wage differences.⁶

PROVISIONS FOR WOMEN WORKERS RELATING TO GENDER PAY UNDER VARIOUS LABOUR LAWS

Equal Remuneration Act, 1976:

- The Act forbids wage discrimination based on gender and guarantees women employees equal compensation for equal effort.
- It creates an equal work environment by supporting justice, non-discrimination, and equal chances for male and female employees.

In the case of *Mackinnon Mackenzie and Co. Ltd. v. Andrey D'Costa*⁷, which involved a claim for equal remuneration for female Stenographers and male stenographers. The Supreme Court held that such kind of differentiation is not maintainable, further, the management could not arrive at a settlement, by flouting the express provision of the statute.

This Supreme Court's conclusion in *Uttarakhand Mahila Kalyan Parishad v. State of UP*⁸, which held that the creation of distinct cadres of male and female teachers and less salary as well as inferior promotional opportunities to the female by the UP education department was illegal. The violation was remedied by a partial merging of the categories and directions to the government to make the service conditions and promotional opportunities equal expeditiously.

6 PriceWaterhouseCoopers (PwC), *Women in Work Index: Closing the Gender Pay Gap* (Mar. 2018) at 10–11.

7 *Mackinnon v. Shivraj and Others*, AIR 1987 SC 1281; 1987 SCR (2) 659.

8 *C.B. Muthamma v. Union of India*, AIR 1992 SC 1695.

In the case of *Randhir Singh v. Union of India*⁹, the Supreme Court observed that although the principle of 'equal pay for equal work' did not find an explicit place in the fundamental rights, it certainly constitutes a constitutional goal, therefore, it is capable of being enforced through constitutional remedies under Article 32 of the Constitution.

The SC in the cases of *Sita Devi & Others v. State of Haryana & Others* and *People's Union for Democratic Rights v. Union of India*¹⁰ wherein female workers were being paid only Rs. 7 per day as the balance of the wage was misappropriated by the jamadars) noted that it was the principle of equality enshrined in Article 14 of the Constitution which was expressed in the provisions of the ERA. Thus, violation of the ERA could legitimately form the subject matter of a writ petition under Article 32.

The Bombay High Court noted in the case of *Irene Fernandes v. Neo Pharma (Pvt.) Ltd.*¹¹ that the applicant must establish that the effort, skill and responsibility required to perform her work are the same as those required to be carried out by the men, post which the employer has an obligation to equally remunerate the applicant unless the classification is reasonable

The court noted that this strengthens the principles of the Contract Labour Regulation and Abolition Act, 1970 invoking Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. This indeed augurs well for the 120 million women in casual ad-hoc employment in the informal sector (UN Women 2016) though enforceability remains a crucial problem.

Payment of Wages Act, 1936

- The Act safeguards the rights of workers, especially women, by specifying timing and mode of wage payments.
- It promotes financial stability for workers, crucial for women supporting themselves and their families.

9 *Air India v. Nergesh Meerza*, AIR 1982 SC 879; 1982 SCR (3) 298.

10 *Miss C. Meera v. State of Tamil Nadu*, AIR 1982 SC 1473; 1983 SCR (1) 456.

11 *Irene Fernandes v. Neo Pharma (Pvt.) Ltd.*, (1997) 99 Bom LR 633.

Minimum Wages Act, 1948

- Ensures every worker, regardless of gender, receives remuneration commensurate with their work, skills, and economic conditions.
- Prevents exploitation by setting a floor wage, guaranteeing fair remuneration for women's work.

Code on Wages, 2019

- Prohibits wage disparity based on gender, emphasizing equal remuneration for both women and men in similar work.
- Promotes fairness and equity in remuneration practices, fostering gender equality in the workforce.

Occupational Safety, Health, and Working Conditions Code, 2020

- Emphasizes creating a secure and healthy working environment, considering women's unique health needs.
- Includes provisions for mandatory health checkups and grants women the right to work at night with safety measures.

Factories Act, 1948

- Regulates working hours, weekly holidays, rest intervals, and overtime pay for all factory workers.
- Imposes restrictions on women's employment during certain hours, ensuring their well-being and safety.

Employees' Provident Funds Act, 1952

- Establishes a provident fund for social security and retirement benefits for all eligible employees, irrespective of gender.
- Provides a savings mechanism for retirement, with contributions from both employers and employees.

Employee State Insurance Act, 1948

- Ensures medical, cash, provident fund, and retirement benefits for all eligible employees, regardless of gender.
- Complies with social security provisions, extending comprehensive benefits to both women and men workers.

These provisions under various labor laws aim to promote gender pay equality, safeguard women workers' rights, and create a conducive and fair work environment for all employees, irrespective of gender.

GOVERNMENT INITIATIVES FOR GENDER PAY GAP ¹²

The Indian government has introduced a number of notable initiatives aimed at reducing the gender pay gap and advancing gender equality in the workplace. Among the significant efforts is the Code on Wages, 2019, which offers a comprehensive framework for labor laws pertaining to wages. By expressly prohibiting salary differences based on gender and highlighting the concept of equal pay for men and women performing comparable labor, this rule encourages justice and equity in payment practices.

Additionally, the government has introduced various schemes and policies aimed at empowering women economically and narrowing the gender pay gap. Programs such as the Pradhan Mantri Jan Dhan Yojana (PMJDY), Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA), and Beti Bachao Beti Padhao focus on financial inclusion, maternal health, and girl child education, respectively. These initiatives not only enhance women's economic opportunities but also contribute to reducing disparities in pay and employment.

In addition, the recommendation for companies to encourage women to enter the workforce has particular clauses aimed at closing the gender pay gap. To find and address any gender-based wage disparities, employers are urged to periodically analyze and audit their pay structures. Businesses may help

12 Ministry of Labour and Employment, Government of India, New Delhi.

close the gender pay gap and promote an inclusive workplace by making sure that compensation policies are fair and transparent. In addition, encouraging gender-neutral job postings is an essential step in closing the gender pay gap. Employers may recruit a diverse pool of skilled candidates and provide equal chances for all people, regardless of gender, by removing gender-specific wording or biases in job descriptions. Gender-neutral hiring procedures help level the playing field and lessen differences in compensation and career progression.

Thus, the government's initiatives to address the gender pay gap are essential for promoting gender equality and empowering women in the workforce. By implementing comprehensive frameworks like the Code on Wages, fostering economic empowerment through various schemes, and promoting gender-neutral recruitment practices, significant strides can be made in narrowing the gender pay gap and creating a more equitable and inclusive work environment. Collaborative efforts between the government, employers, and society are crucial in advancing gender equality and ensuring fair and equal remuneration for all individuals, irrespective of gender.

BENEFITS AND CHALLENGES OF CLOSING THE GENDER PAY GAP

Many benefits are available for society, the economy, and people when the gender pay gap is closed. The rise in women's purchasing power is one important advantage, as it can encourage consumer spending and general economic expansion. Equal pay for men and women encourages greater pension plan contributions and pension income spending, which in turn stimulates the economy. Closing the gender pay gap can also increase gender equality, which feeds back into itself and gives women more economic power.

Integrity in Addressing the Gender Pay Gap: Integrity is crucial in addressing the gender pay gap, as it involves ensuring fairness, transparency, and equality in compensation practices. Companies must demonstrate a commitment

to gender equality by recognizing the business benefits of diversity and implementing measures to close the pay gap. This includes promoting a gender-inclusive culture, offering equitable salaries to men and women, and conducting regular pay reviews to identify and rectify discrepancies. By upholding integrity in addressing the gender pay gap, organizations can enhance their reputation, attract top talent, and contribute to a more equitable society.¹³

Challenges in Narrowing the Gender Pay Gap: In order to achieve gender equality in the workplace, organizations and societies must address a number of difficulties related to narrowing the gender pay gap. The underrepresentation of women in leadership roles is one major issue. Because more women work in support jobs in management than in strategic ones, the average salary for female managers is lower than that of their male colleagues. The gender wage gap is maintained by this lack of representation, which also prevents women from advancing in their jobs.¹⁴

Another challenge lies in the different patterns of workforce engagement by women and men. Women are more likely to work part-time, take career breaks to care for family members, or face challenges re-entering the workforce after such breaks. These factors contribute to women falling behind in advancement and remuneration, creating barriers to closing the pay gap effectively.

Education also plays a role in the gender pay gap challenge. While women are surpassing men in tertiary education and entering STEM fields, they still face barriers in obtaining and maintaining higher-paid jobs in these areas. Occupational gender stereotyping leads to certain jobs being undervalued when held predominantly by women, contributing to lower wages across feminized industries compared to male-dominated sectors.

13 *Women's Rights in India – An Analytical Study: The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The Indian Constitution, Legislations, Schemes, Policies & Judgements*(2021).

14 UN Women- Tackling the Gender Pay Gap.

Moreover, the lack of objective job evaluation methods and practices poses a technical challenge in comparing jobs within and across sectors. The absence of standardized methodologies for assessing the value of work complicates efforts to ensure equal pay for work of equal value. This technical barrier contributes to the persistence of the gender pay gap and requires innovative solutions to overcome.

Addressing unconscious gender bias in performance reviews and salary offers is another challenge in narrowing the gender pay gap. Ensuring that gender-neutral criteria are used in evaluating employees' skills and responsibilities can help mitigate bias and promote fair compensation practices. Organizations must also adopt flexible job structures to allow more women to access higher-level positions and, consequently, higher pay.

Therefore, narrowing the gender pay gap requires a multifaceted approach that addresses the challenges of under-representation in leadership, workforce engagement patterns, education barriers, job evaluation methodologies, and unconscious bias. By recognizing and actively working to overcome these challenges, organizations and societies can make significant strides towards achieving gender equality in the workplace and closing the gender pay gap.

ROLE OF ENTERPRISES IN CONTROLLING THE GENDER PAY GAP

Enterprises play a crucial role in controlling and ultimately closing the gender pay gap within their organizations. To address this issue effectively, companies must first recognize the existence of gender inequalities, including pay gaps, as part of their organizational culture. By acknowledging these disparities, enterprises can take proactive measures to promote gender diversity and ensure equal remuneration for all employees, regardless of gender.

One key step for enterprises is to promote a gender-inclusive business culture that values diversity and equality. This

involves fostering an environment where all employees feel respected, valued, and empowered to contribute their skills and talents. By creating a culture that celebrates diversity and inclusivity, companies can lay the foundation for addressing and eliminating the gender pay gap.

Additionally, enterprises can adopt a holistic approach to equal remuneration by making equitable salary offers to both men and women. This means basing pay on the position itself rather than the employee's previous salary, as the latter can perpetuate existing pay gaps. By ensuring that salary offers are fair and unbiased, companies can prevent gender discrimination in compensation practices and promote a more equitable workplace.

Conducting regular gender pay reviews is another essential step for enterprises to control the gender pay gap. By assessing whether a pay gap exists within the organization and to what extent, companies can identify discrepancies and take corrective actions to address them. Regular pay reviews help organizations stay informed about any disparities and demonstrate a commitment to transparency and fairness in compensation practices.

Moreover, enterprises can make jobs more flexible to enable greater access for women to higher-level positions and higher pay. By offering flexible work arrangements, such as remote work options or flexible hours, companies can support women in balancing their professional and personal responsibilities while advancing in their careers. Flexible job structures can help break down barriers that prevent women from accessing higher-paying roles and contribute to narrowing the gender pay gap.

Hence, enterprises have a significant role to play in controlling the gender pay gap by promoting a gender-inclusive culture, ensuring equitable salary offers, conducting regular pay reviews, and implementing flexible job structures. By taking proactive measures to address gender inequalities and promote equal remuneration, companies can contribute to

creating a more diverse, inclusive, and equitable workplace for all employees.

STRATEGIES TO IMPROVISE GENDER PAY GAP

Organizations can implement various strategies to improve gender pay equity and advance towards a more inclusive workplace. One key strategy is conducting regular pay audits to identify and address gender pay gaps. By analyzing remuneration data and identifying disparities, organizations can take targeted actions to rectify inequities and ensure fair compensation for all employees.

Implementing transparent and gender-neutral remuneration policies is essential in promoting pay equity. Including gender pay equity objectives in remuneration policies and communicating these objectives to managers responsible for performance reviews and remuneration decisions can help ensure consistency and fairness in pay practices across the organization. Making remuneration policies available to all employees promotes transparency and accountability in pay decisions.

Establishing processes to review gender segmentation of remuneration outcomes and ensuring equal access to discretionary pay for women and men in like-for-like roles can help mitigate gender pay gaps. Additionally, organizations can implement job evaluation processes based on gender-neutral assessments to ensure fair and equitable pay for all employees. This may involve assessing job demands, reviewing access to 'other elements of remuneration,' and exploring options to increase opportunities for career advancement.

Engaging in dialogue with finance regarding budgets for pay equity corrections and setting clear timeframes for addressing gender pay gaps are crucial steps in achieving sustainable change. Leadership commitment to gender pay equity goals, including buy-in from senior management and the board, is essential for driving organizational change and fostering a culture of pay equity. Prioritizing gender pay equity as an agenda item at the executive level and including pay equity

metrics in management and board reporting can help track progress and hold the organization accountable.

Furthermore, developing a comprehensive gender pay equity strategy aligned with broader diversity and inclusion initiatives can help organizations address systemic barriers and promote a more equitable workplace. By prioritizing the development of a gender pay equity strategy, organizations can demonstrate their commitment to advancing gender equality and creating a fair and inclusive work environment for all employees.

Thus, implementing strategies such as conducting pay audits, transparent remuneration policies, job evaluations, and leadership commitment are essential steps towards improving gender pay equity in organizations. By proactively addressing gender pay gaps and promoting fair and equitable pay practices, organizations can create a more diverse, inclusive, and supportive workplace for all employees.

TACKLING GENDER PAY GAP, TOWARDS EQUITY

Efforts to tackle the gender pay gap are essential for advancing equity and promoting gender equality in the workplace. Despite progress in women's education and workforce participation, disparities in wages persist globally. The gender pay gap, which reflects the difference in average earnings between men and women, remains a significant challenge across all regions and sectors. Closing this gap is crucial for social justice, economic empowerment, and the overall well-being of individuals and families.

To address the gender, pay gap effectively, a shift in focus is needed from individual behaviours to systemic changes in employment institutions. Policies aimed at reducing wage differentials, valuing women's work and skills, and creating opportunities for career advancement are key components of efforts to achieve pay equity. Raising and extending minimum wage floors, implementing gender pay audits, and promoting equal pay for work of equal value are essential steps in narrowing the gender pay gap and promoting equity in the labour market.

Legislative measures play a critical role in ensuring equal pay rights and combating pay discrimination. However, many countries still lack robust laws that mandate equal pay for work of equal value. Addressing gender inequalities requires a comprehensive approach that tackles structural barriers to pay equity, including occupational segregation and limited opportunities for career progression. By reforming practices related to wage setting, recruitment, and promotion, societies can create a more inclusive and equitable work environment for all individuals.

In addition to legislative reforms, efforts to close the gender pay gap should be complemented by initiatives that support working parents and address the challenges faced by women in balancing work and caregiving responsibilities. Regulating working hours, providing flexible work arrangements, and ensuring opportunities for career development are essential for promoting gender equity and empowering women in the workforce. By recognizing the value of women's contributions, societies can create a more inclusive and supportive environment that enables individuals to reach their full potential.

Thus, tackling the gender pay gap is a critical step towards achieving equity and promoting gender equality in the workplace. By implementing policies that address wage differentials, value women's work, and create opportunities for career advancement, societies can work towards closing the gender pay gap and creating a more inclusive and equitable labor market. Empowering women economically not only benefits individuals and families but also contributes to overall social and economic development.

CONCLUSION

The gender wage gap is a symptom of larger systemic injustices that restrict women's prospects for economic empowerment and success, not merely a reflection of economic differences. In addition to being a question of justice, closing the gender pay gap is essential to the advancement of women's rights

and their ability to participate fully in the workforce. We can build a more prosperous society where everyone has an equal chance to succeed by eliminating the pay gap and encouraging gender equality in the workplace.

The objectives of empowering women in the workforce and advancing women's rights are intertwined and need for a comprehensive strategy to remove the institutional obstacles and discriminatory behaviours that support gender disparity. Despite making up a sizable share of the workforce worldwide, women still encounter structural obstacles that prevent them from participating fully and moving up the job ladder. One of the most obvious examples of these issues is the gender pay gap, which draws attention to the unequal treatment and undervaluation of women's labour in comparison to that of men.

In order to support women's economic empowerment and guarantee equitable chances for career advancement, the gender wage gap must be closed. Women are better equipped to support themselves and their children and make educational investments when they receive a fair wage for their labour and skills development, and contribute to the overall economic growth of their communities. Pay equity not only benefits individual women but also has positive ripple effects on society as a whole, leading to greater financial stability, reduced poverty rates, and increased social mobility.

Empowering women in the labour force goes beyond addressing pay disparities; it requires creating a supportive and inclusive work environment where women can thrive and reach their full potential. This includes promoting women's leadership and representation in decision-making roles, providing access to training and mentorship opportunities, and implementing policies that support work-life balance and flexibility. By breaking down barriers to women's advancement and fostering a culture of gender equality, organizations can harness the full talent and potential of their workforce.

Investing in women's empowerment in the labor force is not just a moral imperative; it is also a smart economic strategy. Studies have shown that companies with greater gender diversity in leadership positions tend to outperform their less diverse counterparts, demonstrating the business case for gender equality. By tapping into a diverse talent pool and leveraging the unique perspectives and skills that women bring to the table, organizations can drive innovation, enhance decision-making, and achieve sustainable growth.

To advance women's rights and empower women in the labor force, policymakers, employers, and civil society must work together to dismantle systemic barriers and create a more inclusive and equitable society. This requires implementing and enforcing laws and policies that promote gender equality, such as equal pay legislation, anti-discrimination measures, and parental leave policies. It also involves raising awareness about the importance of gender equality, challenging stereotypes and biases, and promoting a culture of respect and inclusion in all aspects of society.

Thus, in conclusion, closing the gender pay gap and advancing women's rights are essential steps towards empowering women in the labor force and creating a more just and equitable society for all. By promoting pay equity, fostering women's leadership, and creating supportive work environments, we can unlock the full potential of women in the workforce and drive sustainable economic growth. Empowering women is not just the right thing to do; it is the smart thing to do. When women succeed, we all succeed. Let us work together to build a future where gender equality is the norm, and where every individual has the opportunity to thrive and succeed, regardless of gender.

5

CHAPTER

Maternity Leave and Beyond: Balancing Life and Law

Sanighdha*

ABSTRACT

Law as a profession, is extremely dynamic and is intricately connected to other fields of life as well. There is not even a single sphere of life, that works without legal rules and regulations and quite so; the boundaries and points of transgression of any activity are determined by law only. Law is said to empower anyone who abides by it and strives to uphold its basic tenets of natural justice, while progressing well in it, as a career. Traditionally regarded as a field of men, because of demanding hours of work and extreme professional pressure of succeeding and making a name for oneself, law has seldom been a woman's haven of dreams. However, everything changed dramatically, when the first woman advocate of India, Cornelia Sorabjee threatened the old notions and dared to stand tall in a 'manly profession.' Since then, innumerable women and young females, made a successful career out of law. Life is an artwork of balance. Making one's identity is an innate need of any human being; be it a man, a woman or any of the other recognised genders. To play by one's strengths but to also support the other in weakness, is the rule of humanity. Females are congenitally blessed to be more compassionate, loving, and caring. That is why the legal profession must

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recognise motherhood and maternity leave as a normalized issue of society. It is quite normal to embrace motherhood and is also regarded as the highest perfection of life, whereby a life is grown and is then nurtured by a female inside her womb. However, even after that, a child needs motherly treatment and a supportive household to grow and realise his/her topmost potential in life. But there is no concept of maternity leave in advocacy and having one right now, is still a far cry. If we, as legal professionals, or advocates, as a group of highly enlightened and educated people cannot make room for personal as well as professional balance; then we have no right to say that law strives for natural justice. No, it does not, at least not in this case. And if maternity leaves cannot be recognised, then how will ever a love of a father in the form of paternity leaves be recognised? It is unthinkable then that we as a society, will ever recognise that even fathers have a softened heart which cries out to be with his newborn. Right now, advocate bodies and most importantly, the Bar Council of India, must understand that this recognition of motherhood, maternity leaves, paid maternity leaves for female advocates should be the norm of the society, and this concern must be addressed by amending the Maternity Benefits Act 1961, as well as the latest labour laws.

Keywords: Maternity; Maternity Leave; Legal Profession; Maternity Benefits Act 1961; Advocate.

INTRODUCTION

The human life form is the most blessed life form, that has ever been created by the Almighty. It is the blessing of the Supreme that humans are catered to by the nature and the nurturing forces of life, beyond each and every obstacle or pessimisms. To be able to continue the human genesis is the single brightest and luminous blessing of the Creator¹. It is

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- 1 Sudha Murthy, *The Mother I Never Knew* (2014); Nidhi Upadhyay, *I Hear You* (2023); Heidi Murkoff, *What to Expect When You Are Expecting* (1984); Naomi Chunalal, *The Mindful Mother: A Practical and Spiritual Guide to Enjoying Pregnancy, Birth and Beyond with Mindfulness* (2015); S.M. Gross, *The Simplest Pregnancy Book in the World* (2023); Erica Chidi Cohen, *Nurture: A Modern Guide to Pregnancy, Birth, Early Motherhood—And Trusting Yourself and Your Body* (2017); Ina May Gaskin, *Ina May's Guide to Childbirth* (2003); Kamlesh Patel, *The Wisdom Bridge: Nine Principles of Life That Echo in Your Loved Ones' Heart and Soul* (2022); Shashi Deshpande, *That Long Silence* (2008); Sudha Murthy, *The Daughter from a Wishing Tree: Unusual Tales About Women in Mythology* (2019).

the mother, the all-powerful womb of the mother of us, souls, who has got the nurturing power, both inside and outside the womb. It is the mother who gives the first education, the first knowledge of Behavioural sciences, of worldly matters, of spiritual and metaphysical matters and of self-realisation issues. The Mother has been always regarded as sometimes, even bigger than the Creator, because of the responsibilities and the carefulness that she exhibits while dealing with her children. Females are endowed with the necessary capabilities and abilities to have a beautiful and grounded motherhood, as and when they embrace it. The number of sacrifices, the number of adjustments and various other psychological, sociological, biological, neurological, physical, and emotional transformations and changes that mothers go through, for not just their children but also for their families, has no comparison. This selfless caregiving is rightly recognised by ancient scriptures and sages of all religions and spiritual practices. It is no surprise that the scriptural, the spiritual, the historical and the universal language of love is not extolled or explained or expressed by anyone better than one's own mother. Having a mother in life is just like having a protection that is beyond comprehension, and even if by the laws of nature, one loses his or her mother, the values that have been engrained by her such selfless love- will and always do reside with her kids. Such is the tolerance power of the mother that she not only resides in the hearts of her children, but her children out of love always keep her in her heart, no matter where they go.

The Hindu scriptural knowledge bestows the teaching that there is no one superior than the mother, no god or goddess. This is explained vis the following shloka: "*Na Maatu Paaradevtama*," (There is no God better than Mother). As a matter of fact, be it Hinduism, Sikhism, Jainism, Buddhism, Zoroastrianism, Islam

or any other religious discourse and sect², all teach to revere one's parents, to utmost abilities of oneself. Thus, motherhood is the ultimate summit of perfection in human life. According to the Cambridge Dictionary, "motherhood is the state of being motherly or at the time of being a mother."³ However, it has deeper meanings as well, such as, "*A mother is the female parent of a child. A woman may be considered a mother by virtue of having given birth, by raising a child who may or may not be her biological offspring, or by supplying her ovum for fertilization in the case of gestational surrogacy.*"⁴ Thus, motherhood is the sum total of all the experiences that a human can possibly achieve in its most beautiful sense, possible.

- 2 Vedanata Desika, *Achyuta Shataka*; Avvaiyar, *Atichudi*; Abhanga; Jain Scholars, *Agamas*; Jñanesvara, *Amrutnabhava*; Krishnadevaraya, *Amuktamalayada*; Nayana & Tikkana, *Andhra Mahabharatam*; Aranyakas; Chanakya, *Arthashastra*; Akhilathirattu Ammanai; Jñaka, *Ashtavaakra Gita*; *Rigveda*; *Samaveda*; *Atharvaveda*; *Yajurveda*; Sri Krishna, *Srimad Bhagavad Gita*; Srila Vyasdeva, *Srimad Bhagavatam*; *Srimad Bhagavata Purana*; Srila Prabhupada, *On My Way to Krishna*; Srila Prabhupada, *Kṛṣṇa: The Supreme Personality of Godhead*; Sant Eknath, *Bhavartha Ramayana*; Vrahamihira, *Brihat Samhita*; Dnyaneshwara, *Haripath*; Mahatmayam, *Markandeya Purana*; Madhavdev, *Naam Bheda*; *Padma Purana*; Gona Budda Reddy, *Rangantha Ramayanamu*; Tulsidas, *Ramacharitmanasa*; *Dhammapada*; Guru Arjan Dev Ji, *Guru Granth Sahib Ji*; *The Holy Qur'an*.
- 3 Motherhood, <https://dictionary.cambridge.org/dictionary/english/motherhood> (last visited July 27, 2024); Supreet Dhiman, *Mother of All Tales*; Meg Meeker, M.D., *Strong Mothers, Strong Sons* (2015); Jennifer Rodgers, *You Made It to Motherhood; The Seven Mothers of Hinduism*, <https://www.hinduamerican.org/blog/the-seven-mothers-of-hinduism> (last visited July 27, 2024); *The Five Mothers*, <https://saispeaks.sathyasai.org/discourse/five-mothers> (last visited July 27, 2024).
- 4 *Hinduism & Its Attachment to Mother Earth*, <https://standrewscollege.ac.in/wp-content/uploads/2019/11/Ethics-Society-2015-Hindusim-and-its-attachment.pdf> (last visited July 27, 2024); *It Feels Good to Be a Mother*, https://www.shecodes.io/challenge_submissions/2148323/embed (last visited July 27, 2024).

On the other hand, legal profession is a taxing profession⁵. It requires, undoubtedly and indispensably a focused mindset and an undying zeal to attract clients as well as argue cases in the court. Law, in legal terms is defined as, “different kinds of rules and Principles. Law is an instrument which regulates human conduct/behavior. Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature. Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges. Therefore, Law is a broader term which includes Acts, Statutes, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory, etc. In old English *Lagu* i.e. law, ordinance, rule, regulation from old Norse *lagu*- law collective Plural of *Lag* is layer, measure, stroke ‘Literally’ something laid down of fixed.”⁶ Therefore, it must be understood that law is the basis of the societal and the political order that a government seeks to establish. Law governs all spheres of a person’s life and is the most commonly used and applied foundation of the human existence. Advocacy is the practice of earning through the legal profession and is one of the most cherished ways of doing public service. There have been many advocates who have fought for the better implementation of constitutional models and principles. It must be noted that both men and women are a part of this overwhelming profession and are at par with each other in knowledge and implementation of that knowledge via the client counselling, advocacy, and the argumentation fields.

5 K. Rai, *The History of Courts, Legislature and Legal Profession in India* (2016); *Practical Lawyer: Legal Aid Clinics in India – Does Branding Matter* (2022); Andrew Boon, *Lawyers and Law in India*; Nattasha Garg, *The Legal Profession Requires Tireless Dedication in the First Five Years and Then Rewards You with the Identity That Cannot Be Easily Taken Away*, <https://superlawyer.in/the-legal-profession-requires-tireless-dedication-in-the-first-five-years-but-it-rewards-you-with-identity-and-success-that-cannot-be-easily-taken-away-nattasha-garg-independent-practit/> (last visited July 28, 2024).

6 *Meaning, Nature, and Functions of Law*, <https://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/jurisprudence-Unit-I.pdf> (last visited July 28, 2024).

However, there is one part where the females tend to hanker behind the males in the legal profession. That is, invariably that when females try to cherish the most benevolent blessing of their lives, they are forced to fall out of the profession. Once the female advocates bask in the personal glory of motherhood, their client start taking their cases back from them and give it to more 'active members' of the Bar, their fee starts dropping and they start feeling out of the race to make their name in the legal industry. But, why should this happen. Should not we, as a legal profession, make maternity leaves a norm? Shouldn't the Bar Council of India and the State Bar Councils stand up and make an effort to have a maternity fund of their own, like all other funds? Should not the legal community, grow up and now understand that if we do not make room for maternity leaves, and that too paid, in the profession, we will never be able to make room for paternity leaves? We, as a legal profession will never be able to normalize balancing life and law and making room for new parents to enjoy their lives. It is rather a shame, for the whole profession, that the one profession that seeks to empower the whole world, disempowers its own, when seriously needed. This research manuscript, tries to deal exactly with the same issue. The issue of paternity leaves aside, because that is still a far cry away, the absence of maternity leave for advocates, in the Advocates Act 1961⁷, in the Maternity Benefits Act⁸ and the Bar Rules, is nothing but abominable in the 21st century. The comprehensive constitutional⁹ analysis of Maternity Benefits Act 1961 and other newly launched Labour Codes,¹⁰ will be done in the present research for better understanding of the topic.

7 *The Advocates Act*, No. 25 of 1961, India Code (1961).

8 *The Maternity Benefit Act*, No. 53 of 1961, India Code (1961); *The Maternity Benefit (Amendment) Act*, No. 6 of 2017, India Code (2017).

9 *The Constitution of India* (1950).

10 *The Code on Wages*, No. 29 of 2019; *The Occupational Safety, Health and Working Conditions Code*, No. 37 of 2020; *The Code on Social Security*, No. 36 of 2020; *The Industrial Relations Code*, No. 35 of 2020.

Maternity Benefits to Advocates: A Comprehensive Constitutional Perspective Vis-à-vis Legal Provisions in India

Maternity Benefits and Maternity Leave for the females is a constitutional¹¹ right for them. Article 21¹² of the Constitution of India is the basic right and the most important fundamental right of the persons who are governed by the Constitution of India. The Universal Declaration of Human Rights (1948), The Convention on Elimination of All Forms of Discrimination Against Women (1979), The Inter-American Convention on Prevention, Punishment and Eradication of Violence Against Women (1994), The Protocol to African Charter on Human and People's Rights of Women in Africa (2003), The Declaration on Elimination of Violence Against Women in Association of South-Esat Asian Nations (2004), The International Labour Organisation Convention No. 190 on Violence and Harassment Maternity Benefits Act 1961, and the Constitution of India are the international and national instruments that are backing up the claim of maternity relief and claims in each and very profession that is practiced all around the world, and legal profession is not apart from it. The relief at the time of maternity and especially the paid leaves during maternity, is covered under the life, liberty, and dignity part of Article 21. That is to say, that Article 21 completely and absolutely covers all parts of maternity claims and relief. Each and every demand, thus put forward by a woman who has become a mother and is embracing motherhood is all but, the supreme most claim that one can lay under Articles 21 and 32 of the Constitution of India. Article 21 states that, "*No person shall be deprived of life and personal liberty, except according to procedure established by law*¹³." To understand how important it is to preserve dignity and liberty of a person, one must inculcate certain principles of important Supreme Court judgements. Some of the most important judgments of Apex Court, are thus, reproduced hereinafter.

11 *The Constitution of India* (1950).

12 *Ibid.*, art. 21.

13 *Ibid.*

In the landmark case of *Maneka Gandhi v Union of India*¹⁴, “procedure in Article 21 means fair, not formal procedure. Law is reasonable law, not any enacted piece. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available, forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, *will not be entitled to any procedural safeguard, save such as a legislature’s mood chooses*.¹⁵” It must be noted that fairness of law is of utmost importance and not the whims and fancies of the legislature. The timing of the legislation is most indispensable in cases of accordance of maternity leave and claims to women who embrace motherhood. It must be done, because it is meant to be done.

In *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*¹⁶, the Supreme Court observed that, “...we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair, and just procedure established by law which stands the test of other fundamental rights¹⁷.” The Court further added that, “Now obviously, any form of torture or cruel, inhuman or

14 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

15 *Ibid.*

16 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

17 *Ibid.*

degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. *The expression personal liberty occurring in Article 21 has been given a broad and liberal interpretation in Maneka Gandhi's case (supra) and it has been held in that case that the expression personal liberty used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19¹⁸.* In *Kharak Singh v State of Uttar Pradesh*¹⁹, the Court opined and rightly so that, "by the term life as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.²⁰" Thus, the most

18 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, AIR 1981 SC 746.

19 *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

20 *Ibid.*

important judgements of the Apex Court have pointed out towards having a wholesome experience of life, whereby one is able to cherish all folds of life, and not mere animal existence of survival but joyful living.

Article 42 of the Constitution of India, which is utmost important for the understanding of this research subject is produced in the following words, “42. *Provision for just and humane conditions of work and maternity relief.* — *The State shall make provision for securing just and humane conditions of work and for maternity relief.*”²¹ Non-availability of maternity benefits, leaves and claims also leads to low labour force participation rates.²² As per World Economic Forum’s Gender Gap Report 2022, India ranked 135 out of 146 countries and was behind smaller neighbours such as Sri Lanka, Bangladesh, and Nepal. It is one of five nations, including China, Pakistan, Azerbaijan, and Qatar, with gender inequalities exceeding five percent.²³ According to reports, “as per ILO, 52% of women in India express a desire to work either in paid jobs or in both paid jobs and care for families and homes. But surprisingly, India’s female labour participation rate has been surprisingly declining over the past two decades, dropping from 32% in 2005 to 19% in 2021. This downward trend applies to women across different social classes, religions, and age groups, including rural women who may rely on income the most. According to data from the Centre for Monitoring Indian Economy (CMIE), unemployment rates in rural areas experienced a sharp increase to 9.2 percent in February 2022, whereas urban areas witnessed a reversal in the previous trend, reaching 7.5 percent. Despite the stats, one in four urban

21 *The Constitution of India* (1950), art. 42.

22 *The Maternity Benefit (Amendment) Act, 2017*, <https://www.lawrbit.com/article/the-maternity-benefit-act/> (last visited July 28, 2024); *Female Labour Participation Rate Declining in India: Why Are Women Not Working*, <https://www.indiatoday.in/education-today/jobs-and-careers/story/female-labour-participation-declining-in-india-why-are-women-not-working-2391034-2023-06-09> (last visited July 28, 2024).

23 *Female Labour Participation Rate Declining in India: Why Are Women Not Working*, <https://www.indiatoday.in/education-today/jobs-and-careers/story/female-labour-participation-declining-in-india-why-are-women-not-working-2391034-2023-06-09> (last visited July 28, 2024).

women, aged 15-29, are unable to secure employment.²⁴ This can not only be attributed to various disparities of the society, which are a stark reality, but also to less knowledge regarding maternity benefits, non-availability of such benefits in many professions like advocacy for women, and many other factors. In the legal profession for women, especially at both rural and urban stages, mandatory sanction of maternity benefits must be made, applicable across sectors.

The Maternity Benefits Act 1961²⁵ states its objective in the following words, “...an Act to regulate the employment of women in *certain establishment* for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.²⁶” It must be understood that the very usage of the phrase- certain establishment- is erroneous, because the benefit of maternity leaves, like the protection from sexual harassment via the Act of 2013²⁷, should be mandatorily made applicable across private, government, government-aided, formal, informal, organised and unorganised sectors, irrespective of number of employees and the monetary capacity of the company or said organisation. Even though Section 1 of the said Act, states in non-negotiable terms that this Act shall be applicable across spheres, but explicit non-inclusion of advocacy is a cause of concern. Section 1 states that, “- (1) This Act may be called the Maternity Benefit Act, 1961. (2) It extends to the whole of India 2[* * *] (3) It shall come into force on such date as may be notified in this behalf in the Official Gazette, -- 3[(a) in relation to mines and to any other establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances, by the Central Government, and] (b) in relation to other establishments in s State, by the State Government.

24 Ibid.

25 The Maternity Benefit Act, No. 53 of 1961, <https://clc.gov.in/clc/sites/default/files/MATERNITY%20BENEFIT%20ACT.pdf> (last visited July 28, 2024).

26 Ibid.

27 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, India Code (2013).

NOTES. – This Act came into force in relation to mines in the territories to which it extends on the 1st. November 1963.²⁸ Section 2 states the application of the Act, “- (1) *It applies in the first instance, to every establishment being a factory, mine or plantation 4[including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances]: Provided that the State Government may, with the approval of the Central Government, after giving not less than two months’ notice of its intention of so doing, by notification.*²⁹” Maternity benefit has been defined as, “means the payment referred to in sub-section (1) of section 5 (S.2 (h)).³⁰”

Section 4 specifically states that- “4. *Employment of, or work by, women prohibited during certain period. -- (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery of her miscarriage. (3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health. (4) The period referred to in sub-section (3) shall be – (a) at the period of one month immediately preceding the period of six weeks, before the date of her expected delivery; (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.*³¹” Other than this Section 5 specifically states that there is a right to have a paid maternity leave, which is in tune with

28 *The Maternity Benefit Act*, No. 53 of 1961, s.1, <https://clc.gov.in/clc/sites/default/files/MATERNITY%20BENEFIT%20ACT.pdf> (last visited July 28, 2024).

29 *Ibid.*, s. 2.

30 *Ibid.*, s. 3(h).

31 *Ibid.*, s.4.

Articles 14, 19, 21, 32, 36, 37 and 42 of the Constitution of India. Section 5, in no inexplicable terms' states that, "**5. Right to payment of maternity benefit.** -- (1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at *the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.* Explanation. – For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee a day, whichever is higher. (2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery: Provided that the qualifying period of one hundred and sixty days aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration. Explanation: - *For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, the days for which she has been laid-off during the period of twelve months immediately preceding the date of her expected delivery shall be considered.* (3) The maximum period for which any woman shall be entitled to maternity benefit shall be **twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day:** Provided that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death: Provided further that where a woman, having been delivered of a child dies during her delivery or during the period of six weeks immediately following the date of her delivery, leaving behind in either case the child, the employer shall be liable for the maternity benefit for the entire period of six weeks immediately following the day of her delivery but if the child also dies during the said period, then for the days up

to and including the day of the death of the child.³²

It has been said that, “the Maternity Benefit Act of 1961 safeguards women’s employment during pregnancy and entitles them to several maternity benefits and the most important one is a fully compensated leave of absence from work – to care for their child. In 2017, an Amendment Bill was approved that applies to all enterprises that employ 10 or more people in Factories, Mines, Plantations, Shops & Establishments, and other entities. Establishments with 50 or more workers must additionally provide crèche services, either independently or in conjunction with shared facilities, within a certain distance. The provisions of this act go into effect on April 1, 2017. The contents of this and numerous other acts were combined in the Code on Social Security, 2020, which also repealed the acts in the process.³³” Apart from this, there are many entitlements that are given to female employees to avail the benefit of maternity leaves, and other many such provisions. In a number of cases,³⁴ the Supreme Court and the High Courts have impressed upon the importance of maternity leaves and having a work-life balance, in both profession and personal exigencies.

The Maternity Benefits Act 1961 is the basic Act, however, under the 2017 Amendment Act, there have been a number of changes in the provisions, all for the betterment of the women. There has been an increase in the duration of maternity leave from 12-week to 26-week duration. There is another provision for availing maternity leaves for commissioning and adoptive mothers. Creche facilities have been provided for working mothers. Even though, the provisions for females employed in public-private sector, unorganised or organised sectors, with more than ten employees at the organisation, where the

32 *Ibid.*, s.5.

33 *Landmark Judgments on the Maternity Benefit Act, 1961*, <https://aishwaryasandeep.in/landmark-judgments-on-maternity-benefits-act-1961/> (last visited July 28, 2024).

34 *Pooja Jignesh Doshi v. State of Maharashtra & Others*, (2019) Bom HC (3 July 2019); *Anshu Rani v. State of Uttar Pradesh & Others*, (2019) All 572; *Rasitha C.H. v. State of Kerala & Others*, (2018) Ker HC.

females work, are par excellence; where will the self-employed and females working in organisations having less than ten employees will go? Leaving all self-employment aside, why can't female advocates get a separate fund for themselves, whereby, they will not have to start their career again after coming back from maternity period? Surely, the Bar Councils can do the needful for the female advocates, along with the Central Government rolling out laws to make it possible. The State governments can take the lead in the same. The exclusion of self-employed females, especially advocates, does not necessarily qualify against the backdrop of fundamental right provided by Article 14 and the principle of intelligible differentia³⁵ as held in a number of cases.

WAY FORWARD AND CONCLUSION

The Delhi High Court in a leading case has emphasised that paid maternity leaves, should not depend on the nature of the employment. The motherhood of a female engaged in one profession should not be distinguished from another, under any circumstances, on any grounds. This is against the principles of natural justice and constitutionalism as well as harmonious construction of laws, in any sphere of opinion of life. In a leading case, the case stated that, "legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period.

35 *Sri Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538.

Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment.³⁶ Thus, the Court emphasized that maternity leave should be given to all females, across different fora of employment. For better management of female advocates, their status of self-employment and the issue of paid maternity leaves, must be viewed with optimism. Till the time we view maternity as a source of draining resources of the legal profession. Some simple steps can be taken that can help in harmonizing the situation. *First of all*, the constitutional, international, and national conventions as well as principles must be accepted as it is which provide for equitable justice to women. *Secondly*, the exclusionary clause regarding self-employed and other women should be discarded as redundant. *Thirdly*, the central government, the state governments, and the requisite State Bar councils and most importantly the Bar Council of India, should take proactive steps to provide for a mandatory fund for female maternity benefits, and to make it a paid motherhood, should be the priority. *Fourthly*, the females themselves must be legally and civilly very active and demand, paid maternity leave as a right. There is no force that can stop a woman from embracing motherhood, but a provision for paid leave must be the top priority of all governments. *Fifthly and lastly*, positive motivation can be taken from other jurisdictions to delve deeper into the jurisprudence of this very issue. Conclusively, the nation and the development of the nation is in hands of both men and women, equally, and must be aimed at equitable justice. Maybe someday, when we are clear on a much deeper issue of maternity leave, we can, someday talk openly about the concept and a much needed relief of paternity leaves as well.

36 *Delhi State Legal Services Authority v. Anwesha Deb*, (2024).

6

CHAPTER

Navigating the Lacunas in Indian Legislation: Protecting Women Domestic Workers

**Sai Lakshmi S* , Pooja Padmanabhan* &
Prof. Abirami P C****

ABSTRACT

Domestic workers in India are considered to be seen everywhere yet legally neglected. The article aims at bringing to light the women domestic worker's concerns and the existing legislation in place which is to ease their livelihood. According to the 2011 Census, it has come to picture that out of 41.3 lakh domestic workers, 27.9 lakhs of them were women.

There have been constant attempts, from the time immediately after independence to bringing together, rules and recommendations to govern the landscape of domestic workers. Time and again, the doors of Lok Sabha and Rajya Sabha are being knocked upon, with the litany of private member bills, however, all of it is just confined under the term 'efforts'. Here we analyze their position with respect to the social security measures in place and get to know more about their work environment through literature reviews alongside conducting primary research with a limited sample, to understand the contemporary perspective of the issues they face every day. Moreover, this chapter has been framed to delve into the lacuna in the law, especially about the fact that there is no definition for the term 'social security'.

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This chapter is brought to a conclusion by enumerating workable suggestions to address the current policy gaps.

Keywords: Domestic Workers, Social Security, Interest, Women, Protection.

INTRODUCTION

This Chapter delves into the lives of female domestic workers and the social, economic, and legal spheres that surround them.

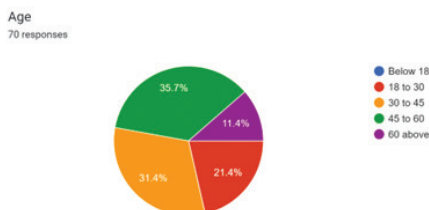
Women domestic workers, even though comprise a good chunk of the population and contribute sliceable economic growth, are neglected when it comes to their personal growth. They are often overlooked and undervalued which makes them float on their existing conditions depriving them of even bargaining for better living and working conditions.

It is a no-brainer that in the process they also endure harsh discrimination at times even abuse yet have no courage to speak up as there is no one to guide them to channel their grievances appropriately.

This Chapter aims to highlight the urgent need for policy interventions and support systems to improve the living conditions and overall well-being of women domestic workers in India.

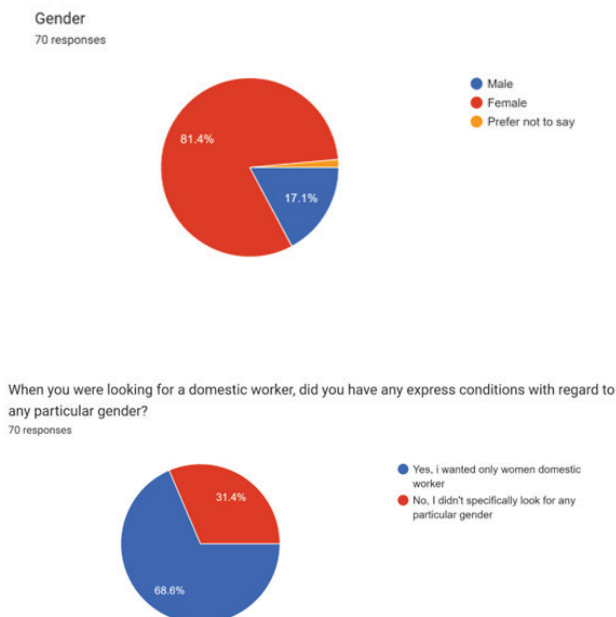
DATA ANALYSIS

Age Distribution



35.7% of the respondents were between 45-60 years followed closely by 31.4% of them who belonged to 30-45 years.

Gender of the participant of the survey (participants include persons employing domestic workers) and the gender preference of the employer in regard to their worker.



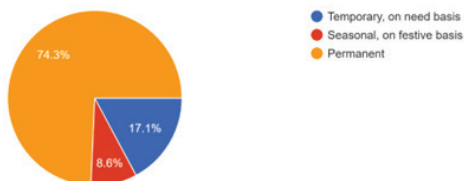
In the collected sample, the majority of respondents, i.e., 81.4% were women, while 17.1% were male employer participants. From the collected sample, it can be easily inferred that the majority i.e., 68.6% preferred women domestic workers. There are multiple threads to the dispute that arise between the employer and the worker in house work. In a way, the work of a domestic worker does benefit the entire household rather than just the lady who runs it¹. Only the woman is expected to be doing and is accountable for the housework, and the man is not. Since there has been a gender stereotype to the

1 Sujata Gothoskar, *The Plight of Domestic Workers: Confluence of Gender, Class and Caste Hierarchies*, 48 *Econ. & Pol. Wkly.* 63–75 (June 1, 2013).

nature of such work, the same has been carried away to gender participation.

Kind of Domestic Worker Employed

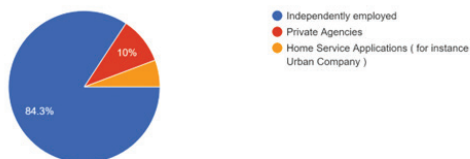
What kind of domestic workers do you employ?
70 responses



74.3% of them employ permanent women domestic workers while only a meagre 8.6% of them employ on a seasonal basis.

Channel of Employment

Through which channel, do you employ your domestic workers?
70 responses



The question attempts to understand the most preferred medium used as an intermediary (if any) by employers in hiring their women domestic workers. A good chunk of respondents i.e., 84.3% independently employ domestic workers while 10% of them employ them through private agencies, and the remaining of 5.7% of the employers, from the ambit of the given sample space, prefer Home Service Applications as a channel of employment. From the legislative perspective, though these private agencies play a crucial role in putting forth a midway path, but they have not become common in the whole of the

nation. This can be implied by the limit on the legislative efforts for establishing law to regulate private placement agencies only for Delhi². Alternatively, they could be brought under the ambit of the Contract Labour (Regulation and Abolition) Act, 1970, for the purpose of regulation of the conditions of work and placement agencies in the domestic service.

Primary Work Extracted (in order of majority)

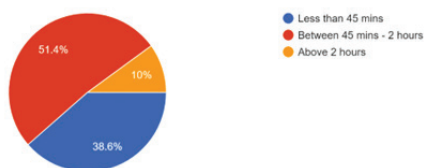
The following table shows the work that is usually extracted by the employers:

Table 1

1.	Cleaning and dusting
2.	Washing utensils
3.	Washing clothes
4.	Gardening
5.	Cooking

Working Hours

In a typical day, how long your domestic worker will have to work?
70 responses



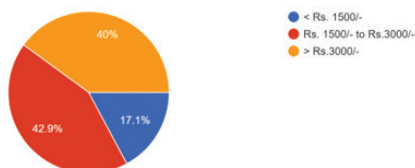
More than 50% of the respondents state that on a typical day, their domestic workers work for 45 minutes to 2 hours while,

2 *The Delhi Private Placement Agencies (Regulation) Bill*, available at [https://thc.nic.in/Central%20Governmental%20Ordinances/Delhi%20Private%20Placement%20Agencies%20\(Regulation\)%20Order,%202014.pdf](https://thc.nic.in/Central%20Governmental%20Ordinances/Delhi%20Private%20Placement%20Agencies%20(Regulation)%20Order,%202014.pdf) (last visited Aug. 16, 2024).

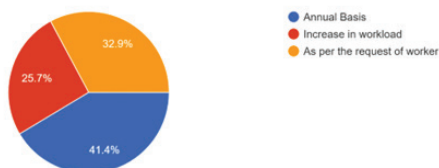
38.6% state that they only work for less than 45 minutes, and 10% of them state that they work above 2 hours.

Wages and the Timeline for Increment of Such Wages

How much of a per service monthly salary you give to your domestic worker?
70 responses



What are your timelines, for providing wage increments?
70 responses



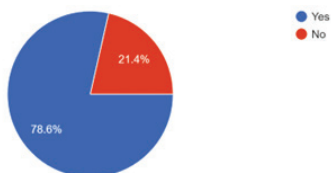
In the former image, the majority of respondents pay between Rs. 1500- Rs.3000 as per service income while 40% of them pay above Rs. 3000 and 17.1% of them pay less than Rs. 1500. The latter, image depicts that 41.4% of the respondents provide increments on an annual basis whereas, 32.9% of them upon the request of the workers and 25.7% of them during an increased workload.

This is indeed a standpoint where, there is a need for a change at the end of persons employing such workers, as the national floor level minimum wage, was Rs.80 per day in both rural and urban areas. Considering the inflation, this number will indeed rise with time³. Thus, it is the duty of the employers, to provide adequate wages at par with the law.

3 Neetha N. & Rajni Palriwala, *The Absence of State Law: Domestic Workers in India*, *Canadian Journal of Women and the Law*, at 111.

Paid Holidays

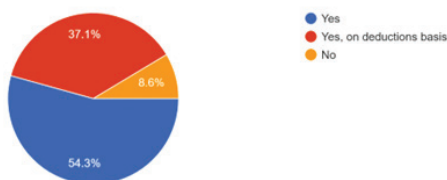
Do you give paid holidays on monthly basis?
70 responses



78.6% of the respondents provide paid monthly leave to their domestic workers. It has been clearly laid down under Section 26 of The Domestic Workers Welfare and Social Security Act, 2010⁴ that weekly one day off must be provided to all types of domestic worker.

Financial Assistance for Emergencies

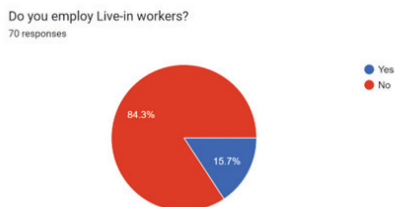
Do you provide any financial assistance for emergencies?
70 responses



More than half of the respondents provide financial assistance during emergencies while 37.1% provide them on a deduction basis. However, 8.6% do not provide any assistance.

4 *Domestic Workers Welfare and Social Security Act, India (2010)*, available at https://ncwapps.nic.in/PDFFiles/domestic_worker_welfare_and_social_security_act_2010.pdf (last visited Aug. 17, 2024).

Employment of Live-in Workers



84.3% of them do not employ live-in workers while 15.7% of them employ them.

Restroom Access



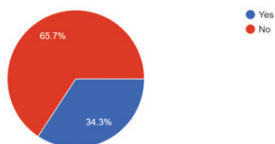
The majority of the respondents let their domestic workers access restrooms in their place while a sizeable 24.3% of them do not let them access the same.

However, it is to be noted that, even though only a section of the workers is denied access the subject matter remains intact to a basic fundamental human need. It was reported by a leading newspaper that the denial is a form of untouchability that is not spoken but shown in practice⁵.

5 Aditi R., "Chennai: House Workers Can't Use Loos They Clean, Approach the Government," *Times of India* (July 10, 2021), available at <https://timesofindia.indiatimes.com/city/chennai/chennai-house-workers-cant-use-loos-they-clean-approach-the-government/articleshow/84286607.cms> (last visited Aug. 17, 2024).

Use of Utensils

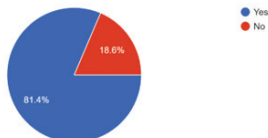
Do you have any specific utensils in which you serve them?
70 responses



65.7% of them do not have specific utensils to serve their domestic workers whereas 34.3% of them have stated the opposite.

Entry during Menstrual Cycle

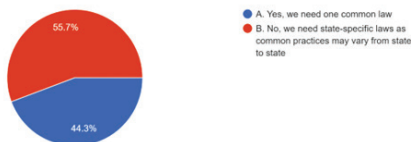
Do you let your worker enter your premises during their menstruation cycle?
70 responses



A sizeable percentage of 81.4 of the respondents let their domestic workers enter their premises during their menstruation. However, there are 18.6% of them who do not let them enter their premises in the said period.

Common Framework of Legislation

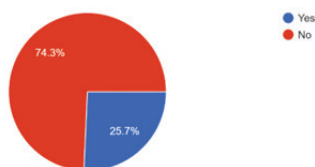
Do you think we need one common legal framework for such laws for the whole of the nation?
70 responses



More than half of the respondents agreed that there should be one common law governing the whole nation on women domestic workers.

Knowledge of Ill-Treatment

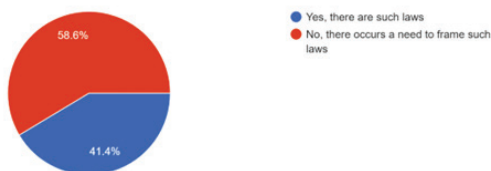
Have you come across circumstances where the domestic workers have been ill-treated?
70 responses



A good chunk of 74.3% of the respondents' state that they are aware of the ill-treatment of domestic workers.

Adequacy of Protection Laws

Do you think, there prevail laws protecting the interest of the domestic workers?
70 responses



The majority of the respondents i.e., 58.6% state that there prevail laws to protect women domestic workers while 41.4% state that there is a need to formulate such a law. This is another crucial aspect where it is essential for the nation to work on creating awareness amongst the people on the current state of affairs. Additionally, state laws, which are aimed at protecting the interests of domestic workers, are not very commonly found across all states in India.

Other Benefits Offered

The following are the benefits offered by the employers in order of commonality of responses collected:

Table 2

1.	Bonus
2.	Paid holidays
3.	Used clothes
4.	Food

SUMMARY OF FINDINGS

There is a clear picture of wanting women domestic workers by the majority of the respondents for a permanent job of cleaning and dusting for an average pay between Rs.1500-Rs.3000 p.m., who are given annual increments aside from monetary help during the financial crunch.

There is still a section of them who continue to treat the workers as inferior to them, however, it is encouraging that a good number of them have not heard of any ill treatment meted out and wants to have a common law framed for the whole country to protect the women domestic workers.

SOCIO-ECONOMIC ANALYSIS

Women performing domestic work are undoubtedly subjected to a lot of societal as well as economic pressures that range from personal to professional crises.

‘Work is God’, is one of the highly revered Indian proverbs which ideally states that work must be worshipped, and no work is less than the other. However, when it comes to domestic work, the aspect of respect is often taken at a toss. The job is often considered to be menial and as a result, many discriminatory practices stem from this notion, right from addressing them to be a ‘maid’ or ‘servant’ rather than ‘house help’. The Central Information Commission, has acknowledged that *“Exploitation of domestic workers can partly be attributed to gaps in national*

labour and employment legislation, and often reflects discrimination along the lines of sex, race and caste⁶."

The convenience of caste and gender discrimination are frequently blended into their everyday lives. As recent as 2020, there was a case instituted by an organization for the protection of domestic workers against a well-known water purifier brand for their advertisement on the promotion of their automated kneader by claiming that the bare hands of maids might be infected⁷. Most women also tend to work on full term during their pregnancy which further negates the possibility of them claiming any form of maternity benefit and Mr. Gurudas Dasguta highlighted this in his speech wherein he stated, "*they [women domestic worker] are under-paid and overloaded with working conditions. In addition, there is denial of maternity benefit. The maternity benefit is a law, but it is denied to 90 per cent of the working women of the country. They are forced to keep away from trade unionism, and they suffer from alarming job insecurity. These are the problems which nobody can ignore in the country. It is there in the Government report which the Government has presented before the country*"⁸.

It is to be given attention to the fact it is often people from the so-called lower caste who make up the major composition of domestic workers in total.⁹ However, the employers often go ahead with employing upper caste domestic workers for jobs other than cleaning, while all the dirt has been left to be washed by the lower caste workers.

Minor girl children are also enslaved in the trap of domestic work which often is because of the poor economic condition

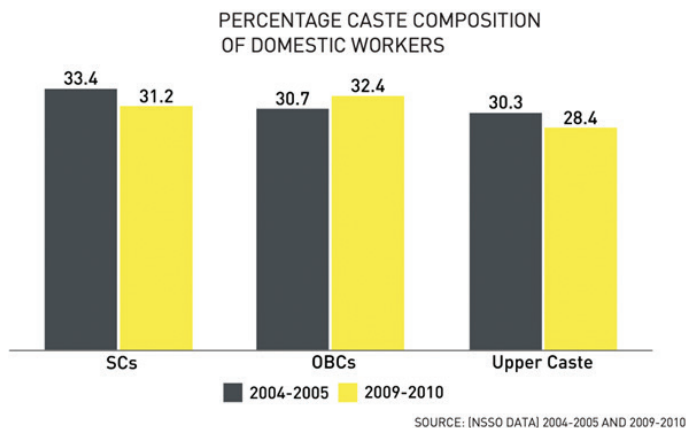
6 *Vandana Prasad v. Ministry of Labour & Employment*, 2017 SCC OnLine CIC 9431.

7 Arpita Raj, "Domestic Workers' Org Calls for Boycott of Kent Over 'Classist' Ad," *The Quint* (May 28, 2020), available at <https://www.thequint.com/coronavirus/domestic-workers-call-for-boycott-of-kent-as-netizens-fume-over-ad>.

8 *Lok Sabha Debates* (May 6, 2010), available at <https://indiankanoon.org/doc/4301751/> (last visited Aug. 15, 2024)

9 *National Domestic Workers Movement, India*, available at <https://ndwm.org/domestic-workers/> (last visited Aug. 17, 2024)

of their parents which pushes them to come to the field and fend for themselves. The mothers bring their kids to the employer's house during their work time, and it so happens that the children too, pick up the work from their mother which usually starts in the form of a 'help'. The hazards that the minor girl faces ranges from verbal to physical abuse, the possibility of never going to a school, lack of leisure and the physical exhaustion and health risks that come with working¹⁰. There are circumstances wherein the girl children are not even paid for the work they do or at times their employment is just considered to be allied to their parent's job¹¹.



Their work life is filled with humiliation and belittlement right from separate utensils, separate entry, prohibition to touch certain things, denial to use restrooms, denial of access during menstruation, and many more. Even though there exist laws to curb such practices, it is still prevalent in many parts of our society.

Economically, they face a lot of issues since there is no job security and no contractual guarantee to permanently hold

10 International Labour Organization, *Child Labour and Domestic Work* (2012).

11 Commonwealth Foundation, *Need Gap Analysis of Child Domestic Labour in India*.

onto their jobs. Primarily, all of this is due to lack of education which leaves them at a loss in the bargaining phase. Even after securing reliable employment, most of them face irregular payments which put them in a place where they are unable to fulfill their financial obligations.

The hope of migration and its consequent opportunities lure many of them to come to cities which ultimately only puts them into the trap of suffering. The reliance on governmental insurance policies and schemes with very little coverage also proves to be a hurdle given the red-tapism and other bureaucratic snags.

Work – Pay scale

The work and pay levels rarely correspond to each other. It is majorly because, being on the other side of the table, the workers are often bargained to lower wages which at times does not even cover their daily affairs.

This was worsened during the pandemic wherein it was ascertained that 85% of the workers were not paid during the pandemic¹². This type of insecurity in jobs and payment of wages causes major hardships which further oppresses them to remain in the same state.

Harassment – The Bigger Devil

One of many inhumane acts that women domestic workers undergo is physical harassment. Despite legislation such as the POSH Act¹³ in the scene, this crime is still persistent. Their secluded nature of work and unawareness of the laws in place, make them suitable prey for such heinous crimes¹⁴.

12 *All India Central Council of Trade Unions, Being Domestic Workers in India: No Rights in the Face of Triple Oppression of Class, Caste and Gender* (2021).

13 *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, India* (2013), available at https://www.indiacode.nic.in/handle/123456789/2104?sam_handle=123456789/1362 (last visited Aug. 3, 2024).

14 *Sexual Harassment of Domestic Workplaces Workers at Their Workplaces*, Martha Farrell Foundation (Gurgaon, Faridabad & South Delhi).

It is unquestionably women who face the brunt of sexual harassment in the workplace more than men¹⁵. The core of this problem is the intention behind the perpetrated act. It is nothing but the seemingly disadvantaged conditions of the women which in no way is a justification for the detestable act. Various studies also suggest that the informal sector which lacks clear-cut policies and the ideology behind the women making the case by taking upon the burden of proof is to be altered as well.

Life of Live-in Workers

The per diem work of live-in workers comes with its perks and falls. The perks include the absence of work travel which helps in the reduction of stress and at times the employers tend to take care of various expenses, which works light on the purse. Besides, by being available 24/7, they tend to create a familial bond that is of use to both the parties in question.

The falls however are deeper than all the mentioned perks. Being available all the time provides more scope for harassment, especially for the women domestic workers¹⁶. Apart from this, the pay ratio in terms of work done is often miscalculated. The amount of work extracted is commensurate to the thought of always being there and never to the actual amount in terms of currency. During a Lok Sabha Debate, Mr. Vincent H. Pala opined that “*For the live-in domestic workers, there is absence of proper food; absence of proper living and sleeping space; lack of freedom of mobility; isolation and exposed to harassment; and sexual exploitation by agents during transit and work*”¹⁷.

Another fallback is the lack of work-life balance and interference in the lives of both parties which ultimately leads

15 Akshaya Vijayalakshmi & Pritha Dev et al., *Domestic Workers and Sexual Harassment in India: Examining Preferred Response Strategies*, Science Direct (2022).

16 C. Lalrempuii & H. Elizabeth, *Issues and Challenges of Female Domestic Workers: An Analysis*, 6 Mizoram University Journal of Humanities and Social Sciences (2020).

17 Lok Sabha Debates on Aug 7, 2018 available at: <https://indiankanoon.org/doc/36678007/> (last visited on Aug 15, 2024).

to the employers overpowering and steering their opinions in the personal matters of their workers.

LEGAL ANALYSIS

Domestic workers are those who work in or for private houses or households, about employment and on an occupational basis¹⁸. Often legislations drawing upon the interests of workers, throw light on the nature of work performed by such workers. But, since there occurs, heterogeneity in the tasks allotted to domestic workers, such workers, could be defined through the nature of their workplace. The definition provided by the ILO Convention No.189¹⁹, includes live-in and live-out workers too but does not recognize any person employed at an age below 15 years.

Most domestic workers are not brought under the framework of unions. From a historical lens, the 26-day hunger strike that took place in Delhi was initiated by a collective group of domestic workers, the New Delhi-based All India Domestic Worker's Union in 1959, which indeed gained momentum from the urban areas also²⁰.

There have been adequate efforts that had been made from the end of the Parliament, in drafting bills regarding bringing forth national legislation regulating the services of the domestic workers. Such efforts date back to 1959 when a private member of the Rajya Sabha²¹, moved a bill, the Domestic Worker (Conditions of Service) Bill, of 1959²², and the year 1989, saw the House Workers (Conditions of Service) Bill, of 1989²³.

18 Progress and Prospects Ten Years After the Adoption of Domestic Worker Convention (No. 189).

19 *Domestic Workers Convention*, 2011 (No. 189).

20 *Supra* note 3, at 113.

21 Upper House of the Indian Parliament.

22 *The Domestic Worker (Conditions of Service) Bill*, 1959, available at https://rsdebate.nic.in/bitstream/123456789/562294/1/PD_27_04121959_10_p1399_p1440_8.pdf (last visited Aug. 17, 2024).

23 *The House Workers (Conditions of Service) Bill*, 1989, available at https://rsdebate.nic.in/bitstream/123456789/258441/1/PD_153_23031990_10_p257_p315_21.pdf (last visited Aug. 17, 2024).

The decade of 1970s saw the attempts of private members from Lok Sabha, in 1972 and 1977, to introduce bills. These bills are said to be identical and also constituted some of the provisions of the Industrial Disputes Act, of 1947²⁴. However, the critiques of the said bill opted for a stance similar to how they responded in 1959, by reasoning that such legislation would diminish the employment opportunities for the workers and would pragmatically be difficult to implement²⁵.

Such legislative efforts received their setback when the Hon'ble Supreme Court, in *Bangalore Water Supply & Sewerage Board vs. Rajappa*²⁶, where the court emphasized an observation on the attempts to bring domestic workers, under the broad ambit of the Industrial Disputes Act, of 1947²⁷. In the words of Justice Krishna Iyer, domestic workers "*are isolated workers and, as such, can't constitute organized workers*", implying that such legislative efforts would eventually lead to failure.

There also stems a reason for the efforts being made to regulate the workers employed in the unorganized sector. The statistics, as displayed by the 1981 census, suggest that 60% of the workers in urban India have been women²⁸.

The Unorganized Workers Social Security Act, of 2008²⁹, aims at providing for the social security of the unorganized workers by formulating suitable welfare schemes, on matters of life and disability cover. Moreover, the instant statute includes

24 *The Industrial Disputes Act, 1957*, available at https://www.indiacode.nic.in/bitstream/123456789/17112/1/the_industrial_disputes_act.pdf (last visited Aug. 17, 2024).

25 Nicola Cunningham Armacost, *Domestic Workers in India: A Case for Legislative Action*, 36 J. Indian L. Inst. 58 (1994).

26 *Bangalore Water Supply & Sewerage Board v. Rajappa*, AIR 1978 SC 548.

27 *Supra* note 24.

28 *Supra* note 25.

29 *Unorganized Workers' Social Security Act, 2008*, available at https://www.indiacode.nic.in/handle/123456789/2100?sam_handle=123456789/1362#:~:text=India%20Code%3A%20Unorganised%20Workers%20Social%20Security%20Act%2C%202008&text=Long%20Title%3A,connected%20therewith%20or%20incidental%20thereto. (last visited Aug. 17, 2024).

domestic workers under the broad umbrella of the wage worker³⁰. But, the primary point of concern, is the functional limitations prevalent in the instant statute, which confines the operation within certain schemes like Rasthriya Swathya Bima Yojna³¹. There also occurs, the issue of lack of uniform legislation in this regard³².

The Study performed by the Catholic Bishops Conference of India (hereinafter referred to as CBCI), had its observations³³. There has always existed a sexual division of labour and jobs have been allocated following the same. The commonly found concerns of such workers are:

- I. Dislocated from their family (Migrant or Live-in workers)
- II. Unfamiliar with the customs and languages of their employers
- III. No network to turn their obstacles into opportunities using protection, advice, or support

The CBCI and its affiliated organizations have made persistent efforts to tabulate bills to answer the needs of such workers. P.M. Bakshi drafted³⁴ the Household Workers Conditions of Service Bill, of 1990³⁵. The instant bill was considered to be very comprehensive in nature, as it provided for the prohibition of child labor, maximum working hours, and provision of paid leave every week amongst others. The bill also provides for the application of certain specific statutes, to domestic workers, including:

- (a) Workmen's Compensation Act, 1923
- (b) Minimum Wages Act, 1948
- (c) Payment of Wages Act, 1936

30 *Ibid* at s 2(n).

31 Jeet Singh Mann, *Employment Rights Protection and Conditions of Domestic Workers: A Critical Appraisal*, 57 *J. Indian L. Inst.* 216–43 (2015).

32 *Ibid*.

33 *Supra* note 25.

34 *Supra* note 25.

35 *Supra* note 23.

(d) Equal Remuneration Act, 1976

(e) Weekly Holidays Act, 1942

A law specifically catering to the interests of female domestic workers, can be noticed through the attempts made by the Rajya Sabha in the introduction of The Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004³⁶. But the instant bill did not get implemented. However, it is considered to be a simple bill, which focussed on mandating the central and state governments register domestic workers, based on territorial jurisdiction.

Though the interventions of the central government, have led to the inclusion of domestic workers under the ambit of even the POSH Act, of 2013³⁷, little, has been contributed in bringing forth any change for the welfare of such workers. Some states have made commendable efforts in the implementation of schemes for the welfare of domestic workers, and one such is Tamil Nadu. Moreover, concerning the aspects of the efforts of states, there exists a need for the states also to make specific laws as the practices adopted may vary from region to region. Since, domestic workers, come in direct interaction with households, certain orthodox, rigid practices of households may impact their smooth functioning. With regard to the seasonal employment of such workers, for the times of say festive occasions, there shall be a change in the way the demand in the labour market shall occur in varied regions.

The Domestic Workers (Regulation of Work and Social Security) Bill, 2017³⁸, is a comprehensive legislation, covering varied arena of issues ranging from the registration of domestic workers, and employers and the consequences of such non-registration, the establishment of domestic worker social

36 *The Housemaids and Domestic Workers (Conditions of Service and Welfare) Bill, 2004.*

37 *Supra* note 17.

38 *The Domestic Workers (Regulation of Work and Social Security) Bill, 2017*, available at <https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/domestic-7417-E.pdf?source=legislation> (last visited Aug. 17, 2024).

security fund, regulation of the working conditions and even the grievance redressal mechanism and penalties.

In 2019, the Ministry of Labour and Employment, via a press release, announced that a draft national policy on Domestic workers would be formulated³⁹. Further, the abovementioned press release, also stated how, certain state governments like Tamil Nadu, Jharkhand, etc., had included domestic workers, under the ambit of the Minimum Wages Act, of 1948⁴⁰ thus empowering them to file cases with the concerned authorities.

In the wake of startup culture, digital intermediaries are entering the instant sector, which can hurt the labor market's adversaries. Though the era of technology has simplified the procedural compliances of such intermediaries, an increase in the demand for such workers, has in itself led to the creation of placement agencies. Such organizations are registered either as a trade union, under the Trade Unions Act, 1926⁴¹, as a cooperative society (under the Society's Registration Act, 1860⁴²), or even a voluntary organization, like that of a non-governmental organization. Thus, regulation of this sector is indeed the need of the hour.

The fact remains that, not all women domestic workers, are female adults. Thus, this in itself brings additional constraint of the occurrence of child labor in the instant sector, which also has the best defines of the absence of legislation. But the court, in *Bachpan Bachao Andolan v/s Union of India and others*⁴³, the Hon'ble Delhi High Court, made an observation, vide its

39 *Ministry of Labour & Employment, Press Release on National Policy for Domestic Workers* (Feb. 13, 2008), available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1564261> (last visited Aug. 17, 2024).

40 *The Minimum Wages Act, 1948*, available at <https://clc.gov.in/clc/sites/default/files/MinimumWagesact.pdf> (last visited Aug. 17, 2024).

41 *Trade Unions Act, 1926*, available at https://www.indiacode.nic.in/bitstream/123456789/13322/1/trade_unions_act_1926.pdf (last visited Aug. 17, 2024).

42 *The Societies Registration Act, 1860*, available at <https://www.indiacode.nic.in/bitstream/123456789/2262/1/AA1860-21.pdf> (last visited Aug. 17, 2024).

43 *Bachpan Bachao Andolan v. Union of India*, W.P. (Crl.) 82 of 2009.

orders for bringing the system of placement agencies under the ambit of law, in order to avoid the human trafficking of domestic workers. Further, it also touched on the aspect of registration of placement agencies who work with domestic workers and also provide for the payment of domestic workers, as per the Minimum Wages Act, 1948⁴⁴. Additionally, it can be observed that the protection for prevention of child labour, is narrower under the child labour act, in comparison to the Juvenile Justice (Care & Protection of Children) Act, of 2000⁴⁵. This is because, the former statute, permitted children above 14 years to be legally authorized to work, while the latter statute, does not include of such an aspect. Additionally, there are cases registered at the district court u/s 23 of the Juvenile Justice (Care & Protection of Children) Act, of 2000⁴⁶, u/s 3 r/w 14 of the Child Labour (Prohibition and Regulation) Act, 1986⁴⁷. In one such case⁴⁸, the Delhi District Court, through its decision in *State vs Parveen Babbar*, had punished an accused for the employment of a child aged about 9 years of age as their domestic help through the penalty as given in the above-mentioned provisions.

The Central Information Commission, in *Harsh Thakur vs Public Information Officers and others*⁴⁹, decided on an appeal on three crucial questions on the following aspects⁵⁰:

- (i) If the minimum wages are provided, as prescribed in Delhi

44 *Supra note 40.*

45 *Juvenile Justice (Care and Protection of Children) Act, 2000*, available at <https://indiankanoon.org/doc/148942/> (last visited Aug. 17, 2024).

46 *Ibid.*

47 *Child Labour (Prohibition and Regulation) Act, 1986*, available at <https://indiankanoon.org/doc/148942/> (last visited Aug. 17, 2024).

48 *State v. Parveen Babbar*, FIR No. 447/2013, available at <https://indiankanoon.org/doc/116855985/> (last visited Aug. 17, 2024).

49 *Harsh Thakur v. Public Information Officers and Others*, CIC/DCFWO/A/2023/101781.

50 *Ibid.*

- (ii) Are there any complaints registered under Clause 9 (a) of the Delhi Private Placement Agencies (Regulation) Order, 2014⁵¹
- (iii) Has there been a provision of directions for the payment of wages in accordance to clause 10(b) of the Delhi Private Placement Agencies (Regulation) Order, 2014⁵²

The commission observes that the appellant has been aggrieved by complete information. The commission accepted the reply of the respondent in regard to the first question, owing to the non-availability of records. But, for the latter two questions, the commission, asked of the respondents to inspect the records in relevance to the information sought on a mutually agreed date and later, upload a compliance report in regard to the said findings in the CIC's website.

Reflecting upon the primary data, collected via the survey, it is observed that, there is a crucial need to create awareness among the workers and employers about the current framework, and the lacunae in the existing framework. The survey, furthermore, reflects, how employers, also reconcile the thought that there occurs a need to bring out state-specific laws since practices and traditions vary from region to region. The primary purpose of such laws, is the environment of the industry, the labor market, and its demand like work and, the category of employers, are all sub-classifications that may vary. Additionally, the discriminatory practices, as discussed above, like that of during periods, of the two-tumbler system, all vary upon the cultural stereotypes. Thus, individual-specific law will attend to the problems, with customized solutions, thus enhancing the pace of improvement of the life of such women domestic workers.

51 *The Delhi Private Placement Agencies (Regulation) Order, 2014*, cl. 9(a), available at [https://thc.nic.in/Central%20Governmental%20Ordinances/Delhi%20Private%20Placement%20Agencies%20\(Regulation\)%20Order,%202014.pdf](https://thc.nic.in/Central%20Governmental%20Ordinances/Delhi%20Private%20Placement%20Agencies%20(Regulation)%20Order,%202014.pdf) (last visited Aug. 17, 2024).

52 *Ibid.* cl. 10(b).

SUGGESTIONS

There indeed prevails adequate law aiming at protecting the interests of domestic workers. To protect such workers, it is necessary to bring stringent penalties for any violation of their rights. Moreover, it is high time, that domestic workers, no longer continue to remain in the 'unorganized sector' and their employment also secures formal regulation. The term 'social security' needs a legally binding definition. These workers, seldom, or little have access to formal legal education. One of the best ways to solve the problem of such workers is by creating awareness amongst them and instilling emotions of unison among them.

Drawing inputs from the primary data collected, it can be observed that employers of domestic workers, have been providing varied forms of fugitive and have been indulgent in taking initiatives for the welfare of their respective workers. Such assistance ranges from social to financial and also extends to cultural inclusion. Some individuals support their children's education through bonus and health emergencies through sick leaves which at times even extend to sweets and food during festivities. Certain household employers, practice providing thrift goods to their workers; whilst other employers provide allowances to compensate for the travel. These are practices, being incorporated and followed by individual employers, in the unorganized sector. Thus, such aspects can be incorporated as a statutory necessity as they are also financially feasible for the employers to provide. Primary data analysis, also brought out one key observation, as to how, individual employers, do not hesitate to provide interest-free short-term credit to their house helps.

Understanding the initiatives, as taken by varied states including Maharashtra⁵³, it is high time that all governments, make efforts to establish specialized welfare boards for the welfare of domestic workers in all districts. Additionally, it is

53 *Maharashtra Domestic Workers Welfare Board Act, 2008*, § 3(3), available at https://www.indiacode.nic.in/handle/123456789/19597?view_type=browse (last visited Aug. 17, 2024).

crucial to legally define the meaning of social security and set standards for the same, which will in turn aid in improving the living standards of other individuals.

Another crucial aspect, where there is a need for legislative interference, is the integration of laws on migrant workers into domestic workers, or providing for the women domestic workers, who live in the employer's residence. Alternatively, the scope of the existing statutes could be extended, for an instance like that of the law regulating the operation of shops and establishments by including the service of the domestic workers, under its ambit.

Social Assistance, is a crucial aspect, particularly for the persons whose income is sufficient to meet their basic needs. There prevail laws, in countries like Hong Kong and Indonesia to provide social assistance schemes, to all such persons, with income, insufficient to meet their basic needs⁵⁴. However, Hong, has an exclusion in such policy, which is of domestic workers and every medical expenditure for such workers, the burden of paying for the same shifts upon to the employer⁵⁵.

Even Indian states like Kerala, have a system of providing social insurance, like that of an agricultural pension scheme to its agricultural workers, where, they provide about a sum of Rs.1000 as a monthly pension to the workers employed in the agrarian industries⁵⁶.

Though there prevail all possible suggestions, that could be incorporated to protect the interests of the domestic workers, and to examine the effective implementation of such efforts, the only possible method, that could be adopted is to inspect the place of work of such workers. But, such workplaces, are also houses of the employers, and such inspections would amount to an invasion of privacy. From an international perspective, ILO through its convention has made labor inspectors to be

54 Utkarsh Agrawal & Shailija Agarwal, *Social Security for Domestic Workers in India*, 14 *Socio-Legal Rev.* 30 (2018).

55 *Ibid.*

56 Government of Kerala, Social Welfare Pensions.

permitted access to the household of the concerned employers, with conditions, giving due respect to the privacy of the employer's family.

CONCLUSION

Historically, it is considered that domestic workers are often drawn from the social sections, that have been devalued by society. In the long run, the government's policies vis-à-vis domestic workers need to undergo substantive changes, and the instant sector shall be formalized. The efforts, plied on protecting such interests shall not overlook the competence of technology, which can potentially replace the skill of such workers. A gender-sensitive approach to labour policies, combined with effective enforcement measures and tabulating review of the government initiatives (in light of the impact it creates on the concerned stakeholders), is essential for removing the socioeconomic barriers that hinder women from entering the workforce.

Towards Safer Workplaces: Policies and Measures to Prevent Sexual Harassment

Dr. Aswathi Sukumaran* & Lakshmy S**

ABSTRACT

Sexual harassment at work is still a big problem in today's workplaces, even though there have been many changes in the law, institutions, and society over the years. Modern factors like more women working, new technologies, and globalization have made the problem more complicated. Harassment at work now happens not only in physical offices but also more and more on virtual platforms like social media, digital communication, and remote work systems. This makes it harder to find and regulate. International treaties, like those set up by the International Labour Organization, and national laws, like India's Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, are both part of the growing body of law. However, effective enforcement is made harder by strong cultural stereotypes, fear of retaliation, poor compliance with rules, and not reporting enough. The #MeToo movement was one of the most well-known events that brought attention to the widespread sexual misconduct that happens in all fields. It showed how important it is to create safe, welcoming, and gender-sensitive workplaces. This chapter emphasizes a significant analysis

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of the Act, scrutinizing the deficiencies in current legislation and offering recommendations for their rectification.

Keywords: POSH Act, Sexual Harassment, Workplace, Gender Equality, Basic Rights.

INTRODUCTION

The modern workplace, which is a key part of social and economic progress, is also a place where gender differences often show up in a big way, with sexual harassment being the worst example. This behaviour is not just wrong on an individual level; it shows a systemic failure that threatens the basic rights to equality, dignity, and a safe workplace. The enactment of the POSH Act, 2013, represented a significant milestone in Indian jurisprudence, transforming the aspirational guidelines of the Vishakha Judgment into binding legislative mandates. However, more than ten years after it was passed, there is still a big gap between the law's lofty goals and the real-life situations that many women face. This paper asserts that although the POSH Act provides a fundamental framework, it is impeded by significant legal, procedural, and cultural shortcomings that undermine its efficacy. This research will thoroughly analyze these deficiencies, including ambiguous definitions, discriminatory regulations, procedural complexities, and inadequate inclusivity, and will propose concrete, actionable strategies to align legislative objectives with transformative, safer workplace outcomes.

INDIAN LEGAL MECHANISM ON SEXUAL HARASSMENT AT WORKPLACE

Indian women are becoming increasingly conscious of their constitutional and statutory rights.¹ This consciousness has awakened in them a sense of urgency in expressing equality and social justice.² Until 2013, there was no legal remedy for

1 G.S. Sharma & Anil Kumar Tandi, *Law Relating to Women and Children* 6 (Asian Law House, 1st ed. 2015).

2 *Id.*

sexual harassment in the workplace in India.³ Instead, victims might seek redress under the Indian Penal Code under more general provisions for sexual offences, such as Sections 354 and 509. The primary foundation for prevention and reparation was established by the Supreme Court in 1997 with the *Vishaka Guidelines*, which required employers to establish internal procedures. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, replaced these court-derived rules, which were based on a landmark case and international treaties.⁴

Relevance of POSH Act

After a long call for legislation for the prevention of sexual harassment in the workplace, in the year 2013, the POSH Act came into existence⁵. In order to protect women from sexual harassment in the workplace and to guarantee that complaints are addressed, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed. The Act was created in response to the realisation that sexual harassment violates several fundamental rights protected by the Indian Constitution, such as the right to equality (Articles 14 and 15), the right to a dignified life (Article 21), and the right to a safe workplace.⁶

In order to understand the legal mechanism provided for the prevention of sexual harassment of women at workplace, first we should know the meaning of the terms 'sexual harassment' and 'workplace'. The Act⁷ defines both these terms. Section 2(n)

3 Anjali Kant, *Law Relating to Women and Children* 181 (Central Law Publications, 4th ed. 2020).

4 Ajay Singh Solanki, *India's Workplace Harassment Law: A Decade On, Int'l Bar Ass'n*, <https://www.ibanet.org/india-decade-of-posh-act> (last visited Sept. 25, 2025).

5 Justice Devi Prasad Singh, *Law and Life* 109 (Universal Law Publ'g, 1st ed. 2016).

6 India Law, <https://www.indialaw.in/blog/civil/addressing-sexual-harassment-work/> (last visited Sept. 25, 2025).

7 *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013 (India).

of the POSH Act 2013⁸ defines the term ‘sexual harassment’ as it includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The definition starts with the term “including,” and as a result, it is indicative rather than exhaustive. The interpretations are contingent upon the circumstances surrounding each incident, the relationship between the parties involved, and their heritage.

The sexual harassment can take on any of the following forms:

1. Physical - Any inappropriate physical contact with a woman
2. Verbal - A comment that is sexually suggestive and unpleasant
3. Uncomfortable nonverbal communication - An action, gesture, or appearance that is sexually objectionable to a woman
4. Cyber - Any sexually motivated communication through electronic media, such as an email, WhatsApp message, SMS, audio, video, or behaviour with a sexual undertone during virtual meetings or interactions.⁹

The Act also explains who an aggrieved woman is. Any woman of any age, whether employed or otherwise, who faces sexual harassment at the workplace is an aggrieved woman.¹⁰ The

8 *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, s. 2(n) (India)

9 Deepa Rafeeqe, *Prevention of Sexual Harassment of Women at Workplace* 28 (Notion Press, 2023 ed.).

10 *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, s. 2(a) (India).

definition also includes women working in dwelling houses. The definition broad enough to include any women. Another unique feature is that it includes non-employees. Eg: Clients, visitors etc.

It encompasses (i) any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or predominantly financed by funds provided directly or indirectly by the relevant Government, local authority, Government company, corporation, or cooperative society; (ii) any private sector organization or private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit, or service provider engaged in commercial, professional, vocational, educational, entertainment, industrial, health services, or financial activities, including production, supply, sale, distribution, or service (iv) any sports institution, stadium, sports complex, or venue for competitions or games, regardless of residential status, utilized for training or related activities; (v) any location frequented by the employee in connection with their employment, including transportation provided by the employer for such travel; (vi) a residence or dwelling.

Sexual harassment can be taken place while working from home through the online platforms. The definition of workplace is wide enough to include it. And section 2 (o) ¹¹ defines the term 'workplace'. It encompasses (i) any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or predominantly financed by funds provided directly or indirectly by the relevant Government, local authority, Government company, corporation, or cooperative society; (ii) any private sector organization or private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit, or service provider engaged in commercial, professional, vocational, educational,

11 *Id.* s. 2(o).

entertainment, industrial, health services, or financial activities, including production, supply, sale, distribution, or service (iv) any sports institution, stadium, sports complex, or venue for competitions or games, regardless of residential status, utilized for training or related activities; (v) any location frequented by the employee in connection with their employment, including transportation provided by the employer for such travel; (vi) a residence or dwelling. Sexual harassment can be taken place while working from home through the online platforms. The definition of workplace is wide enough to include it.

Also, the Act is applicable to unorganised sector. Section 2 (p)¹² of the Act defines the term ‘unorganised sector’. An unorganised sector in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.¹³

PROHIBITION OF SEXUAL HARASSMENT

The POSH Act is designed to prevent and prohibit sexual harassment at workplace. While the POSH Act mandates that employers report on the number of cases filed and disposed of in their annual report, its implementation will be overseen by both the Central and state governments. The central government will be responsible for its own undertakings and establishments, while the states will be responsible for every workplace that is owned, controlled, or partially or fully financed by the federal government or by private sector entities located within their borders. Organizations that don't write Annual Reports would give this information to the District Officer. With this system in place, it is up to each employer to follow the law in their own firm. The central and state governments are in charge of making sure that everyone follows the law. Governments are also in charge of keeping track of information on how the law is being carried out. The

12 *Id.* s. 2(p).

13 *Id.* s. 2(p).

Act would set up a complicated system for reporting and checks and balances, which is what will make the Law work.¹⁴

Internal Complaints Committee

An Internal complaints Committee (ICC) is a mandatory in-house body established under the POSH Act, 2013, that every employer is required to form to investigate and resolve allegations of sexual harassment in the workplace. The Internal Complaints Committee is responsible for establishing a secure environment by accepting grievances from affected women, conducting investigations, suggesting disciplinary measures such as transfer, leave, or termination, and compiling annual reports for the employer. The committee shall comprise a minimum of two members, be led by women, and include at least one representative from a non-governmental organization or association dedicated to women's issues. The Internal Committees will be made up of members who will be nominated by the employer, specifically as follows:

- A Presiding Officer, who will be a woman holding a senior position within the workplace, selected from among the employees.
- At least two Members from among the employees, ideally those who are passionate about women's issues, have experience in social work, or possess legal knowledge;
- A representative from non-governmental organizations or associations dedicated to women's causes, or an individual knowledgeable about issues surrounding sexual harassment.
- At least half of the total Members should be women.

Local Complaints Committee

The Local Complaints Committee is a district-level committee that is responsible for the resolution of sexual harassment grievances from workplaces with fewer than ten employees,

14 Apoorva Mishra, *POSH: Stand Up Speak Out* 26 (Books Clinic Publ'g, 1st ed. 2022).

the unorganized sector, and complaints against the employer. This ensures that women in these situations have a redressal mechanism for workplace misconduct. The local complaints committee is established by the District Officer and is tasked with the responsibility of receiving, investigating, and conveying these complaints to guarantee women's rights.¹⁵

A District Magistrate, Additional District Magistrate, Collector, or Deputy Collector shall be notified as a "District Officer". The responsibilities of the LCC are identical to those of an ICC. Upon the submission of sexual harassment complaint, the LCC members are obligated to investigate. Additionally, it is required to generate an official final report that recommends the provision of assistance to the penalties for the employer and the victim, which is a woman. As a last step, the LCC must compile an annual report detailing its operations. This report is evaluated using a range of criteria, such as the total number of complaints received and resolved, the number of cases that are unresolved for more than 90 days, and the quantity of workshops and programs organized to promote awareness regarding sexual harassment.¹⁶

Complaint

A complaint in writing can be filed by any woman who is the aggrieved, with the Internal Committee of her workplace if there are 10 or more employees, or with the Local Committee at the district level if the workplace has fewer employees or no internal committee. Complaints may be submitted on behalf of the aggrieved women by relatives, friends, coworkers, union members, or, in specific circumstances, other individuals with knowledge of the incident (written consent required) if the woman is incapacitated physically or mentally, or if she is deceased.¹⁷ Three months' time limit is there to file written

15 Keka Academy, <https://academy.keka.com/blog/what-is-posh/> (last visited Sept. 29, 2025).

16 Swaraj Choudhary, *Redefining the Role of Local Complaints Committees*, *Int'l J. Pol'y Scis. & L.*, Vol. 1(3), 1658 (2021).

17 Bhakra Beas Management Board, <https://bbmb.gov.in/Internal-Complaint-Committee.htm> (last visited Sept. 27, 2025).

complaint. A complaint can be submitted after three months but to be filed with the reasons for omission in writing.

Conciliation

Provision for conciliation is there in the Act. Section 10 of the POSH Act says that the person who made the complaint can choose to try to work things out before a formal POSH inquiry. This is an optional action that the committees cannot take on its own or at the request of the respondent.¹⁸ Conciliation does not allow for monetary settlements. The committee records the settlement and throws away the complaint if all sides agree and settle the issue peacefully. But some people have said bad things about this portion because it is possible that the complainant was forced to settle.

The Central Government has suggested an amendment that would get rid of the conciliation process in favour of a more effective and open official mechanism for resolving issues. If mediation does not work, the ICC/IC moves on to a full investigation.¹⁹ And in the case if conciliation does not work, the internal Committee will start the probe under POSH as outlined in section 11 of the POSH Act 2013. After completion of inquiry, a report should be prepared and submitted.

SHE Box Portal

The SHe-Box portal is directly linked to the enforcement of the POSH Act, 2013, serving as the official platform for lodging workplace sexual harassment complaints under this legislation. The Ministry of Women and Child Development established SHe-Box to enable the reporting, monitoring, and resolution of complaints in accordance with the terms of the POSH Act for all women, regardless of their employment in public or private sectors, or organized or unorganized workplaces.²⁰

18 Comply Karo, <https://complykaro.com/understanding-posh-complaints-process-in-workplace/> (last visited Sept. 27, 2025).

19 *Id*

20 *Manorama Yearbook*, <https://www.manoramayearbook.in/current-affairs/india/2024/12/05/posh-act-she-box-portal.html> (last visited Sept. 27, 2025).

Transition of BNS

Also, Section 79 updates the law's response to stalking by including digital forms of harassment. It also recognizes that workplace abuse is changing in remote and online settings. In general, these clauses show that the government is very serious about making workplaces in India safer and fairer. The law is only for women and doesn't take complaints from LGBTQ+ employees into account. People in this community also need support right now.

Many organizations, especially in the private and unorganized sectors, don't set up ICCs or follow the right steps, which leads to a lot of non-compliance. The credibility and fairness of inquiries suffer when ICCs are not set up correctly, such as when there are no outside legal or NGO representatives and not enough gender balance. A lack of awareness and sensitization programs leads to underreporting, with fear of retaliation, shame, and a lack of faith in redressal mechanisms being major reasons. The Act does not cover informal sectors well enough, and it still does not do enough to stop sexual harassment by third parties or in non-traditional work settings. Reports from the Supreme Court and field studies consistently emphasize insufficient enforcement, inadequate penalties for non-compliance, and the necessity for enhanced specialized legal training for ICC members.

SEXUAL HARASSMENT AT WORKPLACE: CROSS JURISDICTIONAL ANALYSIS

One of the important reasons, inter alia given for the acceptance and the commission of the offence against women is economic independence.²¹ Now, as women try to fight economic disparity with men, new form of crime emerges sexual harassment at the workplace. ²² the offence is the most glaring example of human rights violations, gender inequality and injustice. Economic independence is often cited as a contributing factor to the acceptance and committing of crimes against women.

21 Mamta Rao, *Law Relating to Women and Children* 213 (EBC Publ'ns, 4th ed. reprint 2019).

22 *Id.*

As women strive to address economic disparities, a new type of workplace crime has emerged: sexual harassment. The Offence is the most obvious example of human rights violations, gender inequality, and injustice.

UNITED KINGDOM

The Equality Act 2010 is the primary anti-discrimination legislation in the United Kingdom, amalgamating and modernizing over 100 antecedent statutes into a unified legal framework. It safeguards individuals against discrimination, harassment, and persecution based on certain “protected characteristics” including age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. The Act pertains to sectors such as employment, public services, and education, mandating companies to implement reasonable accommodations for those with disabilities.

The Equality Act of 2010 made sexual harassment unlawful in the UK, and the Worker Protection Act of 2023 gave employers a proactive obligation to stop it on October 26, 2024. Employers may now face up to 25% more in tribunal compensation if they fail to take “reasonable steps” to avoid sexual harassment, both by employees and outside parties like clients. Unwanted sexual behaviour that degrades someone’s dignity or fosters a hostile environment is a sign of sexual harassment; examples include physical contact, the presentation of pornographic material, and sexual jokes and remarks.²³

The Equality Act 2010 (applicable in England, Wales, and Scotland) delineates sexual harassment as undesired sexual behaviour that seeks to or culminates in the infringement of an individual’s dignity or the creation of an

23 Reed Smith LLP, [https://www.employmentlawwatch.com/2024/10/articles/employment-uk/new-duty-to-prevent-sexual-harassment-12-things-uk-employers-need-to-know/#:~:text=The%20Worker%20Protection%20\(Amendment%20of,sexual%20harassment%20by%20third%20parties](https://www.employmentlawwatch.com/2024/10/articles/employment-uk/new-duty-to-prevent-sexual-harassment-12-things-uk-employers-need-to-know/#:~:text=The%20Worker%20Protection%20(Amendment%20of,sexual%20harassment%20by%20third%20parties) (last visited Sept. 26, 2025).

intimidating, hostile, humiliating, or degrading atmosphere.²⁴ The Worker Protection Act 2023, an update to the Equality Act 2010, imposes a legal obligation on companies to avert sexual harassment in the workplace. The Equality and Human Rights Commission has issued recommendations regarding the activities employers ought to undertake. This proactive obligation pertains to safeguarding employees against harassment by external parties, including patients.²⁵

All individuals in Britain are safeguarded by the Equality Act. The Act delineates the protected traits as: age disability, gender transition, matrimony and civil union, Gestation and motherhood, ethnicity faith or conviction and sexual orientation.²⁶ The Act prohibits direct and indirect discrimination, along with harassment and victimization. It prohibits discrimination based on an individual's disability and mandates the provision of appropriate accommodations for handicapped persons. The Act applies to various circumstances, including employment, education, and the delivery of services and public responsibilities. Public authorities must comply with a Public Sector Equality Duty. The Duty mandates that they consider equality concerns while executing their responsibilities.²⁷

UNITED STATES

In the United States, federal legislation forbids sexual harassment in the workplace pursuant to Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC).

24 *Sexual Misconduct at Work, BMA*, <https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/gender-equality-in-medicine/sexual-misconduct-at-work> (last visited Sept. 26, 2025).

25 *Id.*

26 Equality & Human Rights Commission, *Equality Act 2010*, <https://www.equalityhumanrights.com/equality/equality-act-2010> (last visited Sept. 27, 2025).

27 House of Commons Library, *Research Briefing: CBP-9448*, <https://commonslibrary.parliament.uk/research-briefings/cbp-9448/> (last visited Oct. 15, 2025).

Sexual harassment constitutes a type of sex discrimination, encompassing unsolicited sexual propositions, demands for favours, or other verbal or physical behaviours of a sexual nature that foster a hostile work environment or lead to adverse job outcomes. This legislation typically pertains to firms with 15 or more employees, and individuals of any gender may be victims, as harassment can be inflicted by anyone, irrespective of sex or sexual orientation.

Since the mid-1970s, US labour law has seen sexual harassment at work as a type of discrimination based on sex. The law in the United States recognizes two types of sexual harassment: *quid pro quo* sexual harassment (when an employee has to put up with sexual harassment to keep their job, get a benefit, or avoid punishment) and behaviour that makes the workplace hostile.

Both Indian and US laws make sexual harassment at work illegal, although they do it in different ways and with different levels of enforcement. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) in India is gender-specific and focuses on stopping and fixing the problem. It requires firms to set up Internal Committees to handle complaints. Title VII of the Civil Rights Act of 1964 makes it illegal for the US to discriminate against anyone based on their sex, including sexual harassment. This law applies to both men and women.

The statutory framework, obligations of employers, mechanisms for complaint and redress, and the extent of protection vary significantly among the United States, the United Kingdom, and India with respect to sexual harassment laws in the workplace. The development of each country's approach has been influenced by its legal history and policy priorities. The UK has recently moved to a more proactive, preventive approach that puts clear, forward-thinking responsibilities on employers. The employer's quick response to complaints and the role of the harasser are both important for US law to be enforced. Liability depends on what the employer does. The POSH Act of India is different from other laws because it has clear legal requirements for training and redressal, requires

internal complaints committees, and is only for women. Right now, the laws in the UK and US do not favour either gender, but India's law only protects women. These differences affect how cases are reported, stopped, and fixed in real life.

JUDICIAL INTERPRETATION AND PRONOUNCEMENTS

India did not have any legislation about sexual harassment in the workplace until 1997. Women might submit complaints under Sections 354²⁸ and 509²⁹, which prohibit assault or conduct that “outrage a woman’s modesty,” but these laws were not clear. The authorities were the only ones who could decide what “outraging modesty” meant, which meant that victims didn’t get enough or consistent protection. One of the most essential sections of the Indian Constitution is that it says that discrimination based on gender is not allowed. The Constitution strongly supports the principle of gender equality. In the important case of *Vishaka v. State of Rajasthan*³⁰, the Supreme Court of India said for the first time that sexual harassment at work constituted a crime. The Court made it plain what the rules were and urged the Union of India to establish a law to stop sexual harassment at work. The POSH Act and the POSH Rules came out 16 years after the Vishaka Judgment, which is amusing.

The Vishaka Judgment set out rules that required every employer to have a way to deal with complaints of sexual harassment at work. These rules were followed by employers until the POSH Act was passed.

The case started in 1992, and the brutal gang rape revealed how unsafe it is for women who work and how crucial it is to keep them safe. This event sparked the rise of women’s rights campaigners. The Court made a historic decision by admitting that there was an obvious legal error and reaffirming that

28 *Indian Penal Code*, No. 45 of 1860, s. 354 (India).

29 *Id.* s. 509.

30 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

sexual harassment at work is a violation of human rights. The Court issued the Guidelines because India had to follow CEDAW³¹ and Article 32 of the Constitution. These norms had to be followed by both the public and commercial sectors until a formal legislative framework was put in place.

The Vishaka verdict defines sexual harassment as any unlawful conduct of a sexual nature, regardless of its explicitness or subtlety. This encompasses making sexual propositions, soliciting sexual favours, uttering sexual remarks, displaying pornographic content, and engaging in other inappropriate physical, verbal, or non-verbal conduct.

Sexual harassment in the workplace encompasses any conduct that induces feelings of embarrassment or jeopardizes an individual's health and safety, irrespective of their occupation or industry. Discrimination transpires when a woman perceives that resisting such conduct will endanger her job opportunities or foster a hostile workplace, particularly if her refusal or objection results in adverse repercussions.

POST VISHAKA JUDGMENTS

*Apparel Export Promotion Council v. A.K Chopra*³²

The Vishaka verdict ignited extensive national discourse regarding workplace sexual harassment, a subject that had hitherto received limited attention. The judicial precedent was significantly reinforced as the Supreme Court affirmed the dismissal of a superior officer who was determined to have sexually harassed a subordinate. This significantly broadened the scope of sexual harassment. The decision was reached that physical touch is not an essential component of the violation. The infraction includes any unsolicited sexual advances, solicitations for favours, or any verbal or physical conduct with sexual implications. This conduct, whether explicit or implicit, constitutes sexual harassment, especially where it jeopardizes

31 *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

32 *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

the victim's job, significantly impairs work performance, or fosters a hostile or intimidating work environment.

Suman Dhanda v. Kurukshetra University, Kurukshetra and others³³

We are established these rules and guidelines for all workplaces and other institutions to follow, as there are currently no laws in place to ensure that the fundamental human right to gender equality and protection from sexual harassment and abuse is enforced, particularly in the workplace. This measure is implemented to safeguard the fundamental liberties enumerated in Article 32 of the Constitution. It is crucial to recognize that this will be interpreted as the law established by this Court in accordance with Article 141 of the Constitution.

Railway Board v. Chandrima Das³⁴

This case demonstrates that when government employees physically harm women, it is an assault on their dignity and a breach of their entitlement to respectful treatment. Because the victim in this instance was a citizen of Bangladesh, the Supreme Court ruled that non-citizens are entitled to the rights and protections of Article 21.

Medha Kotwal Lele & Ors. v. Union of India & Ors³⁵

Following the Vishaka ruling, Dr. Medha Kotwal of Aalochana wrote to the Supreme Court, expressing concern that the rules were not being followed correctly. The letter included numerous particular incidents of sexual harassment. The Court converted this letter into a writ petition and took on a supervisory role, directing state governments to submit affidavits explaining how they were carrying out the directives. The Court's ruling said unequivocally that implementation must be more than simply formal; it must also be substantial and principled in order to create a truly safe and secure workplace where women can work with dignity. The Court was dissatisfied

33 *Medha Kotwal Lele v. Union of India*, CWP No. 10782 of 2014.

34 *State of Punjab v. Ram Singh*, (2000) 2 SCC 465.

35 *State of Maharashtra v. Madhukar Narayan Mardikar*, (2013) 1 SCC 311.

with the development and advised governments to establish proper mechanisms for effective enforcement. It also said that if persons were hurt and did not follow the guidelines, they might seek assistance from their respective High Courts.

***Dr. Punita K. Sondhi vs. Bharat Sanchar Nigam Limited*³⁶**

A BSNL employee's boss sexually harassed her. The internal complaints committee deemed the accused guilty, and the Supreme Court agreed, punishing the culprit harshly. The case demonstrated how effectively internal complaints committees may handle charges of harassment. The verdict demonstrated the courts' support for internal systems and emphasized the need of adhering to existing rules.

***Farah Deeba Abdul Moin v. Union of India*³⁷**

Farah Deeba, an employee of the National Commission for Women, has lodged an official complaint against a colleague, alleging sexual harassment. The court stated that the internal committee failed to adhere to the principles of procedural fairness, rendering its decisions illegitimate. Consequently, the judges mandated a new investigation to ensure the process was equitable and devoid of bias. The case demonstrated the significance of the IC ensuring procedural fairness and conducting investigations impartially. The outcome demonstrated the significance of adhering rigorously to legal regulations and addressing grievances equitably.

CONCLUSION AND SUGGESTIONS

This research analysis reveals several critical issues in the framework for addressing workplace sexual harassment, including administrative inefficiencies, procedural inadequacies, jurisdictional ambiguities, violations of natural justice, ambiguous institutional liability, and intrinsic shortcomings in the POSH Act. The study recognizes its limitations, including both self-imposed constraints and those imposed by the research context. In response to these

36 *National Commission for Women v. Union of India*, W.P.(C) No. 367 of 2009.

37 *OA No. 330/00377/2018* (decided May 15, 2018).

results, the next section outlines practical solutions and policy recommendations aimed at addressing the highlighted difficulties.

The subsequent item is a recommendation.

Establishing an independent appellate body to examine decisions rendered by the Internal Committee (IC) will enhance the fairness and efficacy of the redressal mechanism. This council, comprising a blend of internal members such as employees and external specialists including legal officials, counselors, and NGO representatives, would serve as a crucial mechanism to safeguard against any prejudice. This approach will facilitate the appeal process for individuals, resulting in more equitable outcomes and reduced workload for the judiciary. This will enhance the efficiency and cost-effectiveness of the process.

The government can establish standards as a provisional solution to create an equitable process for individuals to submit grievances within businesses, ensuring fairness for both men and women. This would facilitate the current ICC in addressing grievances from male and LGBTQIA+ employees, ensuring prompt access to justice for all individuals.

Contemporary interpretations often erroneously claim that only women can be victims of sexual harassment, despite the term's inherent gender neutrality. The POSH Act and UGC Regulations provide a gender-neutral definition of the victim; yet, this is often regarded as discretionary, prompting numerous academic institutions to embrace a female-centric perspective. To avert the exclusion of persons, it is imperative to clearly integrate unambiguous gender-neutral elements into the POSH Act.

CONTINUE WITH THE PROCESS

It is essential to eliminate the discretionary compliance or hesitation of the ICC in adopting or adhering to a standard operating procedure. A cautious or moderate follow-up with the procedural foundations might be enough to some degree. Excluding both will equate to excessive, unregulated

administrative discretion and partiality. Consequently, the minimal criteria must be observed.

INSTITUTIONAL ACCOUNTABILITY

Institutional liability is dual in nature: liability arising from circumstances that implicate the employer as the accused, or failure to adhere to the statutory requirements of the POSH Act and UGC Regulations; and liability of the nomination committee or Board of Appointment for the selection of ineffective members or fraudulent appointments. In the event of an appointment, it will be decided by the prejudice shown by the relevant decision-makers. Consequently, inspections conducted quarterly or monthly, adjusted based on the advancement of the ICC, will fulfill the objective. Such surveys will allow the inspection body to conduct a thorough evaluation of the internal circumstances. This will address any institutional bias in the selection of ineffective internal members and institutional non-compliance with legislative obligations.

EMPLOYER-EMPLOYEE RESPONSIBILITY

A victim compensation system may be used to find out if the respondent can pay a lump sum of damages if they go bankrupt. This system creates a fund pool at work through regular payments from both the employer and the workers. When setting up pay, a certain payment ratio must be kept. Every month, one-fourth of the pay may be taken out until the money is paid back or a lump sum is given. The employer can take out one-sixth of the income as a flat amount or monthly from the salary until the compensation is paid. After the first conviction, they can take out two-sixths of the income for the same offense under the Act. The ICCs and LCCs must use this percentage as a guideline when deciding on compensating relief. However, it is important for the recommended resolutions to be recognized by lawmakers. If this recognition doesn't happen, the resolutions will stay unfulfilled, and the number of administrative mistakes and problems listed in this document will reach its highest point.

8

CHAPTER

Deconstructing Sexual Harassment in Legal Internships: An Empirical Analysis and Policy Discourse

Shashanki*

ABSTRACT

The Supreme Court of India pronounced the infamous judgment, Vishaka v. State of Rajasthan in 1997 which provided a mechanism for redressal against sexual harassment. This judgement was ultimately reinforced by Parliament with the enactment of Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013 after the prolonged delay of 16 years. However, the critical issue of sexual harassment of legal interns has been paid abysmal attention to say the least. There has been a dire need to shed some limelight on this persisting and pressing issue faced by the young minds entering the legal profession.

This chapter conducts an empirical analysis into prevalence and extent of sexual harassment experienced by legal interns, a perspective often disregarded in discussions on harassment at workplace. Through this survey and interview-based methodology, the prevalence, extent and specific vulnerabilities of legal interns to such misconduct has been determined. This chapter also focuses on the recent incidents, and case laws that emphasize the absence of clear safeguards and guidelines for interns and the inconsistencies in the application of the law across various legal settings. The role of the Bar

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Council of India has also been discussed in regards to the aforementioned issue.

Through meticulous empirical research, and survey data this study provides insights into the prevalence, and extent of such harassment. By synthesizing empirical evidence, the study offers a set of policy recommendations aimed at legislative reform. It advocates for the inclusion of more targeted protections for interns under the POSH Act and suggests strategic improvements in institutional frameworks to ensure a secure, supportive, and equitable environment for all legal professionals. This work calls for a paradigm shift in how sexual harassment of interns is perceived and addressed, emphasizing the need for urgent reform to safeguard the integrity of the legal profession.

Keywords: POSH Act, Sexual Harassment, Legal Interns, Legislative Reform, Protection.

INTRODUCTION

Female employees in India face an array of additional challenges compared to their male counterparts. From the struggle for menstrual leave to discrimination against pregnant women, sexual harassment remains one of the most rampant barriers hindering the advancement of women in the workplace. As a deeply patriarchal society, India inherently provides numerous safeguards for men, yet these protections often fall short in ensuring the safety of women.

According to a survey conducted by Stratifix Consulting, in collaboration with National Human Resource Development, report on the “Changed Awareness of PoSH in the Workplace” states that about 37% of women experience sexual harassment at workplace. Only 8% of respondents were aware of the policy prior to 2021, and 11% said they’d leave the organisation rather than choose to report sexual harassment.¹ These numbers indicate the pervasive reluctance among women to report such incidents, largely due to the fear of backlash and negative consequences in professional settings.

United Nations Secretariat defines sexual harassment as “any unwelcome sexual advance, request for sexual favour, verbal

1 National HRD Network (NHRDN) & Stratifix Consulting, *Awareness of PoSH (Prevention of Sexual Harassment) Act at the Workplace* (Nov. 2022).

or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.”²

In ILO Discrimination Convention 1958 (No. 111), sexual harassment described as *“a serious manifestation of sex discrimination and a violation of human rights Under Convention No. 190, sexual harassment is not defined, but it is clearly included within the definition of gender-based violence and harassment (Art. 1(1)(b)).”³*

Prior to the establishment of Vishakha Guidelines, the term *“Sexual Harassment”* was not defined in the criminal code of India. The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, hereinafter referred to as PoSH Act defines the term sexual harassment in Section 2(n) as *“direct or implication of unwelcome acts or behavior such as physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”⁴* Though this definition is descriptive, it stands to be bound to certain restrictions.

According to the Lok Sabha Unstarred Question 2187 Dt. 29 July 2022 the percentage of women engaged in the legal profession stands at a meek 15.31%. The persistent negative perceptions surrounding the legal profession for women, along with the

2 United Nations Secretariat, *Secretary-General's Bulletin: Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority*, ST/SGB/2008/5 (Feb. 11, 2008).

3 ILO Discrimination (Employment and Occupation) Convention, No. 111, art. 7 (1958).

4 *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, s. 2(n) (India)

exploitation they often encounter, are the primary reasons for the disproportionately low representation of women in the legal field.

In accordance with rule 25, of Bar Council of India⁵, the recently published National Education Policy 2020 commands experience in professional disciplines like law. In the pursuit to complete 20 weeks of internship, legal interns are frequently subjected to various forms of exploitation—physical, emotional, and sexual—by their superiors. The Bar Council of India (BCI) has mandated that every enrolled law student undergo a minimum internship program before graduation. Students pursuing three-year course are required to complete at least 12 weeks of internships, while students pursuing five years integrated course must fulfill a minimum of 20 weeks of internship. In recent times multiple case have come to light including complaints of sexual harassment by legal interns against advocates and even judges.

After a prolonged wait of 16 years following the implementation of the Vishakha Guidelines propounded by the Supreme Court in 1997, the Ministry of Women and Child Development in India enacted the PoSH Act. Prevention of sexual harassment and establishing an effective redressal mechanism are the main aims of the Act. Despite its noble intentions, the rising number of such cases highlights the Act's inadequate provisions and limited effectiveness in curbing workplace harassment.

DATA ANALYSIS

This chapter is based on multiple sampling techniques namely, probability sampling, simple random sampling, snowball sampling and purposive sampling by conducting interviews. This research is based on a sample of 57 legal interns aged between 19 and 29 years. 85% of the respondents are females and 15% are male. The sample size, although small, is reflective of a distinctive set of experiences within the legal profession, ranging from law firms, chambers, courts, companies, to NGOs.

5 *Bar Council of India Rules*, r. 25.

When asked if they knew any other law intern who had faced sexual harassment in their workplace—be it a chamber, court, firm, or company—59.3% answered “yes,” while 40.7% answered “no. This data shows that more than half of the interns are aware of incidents of sexual harassment within their circles, and this extends beyond individual experiences.

However, the direct experiences of harassment are alarmingly high. When asked if they had personally faced any form of inappropriate behavior or harassment while interning, 66.7% responded experiencing some form of harassment, while only 33.3% indicated they had not faced any harassment. The types of harassment reported included inappropriate physical touch, unsolicited physical advances, demands for sexual favors, teasing or body shaming, invasion of personal space, persistent personal invitations, and intrusive personal questions.

Among those who reported facing harassment, 38.9% indicated that it occurred in law firms, another 38.9% in court chambers, and 72.2% reported experiencing harassment in other places, which could include NGOs, legal aid centers, or other related environments. This diversification suggests that this crucial issue is not confined to a specific type of legal workplace but is spread throughout the legal profession.

Despite the high prevalence of harassment, only 22.2% reported the inappropriate behavior to someone in authority, while 59.3% chose not to file any complaints. Among those who did file a complaint, only 40% noted that some action was taken, while 60% reported that no action was taken. This data reveals a significant gap in the effectiveness of existing complaint mechanisms, where even after reporting, a majority did not receive any redress.

The reasons for not reporting harassment are deeply rooted in fear, social stigma, and a lack of faith in institutional support. Many respondents (37%) cited the belief that no action would be taken against the accused as their primary reason for not reporting. Another 33.3% were deterred by the fear of consequences, and 18.5% felt the weight of social stigma.

Moreover, multiple interns indicated a lack of support from parents, friends, or peers and even parental pressure as factors preventing them from speaking out. The need to complete the internship, a critical requirement for their legal education, also remains a major cause of this silence.

The data shows a concerning situation where young legal interns frequently experience types of sexual harassment from senior members of the legal field in settings designed to help them develop professionally. The low number of complaints being made and the lower number of actions being taken demonstrate the ineffectiveness of existing ways to address these issues and a widespread culture of silence and fear. Structural changes are urgently needed along with accountability and education, within the legal industry to safeguard interns and prevent such misconduct from being accepted. It's crucial to establish welcoming spaces for interns so they can report harassment confidently and without facing backlash or judgment—a key step, in protecting their dignity and rights.

Additionally we conducted interviews with experienced legal professionals to gain deeper insights of the issue. Adv. Manjula Gupta, AOR, Supreme Court emphasized the role of victims confidence and assertiveness, in addressing such matters effectively by stressing the need for victims to report incidents proactively and stand their ground firmly to combat these issues with courage and determination.

The Bar Council of India when posed with a RTI chose to remain silent on the figures. An RTI dated April 28, 2024 was filed to the Bar Council of India inquiring about the number of cases filed of sexual harassment by the legal interns. Even though the council is required to maintain a record of cases, the response received was as follows, *“Further no such data is prepared and available with the CPIO, hence the same cannot be furnished.”*

LEGAL FRAMEWORK DEALING WITH SEXUAL HARASSMENT OF LAW INTERNS

India being a patriarchal society suffers from multiple unaccounted drawbacks. Prior to the notion of gender equality, women were treated as property, at birth of the father and after marriage of the husband. In earlier time rape was associated to property theory and was interpreted in the context of exclusive sexual access, pregnancy, succession. In case of an unmarried woman, it was associated with violation of purity of woman which could lead to unfavorable circumstances in regards to her marriage. The fear that was established here in the mind of the husband was that of the woman getting pregnant. Any damage to the woman was considered damage to the property of the male. This notion has made its way to the modern-day statutes hidden from the eyes of a layman. The definitions of offences against women namely, rape, sexual harassment and sexual assault and others have been formulated with male-centric ideology. Catherine MacKinnon's argues that the offense of rape is defined in male-centric terms. She argues that Rape was categorized as a case of violence rather than sexual offence, it's a case of subjugation by man, it is about power and violence. She questions the harm caused by rape and differentiates it with harm caused by penetration in regards to dignity, integrity etc.

Sexual harassment in the workplace is a pervasive issue that violates the fundamental rights of women and compromises their ability to work with dignity and security. Prior to the enactment of the PoSH Act, sexual harassment was presumed to be included in the broader provisions of sexual offences covered in Indian penal Code 1860. No separate provisions were introduced up until recently, which makes it questionable as to why no action was taken by the legislature even when such heinous cases were on the rise. Section 354A of IPC⁶ added by amendment act of 2013 defines prescribes punishment for sexual harassment. After the implementation of Bhartiya

6 *Indian Penal Code*, No. 45 of 1860, s. 354A (India).

Nyaya Sanhita, Sexual Harassment is covered in section 75⁷ of the act. The punishment has been divided in two parts, for clauses (i), (ii), (iii), the act prescribes “*rigorous imprisonment for a term which may extend to 3 years or fine or both*”. The punishment for making sexually coloured remarks (iv) is “*imprisonment of either description for a term which may extend to one year, or fine, or both.*”

As per Section 9 of the Advocates Act, 1961⁸, “A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.”⁹. Recognizing the urgent need to address this issue, the Indian government enacted the POSH Act. The Bar Councils of various states have also established committees in respective High Courts.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013

Propounded by the Hon’ble Apex Court and adopted by the legislation, the act defines sexual harassment as “*unwelcome sexually tinted behavior such as physical contact and advances, demands for sexual favors, making sexually colored remarks, showing pornography, or any other unwelcome conduct of a sexual nature*”. It also includes circumstances implying or promising preferential treatment or threatening detrimental treatment, creating an intimidating, offensive, or hostile work environment. This definition aligns with the experiences that legal interns may face, such as inappropriate comments, advances, or actions from colleagues, superiors, or clients.

7 Bhartiya Nyaya Sanhita, s. 75.

8 Advocates Act, No. 25 of 1961, s. 9 (India).

9 MANU/SC/0786/199 (Supreme Court of India).

The act defines ‘aggrieved women’ under section 2(a) as “*a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment*”. This definition allows any woman to file a complaint regarding sexual harassment in a particular workspace. This inclusivity means that legal interns, without an employment status, can file complaints if they experience sexual harassment during their internships. In case of *X vs. Internal Committee and Ors.*¹⁰ the Hon’ble Supreme Court stated, “*This act is applicable on each and every company, workspace, establishment or organization employing 10 or more employees whether full time, part time, interns or on contract, irrespective of its nature of industry of location.*” This statement is supplementary to the definition of employee and it covers law interns under the ambit of the term employee.

The Act recognizes that sexual harassment may extend “*beyond the primary place of employment and introduces the concept of an extended workplace, including any place visited by the employee during the course of employment, including transportation provided by the employer*”. For legal interns, this extends beyond the law firm or organization they intern with to include courtrooms, client meetings, or any other locations related to their internship.

According to the provisions of the PoSH Act, in organizations with 10 or more employees it is mandatory to set up an Internal Complaints Committee. This implies that legal firms or organizations where legal interns are placed must have a designated committee to handle complaints of sexual harassment. For workplaces with fewer than 10 employees, there is a provision for Local Complaints Committees (LCCs) at the district level. The procedure for filing a complaint has been stated in Section 9, it entitles an aggrieved woman must submit a written complaint along with supporting documents to the internal or local complaint committee within the time frame of 3 months from occurrence of the incident. The committee has the discretion to extend the deadline if reasons are provided in writing. The committee is also empowered to

10 MANU/OT/0062/2023.

recommend interim measures such as transfer or leave of the aggrieved woman.

PROVISIONS OF CONCILIATION

The Act also provides for the provision of Conciliation under Section 10, which is contradictory in nature. The very essence of the act is to provide justice to the aggrieved women. The nature of the offense of sexual harassment under Section 354A, IPC remains to be cognizable and non-compoundable. Contrasting these general laws, the PoSH Act provides explicit provisions for compounding. This not only undermines the entire authority of the act, rendering it ineffective but also poses a significant threat to women's dignity. It is pertinent to state that misconduct of a sexual nature cannot be settled due to the heinous nature of the crime.

This provision of Conciliation exemplifies the inadequate and half-hearted legislative measures that were reluctantly imposed on the general public, emerging after a protracted delay of 16 years following the Bhanwari Devi case. The protracted delay and the superficial nature of these measures suggest a failure to fully acknowledge and rectify the profound inadequacies in the legal framework designed to address sexual harassment and ensure justice for victims. This phenomenon may be an aftereffect of the lack of lived experience among policymakers and reflects the pervasive influence of deep-seated patriarchy within the collective mindset of contemporary Indian society.

Recently, multiple cases have made headlines where victims of sexual abuse were asked to tie a rakhi or marry the perpetrator as a means of settlement. Justice Devadass stated, *"...even in Islam, Hinduism and Christianity, there are instances of solving the disputes in a non-belligerent manner. The result of it is very good because there is 'no victor, no vanquished'."* This raises the question of why such steps are being taken in the first place. The primary reasons involve the judgments of the judges being clouded by societal norms of shame and acceptability.

The Hon'ble Supreme Court commented on a similar decision passed by the Madras High Court in 2015, which directed the

victim and accused to mediate and get married. The Supreme Court described it as *“a spectacular error”* that is *“against the dignity of women.”* These provisions create a loophole for perpetrators to evade punishment for their crimes. It is important to mention that such attempts to bind the culprit and victim in a socially acceptable relationship have largely been unsuccessful. For instance, culprits have often repeated such crimes with other victims.

THE ROLE OF BAR COUNCIL OF INDIA

The Bar Council of India (hereinafter referred to as BCI) is a statutory body established by Parliament in 1961 under the Advocates Act to regulate and represent the Indian legal profession. As a regulatory and statutory body, similar to the Securities and Exchange Board of India (SEBI), it falls under the obligations of the BCI to ensure the safety, prevention, and redressal of sexual harassment for professionals working in the legal field.

Interns are required to work under senior advocates for at least 20 weeks, as mandated by BCI regulations. Consequently, it becomes the responsibility of the BCI to ensure that these young, learning students are not subjected to sexual harassment in the workplace and to provide for the speedy redressal of such incidents.

Section 2(g) of PoSH Act defines “employer” as follows:

“(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.”

The Act is applicable to the BCI as an employer in the legal profession, as it allows lawyers to practice after meeting specific criteria and paying the requisite fees which is generally much higher than the stipend of an intern. Additionally, the accused remains a part of the legal profession and is affiliated with the BCI. Hence it becomes an absolute duty of this statutory body to interfere and deliver the justice it fights for.

JUDICIAL DEVELOPMENTS

*The Bhanwari Devi Case*¹¹

The Vishaka case has been a landmark in the context of sexual harassment jurisprudence. Bhanwari Devi, who worked as a 'saathin' under the Women's Development Project (WDP) of the Government of Rajasthan, was brutally gang-raped by the relatives of a child marriage victim she was attempting to protect.

In the trial, the Jaipur court acquitted the accused on the grounds of insufficient evidence. Over the course of the proceedings, five judges were replaced, and it was the sixth judge who ultimately declared the accused not guilty. The judge infamously stated, "*Since the offenders were upper-caste men and included a brahmin, the rape could not have taken place because Bhanwari was from a lower caste.*" The judge controversially asserted that Bhanwari Devi's husband could not have passively observed her gang-rape. The State Government appealed the judgment, which sparked a nationwide campaign for justice for Bhanwari Devi. Rajasthan High Court held only one hearing after 15 years of the incident in 2003.

The *Justice A.K. Ganguly harassment case*, 2013 a three-judge committee of the Supreme Court was established. The committee found prima facie evidence of misconduct of Justice Ganguly towards a female law intern. Responding to the increasing number of sexual harassment complaints, West Bengal National University of Juridical Sciences formulated

11 *Writ Petition (Criminal) Nos. 666–70 of 1992.*

“NUJS Policy on Prevention, Prohibition and Redressal of Sexual Harassment 2016” to sensitize law students on how to deal with such cases and encouraged them to lodge complaints if they are victimized.

Certain serious allegations were level against Justice Swatanter Kumar, sitting Supreme Court Sitting Judge by a young student intern. The said intern alleged that Justice Kumar made unwelcome physical contact and made suggestions of a “quid-pro-quo” arrangement with her during her internship dated May 2011.

In *Pushpa Archana Lall case*, 26-year-old law intern Archana Lal was found dead under mysterious circumstances on November 24th, 2018 after filing a complaint against mental and sexual abuse by a senior advocate abusing their position in office.

In the case of *Re: Suicide Committed by Sushant Rohilla, Law Student of Amity University*¹², a young 21 year old student named Sushant Rohilla succumbed to the pressure of Part IV of Bar Council Of India Rules, Rule 25. The matter is still pending in the Apex Court of India.

A Gender Sensitization and Internal Complaint Committee (GSICC) comprising of 10 members was formulated upon the guidelines of Hon’ble Apex court to receive complaints against sexual harassment. Chief Justice of India P. Sathasivam headed the committee with six other female members and two outsiders.¹³ Most high courts all over India however do not have complaints committees which would take up complaints of sexual harassment. Even if they do, they are largely non-functioning¹⁴.

12 MANU/SCOR/27295/2016.

13 SC Constitutes 10-Member Body to Look into Sexual Harassment Complaints, *Firstpost* (Aug. 29, 2024), <https://www.firstpost.com/india/sc-constitutes-10-member-body-to-look-into-sexual-harassment-complaints-1251615.html>.

14 *Sexual Harassment in the Indian Legal Profession*, Oxford Human Rights Hub, <https://ohrh.law.ox.ac.uk/sexual-harassment-in-the-indian-legal-profession/> (last visited Aug. 29, 2024).

LOOPHOLES AND CRITICISM OF POSH ACT

The POSH Act of 2013 represents a significant legislative step however several loopholes and areas of criticism that hinder its effectiveness in combating this pervasive issue. Legal field has adopted the advancements in technology and wide-spread use of the internet, with the concept of Online internships all over the nation. However, the act does not provide essential safeguards in respect to instances. The PoSH Act stipulates penalties for non-compliance with its provisions, including failure to constitute Internal Complaints Committees as mandated, failure to comply with the directions, or obstruction of the work. Any person or employer found guilty of such offenses include a fine, which may also extend up to cancellation or withdrawal of business license.

Another criticism stems from the perspective of implementation and compliance. This lack of awareness and compliance highlights the need for sensitization sessions and strict enforcement measures, including periodic audits and stringent penalties such as the cancellation of trade licenses. According to *Report Garima Sexual Harassment at workplace*¹⁵, most of the respondents were from various work domains starting from IT, media, education, legal, medical, agriculture and to others. Around 70% women stated that they did not report sexual harassment fearing the repercussions. Women when in distress due to sexual harassment approach the committees expecting them to be independent, and find that they are actually puppets in the hands of their superiors.

In case of *"Punjab and Sind Bank v Durgesh Kuwar"*¹⁶, the hon'ble Supreme Court opined that absence of an independent member is a fundamental defect in the internal committee. The presence of independent member reduces the institutional bias. The Delhi High Court in case of *"Tejinder Kaur v Union*

15 Indian National Bar Association, *Report Garima: Sexual Harassment at Workplace* (2017).

16 *Punjab and Sind Bank v Durgesh Kuwar*, AIR 2020 SC 3040.

of India”¹⁷, stated that if there are allegations of biasness in the ICC, the inquiry proceedings shall be stayed and disciplinary committee shall enquire. If such allegations are substantiated, new ICC should be constituted.

One of the major flaws with the act is the biased nature of the committee. This provides no scope of action for law interns to seek redressal or seek justice. They often find themselves entangled in the web of shame, and succumb to the fear of losing their career. Interns, especially those in legal settings, often find themselves in precarious positions where they may feel compelled to tolerate inappropriate behavior due to concerns about their future careers or academic standing. This imbalance of power exacerbates interns’ vulnerability to harassment and limit their ability to seek redress under the Act. Interns encounter harassment from external parties, such as clients or opposing counsel, which may not fall within the purview of the Act’s provisions.

POLICY RECOMMENDATIONS

The data analysis reveals the widespread prevalence and extent of sexual harassment subjected to interns in the legal profession. It is pertinent to highlight that due to certain loopholes and grey areas in the legislations such cases have been on the rise. There is an urgent and pressing need for an extensive revision of the existing legislative framework, with a new approach. The following recommendations are proposed to address the deficiencies and ensure a more effective and equitable system:

1. **Abolition of Conciliation Provisions:** The provisions for conciliation should be entirely removed from the PoSH Act. This mechanism, intended as a less formal means of resolution, often serves as a mere detour from formal adjudication processes. This provision of conciliation is not only ultra vires as it undermines the object of the act but also showcases the halfhearted efforts of the legislation. The Hon’ble Supreme Court has also condoned the ill use

17 *Tejinder Kaur v Union of India*, 2017 SCC OnLine Del 12221.

of this provision. The removal of this provision would ensure proper delivery of justice.

2. **Mandatory Gender Sensitization Training:** All advocates and judges must be required to undergo mandatory ongoing gender sensitization training on regular basis. The objective behind this training should be to increase empathy and enhancing their sensitivity towards the victims. These training sessions would not have any effect without a provision that ensure implementation such as, eligibility for promotions shall depend on the successful assessment of these training sessions. This stands as a mere suggestion however such similar provisions can be implemented.
3. **Judicial Reservation for Women:** In order to ensure adequate representation of women in the judicial system and to address the imbalances there should be reserved quotas for women. This measure will prevent the after effect of the lack of lived experience and will foster a more inclusive environment.
4. **Accountability of the Bar Council of India:** The Bar Council of India being a regulatory body shall be held accountable for its role in preventing sexual harassment and redressal in case of such incidents. It falls on the shoulders of BCI to take proactive measures to prevent such issues and constantly improve its complaint redressal mechanism.
5. **Introduction of the Pupillage System:** A pupillage system, similar to that implemented in the United Kingdom, should be established for the betterment of legal interns. This system would not only ensure proper records of the internship/pupillage but also provides a systematic channel for redressal. Such channel should be formulated by the Bar Council of India to ensure satisfactory redressal.
6. **Modernization of Complaint Filing Procedures:** The procedure provided on the official website of the Bar

Council of India is not only outdated but lengthy and complex. Urgent establishment of a new online portal to facilitate the filing of complaints and making the procedure accessible is required.

7. **Establishment of a Grievance Cell and Helpline:** The Bar Council of India must establish a dedicated grievance cell at every state high court and a toll-free helpline number to address complaints and provide support to individuals facing issues within the legal profession.
8. **Provision for Anonymous Complaints:** There should be a provision in place to allow anonymous complaints. Such provisions shall be added to help victims to come forward without the fear of losing their profession or consequences. In cases where multiple complaints are lodged against the same advocate, an inquiry should be initiated to investigate the allegations thoroughly.
9. **Appointment of Full-Time Counselors:** A full-time qualified counselor should be appointed in each State Bar Council to provide mental support. These counselors can provide support and assistance to the young minds who are in a state of panic, they will be able to guide the victims about the proper course of action.

The object of these recommendations is victim centric and focuses on justiciable redressal of the offence. The prevention is only possible by proper implementation without any levy given to offenders and holding the appropriate body accountable and provide it with power to function as such.

CONCLUSION

The existing laws and rules that oversee the field in India have noticeable shortcomings when it comes to dealing with issues of sexual harassment prevention and resolution within the workplace setting. The current is a move, in combating workplace harassment; however, it needs significant

improvements to keep up with the changing demands of the legal sector. The suggested suggestions are intended to tackle these shortcomings efficiently by eliminating conciliation clauses to guarantee thorough legal review of all complaints. This will strengthen the gravity of sexual harassment claims and improve the trustworthiness of the resolution process.

9

CHAPTER

Sexual Harassment at Workplace: Constitutional Violations and Judicial Safeguards in India

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ABSTRACT

Sexual harassment of women in the workplace is a major cause of concern in present times. Sexual harassment violates the fundamental rights of women, particularly the right to equality contained in Articles 14 and 15 of the Indian Constitution as well as the right to life and existence with dignity contained in Article 21. The Preamble of the Indian Constitution promises “equality of status and opportunity” to all citizens. The constitutionally protected fundamental rights support the elimination of sexual harassment in the workplace. The Supreme Court has undoubtedly taken a bold step to protect women’s rights by setting rules for an issue that did not receive adequate attention until 1997, decades after Independence. The origin of sexual harassment is linked to the Bhawari Devi case and the judgment in Vishaka and others vs Union of India, 1997, which highlight the reasons for the spontaneous increase in cases of sexual harassment from the perspective of different times. The Court’s intervention in cases related to sexual harassment of women presents a different picture. This shows that the courts have recognized their role in social transformation and have effectively used

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their powers for the larger good. Sexual harassment not only harms a woman's physical appearance but also harms her emotional and mental development.

Keywords: *Posh Act, Women ,Sexual Harassment, Work Place, Dignity, Constitution.*

INTRODUCTION

"All nations have attained greatness by giving due respect to women. The country and nation which does not respect women can never become great." *Swami Vivekananda*

The Indian Constitution guarantees equal status and opportunity to all citizens. Gender equality is a fundamental human right, sexual harassment is a violation of the fundamental right to equality enshrined in the Indian Constitution. Such harassment at the workplace creates an unsafe environment, discourages women from working and impedes their economic, social and mental development. The Constitution of India also ensures the right of every citizen to participate in any occupation, trade in a safe and secure environment free from all forms of harassment.

Women face discrimination and crimes at their parental homes, matrimonial homes and workplaces. Gender equality in all these aspects is a fundamental right, which constitutionally ensures equality of status and opportunity for all citizens. Sexual harassment of women at the workplace is a gross violation of this right. It creates a hostile environment for women to work, discourages women from working. Which blocks their economic, mental and social development.

The Supreme Court guidelines define offensive conduct as physical contact or advances, demands or requests for sexual favours, sexually coloured remarks and display of pornography. Sexual harassment becomes more severe when it interferes with a person's work performance or creates an intimidating work environment. Such behaviour can come from a superior, colleague, subordinate or customer.

There are generally two types of sexual harassment:

1. Quid pro quo
2. Hostile work environment

Quid pro quo sexual harassment occurs when an employee's job benefits, such as promotions, are mutualist on acceptive or rejecting sexual advances. For example, if a supervisor suggests that an employee would be more likely to get a promotion if she dressed sexy, it would be quid pro quo sexual harassment. Addressing and preventing sexual harassment is important to ensure gender equality and create a safe and supportive workplace for all.

Workplace harassment occurs when a colleague or supervisor attempts to engage in sexual relations with an employee or makes comments that, while not affecting the employee's promotion or job future, create a hostile and aggressive work environment. The term "sexual harassment" appears to have been coined in the United States and subsequently adopted by other industrial countries such as Australia, Canada, New Zealand, Japan, and several Western European nations. These countries became familiar with the term "sexual harassment" in a formal legal sense only in the 1980s or early 1990s.

As a legal concept, sexual harassment gained meaningful application in the United States in the mid-1970s when American courts ruled that it was a form of sex discrimination, which is prohibited. The term "sexual harassment" has gained the most acceptance because it more fully describes the malady compared to other terms.

In India, sexual harassment remains a concern due to social norms and economic dependence. Laws that favor men highlight discriminatory practices. Inadequate policing and judicial processes prevent female victims from receiving adequate protection and justice. Women's participation in public life is accelerative and laws are being amended, India still has a long way to go before women are recognised as equal citizens in the country. The brutal gang rape of a 23-year-old woman in Delhi on December 16, 2012, brought the issue of violence against women in India to the forefront. The December

incident triggered a wave of anger and frustration over the situation that permit such attacks to occur. A large number of people took to the streets demanding change. Nevertheless, the issues at hand are complex and deeply rooted.

Despite the increase of public life and the correction of laws, India still has a long journey ahead to achieve recognition of women as equal citizens. In response to the public outcry, the Justice Verma Committee was established, leading to the passage of the Criminal Law (Amendment) Act, 2013. This act amends the Indian Penal Code, the Indian Evidence Act, and the Code of Criminal Procedure, and also led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. The aforementioned law reiterates the definition of sexual harassment provided by the Supreme Court in *Vishakha vs. State of Rajasthan* (1997).

Article 19(1)(g) of the Indian Constitution ensures all citizens the right to practice any profession or to carry on any occupation, trade, or business. The *Vishakha* case found that acts resulting in the violation of the rights to “gender equality” and the “right to life and liberty” are violations of the victim’s fundamental rights under Articles 14, 19(1), and 21 of the Indian Constitution. Before the passage of the Criminal Law (Amendment) Act, 2013, cases of sexual harassment were registered under Sections 354 and 509 of the Indian Penal Code (IPC) of 1860. There were no specific statutory provisions related to sexual harassment at the workplace before this amendment, but now Section 354A of the IPC defines sexual harassment and prescribes punishment for it, and new statutory provisions related to workplace sexual harassment have been established.

SEXUAL HARASSMENT AT WORKPLACE

While drafting the sovereign law of the country after independence, the founders of the Indian Constitution had a broad vision for gender equality. As a effect, our Constitution provides some other additional rights to women to balance the male dominance prevalent in the society.

The Preamble of the Constitution ensures “equality of status and opportunity”. However, sexual harassment at the workplace contradicts this guarantee of equality. Sexual harassment at the workplace violates Articles 14 and 15, which provide for gender equality and equal protection under the law, and prohibit gender discrimination. Article 15(1) states that the State shall not discriminate against any citizen on the grounds of race, caste, religion, sex or place of birth.

Article 15(3) provides that “Nothing in this article shall prevent the State from making any special provision for women and children.” This provision negates the effects of discrimination and provides special status or appointments to women.

Article 16(2) prohibits gender discrimination in public employment. Sexual harassment, which creates a hostile or offensive environment for members of a particular sex, is a serious obstacle to gender equality in the workplace, just as racial harassment impedes racial equality. Requiring a man or woman to endure sexual harassment in exchange for livelihood is as insidious and disturbing as the most demanding racial labels.

Article 19(1)(g) guarantees every individual the right to “practise any profession, or to carry on any occupation, trade or business”. It is a fundamental right of a woman to work wherever she wishes. However, sexual harassment at the workplace acts as a deterrent and prevents them from exercising their constitutional rights.

Sexual harassment at the workplace not only affects a woman’s mental, physical or social well-being, but also hinders her performance and ability to excel in her field, making it difficult for her to earn a livelihood. Further, sexual harassment at the workplace violates a woman’s right to life and personal liberty under Article 21.

The Right to Livelihood and Workplace Sexual Harassment

The right to livelihood, a crucial component of Article 21, is also compromised. Sexual harassment at the workplace prevents a

woman from enjoying a safe work environment, which she is entitled to under the Constitution. To ensure her fundamental rights to live with dignity, it is imperative to eliminate the evil of “sexual harassment” at the workplace, allowing women to work freely without fear.

Part IV of the Constitution states that the state must keep the following principles in mind while formulating policies-

Article 39A: Equal justice and free legal aid

Article 41: Right to work, education, and, in certain cases, public assistance

Article 42: Provision for just and humane conditions of work and maternity relief

Article 43: Living wage and a decent standard of life for workers

Although these Directive Principles of State Policy are non-justiciable, they should be followed when making, enforcing, and interpreting laws. Indian Penal Code, 1860 and Criminal Law (Amendment) Act, 2013 Section 354: In cases of assault or use of criminal force with the intent to outrage a woman’s modesty, a punishment of at least one year and up to five years of imprisonment, along with a fine, can be imposed. Section 509: Punishes any word, gesture, or act intended to insult the modesty of a woman with simple imprisonment for up to three years, along with a fine, despite the term “modesty” often being undefined. The Criminal Law (Amendment) Act, 2013 introduced new sections specifically addressing workplace sexual harassment section 354A,(Sexual harassment), 354B (Assault or use of criminal force to disrobe a woman), 354C(Voyeurism), 354D(Stalking Acts of physical and sexual assault are dealt), 375 (Rape),376(Punishment for rape, which can extend to life imprisonment or death penalty), 376A Punishment for causing death or resulting in a persistent vegetative state of the victim),376D (Gang rape) 326A(Acid attacks), 362B(Presumably addresses kidnapping),

166A(Requires public servants to take cognizance of offenses, with failure to do so resulting in six months to two years of imprisonment and a fine).

In Indian Evidence Act, 1872 section 114A of the Supports the prosecution of such cases by allowing any woman to seek justice and ensuring the punishment of the guilty. These provisions collectively aim to protect women from sexual harassment and ensure their right to work in a safe and respectful environment.

INDIAN LEGISLATIVE APPROACH TO WORKPLACE SEXUAL HARASSMENT

The 2013 Criminal Law (Amendment) Act introduced Section 354A into the Indian Penal Code, which defines the offense of sexual harassment and prescribes punishment ranging from one to three years of imprisonment along with fines. Employers are also mandated to report such offenses. Equal Remuneration Act, 1976 This act eliminates discrimination against women in terms of wages, promotions, and transfers. It ensures equal pay for equal work, irrespective of gender or the proportion of work done by the employee. Industrial Disputes Act, 1947 This act allows an employee to sue the employer in a labor tribunal if they are wrongfully dismissed for refusing to comply with demands for sexual favors. It also includes a definition of “unfair labor practices,” which broadly covers sexual harassment. Industrial Employment (Standing Orders) Act, 1946. Employers are legally obligated to specify and inform employees about their working conditions. The act classifies sexual harassment as misconduct, which can result in suspension or dismissal of the employee. Indecent Representation of Women (Prohibition) Act, 1986 Harassing a woman through books, pictures, paintings, films, pamphlets, or packages, etc., is punishable by a minimum sentence of two years. Companies can be prosecuted under Section 7 of this act, leading to a possible two-year imprisonment for the accused. This act also addresses civil suits brought under tort laws for SHW, resulting in loss of income, livelihood,

and employment. Factories Act, 1948 Under Section 48(1), it mandates the provision of crèche facilities where the number of female employees with children below six years of age exceeds thirty. Section 66 prohibits women from working in factories between 6 PM and 7 AM, while Section 56 restricts them from working more than 9 hours a day in factories. Maternity Benefit Act, 1961. This act safeguards women from unemployment during maternity and prevents them from undertaking work harmful to their or their unborn child's health. It ensures a safe, secure, and supportive working environment for women. Information Technology (Amendment) Act, 2008 and Indecent Representation of Women (Prohibition) Act. These two significant laws protect women from sexual harassment at the workplace. The IT Act addresses cyber harassment, while the Indecent Representation Act prevents the exploitation of women through indecent representation in media and advertisements. These legislative measures collectively aim to provide a comprehensive framework to protect women from sexual harassment at the workplace, ensuring their safety, dignity, and equality in the professional environment.

NATIONAL LEGISLATION FOR PROTECTION AGAINST SEXUAL HARASSMENT AT WORKPLACE

National Commission for Women Act, 1990 and Protection of Human Rights Act, 1993 These acts aim to campaign for the better protection of women's rights and human rights, ensuring the dignity and safety of women. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) India ratified CEDAW on June 25, 1993, which provides protection against sexual harassment and ensures that women work with dignity. This international convention led to the creation of domestic laws to protect women at the workplace.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act) With increasing participation of women in both organized and unorganized sectors, it became imperative to implement laws ensuring safe working conditions under Articles 19(1)(g) and 21 of the

Indian Constitution. The PoSH Act, supported by the Criminal Law (Amendment) Act, 2013, emphasizes the importance of creating a gender-neutral environment and upholds Articles 14, 15, 19(1)(g), and 21 of the Constitution.

The PoSH Act aligns with Article 11 of CEDAW, protecting women constitutional rights. It focuses on employer-employee relationships and does not cover acts by non-employees. The Act applies across India and defines a 'victim woman' as any woman of any age alleging to be subjected to any act of 'sexual harassment,' whether employed under this Act or not. It defines an 'employee' as anyone working regularly, temporarily, or on an ad-hoc or daily wage basis, whether directly or through an agent. The concept of an 'extended workplace' includes not only the office premises but also any place visited by the employer during employment, including provided transportation. Although the PoSH Act is not gender-neutral and does not address sexual harassment of men, it is currently the primary law for protecting women from workplace harassment.

PROVISIONS OF THE POSH ACT

The Act provides a clear definition of what constitutes sexual harassment at the workplace. Employers are mandated to report offenses and establish a mechanism for redressal of complaints. Establishment of Internal Complaints Committees (ICC) at all offices/branches with 10 or more employees. Covers any place visited by the employee during the course of employment, including transportation provided by the employer. Employers failing to comply with the provisions of the Act may face penalties, including fines and cancellation of business licenses. The PoSH Act is a significant step toward creating a safer and more equitable workplace for women in India.

JUDICIAL APPROACH TO SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE

Before 1997, there were no formal and specific guidelines to prevent sexual harassment of women at the workplace in India.

Women who experienced harassment could lodge complaints under Section 354 of the Indian Penal Code (IPC), which deals with 'assault or criminal force to women with intent to outrage her modesty,' and Section 509, which penalizes 'word, gesture, or act intended to insult the modesty of a woman.' However, the interpretation of 'outraging the modesty of a woman' was largely at the discretion of police officers, often leading to inconsistent enforcement.

VISHAKA AND OTHERS VS. STATE OF RAJASTHAN (1997)¹

The landmark case of *Vishaka & Others vs. State of Rajasthan* in 1997 was pivotal in addressing the issue of workplace sexual harassment in India. This case arose when Bhawari Devi, a social worker in Rajasthan, was brutally gang-raped for attempting to prevent a child marriage. In response, Vishaka and other women's organizations filed a public interest litigation (PIL) in the Supreme Court of India against the State of Rajasthan and the Union of India, seeking enforcement of the fundamental rights of working women under Articles 14, 15, 19(1)(g), and 21 of the Indian Constitution. The Supreme Court recognized the absence of a legislative framework to address workplace sexual harassment and acknowledged the need for immediate measures to ensure gender equality and protect women's dignity. In its judgment, the Court emphasized that the right to gender equality, the right to work with human dignity, and the right to protection from sexual harassment are fundamental rights under the Indian Constitution. To fill the legislative gap, the Supreme Court laid down the Vishaka Guidelines, which were to be treated as law until appropriate legislation was enacted. These guidelines included:- Employers were required to provide a safe working environment, free from sexual harassment. Establishment of a Complaints Committee to address grievances, with a majority of women members and chaired by a woman. The committee should also include a third party, such as an NGO or another body

1 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

familiar with the issue of sexual harassment. Organizations were required to take preventive measures, including policy formulation, dissemination of the policy, and sensitization programs. Ensuring confidentiality of the complaints and the complainant to prevent victimization. Provision for initiating disciplinary action against the perpetrator if found guilty. Conducting awareness programs to educate employees about sexual harassment and their rights.

The Vishaka case were instrumental in shaping the legal and organizational response to workplace sexual harassment in India. They set a precedent for handling such cases and highlighted the importance of creating a safe and dignified work environment for women. The Vishaka judgment also underscored the relevance of international conventions and norms in interpreting the protection against sexual harassment, aligning Indian law with global standards for gender equality and women's rights. This case laid the groundwork for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which codified the Vishaka Guidelines into law, which were so important which attracted the legislation to legislate a new Act, which is widely known as Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013. The judgment of August 1997 given by a bench of J. S. Verma (Ex C.J.I), Sujata Manohar and B. N. Kirpal, provided the basic definitions of sexual harassment at the workplace and provided guidelines to deal with it. Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favors; c) sexually colored remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature. When any of these acts are committed in a situation where the victim has a reasonable fear that the conduct is related to her employment or work, whether she is earning a salary, honorarium, or volunteering, whether in government,

public, or private enterprise, it can be humiliating and pose a health and safety risk. They enable groups of employees to challenge the widespread prevalence of workplace sexual harassment. The State may be ordered by a PIL to ensure safe working conditions for its employees in accordance with Vishaka and to establish mechanisms for enforcing the law. A woman who is sexually harassed at work has a legal right to be compensated. *Apparel Export Promotion Council v. A.K Chopra*² was the first case before the Supreme Court in this regard after Vishaka. The Supreme Court upheld the dismissal of a superior officer of the Delhi-based Apparel Export Promotion Council after finding him guilty of sexually harassing a junior female employee working under him, following the guidelines laid out in the Vishaka Judgment.

THE FORMATION OF VISHAKA GUIDELINES³

The Vishaka and Others vs. State of Rajasthan case led to the creation of the Vishaka Guidelines, which were instrumental in prompting the legislation of a new act known widely as the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This landmark decision, delivered in August 1997 by a bench comprising J.S. Verma (former Chief Justice of India), Sujata Manohar, and B.N. Kirpal, provided foundational definitions of sexual harassment at the workplace and issued guidelines to address it. The judgment defined sexual harassment as any unwelcome sexually determined behavior (whether directly or by implication), including but not limited to: Physical contact and advances, Demand or request for sexual favors, Sexually colored remarks, Showing pornography, these acts become particularly egregious when they create a situation where the victim reasonably fears that this conduct might affect her employment or work conditions, regardless of whether she is earning a salary, honorarium, or is a volunteer in a government, public, or private enterprise. Such

2 *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

3 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

conduct can be humiliating and pose risks to health and safety, creating a hostile work environment. Sexual harassment does not necessarily have to result in physical harm. It can be any act that creates a hostile work environment, such as making obscene jokes, verbal abuse, or spreading lewd rumors. The creation of a hostile work environment through unwelcome sexual physical, verbal, or non-verbal conduct can result from a pattern of behavior involving multiple such acts rather than a single incident. Public Interest Litigation (PIL) In cases of workplace sexual harassment, public interest litigation (PIL) can be an effective tool. PILs enable groups of employees to challenge the widespread prevalence of sexual harassment in the workplace. Through PILs, the state can be ordered to ensure safe working conditions for its employees and establish mechanisms to enforce the law in accordance with the Vishaka guidelines. A woman who is a victim of workplace sexual harassment has the legal right to seek compensation. Following the Vishaka judgment, the Apparel Export Promotion Council vs. A.K. Chopra case was the first to come before the Supreme Court. In this case, adhering to the guidelines laid out in the Vishaka decision, the Supreme Court upheld the dismissal of a senior officer of the Apparel Export Promotion Council in Delhi, finding him guilty of sexually harassing a junior female employee under his supervision. This principle was highlighted in the Delhi High Court's judgment in the case of Shanta Kumar vs. CSIR, where it was clarified that physical contact without sexual intent and not related to the complainant's gender cannot be deemed as sexual harassment.

SUMAN DHANDA VS. KURUKSHETRA UNIVERSITY, KURUKSHETRA AND OTHERS

This case reaffirmed the need for effective enforcement of gender equality and protection against sexual harassment, especially in the absence of specific legislation. It emphasized the guidelines and norms established in Vishaka to ensure that all workplaces adhere to these standards.

Railway Board vs. Chandrima Das⁴

In this case, the Supreme Court ruled that acts of physical violence by government employees against women not only insult their modesty but also violate their right to dignity. Significantly, the Court extended the protection of Article 21 of the Constitution, which guarantees the right to life and personal liberty, to non-citizens as well. This ruling underscored the universality of human rights irrespective of nationality.

Medha Kotwal Lele vs. Union of India⁵

On October 19, 2012, the Supreme Court reiterated the necessity of effectively implementing the Vishaka guidelines to provide a safe working environment for women in all sectors. The case highlighted that sexual harassment at the workplace should be eradicated to allow women to work with dignity, decency, and respect. It was a clear message that even high-ranking officials, such as IAS officers, are not immune to the repercussions of sexual harassment allegations.

Rupan Deol Bajaj vs. K.P.S. Gill⁶

This high-profile case involved K.P.S. Gill, a senior police officer, who was found guilty of molesting IAS officer Rupam Deol Bajaj during an official function. Despite his contributions to combating terrorism in Punjab, the court held him accountable under sections 354 (assault or criminal force to woman with intent to outrage her modesty) and 509 (word, gesture, or act intended to insult the modesty of a woman) of the Indian Penal Code. He was sentenced to three months in jail and fined INR 2 lakhs in January 1998. This case illustrated the societal challenges and biases faced by women in seeking justice against powerful individuals. In the absence of specific laws addressing workplace sexual harassment, the judiciary has played an active role in establishing fundamental principles of justice. The Vishaka guidelines, born from the Vishaka case, set

4 *Chairman, Railway Board v. Chandrima Das*, MANU/SC/0046/2000.

5 *Medha Kotwal Lele v. Union of India*, AIR ONLINE 2012 SC 632.

6 *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 6 SCC 194.

the precedent for handling sexual harassment and were later codified into the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This proactive stance by the judiciary has been pivotal in ensuring that women's issues are recognized and addressed adequately, even before formal legislative measures were enacted. The aforementioned cases highlight that the role of the judiciary is not confined merely to interpreting laws; it also involves the creation of new guidelines to uphold democratic values and justice. These landmark cases are of historical significance and inspire confidence in the judicial system of our country. Such decisions are crucial for maintaining the rule of law, which is a fundamental principle of our Constitution.

GLOBAL ISSUE OF SEXUAL HARASSMENT

Sexual harassment of women is a worldwide problem that affects both developed and developing countries. It crosses religious, social and economic boundaries, affecting women regardless of their background or status. This widespread issue has emerged as a global crisis, as it is a violation of human dignity, human rights and gender equality. It is a complex issue involving perceptions and behaviour of women as well as gender-discriminatory attitudes and social norms arising from the complex interrelationship of gender, power and sexuality.

CHANGING ROLE OF WOMEN IN INDIA IN PRESENT ERA

With industrialisation, globalisation and development in various sectors, the role of women in India is rapidly evolving. As women are moving from domestic roles to professional environments, the number of crimes against them, including sexual harassment, is increasing. Despite rising rates of sexual harassment, many women hesitate to report it due to social stigma and fear of losing their personal and professional reputation and livelihood.

IMPACT OF THE #METOO MOVEMENT

About 14 years ago, an activist named Tarana Burke started the #MeToo movement. Its goal was to show that victims were heard and understood. The main purpose of this online campaign was to raise awareness among women so that they could come forward and tell about the abuse they faced. However, many victims are seen as sympathetic figures. Many well-known personalities from India and around the world have shared their experiences of sexual harassment. The pictures that come up on social media every day remind us of the widespread impact and awareness of this movement.

Sexual harassment is measured on three criteria Gender harassment, Unwanted sexual attention, Sexual coercion. Women have faced less sexual pressure and unwanted sexual attention, while cases of gender harassment have increased dramatically. The judicial approach in India, especially after the Vishaka case, provides an important framework for addressing sexual harassment at the workplace. The guidelines established by this case laid the foundation for the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”. Such decisions and reforms are necessary to uphold the rule of law and ensure the safety and dignity of women, which are fundamental principles of our Constitution.

The #MeToo movement, while widely supported, has also faced significant backlash. Despite this, it has had a positive outcome by breaking the taboo around discussing and educating people about sexual harassment. Seeing other victims come forward and share their stories has been encouraging and reassuring, helping to uncover many unreported cases. Men have also become more conscious of their behavior towards female colleagues and friends. Since the movement’s inception, private companies have allocated budgets for training programs to educate their employees. They have established and updated strict Sexual Harassment at Workplace (SHW) policies. Men have realized that their behavior towards women was toxic,

and training programs and workshops have prompted the need for change. The Indian government has also taken steps to support female employees by creating platforms for filing complaints. The Ministry of Women and Child Development launched SHe-Box, an online complaint platform for reporting sexual harassment at the workplace. This service, accessible to both private and public sector employees, aims to ensure the proper implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. SHe-Box can be accessed at www.shebox.nic.in.

Despite societal progress and the opening of workplace doors for women, the hoped-for realization of gender equality remains elusive. Stereotypes and prejudices against women persist, and so do violence and oppression. The rise of the service sector was expected to foster a friendly environment where both men and women could work together harmoniously. However, the reality of reported sexual harassment cases at workplaces has revealed a grim truth. Sexual harassment at the workplace significantly impacts women's health, confidence, and morale. These incidents can leave women feeling so vulnerable that they refrain from lodging complaints, fearing disgust, shame, and further victimization. As a result, many women endure their male colleagues' misconduct in silence. The #MeToo movement has played a crucial role in raising awareness about sexual harassment and encouraging victims to speak out. The establishment of platforms like SHe-Box demonstrates progress in providing support and ensuring accountability. However, the persistence of gender-based violence and stereotypes highlights the ongoing need for societal change. Continued efforts in education, policy enforcement, and cultural shifts are essential to create a safer and more equitable environment for women in the workplace and beyond.

CONCLUSION

Sexual harassment at the workplace is highly prevalent in India, and it is important to create a positive work environment for women. To address this issue, the government has enacted

different specific laws. Recognizing that women employees are a significant part of the workforce, it is the government's responsibility to ensure their safety at the workplace. Employers and managers should develop new strategies to protect their organizations from this threat. Women should be treated equally by both the government and employers, and there should be no gender discrimination at the workplace. Effective policy implementation can reduce the incidence and impact of sexual harassment to a great extent. By observing the strategies of other organizations, companies can modify their approach to better handle sexual harassment, thereby reducing or eliminating the disruptions caused by such acts. Governments must understand that while laws addressing sexual harassment provide invaluable support to women's struggles, achieving gender equality requires more than just enacting laws. No woman should have to accept exploitation as a part of her life. It is time for women to raise their voice against all forms of injustice. Deeply ingrained in Indian culture, sexual harassment must be eradicated as it acts like a disease. The government must ensure that both women and men have access to a safe environment. Since a person spends about a third of his day at work, he must know that his employer will provide a harassment-free environment. Various legal scholars have stated that judges, while interpreting the law, can offer multiple interpretations. These interpretations are acceptable as long as they benefit society and people as a whole. As a result, there is no doubt that sovereignty must be maintained in a society where power is divided. On the other hand, the judiciary has the power to intervene, make rules and issue orders to protect the essence of the Constitution and maintain the rule of law. Dealing with sexual harassment at the workplace requires a comprehensive approach that includes strong legal frameworks, effective policy implementation and a cultural shift towards gender equality. Only through joint efforts can we ensure a safe and respectful working environment for all.

10

CHAPTER

Women in the Support to Training and Employment Programme (STEP) Scheme: Challenges and Opportunities

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ABSTRACT

In retrospect, women are always considered to be homemakers and have recently been introduced to the workforce. Surpassing all the gender bias the Government of India has laid emphasis on women's empowerment in the workforce. The government has launched the Support to Training and Employment Programme for Women (STEP) which aims to develop a long-standing initiative to promote women's empowerment using skill development and employment. The program has definitely shifted the focus on marginalized women, increased skill development, and laid down many opportunities for women across the country. It is of concern how well have different social groups or regions responded to the implementation in their area, along with discussing the measures and how we are tracking gender parity in the scheme. This Chapter will focus on what challenges women have to face which is a major hindrance in areas in which the scheme needs more responses. This Chapter will lay emphasis on sociocultural factors like gender roles and societal expectations discouraging women from enrolling in the program, and gender disparity at the workplace and will further provide recommendations for an effective implementation of the scheme. Some unanswered questions for better implementation like policy

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initiatives, mentoring and leaders, and some educational interventions might foster effective guidance and support for women enrolled. This chapter will conclude by recommending strategies to ensure the long-term sustainability of the participation of women in STEP programs.

Keywords: STEP, Government, Women, Programme.

INTRODUCTION

The Support to Training and Employment Programme for Women (STEP) scheme is a government initiative aimed at empowering women and enhancing their economic and social well-being was launched by the Ministry of Women and Child Development (MWCD)¹. The scheme was introduced as a Central Sector team to empower marginalized and asset-deprived women and families who are facing poverty.²The scheme lays out a threefold objective a)Skill Development: The main aim is to provide training in diverse vocational skills which would enable women to secure employment b)Promoting Entrepreneurship: Secondly to encourage women to start their own businesses by fostering them with entrepreneurial skills and relevant knowledge c)Empowerment: Thirdly to elevate women's socio-economic status and prevent oppression in every form.³

Since the beginning, the STEP Scheme has played a vital role in upgrading the livelihood of ⁴women across the country by

- 1 Ministry of Women and Child Development, *Expression of Interest for Selection of an Agency for Social Media Management*, <https://wcd.nic.in/sites/default/files/24-05010215wcdmedia.pdf> (last visited Aug. 15, 2024).
- 2 Jaitely, Arun. "The New Economics of Financial Inclusion in India." *Twenty K.R. Narayanan Orations: Essays by Eminent Persons on the Rapidly Transforming Indian Economy*, edited by RAGHBENDRA JHA, 1st ed., ANU Press, 2021, pp. 369–84. JSTOR, <https://doi.org/10.2307/j.ctv1prsr3r.38>. (last visited Aug. 15, 2024).
- 3 Indian Government Schemes, "STEP Scheme," *Indian-government-schemes.in* (n.d.), available at: <https://indian-government-schemes.in/step-scheme/> (last visited Aug. 15, 2024).
- 4 Government's STEP scheme benefits over 24,000 women this fiscal, (last visited Feb. 25, 2024).
<https://economictimes.indiatimes.com/news/economy/policy/governments-step-scheme-benefits-over-24000-women-this-fiscal/articleshow/46395681.cms?from=mdr>.

equipping them with the vocational skills that are essential for the women workforce to come up with their own enterprises, resulting in contributing to gender equality and economic development.⁵ The STEP Scheme represents a significant step towards empowering women in India, addressing both their economic needs and enhancing their social status. Numerically, At the onset of the scheme i.e. 2013-14 period, 31,478 beneficiaries were covered while the number stood at 30,481 in the 2012-13 fiscal year Only by the beginning of 2015, the STEP scheme had around 2400 women beneficiaries. The Indian government provides funding up to 90% of the project cost to organizations implementing the STEP Scheme.⁶ This financial support allows NGOs and various institutions/associations to conduct training programs without imposing financial burden on women beneficiaries, making it accessible to women in rural areas.⁷

The STEP Scheme specifically targets women aged 16 and above, particularly those from marginalized communities like scheduled tribes and castes and rural backgrounds who are often the most affected by poverty. By focusing on these target sections of women beneficiaries, the scheme aims to empower women in the labor force. The other aspect is to see this also

5 IMF, "Title of the Report/Document" (2020), , URL or Path (last visited on July 12, 2024).

6 Government of India, "Access Finance: Funding," *Wep.gov.in* (n.d.), available at: <https://wep.gov.in/access-finance?slug=funding> (last visited Aug. 15, 2024).

7 Hindrise Foundation, "Women Empowerment in India and Its Importance," *Hindrise.org* (n.d.), available at: <https://hindrise.org/resources/women-empowerment-in-india-and-its-importance/> (last visited Aug. 15, 2024).

Ministry of Women and Child Development, Government of India, "Final Report: Skill Development in Slums," *Wcd.nic.in* (n.d.), available at: <https://wcd.nic.in/sites/default/files/Final%20Report-TISS-%20Skill%20in%20slums.pdf> (last visited Aug. 15, 2024).

as a poverty alleviation program as well.⁸ In retrospect, the acceleration of economic growth and opportunities for per-say ‘Spread Effect of Growth’ had a great emphasis especially when the STEP Scheme was launched.⁹ STEP scheme has successfully resulted in enhancing employability and encouraging entrepreneurship, the STEP Scheme helps women to become self-reliant which eventually leads to direct contribution to poverty alleviation in their households and communities.¹⁰

Empowering women plays a huge role in economic growth. When women have equal access to education, employment, entrepreneurship opportunities, skill training, etc would contribute to the nation’s wealth¹¹. This would eventually boost overall economic development and give women opportunities for personal growth.¹² Women empowerment is crucial for a country like India for several reasons, encompassing social, economic, and political dimensions that contribute to national development and progress. When women have equal access to education, employment, and entrepreneurship opportunities, they can actively participate in the economy.¹³ This not only

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- 8 S. Galab, and N. Chandrasekhara Rao. “Women’s Self-Help Groups, Poverty Alleviation and Empowerment.” *Economic and Political Weekly*, vol. 38, no. 12/13, 2003, pp. 1274–83. JSTOR, <http://www.jstor.org/stable/4413378> (last visited Aug. 10, 2024).
 - 9 DHOLAKIA, RAVINDRA H. “Regional Sources of Growth Acceleration in India.” *Economic and Political Weekly*, vol. 44, no. 47, 2009, pp. 67–74. JSTOR, <http://www.jstor.org/stable/25663814> (last visited Aug. 10, 2024).
 - 10 Ministry of Women and Child Development, Government of India, “Advertisement for the Post of Director (Technical)NMEW,”[https://wcd.nic.in/sites/default/files/Advt.\(Revised\)%20for%20post%20of%20Director%20\(Technical\)-NMEW.pdfh](https://wcd.nic.in/sites/default/files/Advt.(Revised)%20for%20post%20of%20Director%20(Technical)-NMEW.pdfh) (last visited Aug. 15, 2024).
 - 11 Government’s STEP scheme benefits over 24,000 women this fiscal, <https://economictimes.indiatimes.com/news/economy/policy/governments-step-scheme-benefits-over-24000-women-this-fiscal/articleshow/46395681.cms?from=mdr> (last visited Feb. 25, 2024).
 - 12 Women in India’s Economic Growth, Annette Dixon, March 16, 2018.
 - 13 Vocal Thoughts, “Empowerment Goes Beyond Simply Providing Women with Basic Rights and Opportunities” (2023) Times of India Readers’ Blog, <https://timesofindia.indiatimes.com/readersblog/vocalthoughts/empowerment-goes-beyond-simply-providing-women-with-basic-rights-and-opportunities-56486/> (last visited on August 06, 2024).

boosts household incomes but also stimulates overall economic development. Studies have shown that increasing women's participation in the workforce can lead to higher GDP growth rates, as women are essential contributors to labor markets and economic productivity.¹⁴ Women's empowerment is fundamental to achieving social justice and gender equality which addresses discrimination and violence against women, fostering a more equitable society.¹⁵ Legal frameworks and awareness programs can create safer environments for women, reducing the prevalence of violence and discrimination.¹⁶

Participation of women in large numbers in strategic sectors like education, health, rural extension, and social welfare can be a major factor in accelerating changes in attitudes and behavior patterns which will contribute to modernization and increase in output.¹⁷ It is, therefore, necessary to investigate the reasons for the decline in the work participation rate of women and for their negligible participation in modern

14 Stefania Fabrizio, Doris C. Ross & Ting Yan, "Macro-Economic Gains from Gender Equity," 11 International Monetary Fund Working Paper 25 (2020).

Sharma, Shalendra D. "Politics and Governance in Contemporary India: The Paradox of Democratic Deepening." *Journal of International and Area Studies*, vol. 9, no. 1, 2002, pp. 77–101. JSTOR, <http://www.jstor.org/stable/43107058> (last visited Feb. 25, 2024).

15 United Nations, "Gender Equality: Why It Matters" (2024) United Nations, <https://www.un.org/sustainabledevelopment/gender-equality/> (last visited Aug. 12, 2024).

16 UN Women, "Economic Empowerment" (2024) UN Women, <https://www.unwomen.org/en/what-we-do/economic-empowerment> (last visited Feb. 25, 2024).

17 Carol Newman, John Rand & Finn Tarp, "The Transmission of Job Losses from Large to Small Firms: Evidence from Danish Supplier-Customer Data," UNU-WIDER Working Paper No. 33, United Nations University World Institute for Development Economics Research 1 (2020), <https://www.wider.unu.edu/sites/default/files/WP33.pdf> (last visited Aug 12, 2024).

activities.¹⁸ This inclusion ensures that women's perspectives and needs are considered in policy-making, leading to more comprehensive and effective governance.¹⁹

These skill development schemes are run all across the globe to empower the marginalized.²⁰ Adapting a model and revamping the scheme, particularly on the three major issues classified above would enhance the effectiveness of the STEP Scheme and women's participation in the workforce in India.²¹ Skill India Mission is another venture by the government that provides Vocational Training to women in order to increase the representation of women in the workforce.²² Despite

18 Kamla Nath. "Women in the Working Force in India." *Economic and Political Weekly*, vol. 3, no. 31, 1968, pp. 1205–13. JSTOR, <http://www.jstor.org/stable/4358889> (last visited July 07, 2024).

19 Drishti IAS, "Perspective: Women-Led Development" (2024) Drishti IAS, <https://www.drishtiiias.com/loksabha-rajasabha-discussions/perspective-women-led-development> (last visited Aug. 01, 2024).

20 Löw, Christine. "Against the Responsibilization of Marginalized Women for Clean Energy in India: Intersectional Gender Relations, Power and Social-Ecological Transformation in a Neoliberal Hindu-Nationalist State." *Contested Social and Ecological Reproduction: Impacts of States, Social Movements, and Civil Society in Times of Crisis*, edited by Antonia Kupfer and Constanze Stutz, 1st ed., Verlag Barbara Budrich, 2024, pp. 49–66. JSTOR, <https://doi.org/10.2307/jj.16063711.5> (last visited Aug. 02, 2024).

21 Centre starts survey to assess women participation in workforce, Hindu Beaurau, <https://www.thehindu.com/news/national/centre-starts-survey-to-assess-women-participation-in-workforce/article67793871.ece> (last visited Jan. 30, 2024).

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22 National Skill Development Mission, Ministry of Skill Development and Entrepreneurship, Government of India 1 (2015), <https://www.msde.gov.in/sites/default/files/2019-09/National%20Skill%20Development%20Mission.pdf> (last visited Aug. 03, 2024).

IndiaMission, Testbook (2022), <https://blogmedia.testbook.com/blog/wp-content/uploads/2022/04/skill-india-mission-ca6a1709.pdf> (last visited July 19, 2024).

the STEP scheme, all these ventures play a huge role in the participation of women in the labor force. All of these schemes need a revamp while addressing various challenges.

Some traditional sectors of STEM that underlays Animal Husbandry including dairy farming, poultry, and other livestock-related activities. Fisheries cover Covers both freshwater and marine fishing, as well as fish processing and sericulture involving silkworm rearing and silk production, Village Industries make traditional crafts and small-scale industries. Further, some potential sectors yet to explore are beauty and wellness would also include hairdressing, makeup, and skincare, Retail Sales include training in customer service, product knowledge, sales techniques, basic Healthcare home nursing, and other healthcare-related skills.²³

OPPORTUNITIES

Historically, there is a pertinent trend of slight male predominance at the time of birth this pattern is observed in almost every part of the world. However, in recent decades many Western countries have indicated a natural increase in the female population and now on growing imbalance with more women.²⁴ Throwing some light on India's sex ratio which has been a concern for decades most of the women in rural areas are still oppressed but some areas have shown significant improvements in women's sex ratios.²⁵ To address this deep-rooted issue we should extract from Western models of empowering women, especially through their women in workforce elevation programs similar to the STEP Scheme in

23 Government of India, "Support to Training and Employment," *Vikaspedia* (n.d.), available at: https://static.vikaspedia.in/media/files_en/social-welfare/ngo-voluntary-sector-1/government-of-india-schemes-for-ngos/support-to-training-and-employment.pdf (last visited Aug. 15)

24 Anouch Chahnazarian, "HISTORICAL TRENDS IN THE SEX RATIO AT BIRTH," <https://jscholarship.library.jhu.edu/server/api/core/bitstreams/b15d491c-d02b-4338-94c9-c0f600153f7d/content>.

25 ASHCROFT, M. T. "SEX RATIO OF GUYANESE OF AFRICAN AND EAST INDIAN ORIGIN." *Human Biology*, vol. 42, no. 2, 1970, pp. 280–83. JSTOR <http://www.jstor.org/stable/41449302>, (last visited Aug. 12, 2024).

India.²⁶ There is a threefold mechanism when worked upon India's scheme would improvise.²⁷

Skill development equips women with the necessary competencies to secure better jobs and earn higher incomes in order to elevate the standard of living.²⁸ By acquiring relevant skills, women become more competitive in the job market, opening up more employment opportunities. With the increase in potential, skill development programs enable women to achieve financial independence and eventually reduce their reliance on others. Moreover, it directly contributes to poverty reduction at the household level.²⁹ It outshines women's capabilities and enhances women's confidence and participation in social and political spheres.³⁰ Empowered women can advocate for their rights, challenge gender stereotypes, and contribute to policy decisions that promote gender equality. In upcoming years women would not remain marginalized or oppressed if these schemes are implemented in their full swing. Considering the Demographic Dividend of India having a young population, India has the potential to yield maximum economic benefits by investing in

26 Rachael Stryker. "Empowering Women in Russia: Activism, Aid, and NGOs." *Anthropological Quarterly*, vol. 80, no. 1, 2007, pp. 259–63. JSTOR, <http://www.jstor.org/stable/4150951> (last visited Aug. 12, 2024).

27 Report of the Working Group on Empowerment of Women for XI Plan, Accessed 12 Aug. https://www.aicte-india.org/downloads/woman_empowerment.pdf.

28 Sonam Prabhakar and Ashok Nimesh, "Skill Development Programmes for Women in India: Current Status and Future Perspectives," *World Journal of Advanced Engineering Technology and Sciences*, Vol. 7, 2022, pp. 128–136, <https://wjaets.com/sites/default/files/WJAETS-2022-0105.pdf> (last visited July. 12, 2024).

29 SUNDARAM, JOMO KWAME. "Poverty Matters." *Economic and Political Weekly*, vol. 47, no. 49, 2012, pp. 22–26. JSTOR, <http://www.jstor.org/stable/41720434> (last visited Aug. 03, 2024).

30 UN Women, "Facts and Figures: Leadership and Political Participation," *UN Women* (2023), available at: <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> (last visited July 15, 2024).

women's skill development.³¹ Enabling women to participate actively in the workforce can contribute to India's growth and development, helping the country achieve its goals in the coming years.³²

However, STEP is just one piece of a larger puzzle. Other initiatives, such as MUDRA and Stand-Up India, complement STEP's efforts by providing financial support and encouraging entrepreneurship and share a common goal to make women economically independent.³³ While these schemes have a broader beneficiary base, they intersect with STEP's goals by helping women translate their acquired skills into sustainable livelihoods.³⁴ The amalgamation between these programs is essential for achieving holistic women's empowerment in India.³⁵ By combining skill development with financial assistance and mentorship, India is creating a holistic

31 *Indiatoday.in* (Apr. 2, 2024), available at: <https://www.indiatoday.in/diu/story/beyond-numbers-indias-demographic-dividend-and-the-quest-for-economic-miracle-2522426-2024-04-02> (last visited Aug. 15, 2024).

32 Supriya Kumari, "The Crucial Role of Skill Development in Women Empowerment" <https://www.ijcrt.org/papers/IJCRT2310637.pdf> (last visited Aug. 15, 2024).

Shome, Parthasarathi. "Women, Children and Demographic Dividend." *The Creation of Poverty and Inequality in India: Exclusion, Isolation, Domination and Extraction*, 1st ed., Bristol University Press, 2023, pp. 207–34. *JSTOR*, <https://doi.org/10.2307/jj.3485532.13> (last visited Aug. 16, 2024).

33 KANNABIRAN, KALPANA. "The Law, Gender and Women." *Economic and Political Weekly*, vol. 44, no. 44, 2009, pp. 33–35. *JSTOR*, <http://www.jstor.org/stable/25663730> (last visited Aug. 16, 2024).

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34 NITI Aayog, "Empowerment of Women Through Education, Skilling, and Micro-Financing," *Niti.gov.in* (n.d.), available at: <https://www.niti.gov.in/empowerment-women-through-education-skilling-micro-financing> (last visited Aug. 15, 2024).

35 All India Council for Technical Education (AICTE), "Woman Empowerment," (n.d.), available at: https://www.aicte-india.org/downloads/woman_empowerment.pdf (last visited Aug. 15, 2024).

environment for women to thrive economically.³⁶ To conclude, the success of these initiatives lies in their ability to collaborate and create a cohesive ecosystem that supports women at every stage of their journey to be independent.

POTENTIAL CHALLENGES AND MEANS

The female workforce, pervading informality is added to other challenges that keep them from participating in work – such as the burdens of family and caregiving, restrictive social norms, and limitations on mobility.³⁷ Major proper India being a developing country is the funding mechanism. In countries like Canada funding is handled by both the private sector and the government. The responsibility is also taken up by non-state actors like NGOs, social help groups, etc.³⁸ Whereas In India a fixed percentage of ninety percent is fully funded by the government and the remaining is found by implementing agencies not bearing any responsibility. Implementation is another factor, The Australian Government mutually involves both sectors to ensure sustainable job placements and post-training if required which includes enhancing job prospects and opportunities.³⁹

36 Development Monitoring and Evaluation Office, “A Portrait of Women’s Empowerment in India,” Dmeo.gov.in (n.d.), available at: <https://dmeo.gov.in/article/portrait-womens-empowerment-india> (last visited Aug. 15, 2024).

37 Sunaina Kumar, “The Skilling Imperative in India: The Bridge Between Women and Work,” <https://www.orfonline.org/research/the-skilling-imperative-in-india-the-bridge-between-women-and-work> (last visited Aug. 15, 2024).

38 Seema Singh and Antra Singh, “Women Empowerment in India: A Critical Analysis” <https://graduatewomen.org/wp-content/uploads/2020/08/Article-written-by-Seema-Singh-BRPID-project-findings.pdf> (last visited Aug. 15, 2024).

39 Australian Government Department of the Treasury, “Chapter 3: Enhancing Australia’s Economic Resilience,” *Treasury.gov.au* (2023), available at: <https://treasury.gov.au/sites/default/files/2023-10/p2023-447996-05-ch3.pdf> (last visited Aug. 15, 2024).

Australian Government, “Jobs and Skills: Budget 2022-23,” *Budget.gov.au* (2022), available at: https://archive.budget.gov.au/2022-23/download/glossy_jobs.pdf (last visited Aug. 15, 2024).

India is a culturally rich country which hinders societal norms and family resistance resulting in challenges to women's participation in the scheme. The West has strong beliefs of gender equality focusing on social welfare through belonging/following a different culture. These skill development schemes are run all across the globe to empower the marginalized. Adapting a model and revamping the scheme, particularly on the three major issues classified above would enhance the effectiveness of the STEP Scheme and women's participation in the workforce in India. The Support to Training and Employment Programme for Women (STEP) scheme is a government initiative aimed at empowering women and enhancing their economic and social well-being.⁴⁰

One of the key challenges is the lack of access to training and skill-building opportunities for women. At the initial stages, awareness of women beneficiaries is not available and it is urgent to bring awareness by promoting the scheme the main objective to employ women should be put out to encourage more women participation.⁴¹ There are numerous challenges women have to face in rural areas, where this scheme would benefit most of the women's beneficiaries and usually face reluctance from their family members or household activities. Foremost it is crucial for us to understand that first, we should revamp the scheme according to today's time. The scheme has no doubt been very successful but should mend its policies with the change in times. The scheme of the 90's is deemed to be a misfit today. There is an urgent need to amend some policies and take some into consideration. Women require flexible training hours as still in remote areas women are

40 Jaitely, Arun. "The New Economics of Financial Inclusion in India." *Twenty K.R. Narayanan Orations: Essays by Eminent Persons on the Rapidly Transforming Indian Economy*, edited by RAGHBENDRA JHA, 1st ed., ANU Press, 2021, pp. 369–84. JSTOR, <https://doi.org/10.2307/j.ctv1prsr3r.38> (last visited Aug. 16, 2024).

41 Ministry of Women and Child Development, Government of India, "Advertisement for the Post of Director (Technical)NMEW,"[https://wcd.nic.in/sites/default/files/Advt.\(Revised\)%20for%20post%20of%20Director%20\(Technical\)-NMEW.pdfh](https://wcd.nic.in/sites/default/files/Advt.(Revised)%20for%20post%20of%20Director%20(Technical)-NMEW.pdfh) (last visited Aug. 15, 2024).

bound to do household chores. Flexibility in time would allow women to cater to the skill development course and family responsibilities at a balance. There is also a complimentary factor added that women may fear social judgment or backlash from their communities when they assert themselves in professional environments or pursue careers that challenge traditional norms.⁴² It is truly essential to break these notions.⁴³ Socio-cultural norms and gender biases often restrict women's participation in technical and vocational training programs, which are essential for developing the skills needed for successful entrepreneurship.⁴⁴ The research done suggests that women may fear social judgment or backlash from their communities when they assert themselves in professional environments or pursue careers that challenge traditional norms.⁴⁵ It is an ongoing discussion that prevalent social norms translate into patterns of time use that can be difficult to shift, and that continues to mediate outcomes around women⁴⁶. Traditionally gender roles often assign women primary responsibility for household chores and childcare, restricting their time and capabilities for education, skill development, and employment. This "time poverty" has enhanced due to the unequal distribution of unpaid labor, with women bearing the

42 Kamla Nath. "Women in the Working Force in India." *Economic and Political Weekly*, vol. 3, no. 31, 1968, pp. 1205–13. *JSTOR*, <http://www.jstor.org/stable/4358889> (last visited July 15, 2024).

43 https://seemajayachandran.com/social_norms_flfp.pdf.

44 Gray Group International, "Gender Disparity in Education" (August 2, 2022) Gray Group International, <https://www.graygroupintl.com/blog/gender-disparity-in-education> (last visited Aug. 04, 2024).

45 IAS Gyan, "Handbook to Eliminate Gender Stereotypes from Law" (2024) IAS Gyan, <https://www.iasgyan.in/daily-current-affairs/handbook-to-eliminate-gender-stereotypes-from-law> (last visited Aug. 12, 2024).

46 S. Galab, and N. Chandrasekhara Rao. "Women's Self-Help Groups, Poverty Alleviation and Empowerment." *Economic and Political Weekly*, vol. 38, no. 12/13, 2003, pp. 1274–83. *JSTOR*, <http://www.jstor.org/stable/4413378> (last visited Aug. 10, 2024).

brunt.⁴⁷ Consequently, women's availability and utilization of resources and decision-making power is often affected including their economic independence, growth and overall well-being. While analyzing the interplay with social norms and the women who benefited from the team they had issues against violence in public places and restrictions imposed on movement and control over them.⁴⁸ This outlook should be transformed and needs to be shifted to liberalize women and ensure participation in this particular team.⁴⁹ The scheme currently underlies a limited range of skill training levels and more opportunities should be looked for that would help them gain employment easily and maintain a comfortable working environment.⁵⁰ As an initial step, there is an urgent requirement to eliminate gender biases and misconceptions about women's abilities.⁵¹ Some amendments should be made regarding maintaining the work-life balance by incorporating flexible time hours, free parental leaves, etc.

- 47 Koh, Wei Qun, et al. *The Effectiveness of Virtual Reality-Based Interventions for Children with Autism Spectrum Disorder: A Meta-Analysis*. International Journal of Environmental Research and Public Health, vol. 17, no. 18, 2020, pp. 1-16. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7688061/> (last visited Aug. 15, 2024).
- 48 Yojana Sangam, "10 Life-Changing Schemes for Women Empowerment in India" (July 2024) Yojana Sangam, <https://yojanasangam.com/10-life-changing-schemes-for-women-empowerment-in-india/> (last visited Aug. 12, 2024).
- 49 United Nations, "Enabling Environment for Women in Development," *UN Women Watch* (2005), available at: <https://www.un.org/womenwatch/daw/egm/enabling-environment2005/index.html> (last visited Aug. 15, 2024).
- 50 Female Labour Utilization in India, Employment Statistics in Focus-April 2023, https://dge.gov.in/dge/sites/default/files/2023-05/Female_Labour_Utilization_in_India_April_2023_final_1_pages-1-2-merged_1.pdf (last visited Aug. 15, 2024).
- 51 UN Women, "Countering Gender Discrimination and Negative Gender Stereotypes: Effective Policy Responses," *UN Women* (2011), <https://www.unwomen.org/en/news/stories/2011/7/countering-gender-discrimination-and-negative-gender-stereotypes-effective-policy-responses> (last visited Aug. 15, 2024).

Some efficiently equipped mentors in the STEM field can be really helpful for amateur women learners.⁵² This would give a boost in the development of a new skill set and lasting exposure and experience. Some educational interventions like adopting modern styles leaning towards a practical approach can help women enrolled in the scheme to achieve a better understanding of concepts and apply those concepts in practical life.⁵³ Additionally, to increase participation we should also look after the children of women enrolled. The major concern of women who have participated in the survey is that this is a challenge. The scheme should allow the collaboration of women's help groups especially to accelerate women in the rural areas to increase the enrollment numerically and also to create awareness by local means.⁵⁴ During the research, one point is pertinent to note that is; women are being skill-trained in a great number of areas for a particular skill. A substitute for this must be women developing different skills that are in demand currently which are Computer literacy, Management, Data Analysis, Leadership, and Nursing skills.

As an initial step, there is an urgent requirement to eliminate gender biases and misconceptions about women's abilities.⁵⁵ Some amendments should be made regarding maintaining the work-life balance by incorporating flexible time hours, free parental leaves, etc.

52 Government of India, "Support to Training and Employment," *Vikaspedia* (n.d.), available at: https://static.vikaspedia.in/media/files_en/social-welfare/ngo-voluntary-sector-1/government-of-india-schemes-for-ngos/support-to-training-and-employment.pdf (last visited Aug. 15, 2024)

53 VIVOLO, JOHN. "Understanding and Combating Resistance to Online Learning." *Science Progress* (1933-), vol. 99, no. 4, 2016, pp. 399–412. JSTOR, <https://www.jstor.org/stable/26406355> (last visited Aug. 15, 2024).

54 Ministry of Rural Development, Government of India, Schemes for Women Through Self-Help Groups, available at <https://rural.gov.in/en/press-release/schemes-women-through-self-help-groups>, (last visited Aug. 25, 2024).

55 UN Women, "Countering Gender Discrimination and Negative Gender Stereotypes: Effective Policy Responses," *UNWomen*(2011),<https://www.unwomen.org/en/news/stories/2011/7/countering-gender-discrimination-and-negative-gender-stereotypes-effective-policy-responses> (last visited Aug. 15, 2024).

However, the actual implementation of these schemes has faced significant challenges, as highlighted by recent studies.⁵⁶ The scheme currently underlies a limited range of skill training levels and more opportunities should be looked for that would help them gain employment easily and maintain a comfortable working environment. The Scheme should revise and set out new skill set development or training programs according to the current demand in the society. For instance, policymakers couldn't have predicted the technological advancements that have taken place in India. Therefore, with the advancements of society and its trends the training programs should be changed. New ideas should be brought into action, in order to create an impact in women's life. Basic computer literacy would increase the employment rates and would have good opportunities to grab and grow. Especially, Young women can explore opportunities like nursing, tailoring, teaching, and other specific vocational skills so they have job security as well as are safe while working. Moreover, India is a diverse country having so many communities/regional groups. Women belonging to different sections of society can indulge in regional practices for job opportunities.⁵⁷ The northeast is famous for its tea cultivation, and Kashmir in the north has pashmina, women beneficiaries who can foster entrepreneurial

56 PANKAJ, ASHOK, and RUKMINI TANKHA. "Empowerment Effects of the NREGS on Women Workers: A Study in Four States." *Economic and Political Weekly*, vol. 45, no. 30, 2010, pp. 45–55. JSTOR, <http://www.jstor.org/stable/20764337>, (last visited Aug. 15, 2024).

SWAMINATHAN, PADMINI. "REVISITING THE THEME OF WOMEN'S 'EMPOWERMENT': How Leadership Matters." *India International Centre Quarterly*, vol. 39, no. 3/4, 2012, pp. 13–30. JSTOR, <http://www.jstor.org/stable/24394272>, (last visited Aug. 15, 2024).

57 ESWARAN, MUKESH. "How Can Women Be Empowered?" *Why Gender Matters in Economics*, Princeton University Press, 2014, pp. 335–76. JSTOR, <https://doi.org/10.2307/j.ctvvh853j>, (last visited Aug. 14, 2024).

skills and promote their culture and heritage which is now globally famous.⁵⁸ Furthermore, women entrepreneurs face a range of other barriers, including limited access to financial resources, patriarchal constraints within families and society, and difficulty in balancing domestic and professional responsibilities.⁵⁹ These societal norms and gender stereotypes create a complexity that would restrict women's career opportunities in India. Addressing these challenges requires a two-faceted approach that includes education, awareness campaigns, and policy changes to promote gender equality and empower women to pursue their professional aspirations without societal constraints.⁶⁰

Lack of managerial experience and inadequate business development support have also been identified as significant hurdles for women in the STEP scheme.⁶¹ A pertinent lack of

58 Shrestha Verma "How Pashmina is empowering Kashmiri Women", <https://www.tice.news/tice-trending/kashmiri-pashmina-gi-tag-india>. (last visited Aug. 01, 2024).

Mohiuddin, Shafiqa, Ganaie, Mohd, "Empowerment of Rural women: A Study of Kashmir Valley", International Journal of Creative Research Thoughts (IJCRT) www.ijcrt.org (last visited Aug. 15, 2024).

59 JOUR, Coşkun, Çiçek, 2021/01/04, Modernization and Social Change: Social Structure in Kılavuzlar Village
Volume 15, Turkish Studies - Social Sciences.

60 Institute for Social and Policy Studies (ISPP), "Unveiling the Impact of Public Policies on Women's Equality in India" (2024) Indian School of Public Policy, <https://www.ispp.org.in/unveiling-the-impact-of-public-policies-on-womens-equality-in-india>, (last visited Aug. 13, 2024).

(last visited on August 07, 2024). UNESCO, "Global Education Monitoring Report 2020: Inclusion and Education – All Means All," United Nations Educational, Scientific and Cultural Organization 1 (2020), <https://unesdoc.unesco.org/ark:/48223/pf0000375106> (last visited Aug. 05, 2024).

61 The Economic Times, "Government's STEP Scheme Benefits Over 24,000 Women This Fiscal," [Economictimes.indiatimes.com](https://economictimes.indiatimes.com) (2015), available at: <https://economictimes.indiatimes.com/news/economy/policy/governments-step-scheme-benefits-over-24000-women-this-fiscal/articleshow/46395681.cms> (last visited Aug. 15, 2024).

ILO Country Office for India, "India Labour Market Update," file:///C:/Users/Hp/Downloads/wcms_568701%20(1).pdf (last visited Aug. 15, 2024).

managerial experience and inadequate business development support are significant hurdles for women participating in the STEP scheme in India.⁶² Most women, especially those from rural backgrounds, have only a bunch of opportunities available to utilize. Another contributing factor are societal norms and gender stereotypes which often discourage women from pursuing leadership roles and rather pursue household chores; which results in a lack of confidence.

While the STEP scheme provides vocational training in diverse sectors, there is no focus on managerial training. Women entrepreneurs often face challenges in accessing resources necessary for business development, such as funding, mentorship, and market information. The STEP scheme aims to promote entrepreneurship, but without adequate support strategies, women struggling to establish their businesses. The STEP scheme connects beneficiaries with financial institutions, but many women still face barriers to obtaining credit due to a lack of financial literacy. This financial exclusion limits their ability to invest in and expand their businesses.⁶³ After the completion of training programs, many women may not receive the necessary ongoing support to apply their skills effectively in real-world settings. The sustainability of skills and their application has been a problem. Enhancing training programs to include managerial skills, providing awareness of financial literacy, and business development support, and fostering an environment that encourages women to take on leadership roles can significantly improve their chances of

62 Press Information Bureau, Government of India, "Support to Training and Employment Programme for Women (STEP)," *Pib.gov.in* (2015), available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=124444> (last visited Aug. 15, 2024).

63 India Filings, "Support to Training and Employment Programme for Women (STEP)," *Indiafilings.com* (n.d.), available at: <https://www.indiafilings.com/learn/step-scheme/> (last visited Aug. 15, 2024).

success in the workforce and entrepreneurship.⁶⁴ This ideal approach is deemed fit for empowering women and achieving broader economic growth in India in the labor force.⁶⁵

Another emerging challenge is the discontinuation of women enrolled in the program. The women enrolled in the STEP scheme when interviewed shared some reasons of withdrawal which are: a) The number of NGOs, associations, and organizations capable of effectively delivering training programs is inadequate to meet the demand in terms of training and infrastructure.

b) Implementing agencies may face financial and human resource limitations, affecting their ability to scale up operations. Some women also face a lack of support from families and refrain from attending the skill program and further discontinued. These factors hinder the potential of the STEP scheme which remains limited, preventing it from empowering women across the country.⁶⁶

The Support to Training and Employment Programme for Women (STEP) has made significant changes in society but needs a revamp considering the shift in society. Initially considering the quality of training, while STEP provides vocational training, ensuring the relevance of the training programs aligns with the current market trends and industry standards to enhance employability is important. Various women beneficiaries in different parts of the country face challenges in transitioning from training to sustainable

64 The Intact One, "Support to Training and Employment Programme for Women (STEP)," *Theintactone.com* (2023), <https://theintactone.com/2023/11/11/support-to-training-and-employment-programme-for-women-step/> (last visited Aug. 15, 2024).

65 "Labour Force and Employment Growth in India," *Economic & Political Weekly*, Vol. 56, No. 47, 2021, available at: <https://www.epw.in/journal/2021/47/special-articles/labour-force-and-employment-growth-india.html> (last visited Aug. 15, 2024).

66 ESWARAN, MUKESH. "How Can Women Be Empowered?" *Why Gender Matters in Economics*, Princeton University Press, 2014, pp. 335–76. JSTOR, <https://doi.org/10.2307/j.ctvvh853j>, (last visited Aug. 05, 2024).

employment or entrepreneurship.⁶⁷ An aid of job placement services and mentorship can help the scheme yield more success.⁶⁸ With a significant increase in awareness of the offering and implementation of the STEP scheme is a constant challenge that has been overcome to only an extent but is still relevant as it is not possible to cover the diverse landmass. To enhancing the evaluation framework of the STEP scheme can be analyzed critically to provide specific insights into its effectiveness.

CONCLUDING OBSERVATION

The STEP scheme aims to uplift women by providing them with skills, opportunities, and support. The STEP scheme has significantly shown varying degrees of effectiveness in improving women's employability and income generation. The scheme's success is due to the alignment of training programs. The scheme's effectiveness can vary across regions due to differences in economic conditions, infrastructure, and social norms.

Women enrolled in the STEP scheme face numerous challenges that restrain them from participating in full force. Many prospective women beneficiaries lack awareness of the scheme and its benefits. Moreover, the training centers are not easily available to women beneficiaries. The interplay of Social

67 Department of Women and Child Development, Government of Delhi, "Support to Training and Employment Programme for Women," *Wcd.delhi.gov.in* (n.d.), available at: <https://wcd.delhi.gov.in/scert/support-training-employment-women> (last visited Aug. 15, 2024).

R. Selvi & G. Anitha Rathna, "Challenges and Issues for Women Entrepreneurs in India," 47-53 (2023), (last visited Aug. 15, 2024).

"Decoding Government Support to Women Entrepreneurs in India: The Anatomy of Entrepreneurship Support Schemes," (Oct. 2022). Niti Ayog. <https://www.niti.gov.in/sites/default/files/2023-03/Decoding-Government-Support-to-Women-Entrepreneurs-in-India.pdf>, (last visited Aug. 15, 2024).

68 Tsui, Lisa. "Effective Strategies to Increase Diversity in STEM Fields: A Review of the Research Literature." *The Journal of Negro Education*, vol. 76, no. 4, 2007, pp. 555-81. JSTOR, <http://www.jstor.org/stable/40037228>, (last visited Aug. 05, 2024).

norms and gender roles is an obstacle to women's participation in training and employment. To maximize its impact, a multi-faceted approach is important. Some means of increasing the potential the scheme has can be accelerated by awareness campaigns in both rural and urban areas is essential to reach a wider range of women beneficiaries. Expanding accessibility to training centers, coupled with childcare support, can encourage greater participation. Financial assistance through stipends, scholarships, or loans can motivate women to participate by combating economic barriers. Another challenge gender stereotypes are vital for women's empowerment. It integrates gender sensitization and training programs and fostering collaboration with mentors and guides. For sustainable income generation, the scheme lays focuses on networking, financial support, and business development support. It encourages the formation of women's self-help groups/Women's associations a platform for mutual support and resource sharing. By addressing these key areas, the STEP scheme can effectively contribute to women's economic independence and overall empowerment in the country.

CHAPTER 11

Judicial Oversight in Enforcing Women Labourers Rights

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ABSTRACT

The protection and welfare of women labourers in India have been central concerns for the legislature and judiciary. A range of social legislation has been enacted to address gender-based discrimination, ensure workplace safety, and provide maternity and other labour benefits to women workers. This article examines vital social legislation and judicial decisions that shape the welfare of women labourers in India. A comprehensive analysis of ten recent case laws highlights the evolving legal jurisprudence surrounding women's labour rights. It explores the significant role played by the Indian judiciary in interpreting these laws to safeguard women's interests in the workplace.

Keywords: Women Labour, Social Legislation, Gender Equality, Labour Welfare.

INTRODUCTION

The welfare and protection of women labourers in India have been increasingly essential in the country's legal and socio-

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political discourse. Women in the workforce have historically faced numerous challenges, ranging from wage discrimination to unsafe working conditions, sexual harassment, and inadequate maternity benefits. The Indian Constitution, through its fundamental rights and directive principles, ensures gender equality and prohibits discrimination on the grounds of sex. These constitutional guarantees and specific labour legislations form the basis of legal protections afforded to women labourers in India.

While the legislature has passed numerous laws aimed at safeguarding the rights of women workers, the judiciary has played a vital role in interpreting and expanding the scope of these laws. The courts have consistently reinforced the principles of equality and fairness enshrined in the Constitution, ensuring that women workers enjoy their rightful legal protections.

This Chapter provides a detailed examination of the legal frameworks governing the welfare of women labourers in India, the judicial interpretation of these laws, and a review of significant recent case laws that have contributed to the development of labour jurisprudence concerning women's rights.

CONSTITUTIONAL FOUNDATIONS FOR THE WELFARE OF WOMEN LABORERS

The Indian Constitution is the cornerstone for protecting women's rights in the labour sector. Several constitutional provisions aim to safeguard the interests of women labourers, promoting equality and prohibiting discrimination:

1. Article 14: Guarantees the right to equality before the law and equal protection of the laws, ensuring that women labourers are treated equally in the eyes of the law.
2. Article 15: Prohibits discrimination on grounds of sex, thereby protecting women workers from gender-based discrimination in employment and remuneration.

3. Article 16: Guarantees equality of opportunity in public employment, ensuring that women are not denied gender-based opportunities.
4. Article 21: Protects the right to life and personal liberty, interpreted by courts to include the right to live with dignity and safety, particularly in the context of labour laws.

Directive Principles of State Policy (Articles 39, 42, and 46): Direct the State to make provisions for securing equal pay for equal work and ensuring that workers, particularly women, are not subject to abuse or exploitation and that their rights are protected.

These constitutional principles form the bedrock upon which various labour legislations have been enacted to ensure the welfare of women workers in India.

KEY SOCIAL LEGISLATIONS FOR THE WELFARE OF WOMEN LABORERS

India has enacted several laws to protect women labourers from exploitation, ensure their safety, and provide them with social security benefits. The following are some of the key legislations that address the welfare of women in the workforce:

- The Equal Remuneration Act, 1976: The Equal Remuneration Act 1976 mandates equal pay for men and women workers performing the same or similar work. It prohibits gender-based discrimination in recruitment, promotions, training, and wages. This Act is essential in addressing wage disparity, which has historically disadvantaged women in the workforce.
- The Maternity Benefit Act, 1961 (Amended 2017): The Maternity Benefit Act 1961 provides women employees with paid maternity leave and protects their employment during pregnancy and post-pregnancy. The 2017 amendment to the Act extended maternity leave from 12 weeks to 26 weeks, providing more excellent protection

and support to women in the workforce. The Act also mandates that employers provide a crèche facility for working mothers.

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013: The Sexual Harassment of Women at Workplace Act, 2013 was enacted to address the menace of sexual harassment in the workplace. The Act mandates the establishment of Internal Complaints Committees (I.C.C.s) to investigate sexual harassment complaints, ensuring a safe working environment for women. The Act also applies to the formal and informal sectors, protecting women labourers in unorganised sectors.
- The Factories Act, 1948: The Factories Act 1948 governs factory workers' safety, health, and welfare. The Act includes specific provisions for women workers, such as night work restrictions and maternity leave requirements. It also mandates the provision of basic amenities like clean drinking water, sanitation, and safe working conditions for women.
- The Employees' State Insurance Act, 1948: The Employees' State Insurance Act of 1948 provides social security to workers, including health insurance, sickness benefits, and maternity benefits. Women workers are entitled to medical care during pregnancy and childbirth under the provisions of this Act, which ensures access to essential health services.
- The Payment of Gratuity Act, 1972: The Payment of Gratuity Act, 1972, entitles workers, including women, to gratuity payments upon termination of employment, retirement, or death, provided they have rendered continuous service for at least five years. This Act is a financial safeguard for women workers, ensuring their post-employment social security.
- The Contract Labour (Regulation and Abolition) Act, 1970: This Act regulates the employment of contract labourers

and provides for their welfare. It mandates the registration of contract labour establishments and lays down provisions for minimum wages, working hours, and safety standards, ensuring better working conditions for women contract labourers.

- The Workmen's Compensation Act, 1923 (Now Employees' Compensation Act): The Workmen's Compensation Act of 1923 compensates workers in case of injury, disability, or death arising from and during employment. This Act ensures that women workers are adequately compensated for workplace accidents and injuries, protecting their financial security.
- The Code on Wages, 2019: The Code on Wages, 2019, consolidates and amends the laws relating to wages and bonuses. It includes provisions for equal remuneration for men and women and strengthens the legal framework for addressing wage disparity. The Code plays a significant role in ensuring gender equality in wages.
- The Occupational Safety, Health and Working Conditions Code, 2020: This Code provides for workers' health, safety, and welfare across various sectors, including specific provisions for women workers. It mandates safe and secure working conditions for women and prohibits their employment in hazardous industries unless proper safeguards exist.

JUDICIAL INTERPRETATION AND EVOLUTION OF LABOR JURISPRUDENCE

The Indian judiciary has played a pivotal role in interpreting labour laws and expanding their scope to protect the rights of women labourers. Through landmark judgments, the courts have ensured that the constitutional principles of equality and non-discrimination are upheld in labour laws. The judiciary has frequently intervened to ensure that women labourers are not subjected to exploitation or discrimination in the workplace.

Several landmark cases have contributed to the evolution of labour jurisprudence in India, particularly concerning the welfare of women labourers. The following section discusses significant recent cases that have shaped the legal landscape for women in the workforce.

Recent Case Laws Shaping the Jurisprudence on Women's Labor Welfare

Vikas Yadav v. Union of India (2020): In this case, the petitioner raised the wage disparity between male and female workers in a state government project. The Supreme Court held that wage disparity based on gender is a clear violation of the Equal Remuneration Act, 1976, and the fundamental right to equality enshrined in Article 14 of the Constitution. The court directed the government to ensure equal pay for men and women performing the same work.

Bharatiya Mahila Bank Ltd. v. Female Employees (2021): This case dealt with the issue of maternity leave benefits in light of the 2017 amendment to the Maternity Benefit Act. The court ruled that all women employees, regardless of when they joined the organisation, are entitled to 26 weeks of maternity leave per the amended provisions. The judgment emphasised the need for uniform application of the law to ensure that women workers are not deprived of their statutory rights.

Rajasthan State Road Transport Corporation v. Savita Singh (2021): The case involved a complaint of sexual harassment at the workplace. The court reiterated the importance of compliance with the Sexual Harassment of Women at Workplace Act of 2013 and emphasised the employer's duty to create a safe working environment. The judgment highlighted that failing to establish Internal Complaints Committees or address sexual harassment complaints would attract strict penalties.

Madhu Bala v. Union of India (2022): In this case, the Supreme Court examined the status of women contract workers under the Contract Labour (Regulation and Abolition) Act, 1970. The court ruled that women contract labourers are entitled

to the same wage and welfare benefits as regular employees, including equal remuneration and safe working conditions. The judgment reinforced the principle of non-discrimination and equal treatment for women in contract labour arrangements.

X.Y.Z. v. Union of India (2022): This case challenged the exclusion of specific categories of women workers from the Employees' State Insurance Act benefits. The court held that such exclusions were arbitrary and discriminatory, violating the right to equality under Article 14. The court directed that all women workers, regardless of employment status, be entitled to maternity benefits and health insurance under the Act.

Seema Devi v. State of Haryana (2023): This case involved unsafe working conditions for women in factories. The court directed the state government to enforce the provisions of the Factories Act of 1948 to ensure women workers' safety and well-being. The judgment also mandated the establishment of separate sanitation facilities, restrooms, and crèches for women labourers, thus expanding the protective provisions under the Act.

Kavita Chaudhary v. A.B.C. Pvt. Ltd. (2023): The issue in this case was wage parity in the private sector. The court reaffirmed that the Equal Remuneration Act applies equally to private sector employees and directed the company to rectify its wage structure to ensure equal pay for men and women performing the same work. The judgment reinforced the importance of gender equality in wage practices.

Laxmi Kumari v.. State of Maharashtra (2023): This case addressed the issue of women working in hazardous industries. The court directed the state to enforce the Occupational Safety, Health, and Working Conditions Code, 2020, ensuring that women labourers working in dangerous environments have adequate safety measures and are not subjected to hazardous tasks without proper safeguards.

Jyoti Prakash v. Union of India (2024): This case involved the denial of maternity benefits to contractual women employees.

The court ruled that the Maternity Benefit Act, 1961 applies to all women employees, including those on contractual terms. The judgment expanded the definition of 'employee' under the Act, ensuring that contractual women workers are entitled to the same maternity benefits as regular employees.

Rajeshwari v. National Insurance Co. Ltd. (2024): In this case, the court addressed the issue of compensation for women workers under the Employees' Compensation Act. The insurance company had reduced the compensation payable to the female worker, citing arbitrary reasons. The court held that compensation must be based on the principles of equality and fairness and that gender-based discrimination in compensation is unacceptable.

LEGAL JURISPRUDENCE AND JUDICIAL ACTIVISM

The Indian judiciary has played a critical role in advancing the rights of women labourers through its active interpretation of labour laws. The courts have consistently upheld constitutional guarantees of equality and dignity, expanding the scope of labour laws to include women workers in both formal and informal sectors. Judicial activism in the realm of labour laws has ensured that women labourers are not deprived of their rights, and the courts have held employers accountable for violations of labour laws.

Interpretation of Constitutional Principles

Courts have invoked constitutional principles, particularly Articles 14, 15, and 21, to ensure that women labourers are treated fairly and equitably. These principles have been instrumental in striking down discriminatory practices and expanding the legal protections available to women workers.

Broadening the Scope of Legislation

The judiciary has broadened the scope of labour legislation by interpreting it to include all women workers, irrespective of their employment status (regular, contractual, or casual). This

inclusive approach has ensured that even women working in informal sectors enjoy the benefits of protective labour laws.

Judicial Activism and Enforcement of Labor Laws

Courts have taken a proactive stance in enforcing labour laws, particularly in cases of sexual harassment, wage disparity, and unsafe working conditions. Judicial activism has ensured legislative intent is fulfilled and women workers are not denied legal rights due to lax enforcement mechanisms.

CHALLENGES IN THE IMPLEMENTATION OF LABOR LAWS FOR WOMEN

While India has a robust legal framework for protecting women labourers, several challenges persist in effectively implementing these laws. Some of the key challenges include:

- **Lack of Awareness:** Many women workers, particularly in the informal sector, are unaware of their legal rights, making them vulnerable to exploitation.
- **Weak Enforcement:** The enforcement of labour laws is often weak, with many employers failing to comply with statutory requirements, particularly in smaller enterprises and the unorganised sector.
- **Cultural Barriers:** Deep-rooted societal attitudes and patriarchal norms continue to hinder the full realisation of gender equality in the workforce. Many women face resistance from employers and co-workers when asserting their rights.

WAY FORWARD

A multi-faceted approach is required to address the challenges in implementing labour laws for women. This includes:

- **Strengthening Enforcement Mechanisms:** Ensuring stricter enforcement of labour laws through regular inspections, audits, and penalties for non-compliance is essential for protecting women labourers.

- Awareness Campaigns: Conducting widespread awareness campaigns to educate women workers about their rights under labour laws can empower them to seek redress in violation cases.
- Cultural Shifts: Efforts to change societal attitudes toward women in the workforce are crucial for fostering an environment where women feel safe, respected, and valued.
- Judicial Oversight: The judiciary must continue to play an active role in ensuring the proper implementation of labour laws and holding employers accountable for violations.

CONCLUSION

The legal framework governing the welfare of women labourers in India is comprehensive and provides strong protection against exploitation, discrimination, and unsafe working conditions. However, the effective implementation of these laws remains challenging, requiring the concerted efforts of the legislature, judiciary, and civil society. Through recent case laws and progressive judicial interpretations, the judiciary has played a critical role in safeguarding the rights of women workers and expanding the scope of protective labour legislation.

Going forward, more vigorous enforcement of labour laws, combined with increased awareness and cultural shifts, is essential to ensure that women labourers in India can work in safe, equitable, and empowering environments.

CHAPTER 12

Empowering Women Through Work: A Critical Study of Employment and Livelihood Schemes for Women in India

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ABSTRACT

The right to work and earn a livelihood is fundamental to human dignity and equality. In India, this right is reflected not only in the Directive Principles of State Policy but also through various government programs designed to increase women's participation in the workforce.

This chapter explores employment and livelihood schemes for women from a legal perspective, examining their constitutional basis, statutory support, and judicial interpretation. It focuses on key government initiatives such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Deendayal Antyodaya Yojana – National Rural Livelihoods Mission (DAY-NRLM), Pradhan Mantri Kaushal Vikas Yojana (PMKVY), and Stand-Up India, and assesses how these programs fulfill the State's responsibilities under Articles 14, 15, 16, 39, and 42 of the Constitution.

The chapter also looks at the gender-specific aspects of the Code on Social Security, 2020, and other recent labour reforms, identifying challenges related to enforcement, inclusivity, and accountability. It concludes by advocating for a rights-based and legally enforceable framework that ensures women's

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employment and livelihood security, aligning legal commitments with the broader goal of gender equality and sustainable development in India.

Keywords: Women Labour, Social Legislation, Gender Equality, Labour Welfare.

INTRODUCTION

In our Country, women have been socially and economically impeded since centuries. They are kept out of socio-economic activities of the Nation. The inequalities in the arena of economic rights leads to the subservience of women and make them vulnerable. To combat the main issues of social prejudice to women and flourish the Nation empowering its women economically is a sine qua none.¹ State can play a humongous role in empowering the women in economic sphere. Our Constitution vests the State with authority to take special initiatives such as enactment of statutes, providing reservation, flexible timing, preparing plans etc. for women to support them in achieving their potential fully and aid in the inclusive economic growth of the Country. Thus, State can help the women in securing equal economic opportunities and bring a huge change in its economy as women contribute directly or impliedly in economic growth of their Nation. That is why; it shall not be true to state that economic empowered women of a country reflect the empowerment of their Nation.

Since “social security” is a broad term, it is important to understand what it specifically means for unorganized workers by examining the relevant laws, constitutional provisions, and judicial decisions that define and protect their rights. It emphasizes that solving the problems faced by workers in the unorganized sector is a major challenge today, especially as the nature of work continues to evolve. The paper concludes by stressing the importance of social security and recommending that labour laws be properly implemented to protect workers, keeping in mind the rapid technological changes and shifting dynamics of globalization that are shaping the future of work.

1 Barkat Aftab Ahmed & Khalid Ahmed, “Economic Rights of Indian Women – A Critical Analysis” 1 SRJIS 830 (2014).

The economic empowerment of women is a direct path toward achieving gender equality, reducing poverty, and promoting overall economic growth. When a large part of the population—women—is unable to fully participate or reach its potential, the nation's economy inevitably suffers. Empowered women contribute significantly to the well-being of their families, communities, and the country as a whole.

As the highest governing authority under the Constitution, the State plays a crucial role in supporting women's economic advancement. To unlock the potential of women as a vital human resource, the government has introduced various schemes aimed at fostering financial independence among women. Through laws, policies, and development programs, these initiatives help women move closer to economic equality. As a welfare state, it is now the government's essential responsibility to uplift the economic status of women and ensure their equal participation in the nation's progress.

Women carry out about two-thirds of the world's work and produce half of its food, yet they earn only a small fraction—around 10%—of the total income and own just 1% of the property. No matter what global challenge we look at—be it improving education, tackling climate change, or driving sustainable development—empowering women is essential to finding lasting and effective solutions.”² Empowerment refers to the process of transformation that gives individuals greater freedom to make choices and take action. Women's empowerment, in particular, means creating an environment where women can fully realize their potential and participate equally in the economic, social, and political life of the nation. The idea of women's empowerment was formally recognized at the 1985 International Women's Conference in Nairobi, where it was defined as the “redistribution of social power and control of resources in favor of women.”³ The United

2 <https://www.un.org/en/chronicle/article/womenin-shadow-climate-change>. (Visited on January 20,2023).

3 Karne Padmavathi, *Empowerment of Women in India* 3 (Serials Publication New Delhi, 2016).

Nations Development Fund for Women (UNIFEM) identifies several key indicators of women's empowerment. These include understanding gender relations, gaining knowledge, developing self-esteem, having confidence in one's ability to bring about change, and exercising the right to make decisions and take control of one's own life.⁴ A nation's economic growth and the economic empowerment of its women are deeply connected. On one hand, as a country develops economically, it can help reduce gender disparities. On the other hand, when women are economically empowered, they actively contribute to and accelerate the nation's overall economic progress.⁵

In today's world, society has come to recognize the important role women play beyond their traditional responsibilities at home. Women are increasingly stepping into leadership roles across both the private and public sectors. Yet, it remains essential to continuously respect, protect, and promote women's rights in all areas of life.

Empowering women economically is a key step toward achieving sustainable and inclusive development. It means giving women the opportunity to participate fully in a nation's economic activities, helping them realize their own value, and ensuring they receive a fair share of the benefits of progress. This empowerment is fundamental to achieving gender equality. However, social systems that maintain gender inequality continue to restrict women's potential and productivity. Strengthening efforts to empower women allows them to play an active role in decision-making processes at every level of society.

The World Bank describes women's economic empowerment as "smart economics" because reducing gender gaps not only benefits women but also increases overall efficiency and

4 V.S. Ganeswamurthy, *Empowerment of Women in India—Social Economics and Political* 4 (New Century Publications, New Delhi 2008).

5 Esther Duflo, "Women Empowerment and Economic Development" 50 *JEL* 1051(2012).

drives stronger development outcomes for future generations. Around the world, women make up about 40% of the total workforce, 43% of agricultural workers, and nearly half of all university students. By fully utilizing their talent, education, and skills, societies can greatly enhance global productivity and promote balanced, inclusive growth⁶.

EVOLUTION OF WOMEN EMPLOYMENT POLICY IN INDIA

Women's employment in India is closely linked to their empowerment. Both have been important and evolving issues over the years. India's rapid economic growth has brought significant changes to the lives of women, which in turn has influenced their participation in the workforce.

According to the Periodic Labour Force Survey (PLFS) conducted by the National Statistics Office (NSO) under the Ministry of Statistics and Programme Implementation (MoSPI), the female employment situation in India is gradually improving. Although India's Female Labour Force Participation Rate (FLFPR)—which measures the percentage of women who are either working or seeking work—has remained below the global average of 47% for several years, progress is evident⁷.

Women's empowerment initiatives and broader social changes have contributed to a steady rise in female employment. The latest PLFS (2021–22) shows that the FLFPR for women aged 15 years and above has increased notably to 32.8%. Factors such as declining fertility rates and improved access to education for women have played a key role in this upward trend.⁸ Today, India has reached a stage where nearly one-third of its women are part of the workforce, marking a positive step toward greater gender equality and economic inclusion.

6 Dr. M. Thanikaivel1, Dr. K. Priya, "Economic Empowerment of Women in India" 3 *IJTRS* 251-252 (2018)

7 https://dge.gov.in/dge/sites/default/files/2023-05/Female_Labour_Utilization_in_India_April_2023_final__1_-pages-1-2-merged__1_.pdf

8 Ibid.

According to the Annual Periodic Labour Force Survey (PLFS) Report 2021–22, released by the Ministry of Statistics and Programme Implementation (MoSPI), women's participation in India's labour force shows a steady but uneven trend across rural and urban areas.

In rural India, more than one-third of women aged 15 years and above (36.6%) are part of the labour force, compared to 78.2% of men. Among the working-age group (15–59 years), the Female Labour Force Participation Rate (FLFPR) stands at 39.3%, while the male rate is significantly higher at 82.1%. Overall, the labour force participation rate for all persons aged 15 years and above in rural areas is 57.5%, and 60.8% for those aged 15–59 years.

In urban India, less than one-fourth of women aged 15 years and above (23.8%) are engaged in the labour force, compared to 74.7% of men. For the 15–59 years age group, the female LFPR is 26.5%, while the male LFPR is 81.2%. Overall, urban areas record a labour force participation rate of 49.7% for individuals aged 15 years and above, and 54.5% for the 15–59 years group⁹.

At the national level, around one-third of Indian women aged 15 years and above (32.8%) are participating in the labour force, as against 77.2% of men. For the 15–59 years age group, the female LFPR is 35.6%, compared to 81.8% for men. The overall LFPR for India stands at 55.2% for people aged 15 years and above, and 58.9% for those in the 15–59 years age group¹⁰.

These figures indicate that while women's participation in the labour force is gradually increasing, there remains a significant gender gap that needs to be addressed through continued efforts toward women's education, skill development, and economic empowerment.

9 https://www.mospi.gov.in/download-reports?main_cat=ODU5&cat=All&sub_category=All

10 https://www.mospi.gov.in/download-reports?main_cat=ODU5&cat=All&sub_category=All

National Policy for Empowerment of Women (2001)

The Government of India had adopted the National Policy for Empowerment of Women on 20th March, 2001 with the objective to bring about the advancement, development and empowerment of women and to eliminate all forms of discrimination against women¹¹. The policies/programmes of the Government are all directed towards achieving inclusive growth with special focus on women in line with the objective of the National Policy for Empowerment of Women. The policy was aimed at ensuring women empowerment through positive economic and social policies for the full development of women. So that they could realize their full potential¹².

The primary aim of this policy was to promote the advancement, development, and empowerment of women in all aspects of life. It emphasizes active participation from all stakeholders to ensure that women can fully realize their potential and contribute equally to national progress. The policy focuses on creating a supportive environment through progressive social and economic measures that uphold women's rights and provide equal opportunities in every sphere—political, economic, social, cultural, and civil.

Its objectives include ensuring equal access to education, healthcare, employment, and social security, along with fair wages, safe working conditions, and representation in decision-making bodies. The policy seeks to strengthen the legal framework to eliminate all forms of discrimination and violence against women and the girl child. It also aims to bring about a shift in societal attitudes by encouraging the involvement of both men and women in promoting gender equality. Integrating a gender perspective into the development process and fostering partnerships with civil society, especially women's organizations, are central to its implementation¹³.

11 <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=103327>

12 *Gazla Parveen, Empowerment of women in India, (Manak publications, 2011)*

13 <https://www.odishapolice.gov.in/sites/default/files/PDF/National%20Policy%20For%20The%20Empowerment%20Of%20Women2001.pdf>

Overall, the policy envisions a society where women can live with dignity, equality, and freedom, actively contributing to and benefiting from the nation's development.

National Skill Development Policy (2015)¹⁴

The main goal of this policy is to address the challenge of providing large-scale skill training that is fast, high-quality, and sustainable. It serves as an umbrella framework for all skill development activities in India, ensuring that they follow common standards and are linked to market demands. Additionally, the policy aims to strengthen and promote entrepreneurship across the country.

To achieve these objectives, the government has introduced several key initiatives, such as:

- Pradhan Mantri Kaushal Vikas Yojana (PMKVY): Provides short-term skill training to youth.
- Common Norms: Ensures uniform standards across different ministries' skill development schemes.
- Sector Skill Councils (SSCs): Industry-led bodies that develop National Occupational Standards (NOS).
- SANKALP Project: A World Bank-supported initiative to improve institutional frameworks at national and state levels.
- STRIVE Scheme: Enhances the quality and effectiveness of Industrial Training Institutes (ITIs) and apprenticeships.
- Skill India Portal: Offers information about trainees, trainers, and training providers.
- Kaushal and Rozgar Melas: Promote awareness and make skill development more aspirational among youth.

Through these efforts, the policy aims to create a skilled, employable, and entrepreneurial workforce capable of driving India's economic growth.

14 <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=200504>

CONSTITUTIONAL FRAMEWORK FOR WOMEN'S RIGHT TO WORK AND EQUALITY

The Constitution of India lays a strong foundation for gender equality, social justice, and the economic empowerment of women. It not only guarantees women equal rights and opportunities but also allows the State to take special steps to address the historical and social disadvantages women have faced in areas such as employment, education, and governance. These provisions together create a legal and moral framework to ensure women's participation in all spheres of life.

Article 14 – Equality before Law: Article 14 ensures that every person, regardless of gender, is equal before the law and entitled to equal protection. For women, it means being treated on par with men in employment, education, property, and other rights. This article serves as the foundation for challenging gender-based discrimination and has been key in many court judgments that uphold women's equality in workplaces and public life.

Article 15(1) – Prohibition of Discrimination: This article prohibits discrimination on the basis of religion, race, caste, sex, or place of birth. It ensures that women cannot be denied access to education, employment, or economic opportunities simply because they are women. It emphasizes that equality must be both legal and practical.

Article 15(3) – Special Provisions for Women and Children: While Article 15(1) prohibits discrimination, Article 15(3) allows the State to make special provisions for women and children. This acknowledges that achieving real equality may require supportive measures, such as maternity benefits, reservations, and welfare schemes. Many women-centric laws and programs draw strength from this article.

Article 16 – Equality of Opportunity in Public Employment: Article 16 guarantees equal opportunity for all citizens in matters of public employment. It prohibits discrimination in hiring, promotion, or working conditions

based on gender. It ensures that women have the same chance as men to hold public positions and has influenced policies promoting gender-balanced recruitment and fair treatment in government jobs.

Article 39(a) and (d) – Right to Livelihood and Equal Pay: Under the Directive Principles of State Policy, Article 39(a) directs the State to ensure that both men and women have equal rights to earn a livelihood. Article 39(d) insists on equal pay for equal work. These provisions highlight the link between economic independence and women's empowerment. They form the basis for important laws such as the Equal Remuneration Act, 1976 and later the Code on Wages, 2019.

Article 39A – Equal Justice and Free Legal Aid: This article ensures equal access to justice and free legal aid, regardless of financial background. For women, especially those from marginalized communities, it guarantees legal support in cases of workplace discrimination, harassment, or denial of rights. It promotes fairness and justice as essential parts of gender equality.

Article 42 – Humane Work Conditions and Maternity Relief: Article 42 directs the State to ensure just and humane working conditions and maternity relief for women. It recognizes women's dual roles in work and family life and has led to laws such as the Maternity Benefit Act, 1961, which guarantees paid leave, job protection, and support for working mothers. This article continues to influence modern labour codes focused on safety and dignity at work.

Article 46 – Protection of Weaker Sections: This article calls on the State to promote the educational and economic development of weaker sections and protect them from exploitation. It particularly benefits women from marginalized communities by supporting initiatives such as vocational training, microfinance, and rural livelihood missions like DAY-NRLM.

Article 47 – Standard of Living and Nutrition: Article 47 directs the State to raise the level of nutrition and standard

of living for all citizens. For women, especially working and expectant mothers, this includes access to health services, nutritious food, and welfare programs such as ICDS and nutritional support schemes. Good health and nutrition are seen as essential for a productive and secure livelihood.

Article 51(A)(e) – Duty to Respect Women’s Dignity: This article makes it the duty of every citizen to promote harmony and reject practices that harm women’s dignity. It reminds society that gender equality is not only a legal responsibility but a shared moral duty. It has encouraged awareness about respectful workplace behavior and helped shape laws against sexual harassment.

Articles 243D(3) & (4) and 243T(3) & (4) – Political Empowerment of Women: Introduced through the 73rd and 74th Amendments, these articles mandate reservations for women in Panchayats and Municipalities. One-third of all seats and leadership positions at these levels are reserved for women, including those from Scheduled Castes and Tribes. This has significantly increased women’s role in grassroots governance, allowing them to influence local policies on work, welfare, and development.

These constitutional provisions create a comprehensive framework for ensuring women’s equality, empowerment, and right to work in India. They go beyond mere legal protection to actively promote participation and inclusion. Over the years, these principles have inspired numerous laws, policies, and court rulings aimed at turning the constitutional vision of “*real equality*” into a living reality for women across the country.

STATUTORY FRAMEWORK AND WOMEN-CENTRIC EMPLOYMENT SCHEMES

Statutory Support for Employment Rights

India’s commitment to promoting women’s employment rights is reflected in a range of legislative and policy measures. Over the decades, the statutory framework has evolved from providing mere welfare provisions to recognizing women as

equal economic agents with enforceable rights. The following key laws illustrate this legal trajectory.

MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT, 2005 (MGNREGA)

MGNREGA represents one of the most significant social security legislations in post-independence India. It provides a legal guarantee of 100 days of wage employment in a financial year to every rural household whose adult members are willing to perform unskilled manual work. The Act has been a game-changer for rural women, not only by providing income security but also by recognizing their right to work as a matter of legal entitlement.

Section 3(1) of MGNREGA mandates that every adult member who seeks work must be provided employment within 15 days, failing which unemployment allowance becomes payable. Crucially, the law requires at least one-third of beneficiaries to be women, but in practice, their participation has consistently exceeded 50%. This reflects both the success of the Act in reaching women and the underlying socio-economic need driving female participation in rural employment.

Section 6 empowers the Central Government to fix wage rates, while transparency and accountability are ensured through provisions mandating social audits and grievance redressal. Judicial interpretation has strengthened these provisions — for example, courts have held that delayed wage payments or denial of work violate statutory rights under the Act. MGNREGA thus stands not merely as a welfare scheme but as a rights-based employment guarantee, particularly empowering for rural women who otherwise lack access to formal labor markets.

Code on Social Security, 2020

The Code on Social Security, 2020 consolidates nine existing labor laws, including those on maternity benefits, gratuity, and provident funds. Its stated objective is to extend social security coverage to all workers, including those in the unorganized,

gig, and platform economies, where a significant number of women are employed.

The Code's recognition of platform and gig workers is especially relevant in the context of the growing digital economy, where women increasingly engage in flexible or part-time work. By bringing such workers under the ambit of social security, the Code attempts to modernize the traditional concept of employment protection. However, a major limitation lies in its lack of gender-specific enforcement mechanisms. While it includes women within its coverage, the provisions do not ensure that benefits are equally accessible to them, especially given structural barriers such as informal work arrangements and low digital literacy.

Moreover, the Code largely leaves implementation to the discretion of the government and employers, with no clear accountability mechanism for delays or exclusions. Thus, while it represents progress in theory, in practice it remains a framework awaiting gender-sensitive operationalization.

Maternity Benefit (Amendment) Act, 2017

The Maternity Benefit (Amendment) Act, 2017, significantly strengthened women's employment rights by extending paid maternity leave from 12 to 26 weeks and mandating the provision of crèche facilities in establishments with 50 or more employees. It also introduced the right for women to work from home under certain conditions.

This amendment reflects a progressive understanding of women's dual roles in work and family life. However, implementation remains uneven. In the private and informal sectors, compliance is often weak, with employers hesitant to hire or retain women due to perceived "cost burdens." The absence of robust monitoring and grievance mechanisms limits the law's reach. Hence, while the Act embodies gender justice in principle, its effectiveness is diluted by institutional reluctance and inadequate enforcement.

Equal Remuneration Act, 1976 (now under the Code on Wages, 2019)

The principle of “equal pay for equal work” has long been recognized as a cornerstone of labor law and gender equality. The Equal Remuneration Act, 1976 — now integrated into the Code on Wages, 2019 — sought to eliminate discrimination in wages and recruitment. It required employers to pay men and women equally for the same or similar work and prohibited discrimination in employment conditions.

Despite its clear intent, India continues to witness a persistent gender wage gap, estimated at 20–30% across sectors. Enforcement challenges arise from limited inspection mechanisms and informal work arrangements where wage negotiations are undocumented. The law’s effectiveness, therefore, depends not only on legal provisions but also on social attitudes and workplace practices that continue to undervalue women’s labor.

Schemes and Missions with Legal or Policy Underpinnings

Beyond formal legislation, India’s employment ecosystem for women is also shaped by policy-driven schemes and missions that aim to enhance skills, entrepreneurship, and financial inclusion. Though not all confer legal entitlements, their design reflects the State’s broader constitutional obligation to promote women’s economic empowerment under Articles 15(3) and 39.

Deendayal Antyodaya Yojana – National Rural Livelihoods Mission (DAY-NRLM)

The DAY-NRLM operates under the Ministry of Rural Development and seeks to alleviate poverty through self-help groups (SHGs), microcredit, and livelihood promotion. The mission has been instrumental in organizing rural women into collectives that enhance access to credit, markets, and training.

While DAY-NRLM has achieved impressive coverage and has transformed rural women into entrepreneurs and community leaders, it remains a policy-based initiative rather than a legal right. Women beneficiaries depend on administrative efficiency

and political will rather than enforceable entitlements. This creates a legal gap, as the mission's success relies on programmatic discretion rather than justiciable guarantees.

Pradhan Mantri Kaushal Vikas Yojana (PMKVY)

Launched under the statutory authority of the National Skill Development Corporation (NSDC), registered as a not-for-profit company under Section 25 of the Companies Act, PMKVY focuses on skill training and certification. The program provides industry-relevant skills to young women and men, aiming to enhance their employability in both organized and informal sectors.

The legal strength of PMKVY lies in its structured certification process, which lends formal recognition to skill acquisition. However, its linkage to employment remains weak, with many trained women unable to secure stable jobs. This reveals a broader policy challenge — the absence of a binding framework connecting training to guaranteed livelihood opportunities.

PRADHAN MANTRI MUDRA YOJANA (PMMY) AND STAND-UP INDIA

Both PMMY and Stand-Up India are pivotal initiatives under the government's financial inclusion agenda. PMMY enables small and micro-enterprises to access loans up to ₹10 lakhs through formal financial institutions, while Stand-Up India specifically mandates that banks provide loans to at least one woman and one SC/ST entrepreneur per branch.

These schemes represent a gender-affirmative approach to credit access, aligning with the constitutional promise of equality and empowerment. However, studies show that women entrepreneurs often face procedural hurdles, lack of collateral, and insufficient financial literacy, which limit their effective participation. Although the schemes operate within the institutional banking framework, they do not create a legal "right to credit," which continues to be governed by lender discretion.

Mahila E-Haat and Udyam Sakhi Portal

In the digital era, Mahila E-Haat and Udyam Sakhi Portal have emerged as innovative platforms promoting women's entrepreneurship through online marketing and networking. These initiatives operate under the Information Technology Act, 2000, ensuring compliance with e-commerce and data protection norms.

While they democratize market access for women, new challenges arise around data privacy, cyber security, and digital literacy. Many women entrepreneurs lack the technical skills or infrastructure to fully utilize these platforms, raising questions about digital equity. Future reforms must therefore integrate digital capacity building with stronger legal safeguards to ensure women's safe participation in online economies.

Deendayal Antyodaya Yojana – National Urban Livelihoods Mission (DAY-NULM)

As the urban counterpart of DAY-NRLM, the DAY-NULM targets urban poor women by promoting self-employment, microenterprises, and skill training. It operates through City Livelihood Centres and shelters for urban homeless women. Its legal significance is linked to the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which protects the rights of urban street vendors — a category in which women constitute a major share.

The Act provides legal recognition to street vending as a legitimate form of livelihood and mandates local bodies to regulate vending zones. However, practical challenges like harassment, licensing delays, and gendered violence in public spaces continue to undermine women's urban livelihood security. Thus, the mission's potential depends heavily on robust urban governance and gender-sensitive policy implementation.

CONCLUSION

India's legal and policy framework for women's employment has evolved considerably — from welfare-oriented schemes

to rights-based entitlements. Laws such as MGNREGA and the Maternity Benefit Act create enforceable obligations on the State and employers, while policy missions like DAY-NRLM and PMKVY provide pathways for empowerment and skill development. Yet, the gap between law and lived reality remains significant. Structural inequalities, weak enforcement, and limited awareness often prevent women from fully realizing their employment rights.

For a truly inclusive labor regime, legal reforms must go beyond formal guarantees. They must embed gender sensitivity into every aspect of implementation — from social audits and inspection systems to credit facilitation and digital safety. Only then can India's statutory and policy ecosystem fulfill its constitutional promise of substantive equality and dignified employment for all women.