

## GENDER JUSTICE AND OCCUPATIONAL SAFETY OF WOMEN WORKERS UNDER INDIA'S NEW LABOUR CODES

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### ABSTRACT

India's new labour codes consolidate all the labour legislations into four new labour codes. It marks the significant change in the regulatory framework. This research examines the new labour codes especially the Occupational Safety, Health and Working Conditions Code, 2020. The new labour codes strengthen women's role through representation in grievance committee and other advisory bodies. This also ensures the gender equality with strict prohibition of discrimination in workplace. This research also examines the policy objectives, statutory provisions and other constitutional implications of the codes. This research analyses the changes made by new labour codes such as recognising women's right to work in all occupations and working hours subject to safety conditions. This paper also highlights the practical gaps between the executive actions, ground level realities and commitments particularly for women workers in hazardous, unorganised and informal sectors. This paper concludes that achievement of gender justice is not only initiative of legislative action but also need the strong enforcement mechanisms, policy designs and participatory form of governance in working conditions.

**KEYWORDS:** Gender justice, Women's safety, Substantive equality, Occupational safety, Discrimination, Labour codes, Maternity rights.

### 1. INTRODUCTION:

In the advanced society, women constitute a vital and growing segment of India's workforce and the new labour code marks a significant impact towards the working environment. The changes introduced by new labour codes not only safeguard the women's rights in working environment but also extend to the opportunities provided to women workers in all sectors. This protection ensures the women's participation, night shift and works in other hazardous industries. This protection empowers the women to contribute for economic development and gender balanced labour system.

Gender justice is a core component of India's

constitutional governance and social justice. However, women's participation and engagement in work with paid sum of money has historically been accompanied by some challenges such as inequality in wages, unsafe working environment and gender-based discrimination in recruitments. Articles 14, 15(3), 16, 21, 39 and 42 of the Indian Constitution mandates equality, dignity, just and humane conditions of work for women.

Initially, the labour legislation has traditionally attempted to provide protective measure along with welfare-oriented approach in order to address the specific difficulties faced by women workers in their work place. But this situation has changed after the new labour codes came into effect. So, the enactment of

India's new labour codes makes a significant shift from the traditional labour legislations. Particularly, the Occupational Safety, Health and Working Conditions Code, 2020 made a transition by consolidating all labour legislations into a unified framework. The new labour codes modernize the India's labour legislations and regulations in order to meet the needs of today's world.

While 75.1% of men, in the 15–59 age group, were in the workforce in 2018–19, for women in the same age group, it was only 25.0%, reporting a gap of more than 50 percentage points for the year. The work participation rate (WPR) of women dec-lined from 44.2% in 2004–05 to 25% in 2018–19. According to this, the work participation rate of women is started declined in rural areas when compared to urban areas. Finally, this new labour codes strengthen the women's participation and increased the workplace participation of women by providing them equity in working places.<sup>1</sup>

## 2. RESEARCH QUESTIONS:

1. To what extent new labour codes protect the women workers ensuring along with principle of natural justice?
2. How the Occupational Safety, Health and Working Conditions Code, 2020 mandates the employer obligations towards the safety of women workers compared to pre-code labour legislation?
3. What are the main challenges existing during the enforcement of safety provisions for women workers under the New Labour Codes?
4. How India's judicial pronouncements and constitutional provisions like principles of equality influence the gender justice under the New Labour Codes?
5. How India's new labour codes and international framework address the gender justice and occupational safety for women workers?

## 3. REVIEW OF LITERATURE:

### 1. Dr. Sudhir Kumar Singh (2022): "Women's Rights in India: A Study with Special Reference to Gender Justice at Workplace"<sup>2</sup>

In this paper Dr. Sudhir Kumar Singh explains about the status of women's right in India. It also examines the existent labour laws and welfare schemes relating to working hours, wage discrimination and lack of access to resources. And this paper concludes with legal provisions alone not sufficient to address these problems and socio-economic reforms are necessary to ensure workplace equality.

### 2. Pallavi Chaurasia (2025): "Gender Justice and Workplace Equality: A Critical Analysis of Anti-Sexual Harassment Laws and Their Enforcement"<sup>3</sup>

This paper examines about the anti sexual harassment laws in India. This study finds the implementation gap between the legal framework and society. It states that workplace safety includes both physical and psychological security. Legal reforms must be supported by institutional accountability in order to ensure workplace safety and gender justice.

### 3. Sanjeet Singh & Sanjeev Kumar (2025): "Gender Inequality at the workplace in India – A Human Rights perspective and critical analysis"<sup>4</sup>

This research paper explains about the workplace gender justice and equality in comparison with human rights law. It states about the current issues such as access to resources, wage gaps and other workplace harassment. This paper explains about the importance of aligning new labour law with international human rights standards to protect and ensure women's safety and dignity.

### 4. Kona Vijaya Babu & Dr. Atal Kaushik (2024): "An Analysis of the provisions of Indian Labour laws pertaining to

## women and their implementation”<sup>5</sup>

This research paper deals with the impact of labour legislations in India and particularly focusing on women’s safety. And also highlights India’s legal framework including laws on equal remuneration, maternity benefit and about workplace safety. This paper also finds out the institutional barriers, lack of awareness and enforcement challenges relating to these laws.

### 4. RESEARCH OBJECTIVES:

1. To examine the provisions relating to women workers occupational safety and health in new labour codes.
2. To compare the old labour legislations and new labour codes relating to safety and health protection to women workers.
3. To identify the practical implementation challenges relating to women workers protection.
4. To evaluate the role of constitutional principles such as equality, dignity, and the right to life in ensuring women workers’ safety.
5. To compare India’s labour laws and new labour codes with international framework relating to women workers protection.

### 5. RESEARCH METHODOLOGY:

This research is based on the doctrinal method, which means the resources were collected through secondary information. This research involves analysing and examining the existing literature and other legal materials rather than collecting the primary data. The secondary data sources include books, research articles, journals, newspaper, e- libraries and other commentaries related to this research topic. The duration of this research was approximately one month and this research is confined to India and other countries.

## 6. CONTENT OF RESEARCH:

### 6.1 EVOLUTION OF LABOUR PROTECTION FOR WOMEN:

#### Pre-Code Legal Regime:

In earlier days, the occupational safety for women workers was governed by legal framework, including the Factories Act, 1948; Mines Act, 1952; Plantation Labour Act, 1951; Contract Labour (Regulation and Abolition) Act, 1970; and other statutes. These legislations explicitly contained certain restrictions such as prohibition of employment of women in hazardous occupations, night shift work and strict inspection mechanisms.

#### The New Labour Codes:

The new labour codes consolidate 29 labour legislations into 4 new labour codes. Particularly, the Occupational Safety, Health and Working Conditions Code 2020 elaborately discussed about protection of women workers in workplace. The main objectives of new labour codes include reducing the laws, enhance ease of doing business and simplify the process. And also, this code adopts the gender-neutral language by replacing the words ‘men’ and ‘women’ with ‘workers’. It also allows the women workers to work in all industrial establishments subject to certain conditions. This marks a significant shift towards equality and non discrimination in workplace.

### 6.2 CHANGES MADE BY NEW LABOUR CODES:

The following provisions outline the benefits extended to women workers under the new Labour Codes:

#### 1. Representation of Women in the GRC:

The Industrial Relations Code 2020 provide mandatory women workers representation in the Grievance Redressal Committee (GRC). It should not less than women workers proportion in the total workforce of the establishment. It ensures women workers have a fair chance in the dispute arising from the workplace. Their approach and perspectives will help to resolve the problem comprehensively.<sup>6</sup>

## 2. **Maternity Benefits:**

The most important provision for women workers under social security that is provided in the new labour code is maternity benefit. The Code on Social Security 2020 provides benefits to women workers in the form of maternity benefit scheme for unorganised workers and also it has been extended to gig and platform workers. As per this code, in order to be eligible for maternity benefit scheme, a women worker should work in an industrial establishment for atleast 80 days in the 12 months. The maximum period for maternity leave is 26 weeks.

## 3. **Crèche facility:**

In each and every industrial establishment where 50 or more workers are employed, there must be a crèche facility either separate or common within a prescribed distance from the workplace. It is the obligation of the employer to allow four visits a day by the woman worker to the crèche which includes the rest intervals.

The Code on Social Security and Occupational Safety, Health and Working Conditions, 2020 supports working women with children below the age of 6 years by this provision. This type of facilities supports working mothers by enabling childcare at the workplace, helping women workers to balance work and family.<sup>7</sup>

## 4. **Permitting Women for the Night Shift:**

Before enactment of new labour codes, women workers were not allowed to work in any hazardous establishments and factories from 7 pm to 6 am. However this situation is changed, the occupational safety and health code permitted the women workers to work in all establishments from 7 pm to 6 am with their prior consent. It mandates the employers to make sure and arrange safe working conditions and transportation etc.

## 5. **Women's Representation on Advisory Boards:**

The Code on Wages 2019, provides for constitution of Central Advisory Board and State Advisory Board. And it states that atleast

one third members should be women workers in that establishments. This ensures women's voice and their opinions in decision making and policy making activities. It helps to design policies and schemes that will increase employment opportunities for women, and promotes gender equality in workplace.<sup>8</sup>

## PRE-LABOUR CODE LEGISLATIONS ON WOMEN WORKERS' SAFETY IN INDIA:

Prior to enactment of this India's new labour codes, the protection and safety of women workers was governed by a welfare based legislative framework. These laws recognised and protected the women workers as a vulnerable group and also it provided some explicit statutory protection to women workers relating to working conditions, health, safety and other protection from exploitations.

### 1. **The Factories Act, 1948**

The primary legislation governing about occupational safety in workplace or establishment is Factories Act, 1948. This legislation played a vital role in protecting women workers. This act adopted a preventive based approach by way of issuing restrictions on women workers to work in any hazardous or unsafe work conditions. Some of provisions relating to this topic:

#### **Section 23: Employment of young persons on dangerous machines.**

This section prohibits women workers from working in any hazardous or dangerous machinery.

#### **Section 27: Prohibition of employment of women and children near cotton-openers.**

It prohibits employment of certain women and children in certain hazardous processes. **Section 66(1)(b): Further restrictions on employment of women.**

This section restricted employment of women workers between 7 p.m. and 6 a.m. (with limited state exceptions).

## 2. *The Mines Act, 1952*

Another important legislation on labour is Mines Act, 1952. This act provided a strict form of protection to women workers to work in hazardous industries or any other mining operations. And it also recognised mining was a dangerous and hazardous working. Some of provisions relating to this topic:

### **Section 46: Employment of women workers**

**Section 46(1)(a):** It restricted women workers working hours between 6 a.m. and 7 p.m.

**Section 46(1)(b):** This section absolutely prohibits women workers to work in underground mines.

## 3. *The Maternity Benefit Act, 1961*

The most important act which protects and gives benefits to working women is Maternity Benefit Act, 1961. This act not only deals with occupational safety of women's but also protect the women workers health at the workplace. This act recognised reproductive health of the women workers as a part of occupational safety. Some of provisions relating to this topic:

**Section 5:** Paid maternity leave.

**Section 11:** Nursing breaks.

**Section 12:** Prohibition on dismissal during maternity period.

**Section 4(3):** Prohibited arduous work during pregnancy.

## 4. *Equal Remuneration Act, 1976*

The main aim of the act is to eliminate the discrimination in workplace and in employment opportunities. It also prohibits economic discrimination which indirectly affect the occupational safety for women workers. Because economic equality will reduce the vulnerable on women workers in exploitative and unsafe work conditions. Some of provisions relating to this topic:

**Section 4:** Equal pay for equal work.

**Section 5:** Non-discrimination in recruitment.

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

This Act mainly aimed to address psychological and social safety at the workplace especially for women workers. This act also expanded the occupational safety to include dignity and mental well being of workers. Some of provisions relating to this topic:

**Section 3:** Right to a safe working environment.

**Section 4–6:** Internal and Local Complaints Committees.

### **RESULT AND DISCUSSION:**

#### **6.3 Protection of women workers under new labour code:**

The India's new labour codes particularly the Occupational Safety, Health and Working Conditions Code, 2020, the Code on Wages, 2019, and the Social Security Code, 2020 have made an important contribution towards women workers protection along with principle of natural justice. These codes also adopt gender neutral provisions allowing women to work in hazardous occupations with prior consent. Some provisions such as equal wages, maternity benefit, social security reflects the substantive justice and also it aligns with constitution provisions.

When comparing the new labour codes with old labour legislations it shows that there was a shortage in ensuring the procedural safeguards, responsibility and justice. From the natural justice perspective, the new labour codes recognise the procedural justice by way of mandating the inspections and other redressal mechanisms. In short, the new labour codes only providing the substantive safety for women workers and they failed to provide and incorporate the principle of natural justice in their enforcement and adjudication matters thereby it limits the effectiveness of gender justice.

#### **6.4 Employer Obligations Specific to Women's Safety**

##### **a) Pre-Code Requirements:**

Certain legislations like Factories Act provides welfare-based measures for workers. But there is no uniformity in safety provision across all workplaces. And there is no permission for women workers to work in night shift. There is no specific duty upon the employer to safeguard women's protection.

##### **b) OSH Code Obligations:**

The Occupational Safety and Health Code mandates the employers to check and ensure a workplace free from any hazards. It also allows the women workers to work in night shift provided by safety measures and prior consent of the workers. Annual health check-up, providing safe working conditions and safe disposal of waste are listed as obligations of employer by this code. This code also mandates adequate safety should be provided to the women workers before employed in any dangerous, hazardous occupations.

#### **6.5 Main Challenges in Enforcing Safety Provisions for Women Workers under the New Labour Codes**

The new labour codes make a progressive shift towards gender justice but their enforcement remains weak due to certain matters. The following are the main reasons for weak implementation of enforcement of new codes.

##### **a) Delayed and Uneven Implementation of the Codes**

Eventhough the new labour codes were enacted in 2020, it's enforcement is totally based on the framing rules of centre and state. Many states in India have either adopted varying standards or delaying in adoption resulting in non uniformity in protection for women workers in workplace.

##### **b) Excessive Discretion given to Employers**

The Occupational Safety and Health code permits women to work in night shifts provided

with the prior consent and safety conditions. In modern times, consent may be influenced by some other external factors such as economic conditions or job security. There is no clear statutory procedure of taking consent from the workers and this makes the enforcement difficult.

##### **c) Informal Sector Exclusion and Limited Coverage**

A significant proportion of women workers in informal sectors such as domestic work, home based work and other small establishments. Eventhough the code provide coverage for women workers protections; the practical implementation remains low.

##### **d) Low Awareness among Women Workers**

In every industrial establishment not everyone having awareness about these protections. Many workers, especially migrants didn't aware about these rights and protection under new labour codes. Language barriers, illiteracy and lack of support make enforcement difficult.

##### **e) Economic and Compliance Burden on Small Establishments**

There are small and medium enterprises in the country. They often view these safety provisions for women as a financial burden for them. It may lead to partial or symbolic compliance and in some times avoidance of these protections. It indirectly affects the safety provisions and objective of gender justice.

#### **6.6 Judicial Role and Emerging Challenges:**

Indian judiciary continuously played a vital role in interpreting labour laws in harmony with the constitutional protections. Judicial interpretations have continuously reinforced these guarantees by many judgments. The Supreme Court of India in many cases has pointed out that labour legislation must be interpreted in order to provide advances to the society by way of social justice and to protect the vulnerable group such as women workers etc.

### **6.6.1 Constitutional Mandate for Gender Justice in Labour Protection:**

The Constitution of India mandates a strong foundation for gender justice in employment and in workplace. Article 14 of constitution guarantees equality before the employment opportunities, while Article 15 prohibits discrimination in workplace on grounds of sex and other matters and article 15(3) empowers the state to make special provisions for women. Article 21 has been judicially interpreted in order to include the right to live with dignity, which includes safe and humane working conditions for all workers especially for women workers. Articles 39(a), 39(d), 39(e), 42, and 43 of directive principles of state policy further obligates the State to ensure health, strength, maternity relief, and just conditions of work.

### **6.6.2 Landmark Cases on Gender Justice and Occupational Safety of Women Workers**

#### **1. Vishaka v. State of Rajasthan<sup>9</sup>**

In this case the Supreme Court held that the Right to a safe working environment and free from sexual harassment is part of Articles 14, 15, and 21 of the Constitution and also framed the Vishaka guidelines. The supreme court held that the sexual harassment at workplace considered to be a violation of women's fundamental rights. This judgement emphasized that workplace safety includes not only physical working conditions but also psychological safety. Under new labour code such as occupational safety health and working conditions code also provides protection for women workers from workplace harassment specifically in night time works and hazardous industries.

Mackinnon Mackenzie & Co. Ltd. V. Audrey D'Costa<sup>10</sup>

This judgment emphasized the gender equality in terms of employment and also strengthened the application of equal pay for equal work. The Supreme Court in this case held that the work done by Audrey D'Costa was substantially the

same as that done by male stenographers in that establishment. Under the Equal Remuneration Act, 1976, the management is liable to pay equal remuneration to all stenographers irrespective of their gender.

#### **2. Municipal Corporation of Delhi v. Female Workers<sup>11</sup>**

In this case the female workers in Municipal Corporation of Delhi employed on a muster roll claimed maternity benefits. But it was rejected by Municipal Corporation of Delhi stating that muster roll employees are not entitled to claim benefits. The supreme court held that the female employees employed under muster roll also entitled to claim maternity benefits. This judgement strengthened protection for women workers employed in unorganized and informal sectors.

#### **3. Air India v. Nergesh Meerza<sup>12</sup>**

Air India released the special service rules for women air hostesses. But male workers didn't have any such restrictions in employment. In this case Regulation 46 and 47 of the Air India Employee's Service Regulations, 1963 was challenged. The court held that the service rules for women air hostesses are arbitrary and also it insults the dignity of women. Hence, it was held that the rules were unconstitutional. This judgment marks the significant result in workplace gender discrimination particularly in public employments.

### **6.7 International Framework on Gender Justice and Occupational Safety of Women Workers:**

Women workers safety and gender justice are well established principles of international labour laws and human rights laws. This international framework strongly influenced by domestic labour laws and India's labour legislations.

#### **1. International Labour Organization (ILO) Framework**

The primary international body responsible for setting labour standards is the International

Labour Organization. The conventions and recommendations of ILO provide for safe, healthy and protected workplace for women workers.

**(a) ILO Convention No. 155 – Occupational Safety and Health, 1981**

It establishes certain rights such as safe and healthy working conditions to workers in the establishment particularly for women workers. It also obligates States to formulate and implement a national occupational safety and health code policy. Eventhough it's gender neutral; it mandates risk assessment and prevention of certain activities in workplace.

**(b) ILO Convention No. 187 – Promotional Framework for OSH, 2006**

This convention establishes and encourages continuous enhancement of occupational safety and health systems. It also requires the strong institutional enforcement mechanisms for enforcement and monitoring. It supports the labour reforms in favour of women in hazardous and informal sectors.

**(c) ILO Convention No. 190 – Violence and Harassment, 2019**

This convention protects women workers from violence and harassment and also recognise this as a right of workers. The harassment also includes physical, physiological, psychological and sexual harm. This convention is applicable to both formal and informal sectors.

**(d) ILO Convention No. 100 – Equal Remuneration, 1951**

This equal remuneration convention mandates the employers to eliminate economic and social based discrimination among employees. It also mandates equal pay for equal work. Because the equality is closely connected with occupational safety and discrimination lead to increase in women's vulnerability.

## 2. United Nations Human Rights Framework

**(a) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**

This convention obligates the state to adopt special measures in order to fight against mere formal equality in labour codes. It also mandates elimination of discrimination in workplace. Particularly article 11 of this convention deals with right to safe working conditions, health protection, and maternity benefits for women workers.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Under this convention occupational safety for women workers is a part of right to health and dignity. Article 7 deals with right to safe and healthy working environment and article 12 deals with right to health of the workers.

## 7. SUGGESTIONS / RECOMMENDATIONS:

1. Effective enforcement and strong inspection mechanisms along with trained labour officers should be necessary to implement the safety provisions relating to women workers.
2. There must be a special focus given to women workers in both unorganised and informal sectors by providing the extended social security and occupational safety benefits under the new labour codes.
3. Periodic and regular training, awareness programmes should be conducted for employers and women workers in the workplace. It helps to educate them about their rights and social security protections.
4. The use of digital platforms should be increased in order to report safety violations, complaints on harassment, and monitoring compliance, especially for women those who working in night shifts.

5. Our India's new labour codes should be harmonized with international labour organization convention in order to strengthen gender justice and occupational safety for women workers.
6. It is necessary to conduct a periodic gender impact assessment, in order to evaluate the effectiveness of reforms introduced by new labour codes.

### 8. CONCLUSION:

The new labour codes introduce a significant shift in the evolution of India's labour legislations with the objective of simplification, inclusivity and economic development. By increasing the number of women representatives in grievance committee and other advisory boards will protect the interest of the women workers. Finally, these types of reforms in working environment creates a more inclusive, secure and empowered work conditions for women, and also it encourages them to participate and contribute for India's economic growth and development. This improved provisions under the new labour codes strengthen the women workers by ensuring the safety and security measures across all the industrial establishments by bringing gender justice. Some of provisions like enhanced maternity benefits, non discrimination in recruitment and relaxed provisions for working hours will increase the women's participation in the employment.

This research concludes with even though the new labour codes advance the gender equality, but there are many difficulties in implementing these given rights to the women workers. However, equality in matter of access does not automatically gave the right to equality in safety, dignity, or substantive justice. Therefore, achieving gender justice and equality under new labour codes requires substantive equality through strict enforcement and participatory form of governance not by mere gender neutrality. Then only the constitutional mandate of safe and equitable working conditions for women can be fulfilled by new

labour codes.

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## END NOTES

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